

# BELGIUM

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## Contents

1.	National court system .....	1
2.	Restrictions regarding access to justice .....	6
3.	Length of judicial proceedings .....	6
4.	Are procedures concluded within a reasonable time? .....	7
5.	Does provision exist for speedy resolution of particular cases? .....	8
6.	Is it possible to waive the right of access to a judicial body? .....	8
7.	Access to non-judicial procedures .....	9
8.	Legal aid .....	11
9.	Forms of satisfaction available to a vindicated party .....	13
10.	Adequacy of compensation .....	14
11.	Rules relating to the payment of legal costs .....	14
12.	Rules on burden of proof .....	15

## 1. National court system

There is no recognition in a written text of a general right of access to a judicial body. However, its existence as a general principle of law has been confirmed in Belgian case law as part of the right to a fair trial. The right of access to a judicial body to claim one's right can be based on article 13 of the Belgian Constitution, which holds that nobody can be held from the judge attributed to him by law, and article 6 ECHR, which was implemented into the Belgian legal order by act of 13.05.1955. The general right of access to a judicial body in civil matters was, among other cases, confirmed by judgments of the Court of First Instance of Brussels on 23.11.1967 and 18.12.1989. Moreover, the refusal of any judge to decide in a case which has been lawfully subjected to his jurisdiction is punishable under article 258 of the Criminal Code. Any such judge would also be liable for civil claims under articles 5 and 1140 of the Judicial Code.

In the landmark case of *Franco-Suisse Le Ski* of 27.05.1971, the Court of Cassation confirmed the primacy of Community law over domestic Belgian legislation. Moreover, it held that Community law created individual rights which had to be protected by the national courts.

Some specific national laws in the area of the *acquis* pertaining to non-discrimination implementing Community law explicitly foresee the possibility for individuals to seek redress through a judicial body. These laws include the 'Anti-Racism Act', the 'Gender Equality Act' and the 'Anti-Discrimination Act'.

The independence and impartiality of the judiciary is a general principle of law, which is at the basis of a number of articles of the Constitution, in particular articles 13, 144, 145, 146, 151, 152, 154 and 157. Moreover, article 151, § 1 of the Constitution holds explicitly that judges of the ordinary courts are independent in the exercise of their judicial function. Finally, the independence and the impartiality of the courts are guarantees explicitly mentioned in article 6 ECHR and article 14 CCPR.<sup>1</sup> Even the appearance of a lack of independence or impartiality must be avoided. This principle was confirmed by the Court of Cassation in its landmark decision in the 'Spaghetti case' of 14.10.1996.

The national judicial system of Belgium is the following:

#### A. CONSTITUTIONAL COURT

Constitutional Court<sup>2</sup> – The Constitutional Court is a court of law which has the power to annul and suspend acts (of the federal parliament), decrees (of the Communities and the Flemish and Walloon Regions) and ordinances (of the Region of Brussels-Capital). In terms of organisation, it is independent from the legislative, the executive and the judicial authorities. Decisions of the Constitutional Court can be found at [www.constitutionalcourt.be](http://www.constitutionalcourt.be) (Dutch, French or German) (last visited: 20.12.2009).

#### B. ORDINARY COURTS (CIVIL AND CRIMINAL)

General rule - According to Article 144 of the Belgian Constitution, 'the ordinary courts have exclusive jurisdiction over disputes relating to civil rights'. According to Article 145, 'the ordinary courts have jurisdiction over disputes relating to political rights, save for the exceptions

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<sup>1</sup> J. LAENENS, K. BROECKX, D. SCHEERS and P. THIRIAR, *Handboek Gerechtelijk Recht*, Antwerp-Oxford, Intersentia, 2008, p. 124.

<sup>2</sup> See <http://www.arbitrage.be> (English section available) (last visited: 10.11.2009).

provided by law'. Disputes not covered by the articles 144 and 145 may be attributed to other courts than the ordinary courts. The civil courts are organised by the Judicial Code in a hierarchical structure.

