

# The Administrative Authority of Belgian Law in the Europe Modern Political's Perspective

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Article	Abstract.
Keywords: Administrative; Legal; Politic; State.	<i>This research aims to know that since 1831, the Belgian Constitution allows courts to not apply unlawful administrative acts. This power, established as an obligation by the Supreme Court of Appeal, is called "plea of illegality", and is guaranteed by Article 159 of the Constitution, which states that "the courts and tribunals shall not apply the provincial and local decrees and general regulations, until they comply with the laws.</i>
Article History Received: 2023-05-21; Reviewed: 2022-06-10; Accepted: 2022-06-16; Published: 2022-06-16.	<i>This research used library/literature research technic. The administrative high court also has the jurisdiction to issue non-binding opinions on the preliminary drafts of regulatory orders of the various federal State governments (federal, regional and community governments). This ex ante review, also carried out with regard to the preliminary drafts of legislative texts, is carried out by the legislative section of the Council of State. In 1991, the Council of State was vested with additional powers as litigants could apply, in summary and interim proceedings, for suspension of the execution of administrative acts, firstly in case of risk of serious irreparable harm, and since 2014, in case of emergency. The result show that last constitutional revision of 2014 tempered the monopoly of the judicial courts in litigation involving civil rights, with the Constitution stipulating that the Council of State has the jurisdiction to rule on the civil effects of its annulment judgments (Const. Art. 144 (2)). It can henceforth award a "restorative allowance" to any litigant who has suffered the effects of the annulled administrative act (consolidated acts on the Council of State, Article 11 bis). It may also indicate the measures to be taken to remedy the illegality sanctioned by its annulment judgments and, if the annulment implies that the authority takes a new decision, it may prescribe a time limit for doing so (consolidated acts, Art 35/1 and 36, 1<sup>st</sup>).</i>
DOI: 10.30659/jdh.v6i2.3118 4	
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## 1. Introduction

There is no "official" definition of administrative authority in Belgian law<sup>1</sup>. Nor is

<sup>1</sup> Andersen, L. B., Boye, S., & Laursen, R. Building support? The importance of verbal rewards for employee perceptions of governance initiatives. *International Public Management Journal*, 21(1), (2018): 1–32. <https://doi.org/10.1080/10967494.2017.1329761>

such a definition contained in the Constitution, laws or regulations<sup>2</sup>. The legislature, nonetheless, makes frequent use of the expression "*administrative authority*". However, rather than impose a definition, it referred to the concept as it is used, but not defined, in Article 14(1) of the consolidated acts of 12 January 1973 on the Council of State which empowers the latter to annul acts and regulations of the "*administrative authorities*" if they are tainted by misuse of power, by relying upon the interpretation given by case law. The problem is that case law – not to mention legal doctrine – on this matter has varied greatly over time<sup>3</sup>.

Put briefly, it has shifted – far from smoothly and not without controversy – from a precise but overly narrow definition (according to some) based on an organic criterion to an extensive, albeit more ambiguous, representation geared towards a combination of organic and material criteria<sup>4</sup>.

According to the initial interpretation by the Council of State in a ruling by the assembly (no. 93.289 of 13 February 2001), the administrative authorities within the meaning of Article 14(1) of the consolidated acts are the bodies which, by virtue of the Constitution and the special institutional reform acts, exercise executive power<sup>5</sup>, as well as the bodies which, by virtue of constitutional or legislative law, fall under the hierarchical<sup>6</sup> or supervisory purview of the federal government, the community or the region.

According to the second interpretation, laid down on 6 September 2002 by the Supreme Court of Appeal (J.L.M.B., 2004, pp. 11 et seq.) in its capacity as court of jurisdictional disputes, institutions created or accredited by the federal public authorities, the Communities, the Regions, the provinces or the municipalities, constitute administrative authorities within the meaning of Article 14 of the Consolidated Acts on the Council of State, inasmuch as their operation is determined and supervised by the public authorities and they can take required decisions regarding third parties, more specifically by determining unilaterally their

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<sup>2</sup> Frédéric Gosselin, Gregory Delannay & Paul Lewalle, Administrative Justice in Europe, In the following lines, only the powers specific to the Council of State will be examined. As regards the judicial courts, refer to: [https://e-justice.europa.eu/content\\_ordinary\\_courts-18-be-fr.do?init=true&member=1](https://e-justice.europa.eu/content_ordinary_courts-18-be-fr.do?init=true&member=1)".

<sup>3</sup> "The Belgian Crisis". Archived from the original on 11 September 2016. Retrieved 5 June 2022

<sup>4</sup> Rioux, Jean-Pierre (1989). La révolution industrielle (in French). Paris: Seuil. p. 105. ISBN 978-2-02-000651-4. And see Another comparative study on transportation in Belgium: OECD environmental performance reviews: Belgium. OECD. 2007. ISBN 978-92-64-03111-1.

