

## BELGIUM'S NEW SPECIALIZED JUDICIARY

STEFAN VOET,  
Ghent University Law School  
(Ghent, Belgium)

*This brief national report was written for the First Siberian Legal Forum on the 'Specialization of Judges and Courts: Comparative and Russian Context.' It gives an overview of the Belgian judicial structure. After a short analysis of the judicial organization before 2014, that presents an outline of the Belgian first instance and appellate courts, particular attention is paid to the comprehensive judicial reforms of 2014. The enlargement of the judicial districts and the introduction of (internal and external) judicial mobility will lead to more specialized courts and judges. The creation of a Family and Juvenile Court and the re-allocation of some civil and commercial competences, between the Justice of the Peace and the Commercial Court, will have the same effect. Nevertheless, this report concludes that the 2014 reform is a missed opportunity to create a large 'unified' district court in which all first instance courts are merged.*

*Key words: judicial organization; judiciary; judicial reform; Belgium.*

### 1. Introduction

This brief national report, that was written for the First Siberian Legal Forum on the 'Specialization of Judges and Courts: Comparative and Russian Context' provides an overview of the judicial structure in Belgium. It does not aim to be comprehensive, but focuses on the extent and the degree of judicial specialization.

A distinction has to be made between the situation *before* and *after* 2014. In that year, a major judicial reform entered into force reshaping Belgium's judiciary. The most important part of the reform was based on three pillars: enlarging the judicial districts, the mobility of judges and independent judicial management. The aim of the first two goals was to create a more specialized, and therefore more efficient judiciary. Moreover, a Family and Juvenile Court was created and some civil and commercial competences were re-allocated between the Justices of the Peace and the Commercial Courts so that disputes are adjudicated by their 'natural judge.'

All courts discussed in this report are federal courts. Although Belgium is a (complicated) federal state composed of three (language) communities<sup>1</sup> and three (economic) regions,<sup>2</sup> the judicial organization remains a federal competence.

The main focus in this report is on civil courts. Belgium's Constitutional Court, administrative and criminal courts are only briefly mentioned.

## 2. Belgium's Judicial Structure *before* 2014<sup>3</sup>

### 2.1. First Instance Courts

Belgium has five first instance courts: Justices of the Peace, Police Courts, Courts of First Instance, Commercial Courts and Labor Courts. There is one Justice of the Peace (*Justice de la Paix, Vrederechter*) in each judicial canton, which is the smallest geographical subdivision of the country for judicial purposes. There are 187 judicial cantons. The Justice of the Peace has a general jurisdiction over all claims that do not exceed 1,860 EUR ( $\approx$  90,000 RUB).<sup>4</sup> It is regarded as a *small claims court*.

Every judicial district counts one or more Police Courts (*Tribunal de Police, Politie rechtbank*).<sup>5</sup> By law of July 11, 1994,<sup>6</sup> the Police Court has been provided with jurisdiction in civil matters,<sup>7</sup> in addition to its traditional criminal jurisdiction. The Police Court is a *traffic court*. It deals with all compensatory claims, irrespective of their value, regarding traffic accidents, even when the accident happened in a place closed to the public. Before 1994, the other first instance courts (*e.g.*, the Courts of First Instance) had jurisdiction over traffic accidents. This led to a judicial backlog in the Courts of Appeal. To eliminate this, the Police Courts were created. Their decisions can be appealed before the Court of First Instance and not before the Courts of Appeal.

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<sup>1</sup> The Flemish (Dutch-speaking) Community, the French (French-speaking) Community and the German-speaking Community. See <[http://www.belgium.be/en/about\\_belgium/government/federale\\_staats/](http://www.belgium.be/en/about_belgium/government/federale_staats)> (accessed Sep. 27, 2014). For a good understanding of the differences between the Flemish and the Walloons see Robert Mnookin & Alain Verbeke, *Persistent Nonviolent Conflict with No Reconciliation: The Flemish and Walloons in Belgium*, 72(2) *Law & Contemporary Problems* 151 (2009), available at <<http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1524&context=lcp>> (accessed Sep. 27, 2014).

<sup>2</sup> The Flemish Region, the Walloon Region and the Brussels-Capital Region.

<sup>3</sup> For an overview see Marc Castermans, *Gerechtigd Privaatrecht algemene beginselen, bevoegdheid en burgerlijke rechtspleging* 67–172 (Academia Press 2004); Gilberte Closset-Marchal, *La compétence en droit judiciaire privé* (Larcier 2009); Georges de Leval & Frédéric Georges, *1 Précis de droit judiciaire: Les institutions judiciaires: organisation et éléments de compétence* (Larcier 2010); Albert Fettweis, *2 Précis de droit judiciaire: La compétence* (Larcier 1971); Jean Laenens et al., *Handboek gerechtelijk recht* 251–328 (3<sup>rd</sup> ed., Intersentia 2008).

<sup>4</sup> (Old) Article 590 of the Belgian Judicial Code.

<sup>5</sup> There are 34 Police Courts.

<sup>6</sup> Loi du 11 juillet 1994 relative aux tribunaux de police et portant certaines dispositions relatives à l'accélération et à la modernisation de la justice pénale, *Moniteur Belge*, 21 juillet 1994, 19117.

<sup>7</sup> Article 601bis of the Belgian Judicial Code.

