

Judicial system of Belgium

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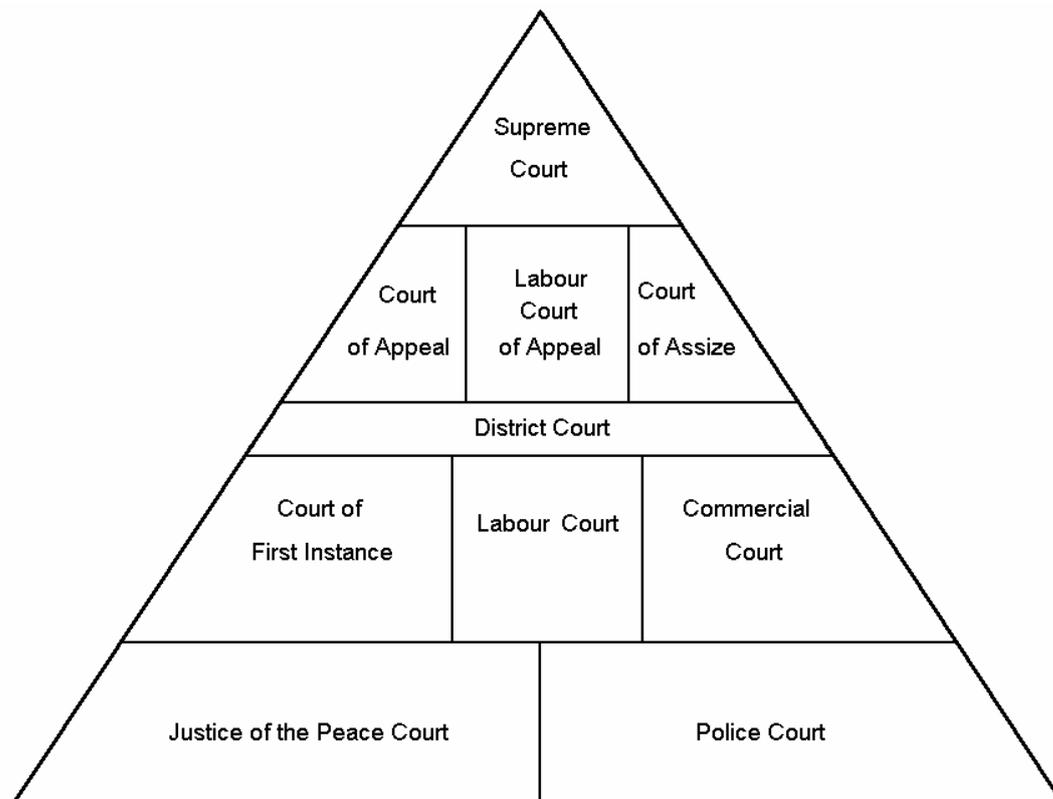
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The legal remedies in the German tax system

I. Overview

The judicial system in Belgium is based on the French system that was created after the French Revolution. Consequently, the judiciary is one of three independent branches of government, on an equal footing with the legislative and executive branches. Most rules on litigation and on the jurisdiction and organization of the different courts can be found in the Judicial Code of 10 October 1967. The Law of 3 August 1992 fundamentally reformed the rules of procedure in the Judicial Code, in order to relieve the judicial backlog.

Schematically, the judicial system in civil and criminal matters can be visualized as follows:



A separate administrative court, the Council of State (*Conseil d'Etat / Raad van State*) was created in 1948. The Constitutional Court (*Grondwettelijk Hof / Cour Constitutionnelle*) was created in 1980.

There are five judicial areas¹ in Belgium, each of which has a Court of Appeals (*Cour d'Appel / Hof van Beroep*) and a Labour Court of Appeals (*Cour du Travail / Arbeidshof*). These areas are in turn divided in 27 judicial districts² each with a Court of First Instance (*Rechtbank van Eerste Aanleg / Tribunal de Première Instance*), a Labour Court (*Arbeidsrechtbank / Tribunal du Travail*), a Commercial Court (*Rechtbank van Koophandel / Tribunal de Commerce*) and a District Court (*Arrondissementsrechtbank / Tribunal d'Arrondissement*). The districts are further divided in 187 judicial cantons, each with a Justice of the Peace Court (*Justice de Paix / Vredegerecht*)³.

