

Dispute Resolution

Belgium

I. INTRODUCTION TO BELGIAN LAW

I.1 LEGAL SYSTEM

Belgium is a civil law country. Continental lawyers think in general terms of codes, while common law lawyers think in detailed terms of legal precedents.

I.2 SOURCES OF LAW

I.2.1 Common Law

Customary law consists of all the rules drawn from a community's repeated practice, made mandatory by that same community.

I.2.2 Statute Law

The Law was for very many centuries an ancillary source of law. It became the principal source of law after the French revolution.

The term "law" can be understood in the broad sense or in the restricted sense. In the broad sense it covers:

- the Constitution ;
- the directly applicable international law within the Belgian legal order ;
- the Act in the restricted sense, the decree and the order ;
- decree-laws ;
- decrees and regulations.

I.2.3 Case Law

Case Law covers all of the rules of law that emerge from the judgements handed down by Belgian and international courts.

It is most important to specify that a judge cannot violate the existing rules of law, nor create a new one. He or she must necessarily apply the law and nothing but the law. If this is not sufficiently clear, he or she must inevitably interpret it. If it appears poorly suited to the situation before him or her, he or she can with extreme prudence remedy any gaps in the law. It is the legislator alone who is qualified to update, amend, repeal or supplement a law. The role of case law is however far from negligible in our law: the solution adopted by one court can indeed convince other courts of the soundness of the interpretation. Judges tend to conform to the jurisprudence of the higher courts so that their decisions are not reformed on appeal or set aside by the Court of Cassation. A concern for safety moreover induces judges to adopt a similar solution in similar cases. There is not always unanimity between the various Belgian courts: jurisprudence is sometimes hesitant and controversy is not rare.

1.2.4 Doctrine

Doctrine covers all of the works written by legal scholars. These texts have no mandatory force but certain authors exert a major influence on the evolution of the law and judges are often influenced by their work when making their decisions.

1.2.5 Equity

Equity can be defined as the general feeling of justice shared by all the members of the social group.

A judge can for example grant an *ex aequo et bono* indemnity: he or she rules in accordance with equity.

1.3 LIMITATION PERIOD

Statute Limitation is the extinction of the right to bring an action because of the time elapsed. Actions relating to property rights are statute barred after thirty years, while the limitation period of personal actions (contracts and civil liability) can extend up to five, ten and twenty years from the day following the action's operative event.

These delays can also be suspended or interrupted according to different causes strictly stated by the law. The main causes of suspension are minority or interdiction, action between spouses and impossibility to act; the main causes of interruption are summons, seizures and agreement of the debtor.

Criminal limitation is five years from the offence, period likely to be increased to ten years by the effect of legal interruption.

The limitation of common fiscal law is in principle from three to five years.

2. ADMINISTRATION OF JUSTICE AND THE JUDICIAL FUNCTION

2.1 JURISDICTION

2.1.1 Belgian Courts

A Belgian judge has jurisdiction only within the limits of the territory that is assigned to him or her by law, except for cases where the law disposes otherwise.

Apart from cases where the law expressly determines the competent judge to hear the demand, this can, as the plaintiff chooses, be brought before the judge of the residence of the defendant or of one of the defendants, of the place in which the litigious obligations or one of them were born or in which they are, were or should be carried out, of the elected residence for the execution of the process; of the place where the bailiff has spoken to the defendant in person if the latter or, if applicable, none of the defendants is domiciled in Belgium or abroad.

2.1.2 Rest of the World

Subject to the application of international treaties, of European Union law or of provisions contained in particular laws, the Act of 16 July 2004 transferring the Private International Law Code governs, in an international situation, the competence of the Belgian courts, the determination of the applicable law and the conditions of the effectiveness in Belgium of foreign legal decisions and notarial acts in civil and commercial matters. Generally, the Belgian courts are competent if the defendant lives in Belgium or has his or her usual residence there when the demand is filed.

The Belgian courts are also competent to hear and determine any demand concerning the exploitation of a secondary establishment of a legal entity with neither registered office nor customary business address in Belgium, when this establishment is located in Belgium when the demand is filed.

When the parties, in a matter where they dispose freely of their rights by virtue of Belgian law, are validly agreed to hear and determine disagreements born or to be born on the occasion of a legal report on the competence of the Belgian courts or of one of them, these alone are competent.