<sup>5</sup> Namely, with Belgian public law as it stands, the King, the ministers and secretaries of state, the members of the federal government, the members of the Community and regional governments, the members of the board and of the French-speaking Community and the Joint Community Commission.

<sup>6</sup> For example, the public universities coming under the jurisdiction of the Community.

own obligations to third parties or by ascertaining, likewise unilaterally, the obligations of third parties<sup>7</sup>.

This interpretation has in particular led to the recognition<sup>8</sup> that private education institutions acted as administrative authorities when they issued or refused to award degrees to their students<sup>9</sup>.

There has been an "alignment" of the positions adopted on the matter by the legislative section of the Council of State (see, in particular, Lower House Session 2002-2003, Par. Doc. no. 50 0679/002, p. 14) and by the plenary session of the administrative section (as named on the date that these rulings were handed down - C.E., 4 June 2003, Zitoumi versus Institut technique Cardinal Mercier-Notre-Dame du Sacré-Coeur, no. 120.131; Van den Brande versus the non-profit association Inrichtende macht van de Vlaamse Katholieke Hogeschool voor Wetenschap en Kunst, no. 120.143)<sup>10</sup>.

Since the reform of 2014, the review of the Council of State is also exercised with regard to acts and regulations "of the legislative assemblies or their bodies, including the mediators instituted with these assemblies, the Court of Auditors and the Constitutional Court, the Council of State and the administrative courts as well as the bodies of the judiciary and the High Council of Justice, relating to public procurement, their staff members, as well as recruitment, appointment, assignment to a public office or disciplinary measures" (consolidated acts on the Council of State, Art. 14, 1, paragraph 1, 2°)<sup>11</sup>.

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<sup>7</sup> Ibid

<sup>8</sup> Bakker, A. B. A job demands–resources approach to public service motivation. *Public Administration Review*, 75(5), (2015): 723–732. <https://doi.org/10.1111/puar.12388>

<sup>9</sup> Andersen, L. B., Heinesen, E., & Pedersen, L. H. How does public service motivation among teachers affect student performance in schools? *Journal of Public Administration Research & Theory*, 24(3), (2014): 651–671. <https://doi.org/10.1093/jopart/mut082>

<sup>10</sup> "Industrial History, Belgium". European route of industrial heritage. Archived from the original on 31 July 2010. Retrieved 15 November 2022., see Lin, David; Hanscom, Laurel; Murthy, Adeline; Galli, Alessandro; Evans, Mikel; Neill, Evan; Mancini, Maria Serena; Martindill, Jon; Medouar, Fatime-Zahra; Huang, Shiyu; Wackernagel, Mathis (2018). "Ecological Footprint Accounting for Countries: Updates and Results of the National Footprint Accounts, 2012–2018". *Resources*. 7 (3): 58. doi:10.3390/resources7030058.

Fidler, Stephen (3 November 2010). "Europe's Top Traffic Jam Capitals". *The Wall Street Journal*. Archived from the original on 19 January 2012. Retrieved 21 June 2022

<sup>11</sup> Andersen, L. B., Pallesen, T., & Pedersen, L. H. Does ownership matter? Public service motivation among physiotherapists in the private and public sectors in Denmark. *Review of Public Personnel Administration*, 31(1), (2011): 10–27. <https://doi.org/10.1177/0734371X10394402>

Andersen, L. B., Pedersen, L. H., & Petersen, O. H. Motivational foundations of public service provision: Towards a theoretical synthesis. *Perspectives on Public Management and Governance*,

## 2. Research Methods

This research used the library / literature research with the collecting data based on the topic and make analyzing with some arguments and the reality about Belgian law draws a distinction between individual acts and regulations (general legislative acts). As already mentioned, in Belgian law, the legality of administrative acts and regulations is still verified by the courts and tribunals, as well as by administrative courts with special jurisdictions (Aliens Litigation Council, etc.) and by the Council of State, the only administrative court with general jurisdiction. Belgian law draws no distinction between administrative courts and administrative courts of appeal<sup>12</sup>.

## 3. Results and Discussion

### 3.1. The administrative authorities classified in Belgium

The Council of State is the supreme administrative court. There is no first or second degree of administrative courts in Belgium. When such courts are created in specific areas on the initiative of the federal entities or the federal State (e.g. the Aliens Litigation Council), the Council of State rules as the administrative court of cassation<sup>13</sup>.

