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## THE E-JUSTICE MODEL IN BELGIUM

### 1. THE JUDICIAL SYSTEM IN BELGIUM

The Belgian legal system is a **system in the civil law tradition**, comprising a set of codified rules applied and interpreted by judges.

The organisation of the courts and tribunals in Belgium is a **solely federal responsibility**.

The judicial branch consists of regular courts in different appeal levels (private and criminal law matters). In 1948, an administrative court was added. A constitutional court was only set up in 1980. A distinction is made between judicial officers (judges in the lower and higher courts) and prosecuting officers (the public prosecutor's office or public prosecution service).

Belgium has five major judicial areas, the **five appeal court jurisdictions**: Brussels, Liege, Mons, Ghent and Antwerp.

These jurisdictions are divided into 27 judicial districts, each having a **court of first instance**.

In addition, the judicial districts have **21 employment courts and 23 commercial courts**.

The districts are divided, in turn, into 187 judicial cantons, each housing a **cantonal court**.

Each of the ten provinces, as well as the administrative district of Brussels-Capital, has an **assize court**. The assize court is not a permanent court. It is convened whenever accused persons are sent before it.

The ordinary courts rank in four levels: "Tribunal de Police" (criminal) and "Tribunal des Juges de Paix" (civil) are the lowest levels for small felonies or conciliation matters. Normal starting level (first instance) is the "Tribunal de Première Instance" (civil and criminal), which is called correctional court or juvenile court in criminal matters. Very recently, specialised tax chambers have been added to the formal organisation of the courts of first instance. Commercial courts have lay judges alongside professional magistrates and social law cases appear in the labour tribunal. Serious offences appear before the "Cour d'Assises", the only Belgian court with a jury. The appeal level is the "Cour d'Appel", where civil, criminal and commercial matters are dealt with; only the "Cour de Travail" is a specific appeal court for social law cases coming from the lower labour tribunals. Finally, the "Cour de Cassation" is the highest ap-

peal level, dealing only with points of law. No new facts can be brought before this court, just like in the French system.

Although civil and criminal courts are both in the same “ordinary” court system, it must be stressed that criminal cases have a specific “foreplay”, with preliminary investigations, an Examining Magistrate and a Public Attorney. All this is written down in the Code of Criminal Procedure (1867), as is done for civil cases in the (new) Code of Civil Procedure (1967). Judicial review as such belongs to the ordinary courts, but administrative redress is possible before an administrative court, where the highest administrative court is the Council of State.

The nature and severity of an offence, the nature of a dispute and also the size of the sums involved determine **the type of court** that must hear the case.

In some circumstances, it is the nature of the dispute that determines the court to be seized. Thus, a cantonal court has jurisdiction over neighbourhood disputes and the court of first instance has jurisdiction over divorce. In other cases it is the capacity of the parties. Generally, most disputes between traders go before the commercial court.

Once the type of court with jurisdiction has been determined, it is necessary to designate **the place** where the case will be considered.

**In civil matters**, the proceedings may be heard before the judge for the domicile of the defendant or before the judge for the place where the obligation was contracted or was to be performed.

**In criminal matters**, the court of the place where the offence was committed, the court of the place where the suspect resides and the court of the place where he or she may be found have equal jurisdiction. In the case of legal persons, it is the court of the place where it has its registered office and of the place where the said legal person has its principal place of business.

### *Courts and tribunals and their hierarchy*

**Table 1. Structure of courts and tribunals in Belgium**

<b>4</b>	<b>COURT OF CASSATION</b>		
<b>3</b>	Appeal courts	Employment courts of appeal	Assize courts
<b>2</b>	First instance courts	Employment courts	Commercial courts
<b>1</b>	Cantonal courts		Police courts

**Table 2. An overview of the courts dealing with appeals, depending on which body issued the judgment being appealed**

Judgment		Appeal
Cantonal court	– civil cases	First instance court (civil section)
	– commercial cases	Commercial court
Police court	– criminal cases	First instance court (Misdemeanours court)
	– civil cases	First instance court (Civil court)
Employment court		Employment court of appeal
First instance court		Appeal court
Commercial court		Appeal court

At the appeal stage the judges (of the first instance or appeal court) deliberate the merits of the case for a second and last time and give a final ruling. The parties, however, still have the opportunity to appeal in cassation. The role of the public prosecutor's office is performed by the Crown counsel (attached to a lower-level court) or the prosecutor-general (attached to an appeal court or employment court of appeal). Decisions of the lower-level courts are called judgments, as are decisions of the appeal courts and the Court of Cassation.

