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2 - My rights during the trial

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How can I be involved in the trial?

As a [civil party](#) (1) or a registered victim you will be notified by letter of the date your case will appear before a court. It is still possible for you to register yourself as a civil party during the trial until the closure of the debates and to claim compensation before the judge.

If you do not have a lawyer and you wish to present your civil claim during the hearing you have to:

- be on time;
- sign up with the court officer and ask if this is the room where the hearing will take place;
- go to the presiding judge when you hear the judge calling the name of the offender from whom you want to claim compensation;
- give your claim to the judge together with all the documents certifying your damage;
- give a copy of the claim to the lawyer of the offender;
- keep the original documents for yourself;
- the presiding judge may ask you for additional information and will then make a decision as regards your request for compensation.

In principle the trial is public and every person who is older than 14 years of age can attend the court hearings. So your friends, neighbours and family (as well as members of the press and public) are allowed to be present at the trial. Only in exceptional circumstances (e.g. sexual offences) will the hearings be non-public and civilians and the press will be banned from the courtroom. To attend these hearings you need to be a civil party. The final judgement of the case is always pronounced in public.

If you submit a claim for compensation (civil claim) you do have to prove the damage you suffered. Your civil claim will be assessed by the court. You need to prove the claim during the trial proceedings; thereupon the court will admit or reject the claim.

If you are a civil party you need to be present at the court hearings. If you want to avoid direct contact with the defendant your lawyer can represent you (there is however no possibility to refuse the presence of the defendant in the court room). The only time that you have to attend in person is when you are called as a witness.

You cannot discuss the case with the prosecutor and you cannot make a victim impact statement.

What are my rights as a witness?

When you have given evidence as a witness during the criminal investigations you may not, or only very seldom, be questioned during the court hearings, except for the [Assize Court](#) (2).

When you are called in person and when you have been granted a protection measure and/or are not in the country you can be interviewed by videoconference or teleconference. If necessary, there is a possibility for voice alteration and concealment of your face.

If you are called to court as a witness you can request reimbursement for your travel and accommodation expenses. You can also get a half-day compensation for taking days off. You have to ask for this compensation yourself. The judge will grant you this compensation when pronouncing the judgment. These costs are paid by the state budget, but will have to be reimbursed by the defendant if found guilty.

I am a minor. Do I have additional rights?

If you are a minor you are protected against media coverage: the publication or spread of pictures, drawings and other materials that reveal your identity.

If an audiovisual recording of your interview has been done during the investigation your personal appearance is not required unless the court finds it necessary to establish the truth. In this case the court will ask you to attend and will explain the reasons thereof. You can ask the judge to hold a non-public hearing behind closed doors. The law expressly provides for this if you are a victim of a sexual crime like rape or sexual assault. The court may also hold a non-public hearing if it is necessary for protecting the interest of a minor or the private lives of the parties.

Can I receive legal aid?

If you have brought a civil claim as a civil party to the criminal proceedings, you can choose to attend the session yourself or opt for legal representation.

For initial legal advice, you can consult the front-line legal assistance team (*aide juridique de première ligne/juridische eerstelijnsbijstand*), whose lawyers provide free advice at certain times on specific days and can refer you to specialist services where appropriate. Consultations are organised in court buildings, civil magistrates' courts, law centres, municipal administrations, and so on. Law centres (*maisons de justice/justitiehuizen*) can be found in any judicial district (contact details available in [French](#) or [Dutch](#)), or you can get in touch with a [victim support service](#).

For detailed legal advice, assistance and representation, you need to enlist the services of a lawyer. Depending on your income, some or all of this assistance may be provided free of charge under second-line legal assistance arrangements. A number of categories of persons in specific situations, such as minors or persons with a mental disability, are always entitled to free legal representation.

If you want to apply for second-line assistance, you need to contact the [Legal Aid Office](#) (*Bureau d'Aide Juridique/Bureau voor Juridische Bijstand*) which is located in every court building. You will have to produce documentation showing either that you belong to one of the special categories or that you are on a low net income. The Office will decide within a fortnight whether to approve your application and send you the contact details of your assigned lawyer. It is also possible to ask a lawyer of your choosing whether he or she is willing to work under the second-line legal assistance arrangements. If the lawyer agrees to this, he or she will contact the Office on your behalf in order to seek approval for your application.

If your financial means are modest, under certain circumstances you can ask to be exempted from a number of procedural costs (e.g. bailiff's costs and the costs of copies from the book of evidence) under the legal aid arrangements. To benefit you need to submit a request to the Legal Aid Office of the criminal court handling the case. If you are already a civil party to the criminal proceedings (see below) you can submit this request, in writing

or verbally, to the criminal court handling the case.

You are also advised to check your insurance policies closely to see whether you have legal expenses insurance. Contact your insurance broker.

During the court proceedings, you can be aided by the staff of a law centre or a victim support service.

How can I get protection, if I am in danger?

When you are in danger and you have been granted partial or full anonymity by the investigation judge during the investigation stage, at the trial you can be interviewed by videoconference or teleconference. If necessary, there is a possibility for voice alteration and concealment of your face.

When you need to appear before the court as a witness and have not been interviewed during the investigation the judge can order that your identity must not be revealed in the official record of the hearing.

If you have suffered from sexual assault or rape you are protected against media coverage: the publication or spread of pictures, drawings or other materials that reveal your identity.