The judicial cantons are grouped into 27 judicial districts. Every district encompasses a Court of First Instance, a Commercial Court and a Labor Court. It also accommodates a District Court (*Tribunal d'Arrondissement, Arrondissementsrechtbank*), i.e. a special tribunal serving as an arbitrator in jurisdictional disputes among all first instance courts.<sup>8</sup>

The Court of First Instance (*Tribunal de Première Instance, Rechtbank van Eerste Aanleg*) consists of three divisions:<sup>9</sup> the Civil Court (*Tribunal Civil, Burgerlijke Rechtbank*) deals with civil cases, the Criminal Court (*Tribunal Correctionnel, Correctionele Rechtbank*) handles criminal cases and the Juvenile Court (*Tribunal de la Jeunesse, Jeugdrechtbank*) has jurisdiction over juvenile cases. In some Courts of First Instance there is a fourth division having jurisdiction over the enforcement of criminal penalties (e.g., regarding parole issues) (*Tribunal de l'Application des Peines, Strafvueroeringsrechtbank*). The President of the Court of First Instance can give preliminary rulings. Every Court of First Instance has one or more Judges of Seizure who deal with the enforcement of orders and pre-trial attachments.

The Civil Court has the power to adjudicate all claims, except for the ones that are to be brought directly before the Court of Appeal or the Court of Cassation.<sup>10</sup> It can judge cases belonging to the specific jurisdiction of another court (for example, the Justice of the Peace) as well as adjudicate disputes for which no other court or tribunal has jurisdiction. Hence, the Civil Court is said to dispose of a *full general jurisdiction*.

The Commercial Court (*Tribunal de Commerce, Rechtbank van Koophandel*) consists of two kinds of judges: professional judges and lay judges. The latter are nominated by the various associations representing commerce and industry. The Commercial Court decides *disputes between merchants* concerning matters deemed commercial by law and not belonging to the jurisdiction of the Justice of the Peace, i.e. their value should exceed 1,860 EUR ( $\approx$  90,000 RUB), or to the jurisdiction of the Police Court.<sup>11</sup> The Commercial Court also handles bill of exchange disputes.

The Labor Courts (*Tribunal de Travail, Arbeidsrechtbank*) are structured in the same way as the Commercial Courts, in the sense that they consist of professional and lay judges. The latter compromise employers as well as employees and self-employed people. The Labor Court has jurisdiction with regard to matters of *labor law* as well as *social security law*.<sup>12</sup>

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<sup>8</sup> The District Court is composed of the President of the Court of First Instance, the President of the Commercial Court and the President of the Labor Court.

<sup>9</sup> Article 76 of the Belgian Judicial Code.

<sup>10</sup> Article 568 of the Belgian Judicial Code.

<sup>11</sup> (Old) Article 573(1) of the Belgian Judicial Code.

<sup>12</sup> Article 578 of the Belgian Judicial Code. The Labor Court has no jurisdiction with regard to collective labor law, being conflicts that go beyond the individual employer-employee relationship, such as a strike, a lockout, etc. The Belgian legislator preferred that these disputes would be solved by means of negotiations and has therefore decided to keep those disputes away from the judiciary as a whole. Hence, no court has jurisdiction in this field. See on labor law in Belgium: Roger Blanpain, *Labour Law in Belgium* (5<sup>th</sup> ed., Wolters Kluwer 2012).

Finally, there are the Courts of Assize (*Cour d'Assises, Hof van Assisen*). These are no permanent courts, in the sense that they have to be constituted for each specific case. There is such a court in each of the 10 Belgian provinces<sup>13</sup> and in the Brussels capital territory. It is composed of three professional judges<sup>14</sup> and 12 lay jurors. It has jurisdiction over severe crimes (*e.g.*, murder, manslaughter, homicide, genocide, crime against humanity) that are not brought before the Criminal Court in the Court of First Instance. Only the jury decides upon the facts, and with the judges the penalty is determined. Decisions of the Court of Assize cannot be appealed, except before the Court of Cassation.

## **2.2. Appellate Courts and Supreme Court**

Appeals against decisions of the Justice of the Peace are brought before the Civil Court in the Court of First Instance or the Commercial Court, depending on the subject matter of the dispute.<sup>15</sup> Appeals against civil decisions of the Police Court are brought before the Civil Court in the Court of First Instance, while appeals against criminal decisions are brought before the Criminal Court. An appeal is only possible when the claim brought before the Justice of the Peace or the Police Court exceeds 1,240 EUR ( $\approx$  60,000 RUB).<sup>16</sup>

The Court of Appeal (*Cour d'Appel, Hof van Beroep*) has jurisdiction to hear appeals against judgments rendered in first instance by the Court of First Instance or by the Commercial Court or by the presidents of those Courts.<sup>17</sup> There is one Court of Appeal in each of the 5 judicial areas: Ghent, Antwerp, Brussels, Mons and Liège. The Court of Appeal is subdivided into civil, criminal and juvenile courtrooms (contrary to the Court of First Instance, there are no separate divisions). An appeal is only possible when the claim brought before the Civil Court in the Court of First Instance or the Commercial Court exceeds 1,860 EUR ( $\approx$  90,000 RUB).<sup>18</sup>

Similarly to the Labor Court, the Labor Court of Appeal (*Cour du Travail, Arbeidshof*) is composed of professional and lay judges of appeal. There is one in each judicial area. The Labor Court of Appeal hears appeals against judgments of the Labor Courts rendered in first instance and against decisions of the president of the Labor Court.<sup>19</sup> All decisions of the Labor Court can be appealed, irrespective of the value of the claim.<sup>20</sup>

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<sup>13</sup> Antwerp, Limburg, Flemish Brabant, East Flanders, West Flanders, Hainaut, Walloon Brabant, Namur, Liège and Luxembourg.

<sup>14</sup> The presiding judge is a judge in the Court of Appeal and is assisted by two judges of the Court of First Instance.

<sup>15</sup> (Old) Article 577 of the Belgian Judicial Code.

<sup>16</sup> (Old) Article 617 of the Belgian Judicial Code.

<sup>17</sup> Article 602 of the Belgian Judicial Code.

<sup>18</sup> (Old) Article 617 of the Belgian Judicial Code.

