



# The Judiciary

## Breakdown of Law

### What is "law"?

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 the Constitution, laws and by-laws, as well as in international law.

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

- 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

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:

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

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

- Treaty law and other international legal rules
- Constitutional law
- Administrative law
- Tax law
- Penal Law
- International law
- etc...

#### ▶ Civil law

This area of law governs the basic 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.

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).

## ► Commercial law

This governs the status of traders and commercial activities. It is governed by the Commercial Code and many other specific laws.

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

In the Commercial Courts there are two professional magistrates and two non-professional judges who are trader or entrepreneur.

## ► Social law

This is divided into two parts: labour law which governs the relations between employers and workers or employees, and social security law which covers compulsory national insurance for workers or employees (illness, disability, accidents at work, unemployment benefit, holiday pay, family allowances, pension). 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.

## ► Private procedural law

This governs the organisation and the jurisdictions of private law courts, as well as the conduct of procedure. 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 organization by the regions of referenda (art. 142 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

This governs the organisation and workings of public administration. Its enforcement is assured by the administrative courts, with the State Council being the supreme administrative court at the federal level. 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

This lays down tax base and rate, and regulates collection of taxes. 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, etc).

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. Some criminal provisions are also found in other areas of law (eg. tax law).

The judgements are Magistrates' Courts, Correctional Courts and the criminal chambers of the Court of Appeal. Each province and Brussels has an Assize Court which operates with a public jury. This 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 procedure

This governs the organisation, jurisdiction and procedure of the criminal courts. It is mainly governed by the Code of Criminal Procedure.