It should be noted that since the last constitutional reform of 2014, the prior (non-jurisdictional) appeal to bodies legally invested with the function of mediator has been encouraged by the legislator, since a complaint filed before one of these bodies suspends the deadline for appeal to the Council of State (consolidated acts on the

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1(4), (2018): 283–298. <https://doi.org/10.1093/ppmgov/gvy003>

Ansell, C., Sørensen, E., & Torfing, J. The COVID-19 pandemic as a game changer for public administration and leadership? The need for robust governance responses to turbulent problems. *Public Management Review*, 23(7), (2021): 949–960. <https://doi.org/10.1080/14719037.2020.1820272>

Backhaus, L., & Vogel, R. Leadership in the public sector: A meta-analysis of styles, outcomes, contexts, and methods. *Public Administration Review*, 82(6), (2022): 986–1003. <https://doi.org/10.1111/puar.13516>

<sup>12</sup> Vanhaute, Eric; Paping, Richard & Ó Gráda, Cormac (2006). The European subsistence crisis of 1845–1850: a comparative perspective (PDF). IEHC. Helsinki. Archived (PDF) from the original on 11 October 2011. Retrieved 31 May 2022, see Vanhaute, Eric (2007). "So worthy an example to Ireland". The subsistence and industrial crisis of 1845–1850 in Flanders". When the potato failed. Causes and effects of the 'last' European subsistence crisis, 1845–1850. Brepols. pp. 123–148. ISBN 978-2-503-51985-2. Archived from the original (PDF) on 22 July 2011. Retrieved 31 May 2011.

<sup>13</sup> Andersen, L. B., Pallesen, T., & Pedersen, L. H. Does ownership matter? Public service motivation among physiotherapists in the private and public sectors in Denmark. *Review of Public Personnel Administration*, 31(1), (2011): 10–27. <https://doi.org/10.1177/0734371X10394402>

Council of State, Article 19 (3))<sup>14</sup>.

Since 1831, the Belgian Constitution has granted the judicial courts and tribunals the power, established as a duty by the Supreme Court of Appeal, to prevent the application of any administrative act contrary to standards that are superior to it in the hierarchy of standards. This system is known as the “plea of illegality” (Const., Article 159). All administrative courts can be created only by a legal (or decretal) text or a constitutional provision, and never by case-law<sup>15</sup>.

As indicated above, there are currently no administrative courts with general jurisdiction in Belgian law. Nevertheless, a large number of administrative courts with specialised jurisdiction have been created by the legislature over time, pursuant to Articles 145, 146 and 161 of the consolidated Constitution. The legislature has most often introduced a new body to do so. In certain cases, however, it has entrusted jurisdictional competences to administrative authorities that already existed, owing to functional duplication. In the Walloon Region, disputes concerning the validity of municipal elections are settled in the first instance by the provincial board, pursuant to Article 104, section 8, of the provincial Act of 30 April 1836, maintained in force by the Decree of 12 February 2004, Article 137. In the Flemish Region, the Dispute Resolution Board for decisions on the progress of studies was set up in 2004 in the area of Community education, and in the area of urban planning and the environment, the Collège de maintien environnemental and the Council for challenging authorisations were created in 2007 and 2009 respectively (X. DELGRANGE, “The federated administrative jurisdictions erode the linguistic parity in the Council of State”, *Pyramide*, 2017, no. 29, p. 249-250).

The administrative courts rule sometimes in both<sup>16</sup> the first and final instance, sometimes in the first instance and then on appeal. Final decisions handed down by these courts fall under the jurisdiction of the Council of State for appeal (Article 14(2) of the Consolidated Acts of 12 January 1973).

<sup>14</sup> Andersen, L. B., Pedersen, L. H., & Petersen, O. H. Motivational foundations of public service provision: Towards a theoretical synthesis. *Perspectives on Public Management and Governance*, 1(4), (2018): 283–298. <https://doi.org/10.1093/ppmgov/gvy003>

<sup>15</sup> Backhaus, L., & Vogel, R. Leadership in the public sector: A meta-analysis of styles, outcomes, contexts, and methods. *Public Administration Review*, 82(6), (2022): 986–1003. <https://doi.org/10.1111/puar.13516>

<sup>16</sup> Ansell, C., Sørensen, E., & Torfing, J. The COVID-19 pandemic as a game changer for public administration and leadership? The need for robust governance responses to turbulent problems. *Public Management Review*, 23(7), (2021): 949–960. <https://doi.org/10.1080/14719037.2020.1820272>

### 3.2. The judges in charge of the review of administrative authorities recruited

Access to the position of member of the Council of State is reserved for candidates who have previously demonstrated their skills and ability to perform the function. Pursuant to Article 70(2) of the Consolidated Acts on the Council of State, prescribes:

“No person may be appointed member of the Council of State if s/he does not hold a bachelor's degree, master's degree or doctorate in law, does not have relevant professional experience of a legal nature of at least ten years, and does not meet one of the following conditions:

1° to have passed the competition for auditor and assistant auditor at the Council of State, the competition for legal secretary at the Constitutional Court and the Supreme Court of Appeal, the competition for assistant auditor at the Court of Audit or the professional aptitude test stipulated in Article 259(a) of the Code of Judicial Procedure; 2° to hold an administrative position of at least rank A4 or equivalent in a Belgian public authority or a Belgian public organisation;

3° to have submitted and defended successfully a doctoral dissertation in law or to have qualified for higher education instruction in law;

4° to carry out duties in Belgium as a magistrate in the public prosecution office or as an actual judge or be a member of the Aliens Litigation Council as referred to in Article 39/1 of the Act of 1980 on admission to national territory, residence, establishment and repatriation of foreign nationals<sup>17</sup>;

5° to hold a teaching position in law at a Belgian university.

6° to have, for at least twenty years, practised law as a principal occupation or have exercised for at least 20 years a function that requires good knowledge of law, of which at least 15 years was in the capacity of a lawyer. The requirement of useful professional experience referred to in paragraph 1 shall be met by compliance with this condition.”

In the case of acts adopted by the decentralised authorities (municipalities and provinces), an optional, internal and non-judicial remedy may be sought from the supervisory authority, that is to say the regional governments, which are competent to annul such acts if they undermine legality or public interest. This

<sup>17</sup> Panorama of Transport (PDF). Office for Official Publications of the European Communities. 2003. ISBN 978-92-894-4845-1. Archived from the original (PDF) on 7 August 2022.

right of annulment is, however, left to the discretion of the supervisory authority, which is not obliged to exercise it.

Apart from this supervisory control, the appeal for annulment to the Council of State may be exercised by any person proving an interest provided, in particular, that any preliminary appeals organised by the texts have been exercised and that the appeal for annulment is introduced within sixty days of publication, notification or acknowledgment of the administrative act.

Apart from the hypothesis of a request for preliminary ruling submitted to the Court of Justice in accordance with Article 234 TFEU, the Council of State is required to refer a preliminary ruling to the Constitutional Court if a legislative provision (law, decree or ordinance) applicable in a dispute that is submitted to it, is potentially contrary to certain articles of the Constitution (mainly of its Title II: "Belgians and their rights") or rules that divide jurisdictions between the federal State, the Communities and the Regions. On the other hand, no preliminary ruling mechanism exists with regard to administrative acts, whether regulatory or individual.

However, it is advisable to keep in mind Belgium's ratification of Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms, under which the highest courts may address the European Court of Human Rights for an advisory opinion on questions of principle relating to the interpretation or application of rights and freedoms defined by the Convention or its protocols<sup>18</sup>.

The Belgian Council of State has exercised both jurisdictional and advisory duties ever since it was created by the Act of 23 December 1946. This dual remit is reflected in the way it is organised.

a. The legislation section has no judicial function.

Its powers are essentially advisory.

Its task is to enlighten and assist the legislature, the federal government, the councils (now the parliaments), and the Community and regional governments, the members of the French-speaking Community Commission or the Assembly, the members of the Board of the French-speaking Community Commission and the Board, depending on the case, in exercising their legislative duties<sup>5</sup>.

b. The administrative legal section is vested with judicial functions.

<sup>18</sup> Alderfer, C. P. An empirical test of a new theory of human needs. *Organizational Behavior & Human Performance*, 4(2), (1969): 142–175. [https://doi.org/10.1016/0030-5073\(69\)90004-X](https://doi.org/10.1016/0030-5073(69)90004-X)



Articles 8 and 9 of the Acts on the Council of State, consolidated on 12 January 1973, provide that this section, then called the administrative section, may be consulted by the federal ministers and members of the Community and regional governments, the members of the French-speaking Community Commission and the members of the Board, each for the matters that concern them, on the difficulties and disputes that the executive power has to solve or settle, provided they are of an administrative rather than a litigious nature<sup>19</sup>.

Articles 8 and 9 of the Consolidated Acts were repealed by Article 3 of the Act of 15 September 2006, which entered into force on 1 December 2006, since the legislator considered that issuing opinions was too time-consuming for members of the Council of State assigned to deal with legal cases (Lower House Session 2005 – 2006, Parl. Doc. No. 51 2779/001, p. 21).

### **3.3. The judicial and advisory functions organised**

The administrative legal section of the Council of State comprises the first president or president, the chamber presidents and members of the Council of State who have not yet been appointed to the legislative section.

The members of the Council of State assigned to the administrative legal section may be called upon by the first president to sit on the legislative section, either to replace a member who is prevented from attending, or to constitute additional chambers as and when required.

The members of the Council of State appointed to the legislative section may be called upon to sit on the administrative legal section as and when needed to form a bilingual chamber, either to replace a member of the Dutch-speaking chamber or a member of the French-speaking chamber prevented from attending, or to form additional chambers<sup>20</sup>. Are applications for review by the courts subject to screening procedures? Distinguish between first instance, appeal, and highest courts.