3. LEGAL PROCEEDINGS

3.1 COURT SYSTEM

3.1.1 The Court of Cassation

There is a one Court of Cassation for the entire country. The Court of Cassation consists of three chambers: the first chamber hears and determines appeals in civil and commercial matters, the second hears appeals in repressive matters and the third hears appeals in corporate matters. Other cases are distributed between the chambers by the first president. Each chamber comprises a French-speaking section and a Dutch-speaking section and each section is composed of five counsel.

The Court of Cassation does not rule on substance, except when a minister has to be tried. The Court controls the proper application of the law by the courts and the tribunals. It appraises only the legality of the disputed decisions. If the Court of Cassation finds that there has been an infringement of a law or a violation of form, either substantial or prescribed on pain of nullity, it sets aside the decision and returns the case to another court of appeal or to another court where it will be retried.

3.1.2 The Court of Appeal

There are five Courts of Appeal in Belgium, which comprise three kinds of chambers: civil chambers, criminal chambers and youth chambers. In principle, the cases are allocated to chambers comprising three counsel. The Court of Appeal hears and determines appeals of the decisions handed down in the first jurisdiction by the court of first instance, by the Commercial Court or by the president of one of the tribunals, provided the value of the demand exceeds €1,860. This court also has a number of specific competences; in particular with regard to rehabilitation, certain tax procedures and certain decisions relating to elections.

3.1.3 The Labour Court of Appeal

There are five Labour Courts in Belgium, which are divided into chambers consisting of a Labour Court Counsel, assisted by two or four Corporate Counsel, who must ensure the equal representation of employees and employers or the self-employed.

The Labour Court hears and determines the appeals of decisions handed down in the first jurisdiction by the Labour Tribunals and by the Presidents of the Labour Tribunals

3.1.4. The Assize Court

Participant in the legal organisation, the Assize Court is an intermittent court. It sits only when, on the requisitions of the Attorney General, the First President of the Court of Appeal orders the opening of a session, in order to examine a matter of its competence in a case that is in the process of being tried. Assize Courts are held in each province and in the Brussels-Capital administrative district. The Assize Court is composed of two distinct colleges: the jury, formed by twelve Belgian citizens drawn by lot by the president of the court, and three judges from the legal order. Subject to the competence of military courts, the Assize Court is competent for all the criminal cases and for political and media offences, with the exception of violations of the media laws inspired by racism or xenophobia. It is a sovereign court, i.e. it rules in final jurisdiction, without appeal.

3.1.5 The District Court

There is one District Court per legal district (27). It is composed of the President of the Court of First Instance, the President of the Commercial Court and the President of the Labour Tribunal. It contains only one chamber.

The District Court hears and determines certain disputes with regard to competence. When the competence of the court dealing with the substance of a case is disputed, the plaintiff can require the case to be referred before the District Court, which will settle the competence issue. The defendant does not benefit from this possibility. When a judge questions his or her own competence as a matter of course, he or she is required to order its referral before the District Court.

3.1.6 The Court of First Instance

There is one Court of First Instance per legal district. The Magistrates Court is part of the Court of First Instance. In principle, the demands are allocated to a chamber with a single judge. There are exceptions, especially for appeals of judgments handed down by Justices of the Peace and Police Courts. The Court of First Instance hears and determines all appeals except those expressly allocated by law to another court. Moreover, the Court of First Instance sits as an appeal court for judgments handed down by Justices of the Peace, except for judgments in relation to demands where the amount is not more than €1,860, which cannot be appealed. In addition, certain disputes must be brought before this court even if the value of the demand is less than €1,860: for example, demands relating to personal conditions, family situations, underage matters, divorce, and so on.

3.1.7 The Seizure Judge

The Seizure Judge, in close co-operation with the Court of First Instance, settles all demands involving attachments and modes of execution.

3.1.8 The Commercial Court

There is one Commercial Court per legal district. It contains one or more chambers. Each is presided over by a career magistrate and is in addition composed of two non-professional judges, called Consular Judges. The Commercial Court hears and determines in the first jurisdiction disputes between merchants relating to acts considered by law to be commercial and which are not of the general competence of the Justice of the Peace. It is also competent in certain specific fields (for example, disputes with regard to bankruptcy, maritime and river matters, trading companies, and so on) or when the parties have recourse to a typically commercial instrument (for example, bill of exchange, promissory note), but again only if the disputed amount is more than €1,860. However, a non-merchant who brings a lawsuit against a merchant has the option, if he or she prefers, of bringing the case before a Commercial Court. On the other hand, a merchant cannot bring a suit against a non-merchant before a Commercial Court. Lastly, the Commercial Court hears and determines judgments handed down by the Justice of the Peace in commercial matters and with regard to bills of exchange.