<sup>19</sup> Article 607 of the Belgian Judicial Code.

<sup>20</sup> (Old) Article 617 of the Belgian Judicial Code.

Finally, on top of the ladder there is the Court of Cassation (*Cour de Cassation, Hof van Cassatie*), Belgium's Supreme Court.<sup>21</sup> There is only one Court of Cassation. It is located in Brussels. There are three courtrooms: one handling civil cases, one dealing with criminal cases and one handling social cases. Each courtroom consists of a Dutch-speaking and a French-speaking department. The Court of Cassation deals with appeals against judgments rendered in last instance.<sup>22</sup> The review of the Court of Cassation is of a limited nature. It does not decide on the merits of the case but merely examines whether procedural rules and rules of substantive law were complied with. The Court can reject the appeal against the challenged decision or it can quash that decision referring the case to a court of the same level as that which rendered the quashed decision in order to obtain a new decision on the merits.

### 2.3. Constitutional Court and Administrative Courts

Besides the ordinary civil and criminal courts, Belgium has a Constitutional Court and a series of administrative courts. Judicial review by the ordinary courts is not possible.<sup>23</sup> Only the Belgian Constitutional Court (*Cour Constitutionnelle, Grondwettelijk Hof*)<sup>24</sup> has the power to annul, to declare unconstitutional and to suspend statutes, decrees and ordinances infringing particular (not all) articles of the Belgian Constitution, more particularly these regarding the rights and freedoms of the Belgians, the legality and equality of taxes, the protection of foreign nationals and the power-defining rules provided for in the Constitution and in laws on institutional reform.

Belgium also has a series of administrative courts, of which the most important one is the Council of State (*Conseil d'État, Raad van State*).<sup>25</sup> The most significant competence of the Council is related to its power to suspend and to annul administrative acts (individual and statutory) that are contrary to the legal rules. However, protection against the arbitrary acts of the public administration is not the only task of the

<sup>21</sup> See Philippe Gérard et al., *Pourvoi en cassation en matière civile* (Bruylant 2012); Claude Parmentier, *Comprendre la technique de cassation* (Larcier 2011); Jean-François van Drooghenbroeck, *Cassation et juridiction. Iura dicit curia* (Bruylant 2004).

<sup>22</sup> Article 608 of the Belgian Judicial Code. For example, an appellate decision of the Court of Appeal or the Court of First Instance or a decision of the Justice of the Peace or the Police Court involving a claim less than 1,240 EUR (≈ 60,000 RUB).

<sup>23</sup> See Louis P. Suetens, *Judicial Review in Belgium*, in Prof. Dr. Louis Paul Baron Suetens. *Op de grens van het ideaal denkbare en het praktisch haalbare* 107–18 (die Keure 1997).

<sup>24</sup> <<http://www.const-court.be/>> (accessed Sep. 27, 2014). See Monica Claes et al., *Constitutional Conversations in Europe: Actors, Topics and Procedures* (= 107 lus Commune Europaeum) (Intersentia 2012); Maartje de Visser, *Constitutional Review in Europe. A Comparative Analysis* (Hart Publishing 2013); Stef Feyen, *Beyond Federal Dogmatics: The Influence of EU Law on Belgian Constitutional Case Law Regarding Federalism* (Leuven University Press 2013); *The Role of Constitutional Courts in Multilevel Governance* (= 3 Law & Cosmopolitan Values) (Patricia Popelier et al., eds.) (Intersentia 2012).

<sup>25</sup> <<http://www.raadvst-consetat.be/>> (accessed Sep. 27, 2014). See Jacques Jaumotte et al., *1 & 2 Le Conseil d'Etat de Belgique* (2<sup>nd</sup> ed., Bruylant 2012); *Publiek Procesrecht* (William Timmermans, ed.) (Larcier 2014).

Council. It is also an advisory body in legislative and statutory matters. The Council of State is also the Administrative Supreme Court. As a cassation court it reviews the external and internal legality of the decisions of lower administrative jurisdictions.

#### **2.4. Procedural Rules**

In this context, it is important to understand that the applicable procedural rules before the Constitutional Court and the Council of State differ from those that apply before the ordinary civil courts (as mentioned in chs. 2.1 and 2.2). The latter use the same procedural rules, namely those laid down in the Belgian Judicial Code (or Code of Civil Procedure). The Code dates from October 10, 1967. Its origins go back to the French Code of Civil Procedure of 1804.<sup>26</sup>

The procedural rules before the criminal courts (*e.g.*, the Police Court as a criminal court, the Criminal Court in the Court of First Instance or the criminal courtrooms in the Court of Appeal) are to be found in the Code of Criminal Procedure.<sup>27</sup> If a procedural issue is not dealt with in the Code of Criminal Procedure, then the criminal courts have to apply the rules of the Judicial Code.<sup>28</sup>

The procedural rules of the Constitutional Court are laid down in a special act of January 6, 1989.<sup>29</sup> Those of the Council of State can be found in the coordinated laws of January 12, 1973.<sup>30</sup>

### **3. Tendency towards Specialized Courts and Judges**

The overview above seems clear and straightforward. In each of the 187 judicial cantons there is a Justice of the Peace having jurisdiction over civil cases. The 34 Police Courts (one or more in every judicial district) have jurisdiction over civil and criminal cases. In every of the 27 judicial districts there is a Court of First Instance composed of a Civil Court (dealing with civil cases), a Criminal Court (dealing with criminal cases) and a Juvenile Court (dealing with civil and criminal cases). There is also a Commercial Court having jurisdiction over commercial cases and a Labor Court handling social cases. In every province there is a Court of Assize dealing with (severe) criminal cases. In each of the 5 judicial areas there is a Court of Appeal (dealing with civil, criminal and commercial cases) and a Labor Court of Appeal

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<sup>26</sup> See C.H. van Rhee et al., *The French Code of civil procedure (1806) after 200 years: The civil procedure tradition in France and abroad / Le bicentenaire du Code de procédure civile (1806): La tradition e la procédure civile en France et à l'étranger / De Code de procédure civile (1806) na 200 jaar: De traditie van het Frans civiel procesrecht in vergelijkend perspectief* (Kluwer 2008).

