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National justice systems

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Belgium



Belgium

This section presents an overview of the organisation of the courts and tribunals.

The judicial system

The Belgian judicial system is a system in the civil law tradition, in which a set of codified rules is applied and interpreted by judges.

The organisation of the courts in Belgium is a solely federal responsibility.

Principles

Before setting out the court system in Belgium, it is useful to look at some constitutional and general principles relating to the organisation of the judiciary.

Alongside the legislative power and the executive power, the Constitution established the judicial power, exercised by the law courts. The courts thus constitute an independent power alongside the other constitutional powers.

The judicial power is exercised by the courts in accordance with the constitutional and legal provisions. The role of the judiciary is to judge cases. When it rules in disputes between citizens, it applies the civil law, and where a person has committed an offence it applies the criminal law. A distinction is made between the judges adjudicating cases in court (*la magistrature assise/de zittende magistratuur*, 'sitting judges') and the law officers who work in the State Counsel's Office or Prosecutor's Office (*ministère public/openbaar ministerie*), who essentially bring prosecutions (*la magistrature debout/de staande magistratuur*, 'standing judges', also known as the *parquet/parket*, 'the well of the court').

Under Articles 144 and 145 of the Constitution, disputes about civil rights belong exclusively to the competence of the courts, and disputes concerning political rights belong to the competence of the courts except where otherwise provided for by the law.

A court or other body capable of rendering judgment can be established only by statute. Under Article 146 of the Belgian Constitution, no extraordinary courts or commissions may be created, no matter what they may be called.

Court hearings are public, unless public access would endanger morals or the peace; if such is the case, the Court so declares in a judgment (Article 148(1) of the Constitution). The principle of public hearings ensures the transparency of justice.

A judgment must state the reasons on which it is based. It is delivered in public (Article 149 of the Constitution). The requirement to give reasons imposed by the Constitution and by Article 780 of the Judicial Code (*Code Judiciaire/Gerechtigd Wetboek*) means that the court must respond to the factual and legal arguments put forward in the parties' submission. The reasons must be given in full and must be clear, precise and sufficient.

The requirement to give reasons, like the independence of the judiciary, protects the litigant against possible arbitrary action, and he or she can decide in the light of the reasons given whether to lodge an appeal before an appeal court or the Court of Cassation (*Cour de cassation/Hof van Cassatie*).

Article 151(1) of the Constitution provides for the independence of judges in the exercise of their office, and the independence of the State Counsel's Office in the conduct of investigations and prosecutions in individual cases, subject only to the right of the responsible minister to order that a prosecution be brought and to issue binding criminal policy guidelines, including guidelines on investigation and prosecution policy.

Under Article 151(4), judges are appointed by the King under the conditions and in the manner specified by the law.

Judges are appointed for life. They retire at an age determined by law and receive a pension provided for by law. A judge can be deprived of his or her position or suspended only by a court judgment. A judge can be transferred only by appointing him or her to a new position and only with his or her consent (Article 152 of the Constitution). Officers of the State Counsel's Office are likewise appointed and dismissed by the King (Article 153 of the Constitution).

Salaries of members of the judiciary are determined by the law (Article 154 of the Constitution).

Judges cannot accept a salaried position from a government, unless they act free of charge and the position does not entail an incompatibility as determined by the law (Article 155 of the Constitution).

Type of court

Belgium has five major judicial areas, each within the jurisdiction of a court of appeal (*cour d'appel/hof van beroep*), of which there are five: Brussels, Liege, Mons, Ghent and Antwerp.

These areas are divided into judicial districts (*arrondissements judiciaires/gerechtelijke arrondissementen*), each having a court of first instance (*tribunal de première instance/rechtbank van eerste aanleg*). There are 12 judicial districts in the country. The Brussels judicial district has two courts of first instance, one of which is Dutch-speaking and the other French-speaking.

In addition, the judicial districts have 9 labour tribunals (*tribunaux du travail/arbeidsrechtbanken*) and 9 commercial courts (*tribunaux de commerce/rechtbanken van koophandel*).

The districts are divided, in turn, into judicial cantons (*canton judiciaire/gerechtelijk kanton*), each with a civil magistrate's court (*justice de paix/vredegrerecht*). There are 187 cantons in the country.