Justices of the Peace<sup>3</sup> - At the lowest level of the pyramid are the Justices of the Peace. There are 187 Justices of the Peace in Belgium – one for each judicial district according to Article 59 of the Judicial Code. These jurisdictions are hearing civil and commercial cases for amounts not exceeding 1.860 euros, except for those removed from their jurisdiction by law. Moreover, they have a special jurisdiction in some matters defined by the Judicial Code regardless of the amount of the claim.

Police Courts<sup>4</sup> - The Police Courts are criminal courts which have jurisdiction in some civil cases, namely all claims, regardless of the amount, relating to compensation for damages arising from a traffic accident, according to Article 601*bis* of the Judicial Code.

Courts of First Instance<sup>5</sup> - The Courts of First Instance are ordinary courts which function alongside special courts. This implies that they hear all cases apart from those expressly transferred to another court by the law (article 568 of the Judicial Code). In addition, they also have some special competences in some matters defined by the Judicial Code. They are composed of sections, namely (a) the Civil Court, (b) the Criminal Court and (c) the Juvenile Court. They are competent to hear appeals against judgements delivered at first instance by the Justice of the Peace, except for small amounts, which may not be appealed. Moreover, they can hear appeals against decisions rendered by the Police Court in accordance with Article 601*bis* of the Judicial Code.

Labour Courts<sup>6</sup> - The Labour Court is a special court of first instance in social cases. There is one Labour Court in each judicial district (art. 78 of the Judicial Code). It has, *inter alia*, jurisdiction over individual disputes between employers and employees, and disputes regarding social security and welfare. It also deals with specific issues regarding (minimum) income benefit, pensions, etc.

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<sup>3</sup> See <http://www.juridat.be/vredegerecht/index.htm> (Links in Dutch, French, depending on the Court) (last visited: 10.11.2009).

<sup>4</sup> See <http://www.juridat.be/politierechtbank/index.htm> (Links in Dutch, French, depending on the Court) (last visited: 10.11.2009).

<sup>5</sup> See [http://www.juridat.be/eerste\\_aanleg/index.htm](http://www.juridat.be/eerste_aanleg/index.htm) (Links in Dutch, French, depending on the Court) (last visited: 10.11.2009).

<sup>6</sup> See <http://www.juridat.be/arbeidsrechtbank/index.htm> (Links in Dutch, French, depending on the Court) (last visited: 10.11.2009).

Commercial Courts<sup>7</sup> – There is one Commercial Court for each district (art. 73 of the Judicial Code). Its jurisdiction is based on article 573 of the Judicial Code. It deals, more concretely, with disputes between traders regarding acts that have been qualified as commercial transactions, and which do not resort under any of the other jurisdictions. It can also deal with appeals in certain cases handed down by a Justice of the Peace (art. 577 of the Judicial Code).

Presidents of the Court of First Instance, the Labour Court and the Commercial Court – In certain cases the presidents of the aforementioned courts can sit alone in cases of summary applications for interim orders. They can then render provisional decisions in urgent matters. Article 584 §1 of the Judicial Code allows the president of a Court of First Instance to render provisional rulings in all urgent matters, except those excluded from his jurisdiction by specific legal provisions. The presidents of the Labour and Commercial Courts are more limited in their jurisdiction, as they can only deal with urgent matters which fall within the jurisdiction of their courts. These procedures are useful in cases where a very speedy resolution is sought, awaiting further examination by a trial or appeal court. The latter courts are not bound by the provisional measures of the aforementioned presidents (art. 1039 of the Judicial Code).

Courts of Appeal<sup>8</sup> - There are five Courts of Appeal in Belgium (article 104 of the Constitution). Their territorial jurisdiction is also defined by the Constitution. Each comprises civil, criminal and juvenile divisions. They have jurisdiction notably to hear appeals relating to decisions delivered at first instance by the Courts of First Instance, the Commercial Courts and the presidents of these courts.