<sup>27</sup> Code d'instruction criminelle.

<sup>28</sup> Article 2 of the Belgian Judicial Code.

<sup>29</sup> Loi spéciale du 6 janvier 1989 sur la Cour Constitutionnelle.

<sup>30</sup> Lois sur le Conseil d'État, coordonnées le 12 janvier 1973.

handling social cases. There is one Court of Cassation dealing with civil, criminal, commercial and social cases. Again, this is the situation before 2014. After the 2014 reform (as discussed in ch. 4), this structure has changed significantly.

However, in the course of the years, additional competences have been assigned to all civil courts. These are called *specific or exclusive* competences, to be distinguished from the *general* competences as discussed in ch. 2.<sup>31</sup> These specific competences are mainly determined by *substantive law*, in the sense that a court applying specific substantive law is allocated the competence to adjudicate disputes arising out of these substantive law rules. The allocation occasionally has to do with the *expertise* and *knowhow* a specific court has built up, for example as a small claims court or a traffic court. In other cases the *specific location* of a court is invoked. This is for example the case for the courts in Brussels. In exceptional cases the assignment of specific competences is nothing more than *arbitrary* (e.g., the competence of the Labor Courts regarding consumer over-indebtedness). Hereafter some examples are discussed. Again, this is the situation before 2014. After the 2014 reform (as discussed in ch. 4), some of these competences shifted.

Apart from its general jurisdiction, the Justice of the Peace, in its capacity as small claims court or 'proximity court', also has some specific competences, irrespective of the value of the claim.<sup>32</sup> The following are the most important: disputes regarding immovable property (e.g., lease), neighbor disputes, certain claims for alimony, claims concerning the rights and duties of husbands and wives, custody cases, disputes concerning the goods and the person of a mentally disabled person, consumer credit disputes, etc.

Since its establishment, the Police Court received additional jurisdiction regarding municipal administrative sanctions<sup>33</sup> and train accidents.<sup>34</sup> The Courts of First Instance have specific jurisdiction over certain family law cases, succession cases, tax disputes, etc.<sup>35</sup> The Commercial Courts have exclusive competences over bankruptcy cases.<sup>36</sup>

In 2006, the Labor Courts received jurisdiction over consumer over-indebtedness cases.<sup>37</sup> This competence shifted from the Courts of First Instance, more particularly

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<sup>31</sup> With the exception of the Police Court and Labor Court that only have specific competences and no general competences.

<sup>32</sup> These specific competences are listed in Arts. 591 and 594 of the Belgian Judicial Code.

<sup>33</sup> Article 601ter of the Belgian Judicial Code (Loi du 13 mai 1999 relative aux sanctions administratives dans les communes, Moniteur Belge, 10 juin 1999, 21629). The Police Court acts as an appellate court for decisions by cities and municipalities imposing administrative sanctions.

<sup>34</sup> Loi du 30 décembre 2009 portant des dispositions diverses en matière de Justice (I), Moniteur Belge, 15 janvier 2010, Ed. 2, 1885.

<sup>35</sup> Articles 569, 570 and 571 of the Belgian Judicial Code.

<sup>36</sup> Article 574 of the Belgian Judicial Code.

<sup>37</sup> Loi du 13 décembre 2005 modifiant les articles 81, 104, 569, 578, 580, 583, 1395 du Code judiciaire, Moniteur Belge, 21 décembre 2005, Ed. 1, 54540.

from the Judge of Seizure in these courts, to the Labor Courts. According to the legislator this allows to take more into account the social dimension of consumer over-indebtedness, of which one of the goals is human dignity for the debtor. Moreover, it was argued that the Labor Courts have more experience and means to deal with these kinds of cases. This view was not only criticized by the High Council of Justice, but also by academics.<sup>38</sup> It was emphasized that consumer over-indebtedness relates to insolvency and execution law. Because of its technical nature, and the fact that it mostly arises in the context of enforcement procedures, consumer over-indebtedness inherently belong to the core business of the Judge of Seizure. Its assignment to the Labor Courts was nothing more than an arbitrary shift of caseload. It was no secret that the Judges of Seizure were swamped with consumer over-indebtedness cases and that the Labor Courts had a lower caseload in comparison with other first instance courts. This resembles what happened in 1994 when the jurisdiction over traffic accidents was allocated to the Police Courts, in order to reduce the backlog in the Courts of Appeal (*see supra*, at ch. 2.1).

Another striking example is the fact that some Brussels courts have exclusive jurisdictions for the whole country. The Brussels Court of First Instance has exclusive jurisdiction for the whole country, *inter alia*, for claims regarding nuclear liability<sup>39</sup> and oil pollution liability,<sup>40</sup> and some claims relating to insurance and financial law.<sup>41</sup> The President of the Brussels Commercial Court and that Court have exclusive jurisdiction regarding all Belgian intellectual property claims.<sup>42</sup> The Brussels Court of Appeal has some exclusive competences, again for the whole country, regarding financial,<sup>43</sup> energy<sup>44</sup> and transport law.<sup>45</sup> The Brussels courts are assigned these exclusive competences because of their extensive and significant experience and expertise regarding international disputes. By making one specific court competent, the Belgian legislator wants to create a uniform and predictable jurisprudence in a specialized area of the law. One specialized court will also be able to deal with these (fairly limited number of) cases more efficiently and swiftly (*see also infra*, at ch. 4.6).