The courts that are relevant in tax proceedings will be discussed in detail in the next section. The other courts are addressed briefly below.

The lowest level in civil and criminal matters consists of the Justice of the Peace Courts in civil matters and the Police Court in criminal matters. Apart from minor offences, the Police Court hears all cases involving traffic accidents. The Justice of the Peace Court hears all civil cases involving amounts not exceeding EUR 1,860, with the exception of several matters which are attributed exclusively to the Police Court, the Court of First Instance, the Labour Court or the Commercial Court. Cases involving the application of tax laws are attributed exclusively to the Court of First Instance⁴.

Appeals against decisions of the Justice of the Peace Courts are, depending on the subject matter, brought before the Court of First Instance or the Commercial Court of the district in which the Justice of the Peace Court is located. Appeals against decisions of the Police Courts are brought before the Criminal Court, which is a division of the Court of First Instance⁵.

The Labour Courts were created in 1967 to deal with issues of labour law and social security. In particular, the Labour Court hears claims involving employment contracts, labour accidents, occupational diseases, social security issues, etc. The Labour Courts of Appeals function as the appellate courts in these matters.

Commercial disputes between merchants are brought before the Commercial Court. Moreover, the Commercial Court is the appellate court for certain decisions of the Justice of the Peace Court. Appeals against decisions of the Commercial Court are brought before the Court of Appeals. However, when

¹ Antwerp, Brussels, Ghent, Liège and Mons.

² Arlon, Antwerp, Bruges, Brussels, Charleroi, Dendermonde, Dinant, Eupen, Ghent, Hasselt, Huy, Kortrijk, Leuven, Liège, Marche-en-Famenne, Mechelen, Mons, Namur, Neufchâteau, Nivelles, Oudenaarde, Tongeren, Tournai, Turnhout, Verviers, Veurne and Ypres.

³ Before 1994, there used to be one Police Court (*Tribunal de Police / Politierechtbank*) in every judicial canton as well. However, the Law of 11 July 1994 has decreased the number of Police Courts to 32. Now there is at least one Police Court in every judicial district, while some large districts have several Police Courts.

⁴ Article 569 Judicial Code.

⁵ The Court of First Instance is composed of four divisions: a Criminal Court, a Juvenile Court, a Court for the Execution of Penal Sanctions and a Civil Court (Article 76 Judicial Code). Only the Civil Court is relevant for the remainder of the analysis.

the Commercial Court acts as appellate court, its decisions are only subject to review by the Supreme Court.

The District Court is composed of Presidents of the Court of First Instance, the Commercial Court and the Labour Court⁶. This Court rules on conflicts of jurisdiction between the different courts at the district- and canton-level. The decisions of the District Court are not open to appeal⁷.

The Court of Assize (*Hof van Assisen / Cour d'Assises*) is a criminal court that has jurisdiction over political offences, press-related offences, crimes of international law and certain felonies. It is the only Belgian court that tries cases by a jury. The Court of Assize sits in each of the ten provinces and in the Brussels-Capital Region⁸.

II. Judicial proceedings in direct tax matters

A. The administrative phase

The taxpayer (and, in certain cases, his or her spouse) may object against the assessment⁹. The objection is made in writing to the regional director of the tax administration within six months from the posting date of the notice of assessment¹⁰. The objection suspends the collection of the tax at issue, with the exception of the uncontested portion of the assessment¹¹.

There is no fixed time limit for the administration to give a decision. However, when there is no decision within six months after filing the objection, the taxpayer may submit the case directly to the Court of First Instance (cf. *infra*)¹². When the taxpayer lodges an objection against the assessment, the assessment period is increased by the duration of the administrative procedure (i.e. the time between lodging the objection and the decision of the administration) with a maximum of six months.

As this procedure is an administrative appeal, the principles of sound administration apply. Accordingly, the taxpayer has the right to be heard and the civil servant attending to the case must be impartial and must give his motives for the decision. Moreover, the principles of non-discrimination, legal certainty, proportionality, etc. apply to the administrative procedure.

In order to alleviate the workload of the courts, the administrative phase is a mandatory first step for the taxpayer. An application to the Court of First

⁶ Article 74 Judicial Code.

⁷ Article 642 Judicial Code. There is one exception to this rule: the Attorney-General attached to the Court of Appeals may bring the matter before the Supreme Court.