Labour Courts of Appeal<sup>9</sup> - There are five Labour Courts of Appeal: within each territorial jurisdiction of a Court of Appeal there is also a Labour Court of Appeal (article 103(1) of the Judicial Code). The Labour Courts of Appeal hear appeals against decisions given in the first instance by Labour Courts and by presidents of Labour Courts (article 607 of the Judicial Code).

Court of Cassation<sup>10</sup> - At the top of this structure stands the Court of Cassation. Article 147 of the Constitution and Article 608 of the Judicial Code provide that this court does not deal with the merits of cases, but merely examines whether the decisions referred to it are compatible with the

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<sup>7</sup> See [http://www.juridat.be/rechtbank\\_koophandel/index.htm](http://www.juridat.be/rechtbank_koophandel/index.htm) (links in Dutch, French, depending on the Court) (last visited: 10.11.2009).

<sup>8</sup> See <http://www.juridat.be/beroep/index.htm> (Links in Dutch, French, depending on the Court) (last visited: 10.11.2009).

<sup>9</sup> See <http://www.juridat.be/arbeidshof/index.htm> (Links in Dutch, French, depending on the Court) (last visited: 10.11.2009).

<sup>10</sup> See [http://www.juridat.be/cass/cass\\_nl/p1.php](http://www.juridat.be/cass/cass_nl/p1.php) (Dutch, French, German) (last visited: 10.11.2009).

law. It does not constitute a third instance. Decisions of the Court of Cassation can be found at [www.cass.be](http://www.cass.be) (Dutch, French) (last visited: 12.11.2009).

In the Belgian legal system there exists no fundamental right to an appeal.

Article 616 of the Judicial Code states that an appeal against a judicial decision is always possible, 'except when the law says otherwise'. The Constitutional Court confirmed that there is no constitutionally protected right to an appeal, but added that if a possibility to appeal exists, the law has to guarantee the fairness of the proceedings.

The Constitutional Court also added that the access to a judge may be subjected to admissibility criteria. However, these restrictions cannot touch the core of the right. A basic condition is in any case that the appellant must have an interest, implying that the initial decision must be at least partly to his detriment. Certain time limits have to be respected as well. For example, with regard to appeals to a Court of Appeal, the normal time limit within which an appeal must be requested is one month from the date of service of the first instance decision.

Belgium made a reservation to art. 14 §5 of the International Covenant on Civil and Political Rights. Belgium held that there is no right of appeal for a person who was acquitted in first instance, but was convicted on appeal. Also it reserves for itself the right to organize the criminal system in such a way that certain people are brought on trial directly before a higher court, such as the Court of Cassation, a Court of Appeal or an Assize Court.

In specific cases before the Court of first instance and the Commercial Court, and where the subject matter of the dispute does not exceed 1.860 euro, no appeal is possible

Normally there is one possibility of appeal on matters of fact and law. Against a final decision, a cassation appeal on matters of law can be initiated.

In principle, parties are obliged to appear at the initial hearing. Unless the law provides otherwise, a person can appear him/herself in proceedings before the courts and tribunals (art. 728 para. 1 Judicial Code). This principle was also confirmed by the Court of Cassation in a decision of 29.10.1976. A few exceptions can be found in specific legislation. As a rule, and unless the law provides otherwise, a person may present his own conclusions and defence (art. 758 para. 1 Judicial Code). However, a judge may deny a party this right if it is clear that he/she is not capable of presenting the arguments in the required fashion, or with the necessary clarity (art. 758 para. 2 Judicial Code). A notable exception to this rule can be found in article 478 of the Judicial

Code, which obliges the intervention of a member of the bar at the level of the Court of Cassation in civil proceedings before that Court. Civil proceedings are conducted on a mainly written basis. Oral hearings are nevertheless the general rule too. However, the judge is not obliged to reply to oral arguments if they have not been included in the written submissions.

