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Belgium

Cour de cassation de Belgique/Hof van Cassatie van België

Date of establishment: 1832

Address and e-mail of the court:

Palais de Justice

Place Poelaert

1000 Bruxelles

secr.cass@just.fgov.be [1]

Website

<http://www.cass.be/> [2] (French)

http://justice.belgium.be/fr/ordre_judiciaire/cours_et_tribunaux/cour_de_cassation/ [3]

Link to the national database of their case law: <http://jure.juridat.just.fgov.be/JuridatSearchCombined/?lang=fr&jur> [4]=

The Cour de cassation de Belgique/Hof van Cassatie van België's the highest court in the judicial system.

What does the Court decide about:

There is only one Court of Cassation in Belgium, which is the highest court of the judiciary.

However, the Court is not a third degree of trial, which means that it does not judge the facts which are the sole competence of the trial judges. It can be said that the Court does not judge cases but decisions: it verifies if decisions have been duly rendered and if they are in accordance with the law.

The Court of cassation therefore hears and determines referred decisions entered in last resort for breach of the law or for legal flaw either substantial or prescribed in such a way that if not complied with it can be declared void.

Within some limits, decisions of certain public authorities, such as the Council of State, can be appealed before The Court, that also decides on conflicts of powers between the judicial and administrative authorities. Furthermore, the Court of cassation exercises at the highest level the disciplinary power on judges.

The principals of procedure:

As to initiate the proceedings before the Court of cassation, a request in cassation has to be filed within the time-limit laid down by law: as a rule, this amounts in civil matters to 3 months from formal notification of the decision, and to 15 days from the day of the decision in criminal matters.

In civil, commercial, social and disciplinary matters, requests shall be made by means of an application signed by one of the 20 specialized attorneys who are members of the cassation bar.

In tax law, it is not compulsory to use such a specialized attorney: requests may be signed either by a attorney or even in some cases by a civil servant.

In criminal matters, a request in cassation may still be constituted by simple notification to the Registry of the court which has delivered the decision or to the Registry of the prison when the appellant is yet imprisoned. However, since February 2015, the use of an attorney will be compulsory in criminal matters too; two years later, it will be requested that these attorneys specialize in cassation cases.

The request states the plaintiff's legal means, i.e. the objections he raises against the disputed decision. This rule is particularly important in civil, commercial, social and disciplinary matters, in which the Court of cassation never initiates legal means of its own accord, even where it concerns a matter of public order; it restricts itself to acting on the means invoked in the application. In return, in criminal matters the Court shall always check whether the sentence is in accordance with the law and whether the decision is regular and where necessary shall quash the decision by way of a means raised of its own accord.

The defendant may lodge a response within the time-limit laid down by law depending on the matters involved.

The judge acting as a 'rapporteur' and appointed by the first president of the Court draws up a draft judgment while the case is subsequently referred to a Prosecutor (advocate general) for the purpose of preparing its conclusions.

During the hearing, after the judge's report and the advocate general's conclusions, the parties have the right to speak and, if required, may submit responses to its conclusions. As a general rule, the attorneys do not plead. The decision is generally delivered on the same day; the decision is adopted by simple majority, while the advocate general is not allowed to take part into the proceedings. The decisions are delivered in the language of the procedure which is the language of the disputed decision; if it is drawn up in German, the First President decides whether the cassation procedure will take place in French or in Dutch. The decisions delivered in one of these languages will be translated into the other language.

When an appeal has been lodged, the Court of Cassation does not decide on the substance of the case : it merely admits or rejects the appeal. Where the appeal is dismissed the disputed decision acquires the force of final judgment. Where it is admitted, the Court delivers a cassation decision, either total or partial, depending on the scope of the legal means resulting in cassation. In the event of cassation, referral is made, in principle, before a court of the same level as the one which pronounced the contested decision. In rare cases, cassation is pronounced without referral, e.g. in criminal matters, where it results from the judgment that the public proceedings have been quashed; in that case, there is nothing more to be judged.

The court of referral is not, as a rule, bound by the Court of Cassation's decision. The new court may thus decide the case as it pleases, from a legal and from a material point of view. However, in the event of a renewed appeal regarding the same legal question, the Court of Cassation decides in plenary session of the chambers and, where there is cassation, the court of referral must comply with the Court of Cassation's decision. However, as a general rule the court of referral follows the Court of Cassation's decision.

The number of justices and panels:

The Court consists of three Chambers: the Civil Chamber, dealing with civil, commercial, administrative, fiscal and disciplinary issues, the Criminal Chamber and the Social Chamber, dealing with social cases. Each Chamber is divided in two sections: a French one and a Dutch one. Each section is composed of five judges, including the Section President. The sections are assisted by a member of the Public Prosecutor's Office.

The Court of Cassation is headed by the First President. It consists of thirty benchers, amongst them the First President,

one President, six section's President and 22 judges. The judges of the Court must have held a judicial post for at least fifteen years, the last ten years of which were held in a function of member of the judicial order.

The Office of the 'Procureur general' (Chief Prosecutor) is headed by the 'Procureur general', who is aided by the First Prosecutor and 12 Prosecutors. The conditions of appointment for the members of the Office of the Procureur general are similar to these for the members of the Bench.

How are the justices appointed:

The judges and the advocates general at the Court of cassation are appointed by the King acting upon a proposal from the Superior Council of Justice. For the judges, the plenary assembly of the Court previously gives a well-founded opinion on each candidate.

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