⁸ Article 114 Judicial Code.

⁹ Article 366 Income Tax Code (hereafter: ITC).

¹⁰ Article 371 ITC.

¹¹ Articles 409 and 410 ITC.

¹² Article 1385*undecies* Judicial Code. This period of six months is increased to nine months in the case of an ex officio assessment.

Instance is therefore only admissible after the administrative phase has been completed (or when the administration has not decided within six months)¹³.

B. The judicial phase: the courts

1. Court of First Instance

If the tax administration has not given a decision within six months (or nine months in the case of an ex officio assessment) after the objection, the taxpayer may bring his case before the Court of First Instance. If the tax administration has given a judgment, the taxpayer has three months to bring the case before the Court of First Instance¹⁴.

The four divisions of the Court of First Instance (cf. supra) all have one or more chambers with one or three judges. As a general rule, both civil and criminal cases are dealt with by a chamber with a single judge. In certain specific matters, the case must be heard by a chamber with three judges¹⁵. Moreover, the case is heard by a chamber of three judges at the request of one of the parties¹⁶.

Not all Courts of First Instance have jurisdiction to hear tax cases: only the Courts of First Instance of the provincial capitals and the Brussels-Capital Region may do so¹⁷. These courts have a specialized tax chamber for this purpose. Territorial jurisdiction is determined on the basis of the tax collector's office where the tax has to be paid or, if the dispute does not relate to the collection of taxes, the location of the administration that has taken the contested decision¹⁸.

2. Court of Appeals

Judgments of the Court of First Instance in tax matters are always open to appeal¹⁹. The appellate court is the Court of Appeals of the judicial area where the Court of First Instance is located.

The Court of Appeals has three types of chambers: civil chambers (including specialized tax chambers), criminal chambers and juvenile chambers. The civil chambers consist of one or three judges²⁰. In general, cases are heard by a chamber of three judges²¹.

¹³ *Ibid.*

¹⁴ Article 1385*undecies* Judicial Code.

¹⁵ Article 92 Judicial Code. None of these exceptions are relevant in matters of direct taxation.

¹⁶ Article 91 Judicial Code.

¹⁷ I.e. the Courts of First Instance of Antwerp, Arlon, Bruges, Brussels, Ghent, Hasselt, Liège, Leuven, Mons, Namur, Wavre. Moreover, the Court of First Instance of Eupen has jurisdiction for procedures in German. Article 632 Judicial Code and Royal Decree of 25 March 1999.

¹⁸ Article 632 Judicial Code. However, when the procedure is in German, only the Court of First Instance of Eupen has jurisdiction.

¹⁹ Article 617 Judicial Code. This is an exception to the general rule that judgments of the Court of First Instance are not open to appeal when the claim does not exceed EUR 1,860.

²⁰ Article 101 Judicial Code.

²¹ Article 109*bis* Judicial Code.

The general procedural rules in appeal are the same as before the Court of First Instance and these general rules also apply to appeals in tax matters. Accordingly, the applicant must have an interest in bringing the case before the Court of Appeals, which implies that the contested decision could put him at a disadvantage²². Moreover, the execution of the Court of First Instance's decision is suspended pending appeal, with the exception of the uncontested portion of the assessment²³. The deadline for bringing a case before the Court of Appeals is one month from the notification of the contested decision²⁴.

There are four different ways to file an appeal: by notification of the writ of appeal by bailiff, by means of a request filed with the registry of the Court of Appeals, by way of a registered letter when this is provided for by law or by means of a trial brief to all parties in the procedure²⁵. The applicant is required to describe the reasons for lodging appeal. Merely stating that he disagrees with the contested decision is not sufficient: the grounds on which the appeal is based must be mentioned. If these grounds are not mentioned, the writ of appeal is void²⁶.

When the appeal was frivolous or vexatious, the appellant may incur a fine and damages may be awarded to the respondent²⁷.

3. Supreme Court

Appeals against judgments of the Court of Appeals are brought before the Supreme Court (*Cour de Cassation / Hof van Cassatie*), which is located in Brussels.