As regards the Council of State, Article 20 of the Consolidated Acts, as re-established by Article 8 of the Act of 15 September 2006, makes the action for a judicial review, as can be introduced before this court pursuant to Article 14(2), subject to a prerequisite: the petitioner must be authorised by the Council of State itself before s/he may refer the matter to it.

<sup>19</sup> "The World Factbook—(Rank Order—Public debt)". CIA. 17 April 2007. Archived from the original on 13 June 2007. Retrieved 8 May 20022

<sup>20</sup> Articles 2-6 of the Consolidated Acts, as amended by the Act of 4 August 1996.



Under the terms of Article 20(1), the application for judicial review is broached only where it is declared admissible by virtue of Article 20(2).

Article 20(2) provides that, as soon as it is placed on the list, each application for judicial review is immediately subjected to the admission procedure on the basis of the petition and the file of the procedure.

Applications for judicial review for which the Council of State has no jurisdiction or which are irrelevant are declared inadmissible. Only applications for judicial review that cite a violation of the law or a violation of rule of form, either in terms of substance or where required on pain of nullity, are declared admissible, provided that the argument cited by the application does not manifestly lack grounds, and said violation is actually of such nature as to lead to the judicial review of the disputed decision, and that it could have influenced the scope of the decision. Nevertheless, under the terms of the final section of Article 20 (2) (new), applications for judicial review in respect of which the Council of State has no jurisdiction, or which are irrelevant and manifestly inadmissible, and which have to be examined by the section to ensure the unity of case law, are likewise declared admissible.

According to Article 20(3), the first president, the president, the chamber president and the member of the Council of State with at least three years of seniority in the position, appointed by the head of the administrative legal section, decide, by ordinance, within eight days of receipt of the court file, on the admissibility of the application for a judicial review, without holding a hearing.

The proceedings must be rapid, without either a hearing or a debate, and succinct reasons must be provided for the decision not to admit or to refuse to admit the application. The legislature has availed himself of the case law of the Court of Justice of the European Communities (CJEC, 8 July 1999, Goldstein vs. the Commission, C- 199/98) and of the European Court of Human Rights (ECHR, 19 February 1996, Botten versus Norway, series 1996-1).

There is no formal procedure to be followed for the application. The only procedural requirements relate to the applicant's contact details, the identification of the impugned act, a statement of facts and the formulation of "pleas" that indicate the violated rule and the extent of that violation.

In the event of a request for suspension, a statement of urgency must also be included in the application. Article 3(a) of the Regent's Decree of 23 August 1948 defining the proceedings before the administrative legal section of the Council of State and Article 5 of the Royal Decree of 30 November 2006 detail the contents and

the conditions for the enrolment of the petition.

Since 2014, recourse to the Council of State can also be introduced by electronic means, according to the procedure organised by the Royal Decree of 13 January 2014 amending the Regent's Decree of 23 August 1948 determining the procedure before the administrative litigation section of the Council of State, the Royal Decree of 5 December 1991 determining the procedure in summary proceedings before the Council of State and the Royal Decree of 30 November 2006 determining the procedure in cassation before the Council of State, with a view to setting up the electronic procedure.

Except in certain specific disputes which are free, the introduction of an application before the Council of State is subject, in principle, to the payment of a role fee of 200 Euros (consolidated acts on the Council of State, art. 70) and a contribution to the legal aid fund of 20 euros (law of 19 March 2017 establishing a budgetary fund for second-line legal aid, Article 4, 4). The lodging of an application to intervene is subject, in turn, to the payment of a role fee of 150 euros. Before the Council of State, except with regard to an application for judicial review, recourse to the services of a lawyer is not mandatory but optional, as is apparent from paragraphs 4 to 9 of Article 19 of the consolidated acts on the Council of State:

“The parties may be represented or assisted by lawyers registered with the bar association or on the list of trainees as well as, depending on the relevant provisions of the Code of Judicial Procedure, by nationals of an EU Member State who are accredited to practice law.” The lawyers will always have the right to access the case file at the registry and to file a memorandum in support<sup>21</sup>, under the conditions to be determined by the royal decrees set out in Article 30.