## 2. Restrictions regarding access to justice

Belgian case law has confirmed the principle that restrictions may not interfere with the core right of a person of access to a judicial body.

Articles 17 and 18 of the Judicial Code require that a person has the legal capacity and the required interest (art. 18). The interest must be acquired and immediate (art. 19). An immediate threat to a right is sufficient (art. 18, second part). In some cases this interest may be held by an organisation.

A victim can claim damages either on a contractual basis, or on a tort basis (see e.g. art. 18 §1 Anti-Discrimination Act; art. 16 §1 Anti-Racism Act; art. 23 §1 Gender Equality Act). Depending on the nature of the claim derived from Community law, various statutes of limitations apply. For a tort claim the period within which a claim must be made is 5 years from the day on which the claimant gained knowledge of the damage or its aggravation and the identity of the perpetrator, without, however, this period being able to go over 20 years (article 26 Preceding Title of the Code of Criminal Procedure and art. 2262bis Civil Code). For a personal claim the period is 10 years (labour law) (Art. 2262bis Civil Code).

## 3. Length of judicial proceedings

In the area of non-discrimination, a total of 29 cases were selected.

Of these 29 cases, 5 cases were injunction procedures under the Anti-Discrimination Act or the Anti-Racism Act. The procedure was intended to deal with urgent cases, and the examples examined have proved that there is indeed a significant time advantage involved. In one case, the time frame within which the proceedings took place was merely 3 days. The other cases involved time frames between 13 days and less than 3 months. In 3 of these 4 cases the decision was

appealed. These appeals lasted respectively approximately (1) 7.5 months, (2) 1 year and 11 months and (3) over 2 years and 10 months.

Of these 29 cases, 3 were procedures before Labour Courts. The duration of the initial proceedings at the Labour Court in the three examined cases was respectively (a little more than) 10 months, over 1 year and 8 months, and more than 2 years. In two of the cases an appeal before the Labour Court of Appeal was examined. The procedures on appeal lasted over 1.5 years viz. over 2 years.

Of the 29 cases, 19 were procedures before a criminal chamber and 2 were procedures before a youth chamber. More than half of these cases (12) saw an initial decision within 2 years of the facts. A further 3 were handled within 3 years of the facts. A further 3 cases were handled within 4 years of the facts. The last three cases were handled respectively after a bit more than 4 years after the facts, 6 years after the facts and 8 years after the facts. In the last, somewhat excessive case, the judgment itself explained the delay as a result of necessary investigative measures.

Of these 19 cases, in 8 cases an appeal was examined as well. In nearly all of these cases (7), the procedure was handled within 2 years. Of these 7 cases, 5 were handled within 1.5 years, with the shortest lasting less than 3.5 months.

One case, the landmark case against three associations linked to the (former) Flemish extreme-right party *Vlaams Blok*, after having been examined at first instance and appeal level, subsequently was examined by the Court of Cassation, was referred to a Court of Appeal again, the judgment of which was finally upheld by the Court of Cassation.

## 4. Are procedures concluded within a reasonable time?

The injunction procedures foreseen in the Anti-Racism and Anti-Discrimination Acts usually lead to very satisfying results. The duration of these procedures, in which a judge can establish and order the cessation of a violation when aggrieved parties lodge an injunction action (*action en cessation*), alleging discrimination and order coercive fines under anti-discrimination legislation, has often been a matter of days only. In the other cases (with a few rare exceptions), the overall time generally seems to have been reasonable as well.