The Supreme Court consists of three chambers: one for civil and commercial cases, one for criminal cases and one for labour cases²⁸. Each chamber has two sections, one French-speaking, one Dutch-speaking. Each section is composed of five judges, including a president. In certain cases, the judgment may be rendered by three or nine judges, or exceptionally by an uneven number of at least eleven judges²⁹. Finally, there are several advocates-general to the Supreme Court whose opinions are usually followed by the Court. These opinions are sometimes published together with the judgments of the Court, but they are not considered to be an integral part of the judgment.

The jurisdiction of the Supreme Court is limited, in that only examines questions of law (i.e. whether the judgment under review has applied the law correctly and has respected mandatory procedural rules³⁰), not the factual

²² Article 17-18 Judicial Code.

²³ Articles 377, 409 and 410 ITC. The same rule applies for appeals to the Supreme Court.

²⁴ Article 1051 Judicial Code.

²⁵ Article 1056 Judicial Code.

²⁶ Article 1057 Judicial Code.

²⁷ Article 780*bis* Judicial Code.

²⁸ Article 133 Judicial Code.

²⁹ Article 128 and 131 Judicial Code.

³⁰ Article 608 Judicial Code.

issues of the case. The Supreme Court therefore does not decide the case on the merits, but instead verifies whether the law has been applied correctly.

When the Supreme Court rejects the application, the judgment under review becomes irrevocable. In contrast, when the Supreme Court decides in favour of the applicant, it reverses the judgment under review and remands the case to a court at the same level of the court that rendered the contested decision. Depending on the gravity of the infringement, the contested decision is entirely or partially void. New proceedings will be opened before the court to which the case has been remanded and the parties can present their case. This court is not bound by the decision of the Supreme Court. However, when this court's decision is once again nullified by the Supreme Court on the same grounds, the court to which the case is subsequently remanded will be bound by the Supreme Court's judgment on this point³¹.

Other courts are not bound by the decisions of the Supreme Court, but these decisions have a significant authoritative value, which means that lower courts generally tend to follow the approach taken by the Supreme Court.

The Supreme Court does not have a specialized tax chamber, nor does it have specialized tax judges. The procedure before the Supreme Court is governed by specific rules which are set out in the Judicial Code³². In civil matters, only attorneys admitted to the Supreme Court may appear before the Supreme Court³³. However, this rule does not apply in tax matters³⁴. As a result, every attorney may file briefs and appear before the Supreme Court in tax matters.

All the parties in the contested decision may appeal to the Supreme Court, insofar as they have an interest in doing so. That is to say, the application is not admissible when the contested decision has no effect on the applicant or when it cannot put him at a disadvantage. An application to the Supreme Court must be lodged within three months following the date on which the decision has been notified to the parties involved.

4. Constitutional Court

Instead of challenging the tax assessment as described above, the taxpayer may want to challenge the constitutionality of the legislative act introducing the tax. The Constitutional Court verifies the constitutionality of the provisions passed by the federal parliament (laws) and the parliaments of the Regions and Communities (decrees and ordinances). This procedure is completely separate from the procedure described above.

Every person may apply to the Constitutional Court for the annulment or suspension of a legislative act, provided he has an interest in doing so³⁵. As a

³¹ Article 1120 Judicial Code.

³² Article 1073-1021 Judicial Code.

³³ Article 478 Judicial Code.

³⁴ Article 378 ITC.

³⁵ Article 142 of the Constitution.

general rule, the application for annulment must be introduced within six months from the publication of the contested legislative act³⁶. An application for the suspension of a legislative act must be introduced within three months from the publication of the act³⁷. If the Constitutional Court decides that the act violates the Constitution, it is nullified *erga omnes*, i.e. it is removed from the legal order.

Moreover, judges are required to refer matters to the Constitutional Court for a preliminary ruling when they are confronted with a constitutionality issue. If the Constitutional Court subsequently decides that the legislative act in question is contrary to the Constitution, the referring court must disregard it in the remainder of the proceedings, but the act is not nullified *erga omnes*. However, a new six month-term for an application for annulment of the act starts as a result of the Constitutional Court's decision.

C. The judicial phase: procedural aspects

The general procedural rules of the Judicial Code apply in tax matters, with some minor exceptions. Moreover, the same procedural rules apply in tax cases involving international aspects. The relevant procedural aspects will be discussed here, insofar as they have not been addressed earlier.

