

Organisation of justice – Belgium

c) Detailed explanation relating to judicial jurisdictions

1. Justices of the Peace

Justices of the Peace are the judges closest to the citizen. They are appointed by the King in accordance with the Constitution. Belgium has one hundred and eighty-seven Justices of the Peace.

Composition

There is one Justice of the Peace for each judicial district (Article 59 of the Judicial Code). Except in the major towns and cities, a single judicial district may comprise one or more local authorities. Justices of the Peace sit alone.

Jurisdiction

Justices of the Peace are a civil court. The principal function of Justices of the Peace is to hear civil and commercial cases.

The jurisdiction of Justices of the Peace can be subdivided into general and special. Under the heading of general jurisdiction, Justices of the Peace hear all claims for amounts not exceeding 1,860 Euros, apart from those removed from their jurisdiction by law, and especially claims provided for in Articles 569 to 571, 574 and 578 to 583 of the Judicial Code.

Article 590 of the same Code thus accords Justices of the Peace overall jurisdiction in civil and commercial matters but restricted to claims in amounts not exceeding 1 860 Euros.

Under the heading of special jurisdiction, Justices of the Peace cover a large number of other jurisdictions regardless of the amount of the claim. The jurisdictions of Justices of the Peace are listed in Articles 591 and 593 to 601 of the Judicial Code.

2. Magistrates' Court

One or more judges in the Magistrates' Court exercise their functions within the territorial limits indicated in the Annex to the Judicial Code.

Composition

Magistrates' Courts comprise one or more benches (Article 60 of the Judicial Code).

Jurisdiction

In civil cases, the Magistrates' Court hears all claims, regardless of the amount, relating to compensation for damages arising from a traffic accident, even if the latter has occurred in a place not accessible to the public (Article 601*bis* of the Judicial Code).

3. District Court

There is one District Court for each judicial district (Article 73 of the Judicial Code). In accordance with Article 568(1) of the Judicial Code, the District Court hears all cases apart from those transferred directly to the Court of Appeal or Court of Cassation.

According to this principle, the District Court is an ordinary court functioning alongside special courts such as the Industrial Tribunal, Commercial Court and Justice of the Peace. The District Court enjoys a broad jurisdiction and accordingly hears cases that legislation has not attributed to any other jurisdiction

Composition

The District Court comprises one or more civil benches, one or more criminal benches and one or more juvenile benches. These benches make up three sections called respectively:

- the Civil Court;
- the Criminal Court and
- the Juvenile Court (Article 76(1 and 2) of the Judicial Code).

Applications in civil cases that fall within the jurisdiction of the District Court are passed to benches comprising only a single judge, except as provided by law (Article 91(1) of the Judicial Code).

However, according to Article 92(1) of the Judicial Code, certain cases should be passed to benches composed of three judges, in particular civil actions seeking to amend civil-status records, civil actions relating to violations of laws governing the Press and appeals against judgments handed down by the Justice of the Peace or the Magistrates' Court.

Jurisdiction

Articles 568 to 572 relate to the jurisdiction of the District Court.

In civil cases, the District Court has power to decide, regardless of the sums involved, in applications to grant exequatur, in conformity with Article 570(1) of the Judicial Code.

4. Industrial Tribunal

There is one Industrial Tribunal for each judicial district (Article 73 of the Judicial Code). The Industrial Tribunal constitutes a special court of first instance in social cases.

Composition

The Industrial Tribunal is composed of career magistrates and non-professional judges

The president of the Industrial Tribunal, the vice-president(s) and the judges who preside over the benches are career magistrates. Apart from these career magistrates there are social judges. The latter participate, under the presidency of professional magistrates, in dispensing justice (Articles 197 to 202 of the Judicial Code). Social judges are appointed on the basis of candidacies submitted by organisations representing employers, manual workers, salaried employees and self-employed persons (Article 199(1) of the Judicial Code).

Jurisdiction

The various jurisdictions of the Industrial Tribunal are listed in Articles 578 to 583 of the Judicial Code).

The Industrial Tribunal accordingly has jurisdiction over individual disputes involving employers and employees, and disputes relating to social security and welfare. It also hears claims to do with industrial accidents and occupational diseases. Its jurisdiction

also covers the implementation of certain legislation relating to guaranteed (minimum) income benefit, pensions, etc. The application of administrative sanctions, provided for by the laws and regulations referred to in Articles 578 to 582 of the Judicial Code and by the law on administrative fines applicable in cases of breaches of certain social legislation also falls within its jurisdiction.

