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Which country's court is responsible?

Belgium

1 Should I apply to an ordinary civil court or to a specialised court (for example an employment labour court)?

See below.

2 Where the ordinary civil courts have jurisdiction (i.e. these are the courts which have responsibility for such cases) how can I find out which one I should apply to?

2.1 Is there a distinction between lower and higher ordinary civil courts (for example district courts as lower courts and regional courts as higher courts) and if so which one is competent for my case?

#### Introduction

For the sake of clarity, in view of the specific characteristics of the Belgian legal system, we will deal with questions 1 and 2.1 together.

A distinction should first be made between jurisdiction by reason of subject-matter (*compétence d'attribution/volstreckte bevoegdheid*, also known as *compétence matérielle/materiële bevoegdheid*) and territorial jurisdiction (*compétence territoriale/territoriale bevoegdheid*).

Any action puts forward a claim, which will often have a monetary value, and the scope of a court's subject-matter jurisdiction is determined by legislation that specifies the nature and value of the claims that the court is permitted to hear.

This answer to questions 1 and 2.1 deals with subject-matter jurisdiction.

The lower courts do not have jurisdiction over the whole of Belgium. The law divides the country into separate areas (subdistricts, districts, etc.). Each court has jurisdiction only in its own area. This is known as territorial jurisdiction, which is described in the answer to question 2.2.

Unlimited jurisdiction: the court of first instance

The court of first instance (*tribunal de première instance/rechtbank van eerste aanleg*) has 'unlimited jurisdiction' (*plénitude de compétence/volheid van bevoegdheid*). This means that the court of first instance, in contrast to the other courts, can hear all cases, including cases that fall within the jurisdiction of other courts.

Article 568 of the Judicial Code (*Code judiciaire/Gerechtelijk Wetboek*) states that the court of first instance will hear all claims except for those that have to be brought directly before the court of appeal (*cour d'appel/hof van beroep*) or the Court of Cassation (*Cour de cassation/Hof van Cassatie*). The unlimited jurisdiction of the court of first instance is 'conditional', in the sense that a defendant can object that the court lacks jurisdiction because another court has special jurisdiction for the subject-matter. The court of first instance also has exclusive jurisdiction over certain matters. Certain types of dispute must be brought before the court of first instance even where the value of the claim is less than €2 500, an example being claims relating to personal status.

#### Other courts

A list of the other courts is given below, along with a brief description of their subject-matter jurisdiction.

##### a) The justice of the peace

Pursuant to Article 590 of the Judicial Code, the justice of the peace (*juge de paix/vrederechter*) has general jurisdiction over all claims with a value below €2 500, except for those that the law expressly assigns to another court. Beyond this general jurisdiction, the justice of the peace also has special jurisdiction (see Articles 591, 593 and 594 of the Judicial Code) or exclusive jurisdiction (Articles 595 and 597 of the Judicial Code) over certain matters irrespective of the value of the claim. Examples of matters falling under the special jurisdiction of the justice of the peace are disputes in connection with leases, joint property, rights of way and other servitudes, and maintenance payments. The justice of the peace has jurisdiction to deal with adoption papers and acknowledgments of paternity. Urgent expropriations and the placing of seals on property fall under the exclusive jurisdiction of the justice of the peace.

##### b) The police court

Pursuant to Article 601 *bis* of the Judicial Code, the police court (*tribunal de police/politierechtbank*) hears all claims for compensation resulting from road traffic accidents, irrespective of the amount. Here the police court has exclusive jurisdiction.

##### c) The commercial court

Pursuant to Article 573 of the Judicial Code, the commercial court (*tribunal de commerce/rechtbank van koophandel*) hears, at first instance, disputes between businesses, that is to say disputes between persons or firms engaged in a long-term economic activity which relate to acts carried out as part of that activity and which do not fall under the special jurisdiction of another court.

A non-business claimant who is instituting proceedings against a business can opt to bring the case before the commercial court. The commercial court also hears disputes relating to bills of exchange and promissory notes.

In addition to this general jurisdiction, the commercial court has special and exclusive jurisdiction in certain cases. The matters falling under its special jurisdiction are listed in Article 574 of the Judicial Code. They include disputes relating to commercial companies and actions relating to maritime and inland navigation. Under Article 574(2) of the Judicial Code the commercial court has exclusive jurisdiction in actions and disputes resulting directly from bankruptcy and judicial reorganisation proceedings in accordance with the Bankruptcy Law of 8 August 1997 (*loi du 8 août 1997 sur les faillites/faillissementswet van 8 augustus 1997*) and the Law of 31 January 2009 on the continuity of businesses (*loi du 31 janvier 2009 relative à la continuité des entreprises/wet van 31 januari 2009 betreffende de continuïteit van de ondernemingen*), where they are governed by the particular law applicable to bankruptcy and judicial reorganisation proceedings.