In addition to the courts mentioned above, two other types of court exist in Belgium. They have a monitoring role: the Council of State and the Constitutional Court. The Council of State is a superior administrative court and monitors the administration. It intervenes when a citizen considers that the administration has not observed the law. The role of the Constitutional Court is to ensure that acts, decrees and ordinances are in conformity with the Constitution and to oversee proper division of powers between the public authorities in Belgium.

## 2. DATABASES OF BELGIAN LEGAL DOCUMENTATION

### The electronic history (1988 – 2000)

Before 1997, the outstanding electronic legal device was a Kluwer database on CD-ROM called Judit, with no serious challenge from other products. It still exists today as a CD. Judit has been a reference tool created in the late eighties, with hardly any full texts, but with (bibliographic) references to legislation, case law and journal articles. To read the referred documents themselves, one has to get hold on the paper products which it refers to: the Official Gazette and the law reviews and books.

This Judit-monopoly in the nineties notwithstanding, electronic legal publishing had actually already started in the sixties with the building of the Justel dial-in databases at the Ministry of Justice. But due to a complete lack of user-friendly products, those databases became only known to the public 35 years later, when they were made available on the Internet in 2000. All of a sudden, these quite large public databases appeared free online, offering access to consolidated legislation and case law of the Supreme Courts and the Constitutional Court. Furthermore, the Official Gazette has been published daily online since 1997 and the Council of State moved to exclusive electronic free publishing of its case law in the same year. Since 1995, the parliament has its draft bills (documents) and hansards (debates) in full text on the web.

### **E-publishing since 2000**

To meet the challenge from the new public websites, Kluwer published Judit and TWS (see below) together on the web in early 2000, calling the “new” database Jura. But this did not end its problems on the online market: full text of lower case law and journal articles was still almost exclusively in printed resources, whereas lawyers were finding their way to the web: they began to expect more full text in legal databases. Furthermore, other legal publishers started trying to set up electronic databases themselves. An early attempt at the end of 1990’s by Mys & Breesch to create a full text database, Judas, failed. Between 2000 and 2004 some separate journals created a website with full text. In 2003, Kluwer mounted the [www.kluwerconnexion.be](http://www.kluwerconnexion.be) website, on which CD-ROM’s could be accessed online. This was an attempt to respond to the declining interest in its loose-leaf products and their CD-ROM versions. Finally, in 2004 Larcier published a complete new website called Strada, offering various full text resources, including some important law reviews. This was a breakthrough, and was almost instantly (2005) followed by an important enlargement of the content of Jura with full text of most law reviews that Kluwer publishes. Then, in November 2005, Intersentia, Die Keure and Bruylant produced a new website, called Jurisquare, with the combined holdings of most of their journals. It took a while, but real full text e-publishing seems currently under way.

### **Official Gazette**

The “Moniteur belge” or “Belgisch Staatsblad” is the Official Gazette of the country. It holds every piece of new legislation from all parliaments and governments: “acts” (loi/wet) by the federal parliament, “decrees” (décret/decreet) by the regional parliaments and all kinds of statutory instruments: “Arrêté royal” (“Koninklijk Besluit”), “Arrêté ministeriel” (“Ministerieel Besluit”), and all “arrêtés” or “besluiten” by the various regional governments. Since it also holds a lot of other official information (exams and nominations, insolvencies, immigrations, etc.) it is quite a heavy daily newspaper, dating back to 1831.

