

## **The Judiciary**

### **Breakdown of Law**

#### **What is “law”?**

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The rules of law are necessary for properly organising life in society, preventing and settling conflicts. The essence of the rules of law are enshrined in international law, in the Constitution and in the legislation.

However, not everyone respects these rules of law. There thus has to be an organised structure for settling the ensuing disputes and punishing indictable offences and compensating the prejudice sustained. This task falls on the courts and tribunals.

#### **Judiciary organisation**

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- **Specialisation**

The courts and tribunals are specialised in the application of a given area of law. Thus the civil courts have competence for settling civil conflicts.

- **Territoriality**

In addition each court has jurisdiction for a certain territory (for example: Justice of the Peace within a canton, the Court of First Instance within a judicial district, etc.)

- **Hierarchy**

There is a hierarchy between the lower and upper courts. Appeals may mostly be lodged with a court at a higher level of jurisdiction.

#### **The breakdown of law**

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Traditionally, national law has been divided up into two major sections: private law and public law.

In simple terms, private law governs the relations between citizens. It includes, among others:

- Civil law
- Business law
- Social law
- Private procedural law (also known as private judicial law).

Public law governs the relations between the State and the citizen and between the States themselves. It includes, among others:

- International law
- Constitutional law
- Administrative law
- Tax law
- Penal Law

#### **» Civil law**

Civil law governs the relations between citizens. It concerns the status of the person (name, domicile, nationality, etc), adoption, marriage and divorce, inheritance, status of property (property disputes, usufruct, etc) and contracts (purchase, lease, etc) ... Civil law is governed basically by the Civil Code, as well as specific laws.

The Civil Code came into effect in 1804, when Belgium formed part of France. It goes without saying that since then it has been profoundly changed and adapted to social development. The Belgian Civil Code is currently undergoing a major reform. This reform will entail the abolition of the structure of the current Code, and the new Civil Code will comprise ten books. Seven of these have already been adopted in whole or in part.

In the event of disputes, those involved in a case may turn to the Justice of the Peace, the Court of First instance (civil chamber), the Family and Juvenile Court or the Court of Appeal (civil chamber).

#### **» Business law**

Business law governs the status of traders and commercial activities. It is governed by the Code of economic law and many other specific laws.

Disputes are settled by the Company Court and the Court of Appeal.

In the Company Courts there are two professional magistrates and two non-professional judges who are trader or entrepreneur. They are called “consular judges”.

## » Social law

Social law is divided into two parts: labour law which governs the relations between employers and workers or employees, and social security law which is the branch of public law that organises the assumption by society of social risks (such as sickness, unemployment, old age or maternity) and certain situations of poverty. This last area also partly comes under public law.

Disputes are brought before the labour courts and tribunals. They consist of professional judges, and also representatives of organisations representing workers, employees and the self-employed. They are called “social judges”.

## » Private procedural law

Private procedural law (or private judicial law) governs the organisation and jurisdiction of courts and tribunals and the conduct of proceedings. The Judicial Code, as well as other specific laws, govern this area.

## » Constitutional law

The Constitution draws up the basic rules for the organisation of the State and the fundamental rights of the citizen.

The Constitutional Court may cancel laws, decrees or ordinances which infringe certain articles of the Constitution or other fundamental principles of the structure of the State. It concerns articles relating to the dividing up of competences between the federal State, the communities and regions, the articles of title II of the Constitution (“On Belgians and their rights”), the federal loyalty (art. 143, § 1, of the Constitution), the principle of legality of taxes (art. 170 of the Constitution), the principle of equality before taxes (art. 172 of the Constitution) and the ban on discrimination against foreigners (art. 191 of the Constitution).

## » Administrative law

Administration law governs the organisation and workings of public administration. Its enforcement is assured by the administrative courts and the State Council. Any citizen may lodge a request for cancellation to the Council of State, administration section, against the orders or regulations of an administrative authority.

There are also specialised administrative courts at the level of the communities and regions, authorised to take administrative decisions concerning matters arising from the powers of the federated entities.

## » Tax law

Tax law sets the base and rate of tax and regulates its collection. It is mainly governed by several tax codes (the Income Tax Code, Inheritance Tax Code, etc).

## » Criminal Law

This defines the prohibited behaviour and sets the penalties in the event of violations (fines, imprisonment, sequestration).

Article 14 of the Constitution formulates the general principle “No punishment can be made or given except in pursuance of the law”. Nobody can be punished for an act that was not yet against the law at the time it was committed.

Criminal law is governed by the Criminal Code and other specific laws. On 8 April 2024, the new Criminal Code was published in the Moniteur belge. It comes into force on 8 April 2026, two years after its publication. Some criminal provisions are also found in other areas of law (eg. tax law).

The judgements are Magistrates’ Courts, Correctional Courts and the correctional chambers of the Court of Appeal. Each province and Brussels has an Assize Court which operates with a public jury. The Court of Appeal has jurisdiction over serious crimes, political and press crimes, with the exception of press crimes inspired by racism or xenophobia. It is not possible to appeal against an Assize Court judgement.

The Sentence Enforcement Courts ensure that sentences handed down are applied.

## » Criminal procedural law

The criminal procedural law governs the conduct of criminal proceedings, the organisation of the criminal courts and their jurisdiction. It is mainly governed by the Code of Criminal Procedure.