3.1.9 The Labour Court

There is one Labour Court per legal district. It contains at least two chambers, which are presided over by a career magistrate and are in addition composed of two or four non-professional judges, called Corporate Judges. The Labour Court hears and determines disputes that arise from employment and apprenticeship contracts, disputes with regard to social security, concerning in particular industrial accident and occupational illnesses, employer social security obligations, unemployment, compulsory sickness and disability insurance, retirement, annual holidays, existential safety, and so on.

3.1.10 The Police Court

There are 45 Police Courts, each pertaining to a legal district. This court includes one or more chambers, presided over by a single judge. The Police Court hears and determines any demand relating to the reparation of injury resulting from a traffic accident, whatever the amount. It also acts on criminal matters.

3.1.11 The Justice of the Peace

There are more than 200 Justices of the Peace. This court has no chamber: there is only one Justice of the Peace per legal canton.

The Justice of the Peace hears and determines all demands of which the amount does not exceed €1,860, except those expressly allocated by law to another court. In addition to this general competence, certain special responsibilities are allocated to the Justice of the Peace, whatever the amount of the demand (letting of buildings, joint ownership, constraints, alimony expropriations, acts of adoption, notorious deeds, and so on).

3.2 CIVIL PROCEDURE

3.2.1 Ordinary Action

The civil procedure in principle is public, written and oral and in general has a single phase, the trial. A trial begins in principle with a summons emanating from the plaintiff, who is the person who feels affected in his or her rights. The summons is the bailiff's instrument by which the plaintiff summons his or her adversary to appear before a judge at a precise time.

The plaintiff and the defendant can also agree to bring their dispute before a judge by means of voluntary appearance, thus saving the expense of the summons.

In cases expressly envisaged by the law, the plaintiff can institute proceedings by a petition filed at the clerk's office of the court of competent jurisdiction. The judge is bound by the parties' demands: "The trial is the parties' affair" (operative principle). The submissions, documents in which the various parties present their arguments in fact and law, must be submitted to the other parties and to the court before the hearing. Often, submissions are presented orally and commented on at the time of the lawyer's pleadings or by the party in person during argument before the court. The parties can decide at any moment, by mutual agreement or unilaterally as the case may be, to stop the trial. It can be a question of abandonment of proceedings or of action. At the end of the trial, the court closes the arguments, deliberates and sets the day for the pronouncement of the decision or refers the pronouncement to a later, unspecified date.

3.2.2 Interim Measures

The Presidents of the Courts of First Instance, the Commercial Courts and the Labour Tribunals can make provisional rulings in cases of which they recognize the urgency, in matters that fall within their jurisdiction (appointing receivers and experts, safeguarding rights, hearing witnesses, and so on).

3.2.3 Enforcement Proceedings

Judgments can in particular be enforced via seizure of furniture, seizure of fruits, garnishments (in the hands of a third party up to the amount that he or she owes to the debtor), seizure of ships and boats, and seizure of real estate.

3.2.4 Enforcement of Foreign Decisions

In addition to the rules resulting from European regulations relating to the recognition and execution of decisions as well as to the European executory title, the Act of 16 July 2004 transferring the Code of Private International Law governs, in an international situation, the conditions of the effectiveness in Belgium of foreign judicial decisions and notarial acts in civil and commercial matters. A foreign judicial decision is neither recognized, nor declared executory, especially if the executory declaration of force is manifestly incompatible with public order and if the decision can still be the subject of an ordinary appeal. A foreign judicial decision is authenticated in Belgium by the observations made by the judge if it meets the necessary conditions for its authenticity according to the law of the State in which it was made.

3.3 JUDICIAL COSTS AND FEES - “REPITIBILITY”

In Belgium, the possibility to put at the charge of the opponent party the lawyer fees exposed to obtain a positive decision from the Court was not foreseen by the law.

After a decision pronounced by the Cassation Court on the 2nd of September 2004, the Belgian authorities have set up the Act on the repitibility of the lawyer costs and fees of the 21st of April 2007, completed by the Royal Decree of the 26th of October 2007.

Being valid from the 1st of January 2008, this Act was enforceable to all affairs still not judged at this moment.

The objective of the legislator was to allow the party who won the case to obtain the payment of a lump sum amount fixed by Royal Decree in the costs and fees of his/her lawyer to the charge of the party who lost the case.