## 5. Does provision exist for speedy resolution of particular cases?

Article 584, first paragraph, of the Judicial Code generally provides the presidents of the courts of first instance with the possibility to render provisional rulings in all urgent cases, except those explicitly excluded from the jurisdiction of any court. A similar – but in terms of jurisdiction more restricted – possibility exists for the presidents of commercial and labour courts (art. 584, second paragraph, of the Judicial Code). Such provisional rulings are not binding on the courts that may later hear the case on its merits (art. 1039 of the Judicial Code). Urgency is a main requirement to make use of this procedure. As a consequence, these procedures can be considered to be very speedy. The minimum time for the defendant to answer the writ served on him is two days (art. 1035 § 2 of the Judicial Code). In especially urgent cases, however, the president can reduce that time (art. 1036 of the Judicial Code), or even order measures *ex parte* (art. 584, third paragraph of the Judicial Code).

The Anti-Discrimination Act and the Anti-Racism Act provide for a procedure which somewhat mimics the aforementioned generally available procedure in urgent cases. However, whereas the aforementioned general procedure is just an intermediate and provisional step towards a decision on the merits by a competent court, the anti-discrimination legislation foresees the possibility for the president of a court to establish the existence of a violation and to order its cessation, by a decision on the merits of the case. As urgency is presumed, unlike in the aforementioned general procedure, this element does not have to be proven. Thus, article 20 §§ 1-4 of the Anti-Discrimination Act and article 18 §§1-4 of the Anti-Racism Act provide for a speedy procedure upon request of the victim, the CEOOR, certain associations or the prosecutor. Such injunction procedures have proven their effectiveness, for example in a case where the judge ordered a prohibition to display and sell certain publications. If any violation of that injunction were to be established, a coercive fine of 10.000 euro would be imposed.

## 6. Is it possible to waive the right of access to a judicial body?

The *disposition maxim* is a general principle in Belgian law. This means that in civil procedures the parties are free to decide if, and on which subject matters, they bring a case to court. This

maxim can be found implicitly in, e.g., art. 1138, 2° of the Judicial Code, and its existence has been confirmed by the Court of Cassation. Individuals can therefore generally waive their right of access to a judicial body. However, exceptions to this rule exist.

The aforementioned Anti-Discrimination Act, Anti-Racism Act and Gender Equality Act explicitly provide that persons cannot waive the rights they are entitled to under the respective Acts. In a case involving the challenging of certain articles of the Anti-Discrimination Act, the Constitutional Court held that the aforementioned prohibition pertains to the period before the violation, as well as to the moment of the violation and the time after it.

## 7. Access to non-judicial procedures

General rule: An agreement (outside of court) about a legal dispute can only be concluded when one has the competence to dispose freely of the object of the agreement (article 2054 of the Civil Code). Moreover, no agreements can be concluded with regard to legal provisions which pertain to the public order (article 6 of the Civil Code).

A distinction needs to be made between, on the one hand, the forms of extrajudicial resolution through which a binding agreement and solution to the existing problem can be found, and on the other hand, those forms of extrajudicial resolution whereby a person or an institution will merely 'mediate' and try to get all parties involved to agree to a consensus.

The validity of an agreement concluded outside of court will be governed by the regular rules regarding contracts and consent, as well as by the principles of the Judicial Code. An agreement for an extrajudicial resolution to a conflict will not necessarily impede the competence of a judge, but in a case where one of the parties refers to the agreement, the judge will have to declare himself incompetent. However, a judge can still order provisional measures. Of course no extrajudicial agreements can be made about matters pertaining to the public order.

An act of 21.02.2005<sup>11</sup> sets out the framework for mediation. This act, *inter alia*, inserts articles 1724 to 1737 into the Judicial Code. Art. 1725, § 1 of the Judicial Code states that every contract can have a mediation clause, through which the parties oblige themselves to turn to mediation first, before resorting to other forms to solve their dispute. Such a clause obliges the parties to commence mediation talks, but it does not oblige them to come to a solution, as the latter

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<sup>11</sup> Belgium/BS 22.III.2005 (21.02.2005).

obligation would interfere directly with a party's right of access to a judge.<sup>12</sup> This type of mediation can take place at the initiative of the parties, even when a judicial procedure is already ongoing, and in that case without the knowledge of the judge (art. 1730 § 1 of the Judicial Code). However, in most types of procedures the judge can also actively refer parties to a mediator (arts. 1734 - 1737 of the Judicial Code). In the meantime, the procedure before the judge is suspended. If an agreement is reached through mediation, this agreement can be submitted to the judge for homologation (art. 1733 of the Judicial Code).