5. Commercial Court

In accordance with Article 73 of the Judicial Code, there is one Commercial Court for each judicial district.

The Commercial Court constitutes a special jurisdiction. It is presided over by a career magistrate. Its composition is mixed, in the sense that it comprises a professional judge and other judges who are normally involved in the world of business.

Composition

The Commercial Court consists of one or more benches. Each bench is presided over by a Commercial Court judge (a career judge) and comprises, in addition, two commercial court judges (Article 84(1 and 2) and Article 85(1) of the Judicial Code). Commercial court judges are appointed by the King to serve a term of five years, renewable (Article 203(1) of the Judicial Code). Their appointment is subject to certain conditions laid down by law. They must, in particular, have been in business or been involved in either the management of a commercial enterprise whose main place of business is in Belgium, or have served as a senior executive of a professional or inter-professional organisation working on behalf of trade or industry, or have had experience of managing an enterprise and accounting (Article 205(1) of the Judicial Code).

Jurisdiction

The Commercial Court enjoys a general jurisdiction under the provisions of Article 573 of the Judicial Code. It accordingly deals, in particular, with disputes between traders relating to acts described by the law as commercial transactions and which do not fall within the general jurisdiction of Justices of the Peace (based on the value of the claim) or within the jurisdiction of the Magistrates' Courts (Article 573(1) of the Judicial Code). Apart from this general jurisdiction, the Commercial Court has special jurisdiction determined according to the nature of the dispute. As such, it deals with certain kinds of dispute even when the parties are not traders (Article 574 of the Judicial Code).

Also falling within the Commercial Court's jurisdiction are appeals against decisions handed down in the first instance by the Justice of the Peace in disputes between traders relating to acts described by the law as commercial transactions or to disputes relating to bills of exchange, or by the Magistrates' Court in the cases described in Article 601*bis* of the Judicial Code (Article 577(1 and 2) of the said Code)

6. Jurisdiction of presidents of the District Court, the Industrial Tribunal and the Commercial Court

Presidents of the District Court, the Industrial Tribunal and the Commercial Court, sitting alone in their capacity as president, have jurisdiction in summary applications for interim orders and render provisional decisions on urgent applications referred to them.

- a) Under the terms of Article 584(1) of the Judicial Code, the president of the District Court renders provisional rulings in all urgent cases apart from those excluded from his judicial authority by law.

Accordingly, use of the procedure requiring the president of the District Court to issue a provisional ruling is conditional on there being a question of urgency.

In contrast to the president of the District Court who enjoys very wide jurisdiction, the jurisdiction of presidents of the Industrial Tribunal and of the Commercial Court with regard to interim rulings is limited to questions that fall within their respective jurisdictions (Article 584(2) of the Judicial Code).

A provisional ruling means that the decision of president giving it is not binding on the trial and appeal courts ultimately hearing the case (Article 1039(1) of the Judicial Code).

The procedure under which an application for a provisional ruling is made to the president of a court or tribunal, is characterised by speed. In principle, the president is served with a writ having a short time-limit. The time-limit for answering the writ must be at least two days (Article 1035(2) of the Judicial Code). The application for a provisional ruling can also be initiated by voluntary appearance before the court.

- b) In cases of absolute necessity, the application can also take the form of an *ex parte* application in accordance with Article 584(3) of the Judicial Code (Articles 585 and 586, and 1025 ff, of the Judicial Code).
- c) In addition, in *ex parte* applications, the president gives decisions in particular in exequatur and visa proceedings concerning:
- judgments handed down in Belgium or abroad, except as provided by Article 606(1) of the Judicial Code;
 - official or formal instruments executed in foreign countries by which mortgages have been granted on property located in Belgium or which contain consent to the cancellation or reduction of such mortgages;
 - all other legal instruments issued in a foreign country, so long as a treaty exists with these countries regulating exequatur proceedings in connection with the said instruments (Article 586 of the Judicial Code).

