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4 - My rights after the court has given its decision

Can I appeal?

Can I appeal against the judgment/ruling issued at the proceedings against the sentence?

A judgment given in your absence or when you have not been represented by a lawyer is given by default. A specific right of recourse exists, application for the judgment to be set aside, which is always available. An appeal is also possible.

If the judgment has been given in your presence, the decision is in the presence of both parties. The right of recourse is an appeal, which is only available when the decision has been issued by a court. There is no appeal, therefore, against the rulings of the appeal court and assize court.

How? To whom?

If you are in custody, the application for the judgment to be set aside and the appeal can be lodged with the court office at the prison. If you are free, the application for the judgment to be set aside is made with the help of a court officer, whereas the appeal must be filed with the office of the court which gave the ruling.

Within what deadlines?

The appeal must be made within 15 days.

- The deadline for an application for the judgment to be set aside starts to run from the day following the day on which the accused learns of the decision in writing (service).
- The deadline for an appeal starts from the day following the hearing at which the judgment was given.

What are the grounds for appeal?

Disagreement with the facts declared to have been established or on legal grounds.

What will happen if I appeal?

What will happen if I am in prison when I file an appeal?

If the appeal relates to the case for which you are being detained and you have been given a custodial sentence, you will stay in prison until a new decision is given. An application for provisional release on bail may be made during these new proceedings.

If you are being held for another matter, the appeal will not affect your situation in prison.

How long will it take for the appeal to be heard?

The application for the judgment to be set aside is called for hearing within 15 days of the application if you are free, or within 3 days if you are in custody. The appeal is set within no more than 60 days of being filed for.

Will I be able to submit new evidence for the appeal?

Yes.

What rules are applicable?

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What will happen at the appeal hearing?

The judge will first examine whether the appeal was filed in time, then he will judge again the facts put forward and any sentence to be given.

What might the court's decision be?

What will happen if the appeal is upheld/dismissed?

If the application for the judgment to be set aside or appeal are accepted, there are 2 possible scenarios:

- The proceedings are declared inadmissible or you are acquitted, which means that you will be released immediately if you were being held;
- a lower sentence is imposed.

If the appeal is rejected,

- in the case of an application for the judgment to be set aside, the conviction will be upheld but never increased;
- in the case of an appeal, the conviction may be upheld or increased.

Is it possible to appeal against a higher court/other court?

An appeal is possible against a decision given on an application for the judgment to be set aside by a court, before the appeal court. An appeal in *cassation* may be brought within 15 days before the Court of cassation against a decision given on appeal, by making a declaration at the office of the court of appeal. It will not suspend the enforcement of the conviction.

Under what circumstances?

An appeal in cassation is only justified in the event of a breach of law or procedure.

If the first decision was wrong, will I get damages?

Yes, if you were held in this case.

How much?

An amount to compensate for the loss suffered as a result of being held in custody.

How?

By making a written request to the Federal Justice Department.

If my appeal is upheld, will the conviction remain on my criminal record?

No.

When does a conviction become final?

When an application for the judgment to be set aside has not been made within 15 days of notification of a conviction issued by default.

Where no appeal has been filed either by you or the Prosecutor's office within 25 days of the conviction being given.

I am a national of another Member State, can I be deported after proceedings held in Belgium?

Yes.

Is the transfer automatic?

No, the consent of Belgium and the other Member State is required in all cases.

Under what circumstances?

- Case 1: to enforce in your country of origin the non-appealable conviction handed down in Belgium, of a period of imprisonment of at least 6 months (see also: [A to Z of Justice](#))

a) with your consent, only if you have a permit to reside in Belgium. See [European Convention](#).

b) without your consent, if you do not have or no longer have a permit to reside in Belgium (see [European Convention](#)) or if you have been the subject of a European arrest warrant issued in Belgium with a guarantee of return to your country of origin.

- Case 2: without your consent, to be judged in your country of origin based on a European mandate issued by the Member State of which you are a national. If you still have to serve your sentence here, Belgium may wait for the end of your sentence before transferring you to your Member State, or may commit you temporarily to be judged there with a guarantee that you will then be returned to serve your Belgian sentence in Belgium. If your usual place of residence is here, you may ask Belgium to hand you over on condition that you are returned to enable you to serve the foreign sentence in Belgium.
- Case 3: without your consent, to serve in your country of origin a sentence given based on a European warrant issued by the Member State of which you are a national. If you still have to serve your sentence here, Belgium will wait for the end of your sentence before transferring you to your country of origin. If your usual place of residence is here, you may ask Belgium to refuse to execute the mandate so as to enable you to serve the sentence in Belgium rather than in your country of origin.

Can I appeal against the decision to deport me?

Yes, except in the case of voluntary transfer which has been granted to you.

As part of a return in order to serve the sentence given in Belgium in your Member State of origin (case 1), applications to set aside and suspend a judgment may be brought within 60 days before the Council of State, as well as a judicial review before the urgent applications judge.

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If I am convicted in Belgium, can I be tried again for the same crime?

No.

Information about the accusations/conviction

Will information about the conviction and associated accusations be entered on my criminal record?

Yes.

How and where will this information be kept?

It will be kept on a database known as the "Criminal records office", managed by the Federal Justice Department.

How long will it be kept for?

Convictions with police sentences (1 to 7 days' imprisonment, fine of between 1 and 25 euros, community service

order of between 20 and 45 hours) will no longer be mentioned on the extract from the criminal record after 3 years.

Other convictions will remain there permanently. It is possible, however, to have them removed by means of a rehabilitation procedure.

Can it be kept without my consent?

Yes

Can I object to this information being kept?

No.

Who has access to my record?

The judicial and police authorities have unlimited access to it.

The criminal record should not be confused with the extract from the criminal record, required by some public administrations or certain individuals (employer, etc.), and not mentioning all the information held on the record. For example, simple declarations of guilt, imprisonment of no more than 6 months and fines of up to €500 or given for breaches of the Highway Code without any loss of licence in excess of 3 years will no longer be shown after 3 years and 25 days from the date the conviction is given. Furthermore, a suspended sentence, whether simple or probationary, is never mentioned on the extract.

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