An appeal in cassation may not be lodged without the assistance of a person referred to in paragraph 4, who must sign the petition. Unless proved otherwise, the lawyer is presumed to have been appointed by the capable person whom he claims to represent”. The consolidated acts on the Council of State contain an article specifically devoted to “fines for manifestly abusive applications” (Article 37). If “in the view of the auditor's report or additional report, the Council of State should deem that a fine may be justified for manifestly improper legal action, the ruling shall fix a hearing at an early date to that end”. If, once an application for a judicial review has been declared inadmissible by virtue of Article 20, the Council of State considers that the fine referred to in section 1 is justified, a difference member of

<sup>21</sup> Andersen, L. B., & Pedersen, L. H. Public service motivation and professionalism. *International Journal of Public Administration*, 35(1) (2012): 46–57. <https://doi.org/10.1080/01900692.2011.635278>

the Council of State to the one who took the decision not to admit the application, shall fix a hearing at an early date for that purpose.

The decision shall be notified to the petitioner and to the opposing party and is “in any case” deemed to have been handed down on the basis of a hearing. Fines range between €125 and €2,500. These sums may be changed by the King in accordance with the consumer price index. Since 1 January 2016, the proceeds of the fine are paid to the general resources of the Treasury.

All the procedural documents must be sent to the registry of the Council of State, which is responsible for forwarding them to the parties. According to the ethical practice of lawyers, however, a copy of their procedural documents must be sent to the opposing party at the same time as they are filed with the court registry<sup>22</sup>.

Proceedings are inquisitorial: when examining an application for annulment, the judge is vested with precise responsibilities regarding the examination of the case. As underscored in the Report to the Regent preceding the<sup>23</sup> Decree of 23 August 1948 laying down the procedure before the administrative section of the Council of State (now the administrative legal section): “It is because the very idea of administrative litigation is inseparable from the concept of general interest that the proceedings must be conducted through the judge, and not by the parties or their counsels. To decide otherwise would be to enable the parties – which are naturally tempted to put their personal conveniences and interest before the general interest

– to delay the settlement of disputes; it would moreover enable an administrative authority to use all the means at its disposal to prolong the effects of the illegal act it committed, to the detriment of the law. That is why in France, as in the Netherlands, the Council of State itself conducts the proceedings (...)”<sup>6</sup>.

### **3.4. The legal costs and expenses distributed**

Before the Council of State, as regards general litigation, the costs are paid as set out in Articles 66 and 67 of the general procedural regulation:

“Art. 66. The costs include:

1° the fees referred to in Article 70;

<sup>22</sup> "Background Note: Belgium". US Department of State, Bureau of European and Eurasian Affairs. April 2007. Retrieved 8 May 2022.

<sup>23</sup> Belgian Official Gazette, August 23-24, 1948, p. 6821.

2° the fees and disbursements of the experts; 3° the taxes of witnesses;

4° living and travelling expenses incurred by the investigation measures; 5 ° the procedural indemnity referred to in Article 67;

6° the contribution referred to in Article 4 (4) of the Law of 19 March 2017 establishing a budgetary fund for second-line legal aid.”

“Art. 67. 1. The basic amount of the procedural indemnity is EUR 700, the minimum amount is EUR 140 and the maximum amount is EUR 1,400.

By way of derogation from the preceding paragraph, the maximum amount is raised to EUR 2,800 for litigation relating to the rules on public procurement and certain works, service and supply contracts.

2. The basic, minimum or maximum amount referred to in paragraph 1 shall be increased by an amount corresponding to 20% of that amount if the action for annulment is accompanied by a request for suspension or provisional measures, or if the request for suspension or provisional measures is introduced under the benefit of extreme urgency and is accompanied by an action for annulment.

The amounts of these increases shall be cumulative, without the total amount of the procedural indemnity thus increased being greater than 140% of the basic, minimum or maximum amount referred to in paragraph 1. No increase is due, in particular, if the administrative litigation section decides that the action for annulment is not applicable and that it only calls for summary debates, or if Articles 11/2 to 11/4 of this order are applied.

3. The basic, minimum and maximum amounts are linked to the consumer price index corresponding to 100.66 points (2013 base). Any change by more or less than 10 points will result in an increase or decrease of 10% of the amounts referred to in paragraph 1 of this article.

The new amounts resulting from these changes apply on the first day of the month following the month in which the threshold of 10% has been reached. The Minister for the Interior is authorised to adjust the amounts of this Order in accordance with the formula in paragraph 1.” In principle, the party that succeeds on the merits bears all the costs of the proceedings. As regards the costs relating to the cassation proceedings, see Articles 28 to 32 of the Royal Decree of 30 November 2006 determining the cassation proceedings before the Council of State. The principle of collegiality is still applied, but in practice, significant exceptions

apply.

In this regard, Article 90 of the consolidated acts on the Council of State provides as follows: “ 1. The chambers of the administrative litigation section have three members.

Nonetheless, they comprise a single member when hearing:

1° requests for suspension and provisional measures;

2° applications for annulment or judicial review pursuant to Article 17 6 and 7, Article 21, section 2 or Article 26, or when the application has to be declared irrelevant, or calls for withdrawal or has to be removed from the case list, or entails only summary proceedings.

