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Types of legal professions

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Belgium



Belgium

This section presents an overview of the various legal professions in Belgium.

Legal professions – introduction

This section presents some information relating to legal professions such as:

- the state counsel's office,
- judges,
- lawyers,
- notaries, and
- bailiffs.

The state counsel's office

Organisation

The state counsel's office, or public prosecutor's office (*ministère public/openbaar ministerie*, also known as the *parquet/parket*), which essentially brings prosecutions (see below), consists of law officers who are qualified judges (*magistrats/magistraten*), and who carry out their duties within the area of jurisdiction of the particular court at which they are based.

In any judicial district (*arrondissement judiciaire/gerechtelijk arrondissement*) the officers representing the State Counsel's Office before the court of first instance (*tribunal de première instance/rechtbank van eerste aanleg*), and likewise before the juvenile court (*tribunal de la jeunesse/jeugdrechtbank*), which is a division of the court of first instance, are the state counsel (*procureur du Roi/procureur des Konings*), senior deputy state counsel (*premiers substitués/eerste substituten*) and deputy state counsel (*substitués/substituten*). They also act before the police court or courts (*tribunal de police/politierechtbank*) and the commercial court (*tribunal de commerce/handelsrechtbank*) of their area of jurisdiction.

Before the labour tribunals (*tribunaux de travail/arbeidsrechtbanken*) this function is exercised by an officer known as the labour auditor (*auditeur du travail/arbeidsauditeur*), who is likewise assisted by deputies and possibly senior deputies. In criminal cases within their sphere of competence these officers also act before the criminal court (*tribunal correctionnel/correctionele rechtbank*), which is a division of the court of first instance, or the police court or courts.

In each court of appeal (*cour d'appel/hof van beroep*) and labour court (*cour du travail/arbeidshof*), this role is played by the principal state counsel (*procureur-général/procureur-generaal*), who directs and oversees the law officers of the principal state counsel's office at the court of appeal (*parquet général/parket-generaal*) and the corresponding body at the labour court (*auditorat général/arbeidsauditoraat-generaal*). In a court of appeal the principal state counsel is assisted by a senior advocate-general (*premier avocat-général/eerste advocaat-generaal*), advocates-general (*avocats-généraux/advocaten-generaal*), and deputy principal state counsel (*substitués généraux/substituten-generaal*). In a labour court the principal state counsel is likewise assisted by a senior advocate-general, advocates-general, and deputy principal state counsel.

At the Court of Cassation (*Cour de cassation/Hof van cassatie*) the function of the state counsel's office is performed by the Principal State Counsel at the Court of Cassation, assisted by a senior advocate-general and advocates-general. Although the same terminology is used, the function of the state counsel's office here is quite different. The Court of Cassation does not rule on the substance of the case, but verifies the legality and regularity of the proceedings.

The state counsel's office is independent 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.

Role and duties

The state counsel's office performs a number of tasks and duties. Its work consists of casework and follow-up in both criminal cases and civil cases.

- In criminal matters the law officers of the state counsel's office act in the public interest, and seek to ensure the proper conduct and resolution of criminal proceedings. They do this both in the main court proceedings themselves and in the earlier inquiry and investigation proceedings (which are supervised by one of two courts: the pre-trial division (*chambre du conseil/raadkamer*) or the indictment division (*chambre des mises en accusation/kamer van inbeschuldigingstelling*)). At the hearing they ask the court to apply the criminal law; they also seek to ensure that the necessary measures are taken for appropriate enforcement of the sentences handed down. Before the assize court (*cour d'assises/hof van assisen*) the role of the state counsel's office is exercised by the principal state counsel at the court of appeal, who may, however, also delegate another officer.
- In civil matters the state counsel's office intervenes on its own initiative in circumstances provided for by law and whenever public policy so requires. In such cases it submits an opinion, written or oral. The state counsel's office must be asked for its opinion in cases relating to specific matters listed in the first paragraph of Article 764 of the Judicial Code (*Code judiciaire/Gerechtigd Wetboek*). It may also ask to be informed of other cases, with a view to giving an opinion, where it judges it appropriate, and a court may bring a case to its attention of its own motion (Article 764 of the Judicial Code, second paragraph).