Each of the ten provinces, as well as the Brussels Capital administrative district, has an assize court (*cour d'assises/hof van assisen*). The assize court is not a permanent court. It is convened whenever an accused person is committed for trial before it.

The type of court that must hear the case is determined by the nature and severity of the offence, or the nature of the dispute, and also the size of the sums involved.

In some circumstances it is the nature of the dispute that determines the court with jurisdiction. Thus, a civil magistrate's court has jurisdiction over neighbourhood disputes, and the court of first instance has jurisdiction over divorce. In other cases it is the capacity of the parties that determines the appropriate court. Generally, most disputes between traders go before the commercial court.

Once the type of court with jurisdiction has been determined, it is necessary to designate the place where the case will be considered.

In civil matters the proceedings may be heard before the court of the defendant's place of residence or before the court of the place where the obligation was contracted or was to be performed.

In criminal matters jurisdiction lies with the court of the place where the offence was committed, the court of the place where the suspect resides, or the court of the place where the suspect may be found. In the case of legal persons, the court with jurisdiction is the court of the place where the legal person has its registered office or its

principal place of business.

Courts and their hierarchy

The ordinary courts are organised in a hierarchy. The structure of courts is as follows:

4	COURT OF CASSATION		
3	Appeal courts	Labour courts	Assize courts
2	First instance courts	Labour tribunals	Commercial courts
1	Civil magistrates		Police courts

The judgments of lower courts are called *jugements/vonnissen*. Judgments of the appeal courts, the employment courts, the assize courts and the Court of Cassation are called *arrêts/arresten*.

Civil courts mainly deal with private disputes between persons, both natural and legal.

The purpose of the criminal courts is to penalise the perpetrators of punishable acts by means of the sentences prescribed by law (imprisonment, community service, fine, etc.).

There are occasions when one of the parties does not agree with a judgment. Various forms of redress are open to the parties to the litigation or, in certain cases, to third parties to obtain a fresh judgment. Redress procedures fall into two categories: ordinary redress procedures and extraordinary redress procedures.

There are two types of ordinary redress procedure: objection (*opposition/oppositie*) and appeal on points of fact and law (*appel/hoger beroep*).

The objection procedure allows a defendant to object to a judgment. In this case, the case can be reconsidered by the court that ruled on it.

Apart from a limited number of instances when it is not possible, appeal on points of fact and law is a right that may be exercised by any of the parties concerned. A convicted person, a party claiming damages, an applicant, a defendant or the State Counsel's Office have the opportunity to have the case heard a second time. The appeal is always considered by a court higher than the one delivering the initial judgment.

The following table gives an overview of the courts dealing with appeals, depending on which body issued the judgment being appealed:

Judgment		Appeal
	civil cases	Court of first instance (civil section)
Civil magistrate	commercial cases	Commercial court
	criminal cases	Court of first instance (Criminal court)
Police court	civil cases	Court of first instance (Civil court)
Labour tribunal		Labour court
Court of first instance		Court of appeal
Commercial court		Court of appeal

At the appeal stage the judges (of the court of first instance or the court of appeal) deliberate the merits of the case for a second and last time and give a final ruling. The parties, however, still have the opportunity to bring an appeal on points of law (*pourvoi/cassatieberoep*) before the Court of Cassation.

In addition to these ordinary redress procedures, therefore, there are 'extraordinary' procedures, the main one being the appeal on points of law to the court of Cassation. Appeal to the Court of Cassation does not constitute a third instance or a third level of court. The Court of Cassation does not examine the facts of the case referred to it, but rather whether the judgment complies with the law.

In addition to the courts mentioned above, two other types of court exist in Belgium. They have a monitoring role: the Council of State (*Conseil d'Etat/Raad van State*) and the Constitutional Court (*Cour Constitutionnelle/Constitutionele Hof*). The Council of State is a superior administrative court and monitors the administration. It considers applications from members of the public who believe that an administrative body has not observed the law. The role of the Constitutional Court is to ensure that acts, decrees and ordinances are in conformity with the Constitution and to oversee proper separation of powers between the public authorities.

Legal databases

[The portal of the judiciary of Belgium](#) gives access, among other things, to judgments, legislation and the Official Gazette (*Moniteur belge/Belgisch Staatsblad*).

Is access to these databases free of charge?

Yes, access to the database is free of charge.

Related links

[Federal Public Service for Justice](#)

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