By way of derogation, the President of the chamber may automatically order the case to be referred to a chamber composed of one member where the legal complexity or interest of the case is not thereby compromised.

By way of derogation, the President of the chamber may, if the petitioner has made a reasoned request in his or her petition or automatically, order that the case be referred to a chamber composed of three members, when the legal complexity or the interest of the case or specific circumstances so require.

2. When examining the admissibility of an application for judicial review as referred to in Article 20, the bench always comprises a single member.”

During the 2016-2017 judicial year, of the 3,339 judgments delivered by the Council of State, approximately 52% were in simplified or abridged proceedings which (in the vast majority of cases) were heard by a single judge. Some of these cases were also cases without a hearing.

Since the last reform of 2014, the Council of State may, at the request of a party, indicate in the reasons for its judgment annulling the measures to be taken to remedy the illegality that led to it, or order a decision be taken within a certain time if the annulment judgment implies that the authority take a new decision (consolidated acts on the Council of State, Art. 35/1 and 36, 1). The Council of State may also impose a penalty payment (consolidated acts on the Council of State, Article 17, 8, and 36, 2 to 5). In this regard, also refer to the Royal Decree of 2 April 1991 determining the procedure before the administrative litigation section of the Council of State on injunction and penalties. Draconian measures *for litigants* have

been taken since 1991 to expedite proceedings.

To cite but one example, by virtue of the Act of 4 August 1996 amending the Consolidated Acts on the Council of State, a petitioner whose request for suspension has not been accepted, is deemed to have withdrawn if s/he does not file a petition to continue the proceedings within 30 days as of the notification of the judgment.

Since these measures did not suffice to reduce the backlog, especially in litigation involving foreign nationals, the legislature decided to adopt the Act of 15 September 2006 reforming the Council of State and establishing an Aliens Litigation Council. In a key point of the reform, the Council of State is no longer competent, in applications for suspension or annulment, to review individual decisions taken by virtue of the legislation relating to aliens. This jurisdiction was transferred to the Aliens Litigation Council on the date the latter was created. The decisions of this body may, however, be referred to the Council of State for review.

This new entity is in theory competent to hear petitions contesting decisions taken by the general commissioner for refugees and stateless persons regarding applications for asylum in the broad sense of the term, i.e. both as regards refugee status and the new subsidiary protection status; it is also competent to review, in petitions for annulment, other decisions taken by virtue of the laws concerning access to the territory, residence, establishment and repatriation of aliens; it has the power to suspend, where necessary in a procedure for extreme urgency, decisions contested before it and to order provisional measures where appropriate, in anticipation of the decision on the application for annulment.

"*Modern management techniques*" have been introduced within the Council of State itself, accompanied by statutory amendments. The aim is to apply the instruments used in courts and tribunals to the Council of State as far as possible. The system of term of office replaces the appointment for life for the chief of staff, the chamber president, the first chief auditor of the section and the first secretary of the section. Holders of the office of first president and president are responsible for management of staff only and are not responsible for management of a chamber<sup>24</sup>.

An evaluation system for office-holders was introduced by law and their workload is to be measured and recorded. Regulations governing illness and disability of office-

<sup>24</sup> Andersen, L. B., & Pedersen, L. H. Does ownership matter for employee motivation when occupation is controlled for? *International Journal of Public Administration*, 36(12), (2013): 840–856. <https://doi.org/10.1080/01900692.2013.795162>

holders have been introduced that are similar to those applied in the courts and tribunals. Additional magistrates, members of the Council of State and members of the auditor's office as well as court clerks have been appointed and assigned to reduce the backlog of ordinary litigation as a matter of priority. Measures have also been taken to expedite proceedings. The list of cases in which the dispute may be decided by a single judge has been lengthened. A petition for judicial review must be signed by a lawyer. A screening procedure is applied. Misuse of such appeal is subject to a fine. Measures have been taken to simplify rulings and reports.

#### 4. Conclusion

Since early 2013, the Council of State has professionalised its communication and appointed new press magistrates. These magistrates have received “*media training*” and are in contact with the press. When important or newsworthy rulings are given, the Council of State makes sure to proactively communicate with the public. Upon notification of these rulings to the parties concerned, the Council of State publishes a “*newsflash*” on its website, which is a summary of the ruling allowing the public to understand the scope and use of the ruling in question. This proactive communication is an essential element for the image of the Council of State. The Council of State is also responsible for making the rules and regulations in force available to the public. To this end, the Council website provides access to a “*refLex*” database which is designed as a search tool for regulations applicable in Belgium. It can also be used to browse through other databases. The Council's website can also be used to access “*juriDict*”, a database of the legal content of the Council's case law. It contains rulings as well as non-admission orders.

