



Annual Conference 2018
Training and Specialisation in Environmental Law
Sofia November 16th – 17th

Specialisation in criminal courts in Belgium

- **Wouter Haelewyn**, Judge Court of First Instance West Flanders
- **Jan Van den Berghe**, Vice President Court of First Instance East Flanders

Situation in Belgium before 2008

- 27 different judicial districts
- No official cooperation
- No official specialisation
- Only ad hoc 'specialisation' of some judges and public prosecutors with personal interest in environmental law (e.g. Ghent and Antwerp)



2008-2013

- Cooperation agreements between some public prosecutors offices
- Voluntary (bottom-up)
- Official
- Only in Flanders, not in Brussels or Wallonia
- Ad hoc

Situation at 01.01.2008

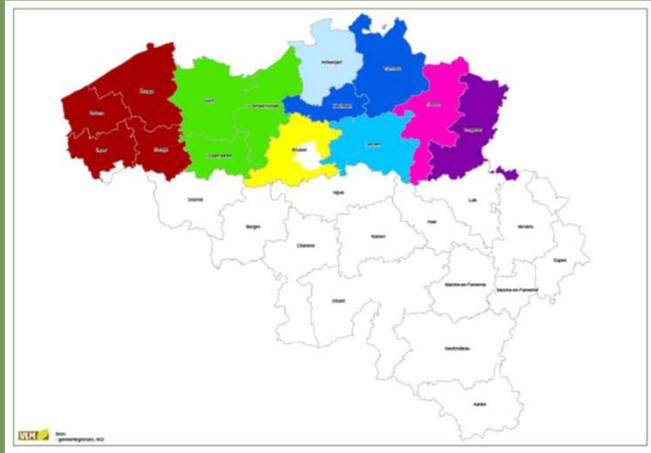
- Cooperation agreement Kortrijk-Ypres



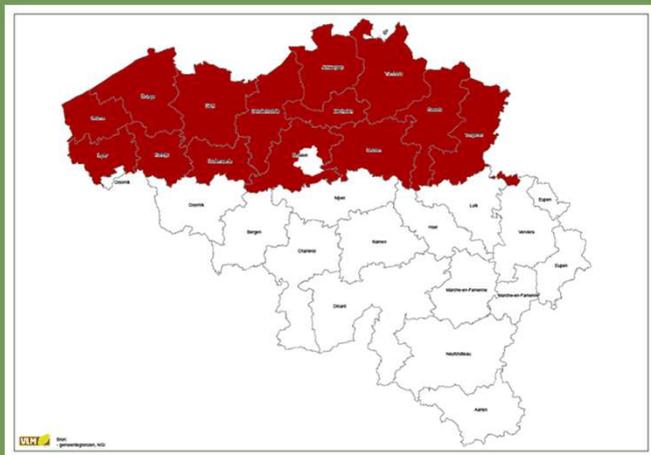
2008-2013

- 01.11.2010: Bruges and Veurne joined cooperation agreement Kortrijk-Ypres (West Flanders)
- 01.01.2011: cooperation agreement Turnhout-Mechelen (Antwerp)
- 01.12.2011: cooperation agreement Ghent-Dendermonde-Oudenaarde (East Flanders)

Situation end 2013



Ideal situation?





Belgian courts: specialisation in criminal cases?

- A. The recent reform of the judiciary: opinion of the High Council of Justice
- B. The new judicial organisation, with specialised judges?
- C. The reality and practice of today in the Court of West Flanders
- D. The reality and practice of today in the Courts of East Flanders

A. The recent reform of the judiciary: opinion of the High Council of Justice

Quote from the opinion of the High Council of Justice from September 30th 2009 on the new judicial organisation:

Environnement Section:

The environmental law is very complex and ever-changing and requires specialisation. The HCJ therefore proposes to create within the court an Environmental Section that can hear all environmental cases: criminal and civil cases, cessation proceedings, summary proceedings, ... It is referred in this respect to similar proposals in the doctrine (Luc LAVRYSEN, « Gespecialiseerde milieurechters : een noodzaak », actes journée d'étude 9 septembre 2009, FUSL et Françoise THONET, « Pour le juge de l'environnement en Belgique », J.T., 2008, 274).

B. The new judicial organisation, with specialised judges? What you buy is what you get?

- Law of 1 December 2013 on the reform of the judicial districts and the Judicial Code allowing more mobility of judges.
- April 1st 2014 – new judicial landscape: 12 judicial districts instead of 27
- *“Finally, **specialised judges** can now be assigned to several courts, which is beneficial for citizens. Complex and specific cases will now faster be dealt with by real experts.”*

➤ https://justice.belgium.be/fr/ordre_judiciaire/reforme_justice/nouvelles/news_pers_2014-04-01

The new judicial landscape



Specialised sections possible by Court regulations

- Court regulations can make one section exclusively competent for a specific civil and criminal cases listed in art. 186 JC
- Listed civil cases: environment forgotten?
- Listed criminal cases: cybercrime, social and economic, financial and taxes, arms and drug trafficking, terrorism, human trafficking, environment, urbanisation, telecom, military, intellectual property, extradition, farming, customs, hormones, doping, food safety, animal welfare
- By Royal decree, on proposal of court president, after opinion of prosecutor, chief law clerk, bâtonnier
- Access to justice and quality of service must be guaranteed
- Comprehensive or general environmental court is not possible