These procedures, by their nature, imply a direct involvement of the parties to come to a resolution. Contrary to the logic in judicial dispute resolution, the main principle in mediation is confidentiality. This also applies to the evidence produced in the framework of such mediation.

As regards the costs of voluntary mediation outside of any procedure, and in the sense of arts. 1724 - 1737 of the Civil Code, these are normally divided evenly over the parties - unless agreed otherwise.

With regard to the costs of mediation in the framework of a judicial procedure, these can be considered court costs (art. 1018 of the Judicial Code). However, art. 1731 of the Judicial Code can be considered a *lex specialis*, and therefore the costs, even in this type of mediation, should be divided evenly, unless differently agreed. The mediation by recognized mediators, as organized by the Judicial Code, is subject to the aforementioned provisions regarding legal aid.

Aside from the mediation as organized by the Judicial Code, many other mediation services exist in Belgium, often intended to mediate between private persons and government agencies, both on the federal level, and on the regional and community levels. These instances can often merely 'break the ice' between two conflicting parties, after which an agreement can be reached.

In this respect, the Belgium Equality Body, the *Centrum voor gelijkheid van kansen en voor racismebestrijding* – *Centre pour l'égalité des chances et la lutte contre le racisme* [Centre for Equal Opportunities and Opposition to Racism], which assists victims of discrimination through advice, legal support, mediation or legal action, should be mentioned as well. It is an independent federal agency placed under the authority of the Prime Minister. The Centre has a wide independence in carrying out investigations and research. It notably makes proposals and recommendations to the public authorities, can act as a mediator or as a party before the courts.

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<sup>12</sup> B. ALLEMEERSCH, "Een geactualiseerde inleiding tot de bemiddelingswet", in R. VAN RANSBEECK, *Bemiddeling*, Brugge, Die Keure, 2008, at p.35.

The Centre has competence in matters of both racial and non-racial discrimination. A notable exception to this general competence is, however, made for gender issues, for which the Belgian Federal Institute for the Equality of Men and Women is competent.

## 8. Legal aid

In every judicial district ('arrondissement') there is a Commission for Legal Aid<sup>13</sup> (article 508/2 Judicial Code), composed of representatives of the local bar and of the public centres for social welfare. Its main tasks, *inter alia*, consist of the organisation of the first-line legal aid by legal counsels, and the information of the general public of the admission requirements for legal aid (art. 508/3 Judicial Code).

Articles 664 to 699 of the Judicial Code deal with legal aid in the sense of waiver of all or part of the court costs. This concept of legal aid implies that, through the Bureau for Legal Aid, a bureau within each court, the costs of the procedure, as well as the fees of the public and ministerial officers (especially the bailiffs) and the experts appointed by the court, are partially or fully waived. The main criterion is the insufficiency of means to conduct the proceedings (article 667 Judicial Code).

According to articles 508/24-508/25, and in conformity with Council Directive 2003/8/EC, the Ministry of Justice and the Bureau for Legal Aid are competent to receive requests concerning legal aid on the territory of another EU member state, and to transmit these requests to the competent authority abroad.

Various forms of legal aid are provided:

- First-line legal aid – This aid is provided by specialised organisations or by legal counsels on certain days, either for free or at a fixed cost. The aid includes practical information, judicial information or preliminary legal advice (article 508/1, 1° Judicial Code). Persons applying for this aid can be directed either to an organisation for legal aid, or to the second-line legal aid.
- Second-line legal aid – This aid includes an elaborate legal advice, and assistance either in proceedings or in a contentious procedure (art. 508/1, 2°). The procedures and

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<sup>13</sup> In Brussels there are two such commissions: one Dutch-speaking, and the other French-speaking.

conditions according to which legal aid is made available are laid down in articles 508/9 and 508/13-508/16 Judicial Code. The second-line legal aid will be partially or fully free of charge for anyone below specified levels of income (art. 508/13).