Alongside the main tasks just described, the state counsel's office also ensures that decisions and guidelines relating to criminal policy are monitored and properly applied in its area of jurisdiction.

Criminal policy guidelines are issued by the Minister for Justice, after consulting a college consisting of the principal state counsel at the five courts of appeal (*collège des procureurs généraux/college van procureurs-generaal*).

This college is under the authority of the Minister for Justice and takes decisions with a view to maximum consistency in the drafting and coordination of policy and the proper functioning of the state counsel's office generally.

The college's jurisdiction extends throughout the country and its decisions are binding on the principal state counsel at the courts of appeal and on all members of the state counsel's office under their authority and direction.

More information is available on the [website of the state counsel's office](#).

Judges

Organisation

The Belgian state is founded on the principle of the separation of powers, namely, the separation of the legislative, executive and judicial branches of government. The judiciary is independent.

A distinction is made between 'sitting judges' (*la magistrature assise/de zittende magistratuur*), who adjudicate in the cases that come before them, and 'standing judges' (*la magistrature debout/de staande magistratuur*), the law officers who serve in the state counsel's office (see above).

The judiciary is made up of courts and tribunals which give rulings on legal cases. It also reviews the legality of the acts of the executive.

In general, adjudicating judges are called «*juges/rechters*» in the lower courts and «*conseillers/raadsheren*» in the appeal courts.

The role of the adjudicating judges is to apply the law to a situation or dispute put before them in a civil matter, or to persons who have committed an offence.

In some lower courts professional judges sit alongside non-professional or lay judges. There are non-professional judges in the following courts:

- Commercial court: professional judges and non-professional judges (called *juges consulaires/consulaire rechters*).
- Labour tribunal: professional judges and non-professional judges (called *juges sociaux/sociale rechters*).
- Sentence implementation court (*tribunal de l'application des peines/strafuitvoeringsrechtbank*): professional judges and non-professional judges (*assesseurs en application des peines/assessoren in straitvoeringszaken*).

The state counsel's office carries out a specific social mission within the judiciary which includes tasks of a civil nature in the areas of labour, youth and commercial law, in addition to compliance with criminal law norms.

Management and support

College of courts and tribunals

Courts and tribunals are part of the judiciary. Within a democratic state governed by the rule of law, they contribute to the resolution or prevention of conflicts in an independent, impartial and professional manner, in accordance with the competences conferred upon them by the legislature. They comply with legal rules and use available resources to ensure the highest standards of quality.

The college of courts and tribunals (*Collège des cours et tribunaux/College van de hoven en rechtbanken*) assists the courts and tribunals in carrying out their main task by:

- requesting necessary resources in a transparent, professional and justified manner and ensuring optimum use of them;
- acting as spokesperson for the management of the courts and tribunals as regards external stakeholders;
- assisting with the management of courts and tribunals.

College of the state counsel's office

In addition to the five principal state counsel, the college of the state counsel's office (*Collège du ministère public/College van het openbaar ministerie*) is made up of the federal prosecutor (*procureur fédéral/federale procureur*), three advisors to the state counsel (*Conseil des procureurs du Roi/Raad van procureurs des Konings*) and an advisor to the labour auditors (*Conseil des auditeurs du travail/Raad van arbeidsauditeurs*). Together, they consider issues relating to the good governance of the state counsel's office.

The president of the college of the principal state counsel is also the president of the college of the state counsel's office.