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<sup>38</sup> Bertel de Groote & Stefaan Voet, *Collectieve schuldenregeling 19–25* (Larcier 2009); *idem*, *Schuldsanering voor particulieren in België – beschouwingen bij tien jaar ‘collectieve schuldenregeling,’* 3 *Journal of South African Law* 502 (2009).

<sup>39</sup> Article 569(17) of the Belgian Judicial Code.

<sup>40</sup> Article 569(21), (28) of the Belgian Judicial Code.

<sup>41</sup> Article 633*octies* of the Belgian Judicial Code.

<sup>42</sup> Article 633*quinquies* of the Belgian Judicial Code.

<sup>43</sup> Articles 633*bis*, 605*bis* and 605*ter* of the Belgian Judicial Code.

<sup>44</sup> Articles 633*quater*, 605*quater*(1)–(5) of the Belgian Judicial Code.

<sup>45</sup> Article 633*quater*, 605*quater*(6)–(7) of the Belgian Judicial Code.



## 4. Belgium's Judicial Structure *after* 2014

### 4.1. Overview

In 2014, the Belgian judiciary was reformed.<sup>46</sup> It was a major reorganization consisting of different components of which some will lead to a more specialized judiciary.<sup>47</sup> The most important part is the reform of the judicial districts, the introduction of judicial mobility and independent judicial management.<sup>48</sup> In this context, the first two are significant (*see infra*, at chs. 4.2 & 4.3). The new rules entered into force on April 1, 2014. The reform aims to achieve three goals:

- 1) better judicial management and more efficiency regarding the use of public means;
- 2) reducing the judicial backlog;
- 3) more judicial quality and better service through judicial specialization.

It is important to underline that the reform was a political consensus. The original objective was to create one district court<sup>49</sup> in every judicial district.<sup>50</sup> The Court of First Instance, the Commercial Court and the Labor Court would merge into this 'unified' court. A political accord was, however, not possible. Instead, the legislature chose for more and better judicial specialization, more judicial mobility and more independent judicial management.

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<sup>46</sup> For an analysis, see Nieuwe Justitie (Benoît Allemeersch et al., eds.) (Intersentia 2014); Le nouveau paysage judiciaire (Deborah Fries, ed.) (Anthemis 2014); Frédéric Georges, *La réforme des arrondissements judiciaires*, 2014(19) *Journal des Tribunaux* 333.

<sup>47</sup> Another issue was the reform of the judicial district of Brussels (Loi du 19 juillet 2012 portant réforme de l'arrondissement judiciaire de Bruxelles, *Moniteur Belge*, 22 août 2014, Ed. 1, 49293; Loi du 6 janvier 2014 relative à la Sixième Réforme de l'Etat concernant les matières visées à l'article 77 de la Constitution, *Moniteur Belge*, 31 janvier 2014, Ed. 2, 8718; Loi du 28 mars 2014 portant modification et coordination de diverses lois en matière de Justice concernant l'arrondissement judiciaire de Bruxelles et l'arrondissement du Hainaut, *Moniteur Belge*, 31 mars 2014, Ed. 2, 28027). This complicated, and highly debated, reform is less important for this national report. For an analysis, see Frédéric Gosselin, *La réforme de l'arrondissement judiciaire de Bruxelles*, in *La sixième réforme de l'Etat (2012–13)* 375–96 (Joëlle Sautois & Marc Uyttendaele, eds.) (Anthemis 2013).

<sup>48</sup> Loi du 1 décembre 2013 portant réforme des arrondissements judiciaires et modifiant le Code judiciaire en vue de renforcer la mobilité des membres de l'ordre judiciaire, *Moniteur Belge*, 10 décembre 2013, Ed. 2, 97957; Loi du 18 février 2014 relative à l'introduction d'une gestion autonome pour l'organisation judiciaire, *Moniteur Belge*, 4 mars 2014, Ed. 2, 18200; Loi du 21 mars 2014 portant modification de la loi du 1er décembre 2013 portant réforme des arrondissements judiciaires et modifiant le Code judiciaire en vue de renforcer la mobilité des membres de l'ordre judiciaire, *Moniteur Belge*, 24 mars 2014, Ed. 2, 23194. *See also* Loi du 8 mai 2014 portant modification et coordination de diverses lois en matière de Justice (I), *Moniteur Belge*, 14 mai 2014, Ed. 2, 39086; Loi du 12 mai 2014 portant modification et coordination de diverses lois en matière de Justice (II), *Moniteur Belge*, 19 mai 2014, 39863.

<sup>49</sup> Not to be confused with the district court mentioned in ch. 2.1.

<sup>50</sup> *See on this idea* Rogier de Corte, *De eenheidsrechtbank*, in *De gerechtelijke hervorming 171–80* (Hubert Bocken, ed.) (die Keure 2012).

A second part concerns a major judicial competence reform. On the one hand, a Family and Juvenile Court is created (*see infra*, at ch. 4.4).<sup>51</sup> On the other hand, some civil and commercial competences are re-allocated so that a dispute is adjudicated by its 'natural judge' (*see infra*, at ch. 4.5).<sup>52</sup> The goal of this reform is a more efficient administration of justice in family disputes and a speedier and qualitative adjudication of disputes by the judge who is best suited.

Finally, the new Belgian consumer class action act is briefly mentioned because of the exclusive competence of the Brussels courts (*see infra*, at ch. 4.6).

#### **4.2. Enlargement of the Judicial Districts**

The 27 judicial districts are reduced to 12.<sup>53</sup> Their boundaries overlap with the 10 Belgian provinces, with the exception of Brussels, Leuven and Eupen.<sup>54</sup> So the current judicial districts are Antwerp, Limburg, East Flanders, West Flanders, Hainaut, Namur, Liège, Luxembourg, Leuven and Eupen.