Belgium has three official languages: Dutch, French and German. The language of the proceedings is regulated by the Law of 15 June 1935. As a general rule, proceedings which are conducted in a unilingual region are conducted in the language of that region (i.e. Dutch in the Flemish Region, French in the Walloon Region, German in Eupen). In the bilingual Brussels-Capital Region, the applicant is at liberty to initiate the proceedings either in French or in Dutch. However, the respondent may request having the proceedings transferred to a court of the other language if he is not proficient in the language in which they were initiated. Documents in a different language that are introduced in the proceedings must be translated on the request of the party against whom they are invoked. On appeal, the language of the proceedings is determined by the language of the contested decision. The same rule applies to the Supreme Court, but when the Supreme Court renders its decision in Dutch, it is translated in French and *vice versa*³⁸. A violation of the provisions of the 1935 Law results in the nullity of the procedural act concerned.

In general, proceedings before the Belgian courts are public and the court's decision is also given in public³⁹. Departures from this rule are only possible in exceptional circumstances (e.g. protection of public order, protection of minors, etc.) or when a party applies for a closed-door hearing. Parties may

³⁶ Article 3 of the Law of 6 January 1989 on the Constitutional Court.

³⁷ Article 21 of the Law of 6 January 1989 on the Constitutional Court.

³⁸ There are specific procedural rules when the contested decision was in German (Article 27*bis* – 29 of the 1935 Law).

³⁹ Articles 148 and 149 of the Constitution; Article 757 Judicial Code.

plead their case in person or they may be represented by an attorney⁴⁰. In tax matters, the taxpayer may request that an accountant or auditor of his choosing be heard during the proceedings⁴¹. Throughout the proceedings, the tax administration is represented by one of its civil servants⁴². In general, high-level civil servants are designated to do this⁴³.

The judges may ask questions and play an active part during the hearing. However, the written procedure is generally more important than the oral hearing.

The judge is bound by the object and cause of the claim. The object is the actual extent of the applicant's request. For the judge, this means that he may not give a verdict on matters not referred to by the parties (no decision *ultra petita*), nor may he refrain from giving a verdict on one of the aspects referred to by the parties⁴⁴. The cause of the claim is composed of the relevant facts and/or legal acts, **not** the applicable rules or legal provisions. It is up to the judge to determine the applicable rules and provisions on the basis of the facts and/or legal acts that have been presented to him.

After closing the session, the judge takes the case under consideration and sets a date for the verdict. This date must be within a month from closing the session. If it is impossible to give a verdict within that period, the reason for this delay must be given. There are specific procedures to be followed when the delay is longer than three months⁴⁵. When a judge keeps a case under consideration for over six months, the case may be taken away from him⁴⁶.

Every final judgment includes a decision on the legal costs⁴⁷. Generally, the unsuccessful party is ordered to pay these costs. The legal costs include court fees, registration fees, witness expenses, etc.⁴⁸ These costs also include a lump-sum contribution towards the attorney's fees of the successful party⁴⁹.

D. The judicial phase: the decision

The structure of judgments is not regulated, but the Supreme Court and the Constitutional Court usually follow a rigid pattern (facts – issue – decision) in their judgments. Decisions are taken unanimously and there is no publication of dissenting opinions. References to foreign (case) law in judgments by Belgian courts are quite rare.

⁴⁰ Article 728 Judicial Code. However, the judge may restrict the right of a party to conduct his own defence (Article 758 Judicial Code).

⁴¹ Article 728(2*bis*) Judicial Code.

⁴² Article 379 ITC.

⁴³ Cf. Administrative Circular No. Ci.RH.863/547.570 (AOIF 6/2002) of 1 March 2002.

⁴⁴ Article 1138 Judicial Code.

⁴⁵ Article 770 Judicial Code.

⁴⁶ Articles 648(4) and 652 Judicial Code.

⁴⁷ Article 1017 Judicial Code.

⁴⁸ Article 1018 Judicial Code.

⁴⁹ Article 1022 Judicial Code.

Decisions of Belgian courts are generally very concise, but the Supreme Court and the Constitutional Court sometimes give judgments that are rather elaborate. The decisions of the Supreme Court and the Constitutional Court are published on their respective websites⁵⁰. Moreover, decisions of lower courts are published in legal periodicals if they are interesting or important.

⁵⁰ www.cass.be and www.arbitrage.be.