Overview Court Regulations



C. Today's practise in the Court of First Instance of West-Flanders

Number of court hearings in criminal environmental cases - 01/01/2017 > 31/12/2017	
Kortrijk	9 (1 judge)
Bruges	+ - 20 (1 judge)
Ypres	+ - 2
Veurne	+ - 2
Total	+ - 33

Total number of cases - 01/01/2017 > 31/12/2017		New cases - 01/01/2017 > 31/12/2017	
Kortrijk	55	Kortrijk	42

Kind of violations Kortrijk		
Environmental permit	4	9,52 %
Waste	2	4,76 %
Urbanisation	5	11,9 %
Cultural Heritage	1	2,38 %
Nature Conservation and CITES	2	4,76 %
Housing Code	2	4,76 %
Food Safety	8	19,04 %
Animal Welfare	9	21,42 %
Other specific legislations (cyber-crime, privacy, ...)	9	21,42 %
Total	42	100 %

Prosecuted persons	
Natural persons	55
Legal persons	19
Total	74
Non-appearance	12

Imposed sanctions	
Suspension of prononciation of condemnation	9
Imprisonment	4 (1x9m, 1x6m, 1x4m, 1x2m)
Fines (x6)	57 (1x50, 2x75, 9x100, 1x150, 5x200, 5x250, 1x350, 1x400, 11x500, 1x750, 2x800, 1x1000, 5x1500, 1x2000, 1x2500)
Community service	3 (2x85h, 1x145h)
Confiscation of illegal benefits	11 (139.017 € in total)
Restoration claims	6
Lump sum	6
[Cases with civil parties]	[8]

Conclusions

- Wide range of violations
- More and more legal persons
- Sanctions: mostly fines, only few imprisonments (2 x waste and 2 x CITES)
- High amount of confiscated illegal benefits
- In 2017: only one judge (9 court hearings)
- From 01.09.2018: 3 judges (+- 33 court hearings)

D. Today's practise in the Court of First Instance of East-Flanders

Number of court hearings in criminal environmental cases - 01/01/2017 > 31/12/2017	
Gent (Ghent)	15 (11x1 judge, 4x3 judges)
Oudenaarde	3 (3x1 judge)
Dendermonde	?
Total	18

Number of site visits by the court– 01/01/2017 > 31/12/2017	
Ghent	2
Oudenaarde	1
Total	3

Total number of cases- 01/01/2017 > 31/12/2017		New cases- 01/01/2017 > 31/12/2017	
Ghent	173	Ghent	99
Oudenaarde	54	Oudenaarde	37
Total	227	Total	136

Kind of violations		
Environmental permit	15	11,02%
Waste	22	16,17%
Urbanisation	38	27,94%
Cultural Heritage	01	0,73%
Nature conservation, hunt and CITES	08	5,88%
Housing Code	11	8,08%
Food Safety	22	16,17%
Animal Welfare	10	7,35%
Other specific legislations (cyber-crime, privacy, ...)	09	6,61%
Total	136	100%

Prosecuted persons	
Fysical persons	174
Legal persons	42
Total	216
Non-appearance	22

Decisions 01/01/2017 > 31/12/2017	
Nomination of proxy holder <i>ad hoc</i> (for legal person)	18
Regulation of the procedure	56
Postponement for control of restoration	22
Orders to site visit	3
Final decisions	119

Imposed sanctions	
Acquittals	4
Suspension of prononciation of condemnation	9
Imprisonment	9 (2x2m, 3x3m, 3x4m,1x6m)
Fines (x6)	130 (1x50, 12x100, 4x150, 9x200, 15x300, 4x400, 26x500, 1x600, 2x700, 1x800, 17x1000, 6x1500, 19x2000, 1x2500, 5x3000, 1x4000, 4x5000, 2x10000)
Community service	4 (2x46h, 1x280h,1x80h)
<i>Partially suspended</i>	48
<i>Suspended under probation</i>	6
Confiscation of illegal benefits	8 (57.490 € in total)
Orders to restore/to sto	22
<i>Lump sum</i>	22
<i>Executable</i>	12
<i>Constataion of restoration</i>	20
[Cases with civil parties]	[11]

Conclusions

Incomplete Figures (Ghent+Oudenaarde, Dendermonde?)

Wide range of violations. No other field of law is so complex, so diverse as environmental law is: criminal, civil, administrative, air, water, soil, noise, urbanisation, biodiversity, heritage... with huge social impact

Incomplete organisation (court legally must have juvenile judges, family judges, tax judges, investigating judges, execution judges, ...) but NO environmental section/judges

So, if you have a broken foot you might end in the psychiatrist cabinet.

- Immature organisation
- With no standards, no minimum legal framework, no minimum guarantees for qualifications nor training
- A judiciary that is not up to date with social reality with his technical and legal public and private specialists,
- That works with volunteers and some 'Chi...' volunteers
- But with a lot of experience: What you buy is not what you get!



Ceci n'est pas un juge de l'environnement