In each of these districts there is one Court of First Instance and one Police Court. The former seats of these courts (in the 27 judicial districts) are all maintained as local divisions, so for parties seeking justice nothing changes in practice. They can still go to the same courthouse. For example, before April 1, 2014 there was a Court of First Instance in Ghent, Dendermonde and Oudenaarde (*i.e.* 3 of the 27 judicial districts located in the province of East-Flanders). These 3 courts merged into one court: the Court of First Instance of East-Flanders. This Court has 3 divisions: one in Ghent, one in Dendermonde and one in Oudenaarde.

The Commercial Courts and the Labor Courts are not anymore organized on district level, but on the level of a judicial area,<sup>55</sup> just like the Court of Appeals. Again, the former seats are maintained as local divisions. For example, the former 8 Commercial Courts in West- and East-Flanders merged into the Commercial Court of Ghent (which is one of the 5 judicial areas). This Court has 8 local divisions.

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<sup>51</sup> Loi du 30 juillet 2013 portant création d'un tribunal de la famille et de la jeunesse, *Moniteur Belge*, 27 septembre 2013, Ed. 2, 68429. For an analysis, *see* Didier Pire, *La loi du 30 juillet 2013 portant création d'un tribunal de la famille et de la jeunesse*, 2013(9) *Actualités du droit de la famille* 170; *idem*, *Tribunal de la famille et de la jeunesse: loi réparatrice*, 2014(6) *Actualités du droit de la famille* 178. This reform entered into force on September 1, 2014.

<sup>52</sup> Loi du 26 mars 2014 modifiant le Code judiciaire et la loi du 2 août 2002 concernant la lutte contre le retard de paiement dans les transactions commerciales en vue d'attribuer dans diverses matières la compétence au juge naturel, *Moniteur Belge*, 22 mai 2014, 40635. This reform entered into force on July 1, 2014.

<sup>53</sup> The division into 27 districts dates back to 1830 when Belgium was founded. The idea was that every capital city in a district was reachable in one day by horse.

<sup>54</sup> These exceptions are explained by the reform of the judicial district of Brussels. Eupen has a separate judicial structure because it has the only German-speaking courts.

<sup>55</sup> There is an exception for Brussels, Leuven, Walloon Brabant and Eupen.

The core idea of the reform is that *all* court divisions offer *basic* judicial services and that *specialized* cases can be assigned exclusively to *one* division for the whole district or area.<sup>56</sup> This allows specialization by that division. Before, all 27 courts need to have specialized judges to deal with all kinds of cases. From now on, these cases can be pooled into one division.

The law explicitly describes which kinds of cases (mostly technical in nature) can be dispatched to one court division. Regarding civil law, all divisions of the Court of First Instance have to maintain their full general jurisdiction<sup>57</sup> and their jurisdiction regarding appeals against decisions of the Justice of the Peace and the Police Court.<sup>58</sup> All other (specific) jurisdictions (*e.g.*, expropriation, mining concessions, private international law cases, *etc.*)<sup>59</sup> can be dispatched to one (specialized) court division. All divisions of the Commercial Court have to maintain their general jurisdiction over commercial matters<sup>60</sup> and their (specific) competences over bankruptcy cases.<sup>61</sup> Their other competences (*e.g.*, bill of exchange disputes, disputes about postal services, cases about the protection of semi-conductors, *etc.*)<sup>62</sup> can be assigned to one division. Finally, all Labor Court divisions maintain most of their labor law and social security law competences.<sup>63</sup> Other jurisdictions (*e.g.*, work accidents and administrative sanctions)<sup>64</sup> can be pooled into one court division.

Regarding criminal law, the following cases can be dispatched to one specialized court division: cybercrime, socio-economic cases, financial and fiscal cases, international drug cases, arms trade cases, marriage of convenience cases, terrorism, human trafficking, environment cases, telecommunication, military crimes, intellectual property, agriculture, extradition cases, customs, hormones, animal welfare, food safety and doping.

Everything will be laid down in a 'case division regulation' per judicial district and area.<sup>65</sup> This regulation has nothing to do with jurisdiction or competence. It only deals with the internal division of cases in a district or area. Therefore, this regulation can never give rise to jurisdictional disputes.

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<sup>56</sup> (New) Article 186 of the Belgian Judicial Code.

<sup>57</sup> Article 568 of the Belgian Judicial Code. *See supra*, at ch. 2.1.

<sup>58</sup> Article 577 of the Belgian Judicial Code.

<sup>59</sup> For a complete list see Art. 186 of the Belgian Judicial Code.

<sup>60</sup> Article 573 of the Belgian Judicial Code. *See supra*, at ch. 2.1.

<sup>61</sup> Article 574 of the Belgian Judicial Code. *See supra*, at ch. 2.1.

<sup>62</sup> For a complete list see Art. 186 of the Belgian Judicial Code.

<sup>63</sup> Article 578 of the Belgian Judicial Code. *See supra*, at ch. 2.1.

<sup>64</sup> For a complete list see Art 186 of the Belgian Judicial Code.

<sup>65</sup> This will be laid down in a royal decree.

For the Justices of the Peace nothing changes. There is still one court in each judicial canton.

#### **4.3. Mobility of Judges**

The new reform foresees two systems of judicial mobility:<sup>66</sup> internal and external mobility. *Internal mobility* means that a judge who is appointed primarily in a judicial canton or district, is appointed subsidiarily in another canton or district. He or she can, after being heard by the president of the canton or district to which he or she primarily belongs, be called in to work in the other canton or district. The consent of the judge is not needed. For example, all Justices of the Peace are subsidiarily appointed in all the judicial cantons of the judicial district to which their own judicial canton belongs. The same is true for all the judges in the Court of First Instance. They are all subsidiarily appointed in the judicial districts of the judicial area to which their own judicial district belongs.