Since July 1997, the Official Gazette is published daily on the Internet on the website of the Federal Justice Department (formerly the Ministry of

Justice) ([www.moniteur.be](http://www.moniteur.be) or [www.staatsblad.be](http://www.staatsblad.be)<sup>1</sup>). It has a search engine for full text. Texts are presented both in HTML and in PDF. In 2003, the government stopped the publication of the paper version. But since 2005, due to a judgment of the Constitutional Court, a limited number of paper copies are available again in local libraries, for people with difficulties in accessing the Internet.

### **Consolidated Legislation (Juridat)** (Federal Justice Department)

Since the summer of 2000, a huge and quite comprehensive governmental database with consolidated texts of legislation, including older versions, is available for free on the Internet. The database is very interesting for high level legal research. The search engine offers a lot of possibilities, and texts are in Dutch and French. Actually, this legislation database is part of a set of databases; other databases involve case law and a bibliography of legal texts, all of them published by the Justice Department. They will all be mentioned in this guide later.

The portal of the Judiciary of Belgium gives access, among other things, to case-law, Belgian legislation and the Official Gazette.

The name of this legislation database is indeed “Consolidated Legislation”. But the mentioned total set of databases from the Justice Department has been called Justel, Judoc, E-justice, Juridat and recently Justel again. Also their URL’s have been subject to changes and have caused a lot of confusion since 2000. One can reach them in different ways:

- [www.juridat.be](http://www.juridat.be) (the official website of the Belgian Courts);
- [www.just.fgov.be](http://www.just.fgov.be) (the website of the Federal Justice Department);
- [www.cass.be](http://www.cass.be) (webserver of the “Court de Cassation”, the Supreme Court).

### **BelgiumLex** (BelgieLex – BelgiqueLex)

The Justice Department is not the only governmental body that produces a legislative database. The Council of State and Parliament have likewise developed their own databases over the years. So finally, in an effort to sum this all up and somehow trying to end the confusion, the government created another website with an apparently very clear name, [www.belgiumlex.be](http://www.belgiumlex.be). BelgiumLex is not a database itself; rather it is a portal to give an overview of all governmental legal databases, pointing to the various databases from the Justice Department, the Parliament and the three highest courts. However, it might not end the confusion, because it gives access to legislation and case law at the same time. Furthermore, it points to new databases like Reflex from the Council of State, that are not easy to use. Reflex is a legislation database without full text, but it will give the complete history of every article of a law in all its details.

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<sup>1</sup> Note that the above links do not lead directly to the Official Gazette, but to the general website of the Federal Justice Department, only the next page presents the Gazette, amongst other features of that website.

### **Electronic information provision and Courts**

In Belgium, like in France, each court can develop its own website, following the guidelines established by the Ministry of Justice. The Ministry of Justice has thus been keen to permit the decentralised development of websites by individual courts and tribunals. To keep things coordinated a central portal has been created on the website of the Court of Cassation ([http://www.cass.be/pyramide\\_fr.php](http://www.cass.be/pyramide_fr.php)). Under this portal the various courts and tribunals have the possibility to build and maintain their own website following a common, but more or less open template. Courts and tribunals have started to make use of this possibility and began to develop their own websites.

## **3. THE USE OF E-TOOLS TO IMPROVE THE ADMINISTRATION OF JUSTICE**

### *Initiatives towards e-justice*

In Belgium, during the early 1980's, certain initiatives have been undertaken focusing on the internal use by tribunals of computers and the development of certain software aiming to support the tribunal members' work. However these initiatives were locally driven, largely fragmented and uncoordinated. PCs with word processing software were made available to members of the administrative court registry upon personal request to respond to urgent demands.<sup>2</sup> At the beginning of 1990s, the government started to invest more substantially in ICT for courts and tribunals,<sup>3</sup> starting the so-called 'mammoth project', to cover the entire Belgian court structure and replace the obsolete technical facilities by a single, efficient IT solution. This project's aim was to supply the entire Belgian court system. Furthermore, within the framework of an ICT promotional project in 1997, all judges were provided with a laptop computer from the Ministry of Justice.