This fixed-price intervention is named “indemnity of procedure” and inscribed in the Belgian Judicial Code (Clause 1022).

This clause set out 3 types of amounts in this regard: the basis amount, which could be claimed without any additional justification, with a minimum and a maximum, determined by the amount at stake in the litigation. The Royal Decree of the 26th of October 2007 fixed the gaps to determine the indemnity to be claimed, according to this table (in euros):

Montant de la contestation	Indemnité de base	Indemnité minimale	Indemnité maximale
< 250	150	75	300
250 - 750	200	125	500
750 - 2.500	400	200	1000
2.500 - 5.000	650	375	1.500
5.000 - 10.000	900	500	2.000
10.000 - 20.000	1.100	625	2.500
20.000 - 40.000	2.000	1.000	4.000
40.000 - 60.000	2.500	1.000	5.000
60.000 - 100.000	3.000	1.000	6.000
100.000 - 250.000	5.000	1.000	10.000
250.000 - 500.000	7.000	1.000	14.000
500.000 - 1.000.000	10.000	1.000	20.000
> 1.000.000	15.000	1.000	30.000

If the case is not valuable in cash, the basis amount will be of 1.200 €, the minimum of 75 € and the maximum of 10.000 €.

In order to increase or reduce the basis amount, the judges may take into account:

- the financial capacity of the losing party;
- the complexity of the case;
- the contractual indemnities possibly agreed for the winning party;
- the character obviously foolish of the situation.

These principles may not be applied to some type of litigation, like criminal procedure being introduced by the Public Prosecutor (not the one introduced by the civil party), administrative procedure (Constitutional Court or Council of State).

4. ARBITRATION

4.1 ARBITRATION IN BELGIUM

The arbitration procedure is regulated by Clauses 1676 and following of the Belgian Legal Code.

Arbitration is a way of resolving disputes in which the parties agree to submit their disagreement to an arbitral court composed of one to three people. On the basis of the request of the parties, the court will render a decision, an arbitral award, which is obligatory. The award can be enforced if need be.

4.2 PROCEDURE

Any arbitration agreement must be in writing signed by the parties or the subject of other documents that commit the parties and express their will to resort to arbitration.

The arbitration court must be composed of an uneven number of arbitrators. There can be a single arbitrator. The parties can, either in the arbitration agreement or thereafter, appoint the single arbitrator or arbitrators or call upon a third party to do so. The party that intends to bring the disagreement before the arbitration court must notify the opposing party of the fact. The parties determine in principle the rules of the arbitration procedure, as well as the arbitration venue. The arbitration court must give each party the possibility of asserting its rights and of proposing its means. The arbitration court rules after oral argument. The procedure is in writing if selected by the parties or insofar as they have abandoned the oral argument. The arbitration court can order provisional and conservatory measures at a party's request. Unless the award is contrary to public order or the dispute is unsuitable for settlement by arbitration, the arbitral award has the authority of *res judicata* when it has been notified and when it can no longer be challenged before arbitrators. The arbitral award can be challenged before a Court of First Instance only with regard to cancellation and only in strictly enumerated cases (public order; abuse of power, etc).

4.3 APPEAL

An arbitral award can only be appealed if the parties have agreed this possibility in the arbitration agreement. Unless stipulated otherwise, the period for lodging an appeal is one month from the notification of the award.

5. ALTERNATIVE EXTRA-JUDICIAL DISPUTE RESOLUTION

5.1 ALTERNATIVE DISPUTE RESOLUTIONS

For some years, the ADR such as mediation, conciliation, arbitration and out-of-court settlement have multiplied in the various fields of law. The choice between the various modes

belongs in equal measure to the parties and to the judge. There is neither hierarchy nor prevalence between these various dispute resolution modes.

Author

Vanessa David

Tondreau & Associés
Brussels, Belgium

E-mail vanessa.david@tondreau.be

Tel. +32 2 375 70 76

To contact PLG

Julienne Laveaux
PLG Secretariat
PANNONE LAW GROUP E.E.I.G.
avenue de Sumatra 41
1180 Brussels
Belgium

Tel. +32 2 374 88 46

Fax: +32 2 374 90 61

E-mail plg@plg.be

www.plg.eu.com

Disclaimer

The contents of this article are intended to provide guidance only and should not be taken to constitute legal advice on specific problems. PLG cannot accept responsibility for this information or matters affected by subsequent changes in the law.

Readers are requested to direct their enquiries to the author(s) of the article.

© 2010 Pannone Law Group