*External mobility* implies that a judge is asked to work in a court in which he or she is not appointed primarily or subsidiarily. Here, the consent of the judge concerned is required. The external mobility can be horizontal or vertical. For example, a Justice of the Peace can be asked to work in a Police Court of the judicial district to which his or her judicial canton belongs, or in a Justice of Peace of another judicial district of the judicial area (= horizontal mobility). A judge in the Court of First Instance can be asked to work in the Court of Appeal of the judicial area to which his or her own judicial district belongs (= vertical mobility).

The mobility of judges will meet two needs. From a quantitative perspective, it offers a solution for over- and undercapacity. Qualitatively, it allows specialization: one judge in one place cannot know everything. When mobile judges can be pooled in larger districts or areas, the work can be better distributed.

#### **4.4. Family and Juvenile Court**

As mentioned above, the Court of First Instance consists of three divisions: the Civil Court, the Criminal Court and the Juvenile Court. The latter is reformed into a Family and Juvenile Court (*Tribunal de la Famille et de la Jeunesse, Famille- en Jeugdrechtbank*). The Court of First Instance now has 3 sections:<sup>67</sup> the Civil Court, the Criminal Court and the Family and Juvenile Court.<sup>68</sup> The latter has juvenile chambers, family chambers and settlement chambers.<sup>69</sup> The same chambers also exist in every Court of Appeal.

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<sup>66</sup> For some general reflections on judicial mobility see Randall D. Lloyd et al., *An Exploration of State and Local Judge Mobility*, 22(1) *The Justice System Journal* 19 (2001).

<sup>67</sup> The term 'division' is abandoned to avoid confusion with the 'divisions' mentioned in ch. 4.2.

<sup>68</sup> In some Courts of First Instance there is a fourth section that has jurisdiction over the enforcement of criminal penalties (see *supra*, at ch. 2.1).

<sup>69</sup> The new rules promote the amicable resolution of family disputes. Therefore settlement chambers are installed. The judges that preside these chambers will assist parties in reaching a settlement.

All competences related to family and juvenile law, in the broadest sense of the word, are assigned to the Family and Juvenile Court. Before 2014, multiple courts had jurisdiction over these matters: the Justice of the Peace to rule on certain claims for alimony, claims concerning the rights and duties of husbands and wives and custody cases;<sup>70</sup> the President of the Court of First Instance to rule on provisional measures; the Civil Court in the Court of First Instance to rule on divorce proceedings and other family law cases; the Juvenile Court in the Court of First Instance to adjudicate cases involving minors; etc. All these courts lose their competences, which are now allocated to the specialized Family and Juvenile Court.

Because the Justices of the Peace lose a lot of their specific competences (e.g., with regard to alimony claims), the new rules provide a compensation, in order to re-balance the workload. The general jurisdiction of the Justices of the Peace is expanded from claims that do not exceed 1,860 EUR ( $\approx$  90,000 RUB) to claims not exceeding 2,500 EUR ( $\approx$  121,000 RUB).<sup>71</sup> As a consequence, decisions of the Justice of the Peace and the Police Court can now be appealed when they involve claims exceeding 1,860 EUR (instead of 1,240 EUR ( $\approx$  60,000 RUB)). Decisions of the Court of First Instance and the Commercial Court can be appealed when they involve claims exceeding 2,500 EUR (instead of 1,860 EUR).<sup>72</sup> Another compensation is that the Justices of the Peace are assigned all competences regarding mental incompetence.<sup>73</sup> The competences the Court of First Instance had in that regard are shifted to the Justice of the Peace.

#### **4.5. Act on the 'Natural Judge'**

The Act on the 'natural judge' re-allocates some civil and commercial competences so that disputes are adjudicated by their more 'natural judge.'

The Justice of the Peace is assigned specific jurisdiction regarding the recovery of debts that are linked to public utilities (*i.e.*, gas, electricity, energy, water and telecommunication), and this irrespective of the value of the claim. The only condition is that the debtor has to be a natural person and not an enterprise.

The Justice of the Peace loses his competences regarding small commercial disputes. As mentioned above, the Commercial Court decides disputes between merchants as long as the claim involved exceeds 1,860 EUR ( $\approx$  90,000 RUB).<sup>74</sup> If not,

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<sup>70</sup> See *supra*, at ch. 3.

<sup>71</sup> (New) Article 590 of the Belgian Judicial Code.

<sup>72</sup> (New) Article 617 of the Belgian Judicial Code.

<sup>73</sup> Loi du 17 mars 2013 réformant les régimes d'incapacité et instaurant un nouveau statut de protection conforme à la dignité humaine, Moniteur Belge, 14 juin 2013, Ed. 2, 38132. For an analysis, see Alewandra Demortier & Thomas van Halteren, *La loi du 17 mars 2013 réformant le régime des incapacités – Principes et innovations en matière de mandat extrajudiciaire et de libéralités*, 140(3086) Revue du notariat belge 391 (2014).

<sup>74</sup> See *supra*, at ch. 2.1.

the Justice of the Peace has jurisdiction. This condition is abolished. According to the law, the Commercial Court now has jurisdiction to adjudicate *all* disputes between businesses, more particularly between all persons durably pursuing an economic goal, regarding an action that was performed in the context of the realization of that goal.<sup>75</sup> This means that the Commercial Court now has general jurisdiction over all (internal and external) business and corporation disputes, irrespective of the value of the claim.<sup>76</sup> Consequently, and contrary to past practice, the competence of the Commercial Court to rule on appeals against some decisions of the Justice of the Peace – a competence this court shared with the Court of First Instance – lapses. Decisions of the Justice of the Peace can now only be appealed before the Court of First Instance.