##### d) The labour tribunal

The labour tribunal (*tribunal du travail/arbeidsrechtbank*) is the main special court, and has jurisdiction essentially in matters specifically assigned to it. These matters are described in Article 578 et seq. of the Judicial Code and are as follows:

employment disputes;

disputes relating to accidents at work and occupational illnesses;

disputes relating to social security.

The labour tribunal has exclusive jurisdiction over the application of administrative penalties laid down by the laws and regulations referred to in Articles 578 to 582 and by the Law on administrative fines applicable in the event of the infringement of certain social laws (*loi relative aux amendes administratives applicables en cas d'infraction à certaines lois sociales/wet betreffende de administratieve geldboeten in geval van inbreuk op sommige sociale wetten*), and also over claims relating to the collective settlement of debts.

e) Presiding judges of the lower courts – interlocutory proceedings

Articles 584 to 589 of the Judicial Code stipulate that the presiding judges of the court of first instance, the commercial court and the labour tribunal have power, in all urgent cases, to issue interim rulings in matters falling within the jurisdiction of their court (interlocutory proceedings (*référé/kort geding*)). The proviso is that the case must be urgent and the decision must be an interim decision only, a decision that will not prejudice the case itself. Examples are ordering an expert investigation, ordering the hearing of a witness, etc.

f) The judge of attachments

The judge of attachments (*juge des saisies/beslagrechter*, see Article 1395 of the Judicial Code) deals with all claims concerning preventive attachments (*saisies conservatoires/bewarende beslagen*), the enforcement of judgments, and measures taken by the Office for Maintenance Claims referred to by the Law of 21 February 2003 establishing an Office for Maintenance Claims within the Federal Public Service for Finance (*loi du 21 février 2003 créant un Service des créances alimentaires au sein du SPF Finances/wet van 21 februari 2003 tot oprichting van een Dienst voor alimentatievorderingen bij de FOD Financiën*).

g) The juvenile court

The protection of young people is a responsibility of the component communities of the Belgian federal state, but the organisation of the juvenile courts remains a federal matter, and is governed by the federal Youth Protection Law of 8 April 1965 (*loi relative à la protection de la jeunesse du 8 avril 1965/wet op de jeugdbescherming van 8 april 1965*). The juvenile court (*tribunal de la jeunesse/jeugdrechtbank*) is a division of the court of first instance that deals with measures to protect young people.

h) The family court

The family court (*tribunal de la famille/familierechtbank*) has jurisdiction in all family-related disputes. In particular (Article 572 *bis* of the Judicial Code), it has jurisdiction in:

- disputes between spouses and between legal cohabitants;
- disputes concerning parental authority;
- disputes concerning maintenance obligations;
- disputes relating to matrimonial property arrangements.

## **2.2 Territorial jurisdiction (Is the court of city/town A or of city/town B competent for my case?)**

### **2.2.1 The basic rule of territorial jurisdiction**

The basic principle in the Belgian legal system is that the applicant has freedom of choice. The general practice is provided for in Article 624(1) of the Judicial Code. The applicant generally brings the action before the court of the place where the defendant or one of the defendants has their address (*domicile/woonplaats*).

What happens if the defendant is not an individual but a legal person? The address of a legal person is the location of its head office (*siège/hoofdzetel*), i.e. the place from which it is managed.

### **2.2.2 Exceptions to the basic rule**

#### **2.2.2.1 When can I choose between the court in the place where the defendant lives (court determined by the application of the basic rule) and another court?**

The applicant is entitled to bring the case before a different court in certain cases. These options are described, in particular, in Article 624(2) to (4) of the Judicial Code. In addition to the court of the place where the defendant or one of the defendants has their address, the applicant can opt for:

the court of the place where one or more of the obligations in dispute arose, or where the obligations are, have been or should have been performed;

the court of an address for service accepted for the application of the document at issue;

the court of a place where a bailiff (*huissier de justice/gerechtsdeurwaarder*) has spoken to the defendant in person, if the defendant or defendants have no address in Belgium or abroad.

It is also settled case-law that in interlocutory proceedings territorial jurisdiction rests with the presiding judge of the place where the judgment is to be enforced.

As regards maintenance payments, Article 626 of the Judicial Code states that claims relating to maintenance connected with the right to social integration assistance can be brought before the court of the address of the applicant (i.e. the family member entitled to maintenance).