#### 4. References

##### Journals:

- Alderfer, C. P. An empirical test of a new theory of human needs. *Organizational Behavior & Human Performance*, 4(2), (1969): 142–175. <https://doi.org/10.1016/0030-50736990004-X>
- Andersen, L. B., & Pedersen, L. H. Does ownership matter for employee motivation when occupation is controlled for? *International Journal of Public Administration*, 36(12), (2013): 840–856. <https://doi.org/10.1080/01900692.2013.795162>
- Andersen, L. B., & Pedersen, L. H. Public service motivation and professionalism. *International Journal of Public Administration*, 35(1) (2012): 46–57. <https://doi.org/10.1080/01900692.2011.635278>
- Andersen, L. B., Boye, S., & Laursen, R. Building support? The importance of verbal rewards for employee perceptions of governance initiatives. *International*



- Public Management Journal*, 21(1), (2018): 1–32. <https://doi.org/10.1080/10967494.2017.1329761>
- Andersen, L. B., Heinesen, E., & Pedersen, L. H. How does public service motivation among teachers affect student performance in schools? *Journal of Public Administration Research & Theory*, 24(3), (2014): 651–671. <https://doi.org/10.1093/jopart/mut082>
- Andersen, L. B., Pallesen, T., & Pedersen, L. H. Does ownership matter? Public service motivation among physiotherapists in the private and public sectors in Denmark. *Review of Public Personnel Administration*, 31(1), (2011): 10–27. <https://doi.org/10.1177/0734371X10394402>
- Andersen, L. B., Pedersen, L. H., & Petersen, O. H. Motivational foundations of public service provision: Towards a theoretical synthesis. *Perspectives on Public Management and Governance*, 1(4), (2018): 283–298. <https://doi.org/10.1093/ppmgov/gvy003>
- Another comparative study on transportation in Belgium: OECD environmental performance reviews: Belgium. OECD. 2007. ISBN 978-92-64-03111-1.
- Ansell, C., Sørensen, E., & Torfing, J. The COVID-19 pandemic as a game changer for public administration and leadership? The need for robust governance responses to turbulent problems. *Public Management Review*, 23(7), (2021): 949–960. <https://doi.org/10.1080/14719037.2020.1820272>
- Backhaus, L., & Vogel, R. Leadership in the public sector: A meta-analysis of styles, outcomes, contexts, and methods. *Public Administration Review*, 82(6), (2022): 986–1003. <https://doi.org/10.1111/puar.13516>
- Bakker, A. B. A job demands–resources approach to public service motivation. *Public Administration Review*, 75(5), (2015): 723–732. <https://doi.org/10.1111/puar.12388>
- Lin, David; Hanscom, Laurel; Murthy, Adeline; Galli, Alessandro; Evans, Mikel; Neill, Evan; Mancini, Maria Serena; Martindill, Jon; Medouar, Fatime-Zahra; Huang, Shiyu; Wackernagel, Mathis (2018). "Ecological Footprint Accounting for Countries: Updates and Results of the National Footprint Accounts, 2012–2018". Resources. 7 (3): 58. doi:10.3390/resources7030058.

#### Books:

- Panorama of Transport. *Office for Official Publications of the European Communities*. 2003. ISBN 978-92-894-4845-1. Archived from the original (PDF) on 7 August 2022.
- Rioux, Jean-Pierre La révolution industrielle (in French). Paris: Seuil. p. 105. ISBN 978-2-02-000651-4. 1989.
- Vanhaute, Eric (2007). "'So worthy an example to Ireland'. The subsistence and industrial crisis of 1845–1850 in Flanders". When the potato failed. Causes and effects of the 'last' European subsistence crisis, 1845–1850. Brepols. pp. 123–148. ISBN 978-2-503-51985-2. Archived from the original (PDF) on 22 July

2011. Retrieved 31 May 2022.

**Internet:**

"Background Note: Belgium". US Department of State, Bureau of European and Eurasian Affairs. April 2007. Retrieved 8 May 2022.

"Industrial History, Belgium". European route of industrial heritage. Archived from the original on 31 July 2010. Retrieved 15 November 2022.

"The Belgian Crisis". Archived from the original on 11 September 2016. Retrieved 5 June 2022

"The World Factbook—(Rank Order—Public debt)". CIA. 17 April 2007. Archived from the original on 13 June 2007. Retrieved 8 May 20022

Fidler, Stephen (3 November 2010). "Europe's Top Traffic Jam Capitals". The Wall Street Journal. Archived from the original on 19 January 2012. Retrieved 21 June 2022

Vanhaute, Eric; Paping, Richard & Ó Gráda, Cormac (2006). The European subsistence crisis of 1845–1850: a comparative perspective (PDF). IEHC. Helsinki. Archived (PDF) from the original on 11 October 2011. Retrieved 31 May 2011.