In 2000, the Federal Council of Ministers approved an e-Justice programme, designed to use ICT to modernise the work of the Belgian judiciary. The Council also gave the green light to the development of a federal eGovernment portal serving as a one-stop shop for public services for citizens and businesses, and for the development of an IT system enabling the various Departments and Agencies to exchange data and information through the Federal Government's Intranet 'Fedenet'.

Three main concerns explain the launching of a global and strongly centralised project: (1) the development of the Internet which creates an opportunity but also an absolute need to integrate the different databases;

<sup>2</sup> J. Dumortier et al., *The Challenge of the Information Society: Application of Advanced Technologies in Civil Litigation and Other Procedures*; Report on Belgium, XI World Congress on Procedural Law, Vienna, 23-28 August 1999.

<sup>3</sup> J. Dumortier, "Judicial Electronic Data Interchange in Belgium", in M. Fabri et al. (eds), *Judicial Electronic Data Interchange in Europe: Applications, Policies and Trends*, 2003 p. 127.

(2) the obligation to avoid all the problems raised by the incompatibility between the material used at the different levels; and (3) the idea that such a centralised project would lower at midterm perspective the costs of the functioning of the tribunals.

Several technical working groups have been set up in order to elaborate and formulate the needed recommendations to address to the legislator, to the furnisher chosen, and definitively to the different actors involved in this revolution. The first concrete steps started in 2002; two acts have been promulgated, and no less than 18 royal decrees have to be drafted, in order to fix the legal basis (defined in a Bill<sup>4</sup> approved on 18 March 2005 by the Belgian Council of Ministers) for the implementation of an ambitious e-Justice project initiated under the name of "Phenix". Designed to modernise and standardise the systems used by the Belgian justice, the Phenix project was supposed to offer a centralised solution to improve and speed up the country's judicial system.

Proposed by Belgian Minister of Justice Laurette Onkelinx, the Bill established a clear legal framework allowing courts and other judiciary institutions and actors to communicate and exchange official documents by electronic means. Phenix was part of a long-term strategy for the implementation of a coherent e-justice system based on the concept of "electronic files", using Open Source standards, and thus the whole computerisation of all courts and tribunals in Belgium: 1. through the introduction of ICT at all the steps of the judicial procedure, no matter the matter concerned: criminal, civil, commercial, and so forth; 2. through the involvement of the actors involved in the different phases: the lawyers, the magistrates, the registrars, the public prosecutors. Created at the start of each judiciary procedure, each "electronic file" would be progressively enriched as the procedure evolves – by the courts, the police, the lawyers, the parties, etc.

In addition to facilitating the internal management and efficiency of judiciary processes and to delivering concrete benefits for citizens in terms of lower costs and simpler, faster procedures, the purpose of the system was also to allow lawyers and their clients to follow procedures in a convenient way.

### ***Providing legal value to electronic procedural documents***

Pursuant to the legal framework created, the qualified signature was declared as the only means to electronically sign a procedural document. In practice this notion referred to signatures created by means of the Belgian eID card. What is also noticeable in the aforementioned legislation is the importance given by the legislator to apply and follow strictly the data protection principles in order to build up the Phenix Information System.

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<sup>4</sup> Act of 10 August 2005 establishing the information system Phenix; see [http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&cn=2005081057&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2005081057&table_name=loi)

Article 2 of the 2005 act setting up Phenix is enunciated as follows: “Il est créé un système d’information appelé Phenix qui a pour finalités la communication interne et externe requise par le fonctionnement de la Justice, la gestion et la conservation des dossiers judiciaires, l’instauration d’un rôle national, la constitution d’une banque de données de jurisprudence, l’élaboration de statistiques et l’aide à la gestion et l’administration des institutions judiciaires.” (“To set up an Information system called Phenix, which has as purpose the internal and external communication requested for the Justice needs, the setting up of a case law data base, the working out of statistics and the assistance to the management and administration of judicial institutions”). This provision and the precise enumeration of the different purposes of the Phenix project are illustrative of the importance given by the legislator to follow strictly the first Privacy principle: all processing must be created for legitimate, determine, and explicit purposes.