#### **4.6. Consumer Class Action Act**

Finally, the new Belgian consumer class action should be mentioned briefly. The new procedure, which enters into force on September 1, 2014, is an opt out representative class action.<sup>77</sup> It can only be used in consumer cases. Consumer associations have exclusive standing. After the court has certified the class action, there is a mandatory negotiation phase. If a settlement is reached, the court will homologate it. If no settlement is reached, the court will decide on the merits of the case. In both cases, the court will appoint an out-of-court claims settler who will distribute the funds, provided by the (liable) defendant, among all class members.

The Brussels courts have exclusive jurisdiction for the whole country.<sup>78</sup> In first instance, the class action can be brought before the Brussels Court of First Instance or the Brussels Commercial Court.<sup>79</sup> In appeal, the case is brought before the Brussels Court of Appeal. The legislator wants to create a specialized class action court. This will pave the way for an efficient resolution of class actions. A uniform and predictable jurisprudence will develop in a specialized area of the law. Moreover, a specialized and more experienced court will be able to deal with these cases more efficiently

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<sup>75</sup> (New) Article 573 of the Belgian Judicial Code.

<sup>76</sup> Maybe it was better to change the name from Commercial Court to Business Court – an idea that has been launched in the past (see Jean Laenens, *Ondernemingsrechtbanken*, 68(40) *Rechtskundig Weekblad* 1597 (2004–05)).

<sup>77</sup> Loi du 28 mars 2014 portant insertion d'un titre 2 «De l'action en réparation collective» au livre XVII «Procédures juridictionnelles particulières» du Code de droit économique et portant insertion des définitions propres au livre XVII dans le livre 1er du Code de droit économique, *Moniteur Belge*, 29 avril 2014, 35201. For a brief analysis see Stefaan Voet, *European Collective Redress: A Status Quaestionis*, 4(1) *International Journal of Procedural Law* 97, 126–28 (2014).

<sup>78</sup> Loi du 27 mars 2014 portant insertion des dispositions réglant des matières visées à l'article 77 de la Constitution dans le livre XVII «Procédures juridictionnelles particulières» du Code de droit économique et modifiant le Code judiciaire en vue d'attribuer aux cours et tribunaux de Bruxelles une compétence exclusive pour connaître de l'action en réparation collective visée au livre XVII, titre 2, du Code de droit économique, *Moniteur Belge*, 29 avril 2014, 35197.

<sup>79</sup> The Brussels Justices of the Peace and the Brussels Labor Court have no jurisdiction.

and swiftly. Because the total number of mass cases seems to be fairly limited, even in jurisdictions that already have class actions or class action-like tools, it would be inefficient to give jurisdiction to multiple courts. One competent court also avoids time-consuming litigation over jurisdictional issues and forum shopping.<sup>80</sup>

## 5. Conclusion

Belgium has a traditionally shaped judiciary. At the bottom there are the Justices of the Peace, as small claims courts, and the Police Courts, as traffic courts. On the next level, the Courts of First Instance, the Commercial Courts and the Labor Courts are to be situated. The Courts of First Instance have Civil Courts, Criminal Courts and Juvenile Courts. The Commercial Courts deal with commercial cases, while the Labor Courts handle labor cases. On the third (appellate) level, there are the Courts of Appeal and the Labor Courts of Appeal. On top, there is the Court of Cassation. This pyramidal structure is inherently characterized by specialization: each court has jurisdiction over specific (civil, criminal, commercial or social) cases. In the course of the years, these courts have been assigned additional specific competences. Substantive law reasons as well as expertise and location reasons underlie these additional competence allocations. In some cases the allocation of specific competences was nothing more than an arbitrary shift of caseload.

The 2014 judicial reforms have expanded this specialization. By enlarging the judicial districts and making judges (internally and externally) mobile, the legislature has created more specialized courts and judges having jurisdiction over larger territory. One of the core ideas is that *all* court divisions offer *basic* judicial services and that *specialized* cases can be assigned exclusively to *one* division for the whole district or area. By introducing a Family and Juvenile Court, as a section of the Court of First Instance, the legislator wants to create a specialized court having jurisdiction over all family and juvenile cases. The Justices of the Peace and the Commercial Courts are further specialized. The general competence of the Justices of the Peace is expanded to all claims not exceeding 2,500 EUR ( $\approx$  121,000 RUB). They are also assigned all competences regarding mental incompetence and the recovery of debts that are linked to public utilities. The Commercial Courts now have general jurisdiction over all business and corporation disputes, irrespective of the value of the claim.

In theory, these reforms will undoubtedly lead to a more specialized, and therefore more efficient, judiciary. Nevertheless, the 2014 reform is a missed opportunity, in the sense that a merger of the Courts of First Instance, the Commercial Courts and the Labor Courts into one large an 'unified' district court would have achieved the most optimal specialization. Unfortunately, a political consensus could not be reached.

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<sup>80</sup> Stefaan Voet, *Cultural Dimensions of Group Litigation: The Belgian Case*, 41 Ga. J. Int'l & Comp. L. 433, 471 (2013), available at <[http://papers.ssrn.com/abstract\\_id=2235645](http://papers.ssrn.com/abstract_id=2235645)> (accessed Sep. 27, 2014).

Especially in the southern (French-speaking) part of Belgium there existed a fierce opposition against such a merger. Another missed opportunity is the asymmetrical territorial organization of the Courts of First Instance and the Police Courts on the one hand and of the Commercial Courts and the Labor Courts on the other. While the former are still organized per (bigger) district, the latter are organized per judicial area. There is no clear and logical motivation for this.

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### Information about the author

**Stefaan Voet (Ghent, Belgium)** – Assistant Professor at the Institute for Procedural Law, Ghent University (Ghent Law School, Universiteitstraat 4, Ghent, 9000, Belgium; e-mail: Stefaan.Voet@UGent.be).