#### Court costs:

Articles 664 to 699 of the Judicial Code deal with legal aid in the sense of waiver of all or part of the court costs. This concept of legal aid implies that, through the *Bureau voor Rechtsbijstand – Bureau d'Assistance Judiciaire* [Bureau for Legal Aid], a bureau within each court, the costs of the procedure, as well as the fees of the public and ministerial officers (especially the bailiffs) and the experts appointed by the court, are partially or fully waived. The main criterion is the insufficiency of means to conduct the proceedings (article 667 Judicial Code).

#### Income rules:

Legal aid and waiver of courts costs are provided at a maximum income of 822 euro for someone living alone, 1.056 euro for a household.

Specific acts can foresee the possibility for an organisation with a proven interest to bring a case before a court or to intervene in a case brought before a court. Three different categories of collective actors may launch legal proceedings in discrimination matters, with the victim's consent: first, the NGOs existing for at least three years and whose purpose is to defend human rights and to struggle against discriminations; second, the representative and professional organisations (trade unions); third, the public service institutions. For gender matters, the Institute for Equality between Women and Men is the institution that can launch proceedings. For the other criteria mentioned in the anti-discrimination legislation, the Centre for Equal Opportunities and Opposition to Racism is competent.

The Centre for Equal Opportunities and Opposition to Racism assists victims of discrimination through advice, legal support, mediation or legal action. Victims can contact the Centre by phone or e-mail, they can visit the Centre or approach one of the twenty local anti-discrimination centres in towns across Belgium. In these centres, staff members of the Centre are present at least once a month together with experts in the field of anti-discrimination in order to assist victims of discrimination. This delocalisation increases the accessibility of legal and practical support. Legal proceedings are only started if the Centre board of administration agrees, which happened in 5 per

cent of the cases registered by the Centre staff.<sup>14</sup> The Centre may provide assistance, but does not represent the victim. It may, however, file in its own name a simple complaint or an application to join criminal proceedings as a civil party, bring directly a criminal action or file a cessation claim.

## 9. Forms of satisfaction available to a vindicated party

Compensation can be claimed either on a contractual or an extra-contractual basis. Explicit legal provision for such compensation is thus not required, although some acts explicitly provide for the possibility.

In the case of the Anti-Discrimination and Anti-Racism Acts, respectively article 18 §§1-2 and article 16 §§1-2 provide for two types of compensation. First of all, the victim can claim an amount fixed by law (flat-rate compensation) (art. 18 §2 Anti-Discrimination Act; art. 16 §2 Anti-Racism Act). Secondly, the civil party can claim compensation for the actual damage. In this case, however, the victim needs to prove the extent of the damage (art. 18 §1 Anti-Discrimination Act; art. 16 §1 Anti-Racism Act).

The flat-rate compensation may range from 650 € (if the author of the discriminatory act can prove that the disadvantageous treatment would also have been adopted in the absence of discrimination or because of other circumstances) to 1300 €. In case of discrimination in a labour relationship, the employer will be convicted to pay the equivalent of six months of salary to the victim, or three months if the employer can prove that the disadvantageous treatment would also have been adopted in the absence of discrimination. There is also the possibility of a coercive fine, which the court can impose for in case the discrimination established by it will not cease (article 19 Anti-Discrimination Act; art. 17 Anti-Racism Act). This fine clearly has the purpose of deterrence. In the case of the injunction procedure, the cessation of an ongoing discrimination, as well as the prevention of a future one, can also be considered an effective method of redress.

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<sup>14</sup> European Union Agency for Fundamental Rights, Information Portal, available at <http://infoportal.fra.europa.eu/InfoPortal/humanOrganisationFrontEndAccess.do?id=1287> (11.03.2009).