Firstly, the college of the state counsel's office assists in managing the implementation of criminal policy as established by the college of the principal state counsel. Secondly, it strives for the highest quality communication, knowledge management, computerisation, workload measurement, work processes, statistics and strategic human resources management standards within the state counsel's office. Finally, it provides management support to the judicial bodies, namely, the principal state counsel, the principal state counsel's office at the labour court (*auditorats généraux du travail/arbeidsauditoraten*), the department of the state counsel (*parquets du procureur du Roi/parketten van de procureur des Konings*), the state counsel's office at the labour court (*auditorats du travail/arbeidsauditoraten*), and the federal prosecutor's office (*parquet fédéral/federaal parket*).

To accomplish these tasks, the college of the state counsel's office takes any necessary measures and may issue binding recommendations and directives.

It meets once per week. It consults regularly with the Ministry of Justice.

Opinion

Advisory Council of the Judiciary

The Advisory Council of the Judiciary (*Conseil consultatif de la magistrature/Adviesraad van de magistratuur*)

represents the judiciary before the authorities in relation to the status, working conditions and rights of judges.

Autonomous and federal bodies of the judicial system

High Council of Justice

Review and opinion

The High Council of Justice (*Conseil supérieur de la Justice/Hoge Raad voor Justitie*) must assist the Belgian judicial system to function more effectively by playing a key role in the selection and appointment of judges, by carrying out external reviews of how it functions, in particular via audits, individual inquiries, the processing of complaints and the issuing of opinions.

The High Council of Justice is independent of parliament, the government and the judiciary.

Judicial Training Institute

Training

The Judicial Training Institute (*Institut de formation judiciaire/Instituut voor Gerechtelijke Opleiding*) is an independent federal body responsible for the drafting and implementation of a comprehensive development and training policy for judges and the staff of the judiciary, and contributes to high standards of quality.

Lawyers

Role and duties

Lawyers (*avocats/advocaten*) are law and justice professionals. They are subject to rules of conduct which guarantee their total independence. They are also bound by professional secrecy.

Lawyers are trained to act in the different fields of law, which often overlap (company law, administrative law, town planning law, tax law, family law, etc.). Over the course of their career, lawyers may specialise in one or more fields where they have acquired specific expertise.

Lawyers can assist you not only before the courts but in any situation where you may need legal assistance, a representative, a drafter or even moral support.

Their mission is therefore threefold:

- Lawyers advise
- Lawyers conciliate
- Lawyers defend.

Any lawyer can plead and represent their client in any court in the country — the police court, the civil magistrate's court (*justice de paix/vredegericht*), the court of first instance, the commercial court, the labour tribunal, the court of appeal, the labour court, the assize court, or the Council of State (*Conseil d'État/Raad van State*) – as well as in other European Union countries.

Lawyers also provide assistance in arbitration or mediation proceedings, with alternative dispute resolution, or for any meeting.

They do not act only in the event of a dispute. Through the advice they provide, or the contracts they draft or adapt, they often avoid the need to go to court.

They can also help if you need to rent or buy real estate, if you want to set up a company, if you are struggling with debt, if you want to conclude a contract with a new employer, if you have been the victim of an accident or an assault, if you are summoned to court or if you are separating from your partner.

Lawyers for everyone:

For people on low incomes, the law provides a legal aid service (*aide juridique/juridische bijstand*, formerly known as 'pro deo') and assistance with court costs (*assistance judiciaire/rechtsbijstand*):

Through legal aid, the services of a lawyer are made available completely or partially free of charge. It is a two-tier system:

- Front-line legal aid (*aide juridique de première ligne/eerstelijnsbijstand*) is available to all, and is not linked to income. Lawyers are available on standby (*permanence/permanentie*) for brief consultations: initial advice, a request for information, etc.
The bodies responsible for the provision of front-line legal aid are known as 'legal aid commissions' (*Commissions d'Aide Juridique/Commissies voor Juridische Bijstand*).
- Second-line legal aid (*aide juridique de deuxième ligne/tweedelijnsbijstand*) is available to persons who meet certain financial conditions or who are in certain situations. This aid – free or charged only in part depending on individual circumstances – means that a lawyer will be appointed to assist you in legal or administrative proceedings, to provide you with more detailed advice, or even as part of mediation. The bodies responsible for providing second-line legal aid are known as 'legal aid bureaus' (*Bureaux d'Aide Juridique/Bureaus voor Juridische Bijstand*).