The following provisions of the act are describing more precisely these different purposes and implicitly are setting the recipients of the different processing, the data to be processed, and the duration of the data storage, according to the principle of proportionality: “Data might be processed and kept only if they are necessary for the achievement of the legitimate purpose of the processing.” Two examples might be given on that point. Article 7 distinguishes the court decisions databases used for internal purposes and the court decisions databases diffused publicly. As regards the second category, the act imposes the duty to make the decisions anonymous before any diffusion. What is not asked as regards the first category insofar is that the purpose of this second processing ought to support the members of the jurisdiction having issued the decision to “maintain a consistency as regards its jurisprudence,” as explained by the Ministry of Justice. Another example definitively is the use of certain data for statistical purposes (art. 10 and ff), which might help internally to support decisions about the management of the tribunals, but might never be used for controlling the work achieved by each judge individually.

A second act approved on 10 July 2006 “relative to the judicial procedure by electronic means” aimed at modifying certain provisions into the Civil and Penal Procedural Code in order to give legal value to the documents generated by the use of the electronic procedure settled up by the Phenix Information System.<sup>5</sup>

Three main principles are asserted: the first one is the freedom for everybody to choose or not the electronic procedure: “Sauf dispositions légales contraires, personne ne peut être contraint de poser des actes de procédure ou de recevoir des documents relatifs à des actes de procédure par voie électronique” (“Unless there are applicable provisions to the contrary, no person can be constrained to perform procedural acts or receive documents, relative to the acts, electronically”). This consent principle is however alleviated by the possibility to impose the use of

<sup>5</sup> Jean-François Henrotte, “Phenix et la procédure électronique”, Collection: Commission Université-Palais (CUP), Larcier, 2006; Jean-François Henrotte, Yves Poulet, “Cabinets d’avocats et technologies de l’information: balises et enjeux”, Bruylant, Collection “Les cahiers du CRID”, 2005.



the electronic procedure to certain professions by royal decree. In order to ensure the real consent of the actors to use the electronic procedure but also the opposability of the electronic exchanges, a list of the actors, professional or not, who do accept the new tools to communicate in the context of the procedure will be held and published by the Ministry of Justice or by the professional associations. The consent might be withdrawn. Precisely the use of an electronic judiciary address is left to the free choice of the persons. The electronic address is defined under Art. 6 of the 2006 Act, as: "l'adresse de courrier électronique, attribuée par un greffe et à laquelle une personne a accepté, selon les modalités fixées par le Roi, que lui soient adressées les significations, notifications et les communications." ("the e-mail address, assigned by a court, which a person has accepted, in the manner prescribed by the King, where announcements, notifications and communications can be sent.")

The second principle is the equivalency principle. Under this principle, the electronic address is equivalent to a physical address and has the same permanency as the traditional one. Furthermore, it must be considered that all the electronic documents generated in the context of the procedure are assimilated as regards their legal value to a paper document and that electronic signature in that context has the same legal value than the traditional handwritten signature. It must be clear that under the 2006 Act not all electronic signatures, but only advanced or qualified, under the Belgian terminology, signatures complying with the EU requirements are recognised in the context of the e-justice system in order to ensure legal security. Finally, there is the principle of the unity of the electronic file insofar as the electronic nature of the file; it is no more necessary to distinguish copies and originals, insofar that the latter might be reproduced in an unlimited way.

### ***The Phenix model: core principles and implementation hurdles***

The Phenix project was tested during the first half of 2005 in the cities of Eupen, Tournai, and Turnhout. After the pilots, all Belgian courts were supposed to be progressively connected to the system, a process expected to be completed in 2008. However, the Phenix project was scrapped in its entirety in 2007, after the realisation of a full scale project turned out to be infeasible in practice. Instead, it was replaced with a number of smaller scale and bottom-up applications (such as the pilot ones initiated in 2008 in the cities of Charleroi and Torhout) to be developed under the joint name of Cheops.