These rules, laid down in Articles 624 and 626, are rules that apply in the absence of any provision to the contrary, and the parties are free to deviate from them. Parties can therefore enter into a choice-of-court agreement that provides that any dispute is to be brought only before specified courts at first instance. There are, however, some exceptions to this basic principle of freedom of choice.

Legislation identifies a number of cases in which the applicant has no choice. These cases are listed mainly in Articles 627 to 629 of the Judicial Code.

Examples are:

in disputes relating to contracts of employment (Article 627(9)): jurisdiction lies with the court of the place where the mine, factory, workshop, shop, office or, in general, the premises used to operate the business or pursue the profession or activity of the company, association or grouping is located;

in applications for divorce or legal separation on the grounds of irretrievable breakdown (Article 628(1)): jurisdiction lies with the court of the place of the last marital residence or of the address of the respondent.

Even in these cases, there is still some freedom of choice. Article 630 of the Judicial Code states that after a dispute has arisen the parties may agree to deviate from these legal provisions. Any such agreements made before the dispute arose, however, are null and void.

#### **2.2.2.2 When do I have to choose a court other than that in the place where the defendant lives (court determined by the application of the basic rule)?**

In certain cases, and in particular those described in Articles 631 to 633 of the Judicial Code, one court has exclusive territorial jurisdiction. The applicant then has no choice, and no choice-of-court agreement can be made either before or after the dispute arises. These cases include the following:

Bankruptcy (Article 631(1) of the Judicial Code): The commercial court that has jurisdiction to declare bankruptcy is the court of the place where the trader has his or her principal place of business, or, in the case of a legal person, where it has its head office on the date of the bankruptcy petition or application to the courts. Secondary bankruptcy: the commercial court of the place where the bankrupt has the relevant place of business. Where there are multiple places of business, the court with jurisdiction is the first court to which an application is made.

Judicial reorganisation (Article 631(2) of the Judicial Code): The commercial court that has jurisdiction is the court of the place where the debtor has his or her principal place of business, or, in the case of a legal person, where it has its head office on the date when the application is filed.

Disputes relating to the application of tax law (Article 632): The court with jurisdiction is the court sitting at the seat of the court of appeal of the place where the office by which the tax was or is to be collected is located, or, if the dispute does not relate to the collection of tax, the place where the tax authority that

made the contested decision is established. However, where the proceedings are conducted in German, the court of first instance of Eupen has sole jurisdiction.

Claims concerning preventive attachment and enforcement measures (Article 633): The court of the place of the attachment has jurisdiction, unless otherwise provided by law. In the case of a garnishee order (*saisie-arrêt/beslag onder derden*), the court with jurisdiction is the court of the place where the garnishee has his or her address. Where the garnishee's address is outside Belgium or unknown, the court with jurisdiction is the court of the place of enforcement of the garnishment (see also Article 22(5) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters).

#### **2.2.2.3 Can the parties themselves attribute jurisdiction to a court that would not be competent otherwise?**

As has already been stated above, the rules of Articles 624 and 626 apply in the absence of any provision to the contrary, and the parties are free to deviate from them. Parties can enter into a choice-of-court agreement that provides that any dispute is to be brought only before specified courts at first instance.

In the cases referred to in Articles 627 to 629 of the Judicial Code, no choice-of-court agreement can be made before the dispute arises. However, under Article 630, such agreements are permitted after the dispute arises.

In the cases described in Articles 631 to 633 of the Judicial Code it is not permitted to enter into a choice-of-court agreement.

### **3 Where specialised courts have jurisdiction how can I find out which one I have to address?**

The answer to this question is contained in the answer to questions 1 and 2.

#### **Links**

Relevant articles of the Judicial Code: [Federal Public Service for Justice](#)

Click on *Législation consolidée/Geconsolideerde wetgeving* (Consolidated legislation).

Under *Nature juridique/Juridische aard* (Legal nature), select *Code judiciaire/Gerechtigd Wetboek* (Judicial Code).

In the *Mot(s)/Woord(en)* (Word(s)) field, enter '624'.

Click on *Recherche/Opzoeking* (Search).

Click on *Liste/Lijst* (List).

\* Click on *Justice de A à Z/Justitie van A tot Z* (The A to Z of Justice).

\* Select: *Cours: compétence/Hoven: bevoegdheid* (Courts: jurisdiction).

Help in finding the court with territorial jurisdiction: [Federal Public Service for Justice](#)

Click on *Compétence territoriale/Territoriale bevoegdheid* (Territorial jurisdiction).

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