Assistance with court costs means that fees incurred during the proceedings – registry costs (*droit de greffe/griffierechten* or *droits d'enregistrement/registratierechten*), the fees payable to bailiffs (*huissiers de justice/rechtsdeurwaarders*), to notaries (*notaires/notarissen*) or for expert reports – will not be charged, or will be charged only in part. To obtain assistance with court costs clients must contact the legal aid bureau themselves or through their lawyer.

Responsible authorities

All lawyers are members of a bar (*barreau/balie*). At present there are 25 bars in Belgium.

An Association of the French-speaking and German-speaking Bars (*Ordre des barreaux francophones et germanophone/Kammer der französischsprachigen und deutschsprachigen Rechtsanwaltschaften (AVOCATS.BE)*) groups together the bars of the French-speaking and German-speaking communities in the country (11 French-speaking bars and one German-speaking).

The Flemish Bar Association (*Orde van Vlaamse Balies (OVb)*) groups together the bars of the country's Dutch-speaking community (13 bars).

Information concerning the profession of lawyer may be obtained by consulting the following websites:

- [Association of French-speaking and German-speaking Bars of Belgium](#)
- [Flemish Bar Association](#)

Access to these databases is free of charge.

Notaries

Notaries are public officers, appointed by the King, whose particular role is to authenticate legal instruments executed before them. By law, some instruments require the involvement of a notary to record an agreement reached between the parties ('authentic instruments', *actes authentiques/authentieke akten*). Thus, for example, the involvement of a notary is required when selling a property. As well as acting to draw up authentic instruments, a notary may also be asked to liquidate an estate, to draft a private agreement, to give an opinion, etc.

The sphere of responsibility of notaries covers three major areas:

- Property law (sale of a property, borrowing, etc.),
- Family law (marriage contracts, inheritance, divorce, etc.) and
- Business law (setting up of companies, etc.).

There is a National Chamber of Notaries (*Chambre nationale des notaires/Nationale Kamer van Notarissen*). Its main objectives are:

- to represent the notaries of Belgium in dealings with the authorities within the scope of its competence,
- to lay down rules of professional conduct,

- to make recommendations to chambers of notaries to help in maintaining professional discipline.

Provincial chambers are the profession's disciplinary bodies: their main tasks are to ensure that the rules of professional conduct are observed and to settle professional disputes (among other things, they handle complaints). As regards complaints, a [national mediation service](#) has also been established for notaries (www.ombudsnotaire.be).

There is also the Royal Federation of Belgian Notaries (*Fédération Royale du Notariat Belge (Fednot)/Koninklijke Federatie van het Belgisch Notariaat (Fednot)*), Fednot is a professional association which assists notaries by providing legal opinions, advice and recommendations on the management of notary offices, information technology solutions, training and communication with the public. There are 1 150 notary offices in the Fednot network, encompassing 1 550 notaries and 8 000 associates.

More information is available on [the website of the Royal Federation of Belgian Notaries](#).

Other legal professions

Bailiffs

Bailiffs are public legal officials who operate as practitioners of a self-employed profession. In other words, they have a dual professional identity: on the one hand, they are public officials; on the other hand, they practise their profession independently.

They are public legal officials because the State has delegated a share of official authority to them. For that reason, they cannot refuse to respond to a request to act, unless their code of professional conduct or the law does not allow it, for example where there is a conflict of interest or the request is unlawful. They never act on their own initiative, but always at the request of someone who has given them formal instructions. In each of the tasks they have to perform they must adhere to various legal requirements. They may charge fees for the acts they perform, to cover part or all of their costs.