Despite the present failure of its launching, the Belgian Phenix project could be viewed as a model for foreign countries. It is obvious that the promoters have been too ambitious and, perhaps, a more progressive approach associated with the actors, especially magistrates, registrars, and lawyers, step by step, working on specific domain and using pilot experiences would have been better. Notwithstanding these facts, the qualities of the legal framework put into place to ensure e-justice should be underlined. The Belgian legislator has designed a privacy compliant system and, through the organs settled up in the legal framework, the independence of the judiciary vis-à-vis the executive is safeguarded.

In fact, two points have to be considered as crucial in the future. First, since through a global information system at the hands of the magistrates their informational power is increased by their possibility to crosscheck certain pieces of information about the parties, it must be feared that the principle of the “equality of arms” would not be respected. In that respect, data protection requirements are important. At the same time, the fact that the information system is operated and sometimes developed by the administration poses a threat in the long term of a progressive loss of the independence of the judges. The solution proposed by the Belgian legislation is in that perspective noteworthy even if it appears a bit intricate and too complex as regards the day to day management.

As regards the modifications introduced by the legislator into the Code of Civil Procedure, we might subscribe to the main principles asserted through the multiple provisions: the consent permits to avoid any risk of discrimination between those who adopt the new electronic system and the others more reluctant to do it. The “functional equivalency” principle has permitted to introduce concepts like electronic address, electronic file, electronic signature, electronic announcement and notification. By doing that and by proposing a really secure communication system with the intervention of trusted third parties, control of access, double checking, etc., the Belgian legislator proposes to the other European legislators a really attractive model.

## 4. TRANSNATIONAL E-JUSTICE PROJECTS INVOLVING BELGIUM

Apart from its ongoing efforts to modernise the administration of its justice system through the use of electronic means, Belgium is also involved in several transnational projects aimed at fostering e-cooperation among EU Member states which are worth mentioning:

### 1. Pilot project ‘Network of Judicial Registers’

Eleven EU countries (Belgium, the Czech Republic, France, Germany, Spain, Italy, Luxembourg, the Netherlands, Poland, Slovakia and the UK) already exchange information on criminal records electronically in the framework of the ‘**Network of Judicial Registers**’ pilot project. The development of this project and its achievements – namely the IT architecture and the reference tables – were the basic inspiration for the ECRIS system.

### 2. ECRIS (European Criminal Records Information System)

The ECRIS computerised system was established to achieve efficient exchange of information on criminal convictions among EU countries.

In response to this obvious need, ECRIS was created to improve the exchange of information on criminal records throughout the EU.

It will establish an electronic interconnection of criminal records databases to ensure that information on convictions is exchanged between EU countries in a uniform, speedy and easily computer-transferable way.

The system will give judges and prosecutors easy access to comprehensive information on the offending history of any EU citizen, no matter in which EU countries that person has been convicted in the past. Through removing the possibility for offenders to escape their criminal past simply by moving from one EU country to another, the system could also serve to prevent crime.

### 3. e-CODEX (e-Justice Communication via Online Data Exchange)

e-CODEX is a large-scale project designed to improve access by European citizens and businesses to legal resources across borders – specifically information on laws and procedures in other EU countries. Moreover, the project seeks to improve the interoperability of the information systems of legal authorities within the EU, and supports the implementation of common standards and solutions that make cross-border case-handling activities easier.

High mobility between EU countries and increasing European integration means that procedures requiring cooperation between different national judicial systems are increasing.

The use of ICT makes judicial procedures more transparent, efficient and economic while facilitating access to justice for citizens, businesses, administrations and legal practitioners.

To achieve a pan-European interoperability layer, e-CODEX will build on national solutions as well as on the European e-Justice Portal, contributing to the further development of the latter.

Connecting the existing systems will allow communication and data exchange based on the development of common technical standards and foster cross-border cooperation in the area of European e-Justice.

The project involves 17 participants:

- 14 **EU countries** (Austria, Belgium, Czech Republic, Estonia, France, Germany, Greece, Hungary, Italy, Malta, the Netherlands, Portugal, Romania, Spain);
- one **candidate country** (Turkey);
- two major **associations of legal practitioners** (CCBE and CNUE).