## 10. Adequacy of compensation

The Anti-Discrimination and Anti-Racism Acts provide for two types of compensation. First of all, the victim can claim an amount fixed by law (article 18 § 2 Anti-Discrimination Act; Art. 16 § 2 Anti-Racism Act). This amount is in the order of 650 € to 1.300 €. Such flat-rate compensation is relatively easy to obtain, but the question is whether it constitutes an effective remedy for the actual damage. The law therefore does not prevent the victim from choosing to go for a full compensation, in which case, however, he will have to establish the extent of the damage actually incurred (article 18 § 1 Anti-Discrimination Act; Art. 16 § 1 Anti-Racism Act)..<sup>15</sup>

With regard to the injunction procedures, coercive fines were imposed, ranging from 3000 euro for each established violation (*in casu* the discrimination of potential employees) to 10.000 euro for each established violation (*in casu*, the exhibition and sale of certain publications). These coercive fines clearly have a deterring effect. If the defendant respects the order of the court, i.e. if he puts an end to the discrimination, he will not have to pay the fine.

With regard to damages awarded, a symbolic amount (e.g. 1 €) is usually awarded to the victim or the organisation which has assumed the role of civil party, very often the Centre for Equal Opportunities and Opposition to Racism assists.

## 11. Rules relating to the payment of legal costs

Every party to a judicial proceeding carries its own financial risk. Concerning the attorney costs, a general legal aid system exists in Belgium for people belonging to special categories of citizens (minors, prisoners ...) or fulfilling financial and civil status conditions.

In civil cases, the court fees have to be advanced by the party launching the procedure. In criminal cases, one has to distinguish different situations. If a judicial investigation is already in process, the application to join the proceedings as a civil party is free of costs. If parties submit an

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<sup>15</sup> Belgium/Kamer van volksvertegenwoordigers – Chambre des représentants, Wetsontwerp ter bestrijding van bepaalde vormen van discriminatie – Projet de loi tendant à lutter contre certaines formes de discrimination, 2006-07, no. 51-2722/1, pp. 26-28, available at <http://www.dekamer.be/FLWB/PDF/51/2722/51K2722001.pdf> (09.04.2009).

elaborate assessment of their legal costs, they will be settled in the judgment (art. 1021 of the Judicial Code). The party against whom the judgment is ruled, will be ordered to pay the costs (art. 1017 Judicial Code). The same principle goes for the appeal stage of the proceedings: depending on the outcome of the case on appeal, one or the other party will have to bear the costs of both the first instance and the appeal proceedings.<sup>16</sup> If the appeal is declared inadmissible, the appellate court will only rule on the costs of the appeal, and not on those of the initial stage.<sup>17</sup> Some specific laws can differ from the general rule.

## 12. Rules on burden of proof

According to the anti-discrimination acts of 2007, if the plaintiff can bring the beginning of proof or any elements susceptible of shoring up the discrimination, it is up to the alleged perpetrator to show the inexistence of discrimination. In case of a direct discrimination, the beginning of proof may be based on the recurrence of a situation when people belonging to a same group are systematically treated in different ways or on comparisons when people in a same situation are submitted to a different regime. In case of indirect discrimination, general statistics or the notion of an 'intrinsic criterion' (as for example jobs offers requiring from the candidates to have a specific mother tongue rather than the perfect mastery of this language) may be used to prove discrimination. The anti-discrimination acts of 2007 also permit a flexible use of situation tests.

Since 2003, the role of the Centre for Equal Opportunities and Opposition to Racism in proving the discriminatory character of acts in civil cases has been strengthened, notably as the proof relates to the collection of statistical data and of evidence based on situation tests.

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<sup>16</sup> D. MAES, "Art. 1017 Ger. W.", in *Comm. Ger.* (1997), at 6.

<sup>17</sup> Belgium/Court of Cassation (15.02.1991).