As self-employed professionals, bailiffs act independently and impartially. Their professional experience is available to everyone. They do not receive any salary, compensation or other emolument from the authorities. They have to pay for everything themselves.

The steps that a bailiff may have to take fall into two broad categories: 'out-of-court' measures (*interventions extrajudiciaires/buitengerechtelijke tussenkomsten*, such as out-of court recovery of debts or official findings of fact) and 'court' measures (*interventions judiciaires/gerechtelijke tussenkomsten*, meaning the serving or enforcement of a decision). When the bailiff is taking a step of one of these kinds they will often have a duty to provide you with information on how you can exercise your rights, and to answer your questions about the bailiff's role, regardless of whether you asked the bailiff to act, or whether the step taken by the bailiff is addressed to you.

In each judicial district there is an association (*chambre/kamer*) of all the bailiffs in the district. Its main tasks are to ensure that bailiffs in the district observe the rules of professional discipline and the laws and regulations that concern them, and to settle disputes that may arise between them.

There is also a Belgian National Association of Bailiffs (*Chambre nationale des huissiers de justice de Belgique/Nationale Kamer van Gerechtsdeurwaarders van België*), whose main objectives are:

- to ensure uniformity of discipline and rules of professional conduct among bailiffs,
- to defend the interests of its members, and
- to represent them.

More information is available on the website of [the Belgian National Association of Bailiffs](#).

Other

Judges and the law officers of the state counsel's office are assisted by a range of administrative and legal professionals, such as: registrars, legal secretaries, lawyers, secretaries and administrative staff.



At every hearing the judge is assisted by a registrar (*greffier/griffier*). The registrar clears the way for the work of the judge, for example by preparing the files needed for the hearing. At the hearing the registrar records the proceedings and ensures that all the necessary documents are properly drawn up. The registrar performs and coordinates the tasks of the court registry (*greffe/griffie*). Every court has a registry, headed by a chief clerk or registrar (*greffier en chef/hoofdgriffier*). There are one or more registrars in a registry, depending on the size of the court. In turn, court registrars may be assisted by administrative staff.

Legal secretaries (*référéndaires/referendarissen*) are lawyers who assist the judges in the drawing up of their judgments. They help in the handling of cases, on the instructions and under the responsibility of one or more judges. They study the file, look into the legal questions raised, and draft judgments.

The officers of the state counsel's office may also engage lawyers to prepare the legal aspects of their cases. These lawyers are known as *juristes du parquet/parketjuristen*. They carry out legal research, manage investigations, or prepare the legal aspects of summonses and submissions, on the instructions and under the responsibility of one or more of the law officers of the state counsel's office.

Every state counsel's office has a secretariat headed by a chief secretary. These secretaries assist the law officers in research and documentation work and in compiling files. They keep the office's documents and registers up to date, maintain records, etc. The number of secretaries depends on the size of the office. The secretaries may also be assisted by administrative staff.

Court registries and state counsel's offices employ large numbers of administrative staff. The administrative staff manage the files on the cases being dealt with and the data entered in databases. Other administrative staff handle post and filing, and receive visitors at the office.

More information on these professions can be found in [this document](#)  (378 Kb) .

Organisations providing free legal advice

All citizens can obtain free initial legal advice, given by law professionals. This is known as front-line legal aid (see above):

- practical information,
- legal information,
- an initial legal opinion, or
- referral to a specialised organisation.

Here the matter will not be resolved immediately, but initial guidance is given. Pools of lawyers are available on standby in law courts, community law centres (*maisons de justice/justitiehuizen*), some municipal offices (*administrations communales/gemeentelijke diensten*), most public social welfare centres (*centres publiques d'action sociale/openbare centra voor maatschappelijk welzijn*), and various associations that provide a legal service.

More information is available in the online brochure: [Legal Aid: Better Access to Justice](#).

Legal databases

Information is available on the [website of the Federal Public Service for Justice](#) (Ministry of Justice).

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