7. Court of Appeal

There are in Belgium five Court of Appeal (Article 104 of the Constitution). These five courts are located as follows:

- Antwerp, whose territorial jurisdiction covers the provinces of Antwerp and Limbourg;
 - Brussels, whose territorial jurisdiction covers the provinces of French-speaking Brabant, Flemish-speaking Brabant and the bilingual region of Brussels-Capital.
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- Ghent, whose territorial jurisdiction covers the provinces of Western Flanders and Eastern Flanders;
- Liège, whose territorial jurisdiction covers the provinces of Liège, Namur and Luxembourg, and
- Mons, whose territorial jurisdiction covers the province of Hainaut.

Territorial jurisdiction is defined by reference to these judicial districts.

Composition

Each Court of Appeal comprises civil, criminal and juvenile divisions (Article 101, paragraph 1, of the Judicial Code).

The Court of Appeal consists of the President, the presidents of each division and Court of Appeal judges. The divisions of the Court of Appeal are presided over either by three court judges, including the President, or by just one member, being the president of the division or a court judge (Article 101, paragraph 2 and 3, of the Judicial Code).

Jurisdiction

The Court of Appeal hears appeals relating, in particular, to (Article 602 of the Judicial Code):

- decisions delivered at first instance by the District Court and by the Commercial Court;
- decisions delivered at first instance by the president of the District Court and by the president of the Commercial Court;
- decisions handed down by Belgian consuls abroad;
- decisions delivered in electoral proceedings by the College of Burgomasters and Municipal Magistrates and by the principal bureaux.

It also hears actions dealing with deprivation of citizenship and applications for rehabilitation in bankruptcy cases (Article 604 and 605 of the Judicial Code). See also the cases provided for in Articles 603 and 606 of the Judicial Code.

8. Labour Court

There is one Labour Court within each territorial jurisdiction of a Court of Appeal (Article 103(1) of the Judicial Code), in other words, five Labour Courts for the whole Kingdom. The Labour Court is an appeal court acting in cases dealing with disputes between social partners.

Composition

The Labour Court is divided into benches, each presided over by one Labour Court judge and, if necessary, with the presence of two or four social counsellors (Article 104(1) of the Judicial Code).

The composition of the Labour Court is mixed, like that of the Industrial Tribunal. The Court is made up of career magistrates and social judges, called social counsellors. The Labour Court accordingly comprises a President, bench presidents, counsellors to the Labour Court and social counsellors (Article 103(2) of the Judicial Code).

Social counsellors are appointed either in their capacity of employer, or manual worker or salaried employee, depending on the grade of worker involved in the case

when these social counsellors sit on a bench that hears appeals against judgments handed down in cases provided for in Article 578(1, 2, 3 and 7) of the Judicial Code (Article 104(2) of the Judicial Code). The number of social counsellors depends on the nature of the case submitted to the bench in question (Article 104 of the Judicial Code).

Jurisdiction

The Labour Court hears appeals against decisions given in the first instance by Industrial Tribunals and by presidents of Industrial Tribunals (Article 607 of the Judicial Code).

9. Court of Cassation

For the whole of Belgium there is one Court of Cassation. This Court does not decide on the substance of cases (Article 147 of the Constitution). It heads all the jurisdictions of the judicial system and does not constitute a third branch of the judiciary.

Composition

The Court of Cassation consists of three divisions and each division of the Court of Cassation comprises two sections, a Dutch and a French section. Each of these sections is composed of five counsellors, including the President (Article 128 of the Judicial Code).

The Court of Cassation is made up of a President, a Deputy President and counsellors at the Court of Cassation. Four section presidents are appointed from among the counsellors (Article 129 of the Judicial Code).

Jurisdiction

Under the terms of Article 608 of the Judicial Code, the Court of Cassation reviews last-instance decisions referred to it on grounds of error of law or of a failure to comply with formal procedural requirements, whether material or having to do with requirements failure to observe which makes the judgment null and void. It accordingly passes judgment on decisions of courts and tribunals in all cases and in last resort (Article 609(1) of the Judicial Code).

Apart from this, the Court also decides on other applications such as those covered by Article 609 and Articles 610 to 615 of the Judicial Code.

By monitoring the legality of judicial decisions referred to it and by sanctioning errors of law, the Court performs a monitoring and coordinating role (uniform application of the law).

It should be noted that the Court does not rule on the facts submitted to it and does not intervene as a third tier of the judicial system.