If the defendant is not taken into custody during the investigation and you feel concerned about possibility to stand face to face with the defendant while waiting for your case to be handled, you can contact a justice assistant. In some courthouses separate waiting rooms have been installed in order to give you the opportunity to avoid direct contact with the defendant.

How can I claim damages from the offender or receive compensation from the State?

If you want to seek financial compensation at the criminal trial, you need to bring a civil claim in the criminal proceedings. Your claim can list all kinds of damage suffered, such as physical injuries and related medical costs, moral damage, material damage (e.g. loss of earnings, the repeat of a study year, loss of employment and damage to vehicles or clothing), funeral expenses, etc.

If the offender is found guilty the criminal court will rule on your civil claim and find that you are entitled to damages. The court will then evaluate the content of the damages claim.

If, for whatever reason, you did not take part in the criminal proceedings, you can choose to pursue a claim in the civil courts. This possibility is also open to you if the public prosecutor's office decides not to proceed with the criminal case. You bring the civil claim before the civil court by summoning the person who has caused the damage, unless all parties are willing to appear voluntarily. Where an insurer is involved (after a traffic accident, for example) you may also summon the insurer. Procedure in the civil courts differs fundamentally from criminal procedure. For instance, you yourself must prove that the opposing party is liable for your damage, though you may do this by producing copies of evidence from the criminal case, even if the proceedings were discontinued. If criminal proceedings are in progress the civil court has to suspend the proceedings before it pending the judgment of the criminal court. The civil court is bound by the findings in the criminal case. Remember that launching a claim before the civil court also entails costs.

If the public prosecutor has moved for a criminal action to be dropped (amicable settlement or mediation in criminal cases), this is another way for you to obtain compensation from the offender. You can also obtain damages from the offender through mediation. For instance, in most cases you will receive damages if the public prosecutor proposes mediation in criminal cases or an amicable settlement to the offender.

It is not always possible to obtain damages from the offender (for instance, it may be that the offender cannot be identified or detained), or to recover compensation in full from an insurer. If you have been the victim of a premeditated violent crime, under certain circumstances you can obtain compensation from the State. For more information about possible compensation from the State, please consult the European Legal Network's information pages on compensation for victims in Belgium (available in [French](#), [Dutch](#), [German](#) and [English](#) and in other

languages).

If the accused is found guilty, he or she must repay the costs of your civil action, which will include a share of your lawyer's fees. The court sets the relevant compensation figure when it gives its judgment in the case.

If the proceedings began because you summoned the accused directly or initiated criminal proceedings by lodging a criminal complaint with a civil claim, and the accused is then found not guilty, the court can order you to repay all or a specified proportion of the costs incurred by the State and by the accused.

Are there opportunities to reach settlement/conciliation or to start mediation between the offender and myself?

You can ask for restorative mediation (*médiation réparatrice/herstelbemiddeling*) at any time during proceedings: before a case goes to court, while the court is handling it, and after the court has passed sentence. Restorative mediation runs separate from the criminal proceedings and does not replace them. The judicial authorities therefore remain responsible for any decision involving criminal prosecution, sentencing, and the application of sentences.

Restorative mediation is not performed by the State but by two non-profit associations, [Suggnomè](#) in Flanders and [Médiante](#) in Wallonia. They have local sections in each judicial district.

An agreement reached as a result of restorative mediation is confidential and is transmitted to the court only with the consent of both parties. The court's judgment must make mention of the restorative mediation, but does not have to take account of the agreement reached.

A judge of the juvenile court can deliver a judgment ordering restorative mediation or a group conference (*concertation restauratrice en groupe/hergo*).

I am a foreigner. How are my rights and interests protected?

If you as a [civil party](#) (1) or witness do not speak the official language of the region where the proceedings take place, an interpreter will be appointed. You cannot have your documents translated free of charge.

More information:

- Law of 1 August 1985 concerning tax and other measures – in [Dutch](#) and [French](#)
- Law of 8 April 1965 on the protection of young people, the responsibility of minors committing an act constituting a crime and the restoration of the damage caused by this act – in [Dutch](#)
- Constitution – in [Dutch](#) and [French](#)
- Code of Criminal Procedure – in [Dutch](#), [French](#) and [English](#)
- Judicial Code – in [Dutch](#) and [French](#)
- Royal Decree of 28 December 1950 laying down general rules on legal costs for enforcement measures

Notes:

1. Civil party to criminal proceedings You can bring a civil claim before the criminal court at any time during the criminal proceedings even if you have not lodged a police complaint. In addition to the ordinary rights of a victim, your status as a civil party to the criminal proceedings then also confers the right:

- to request damages
- to be heard by the court
- to have costs reimbursed at the end of proceedings
- to request an interpreter during court proceedings
- if your civil action is deemed admissible and well founded, you also receive a number of rights in the criminal proceedings without having to submit an application for recognition as a victim to the court for the application of sentences

You can register as a civil party to the criminal proceedings via an express declaration if the proceedings have already been launched by the public prosecutor's office. You can do this at any stage during the investigation and the actual trial, but it is no longer possible at the appeal stage. If the offence is a minor offence (contravention/overtreding) or an intermediate offence (délit/wanbedrijf), you can lodge a civil claim before the investigating judge, who is then obliged to launch a criminal investigation. Bear in mind that at the end of the investigation the pre-trial chamber is still free to decide that there is insufficient evidence to bring the alleged offender to court. If you wish to obtain damages, you will need to prove the damage you have suffered. The court will assess whether your application is admissible and either admit or dismiss it. As a civil party to the criminal proceedings, you are entitled to bring the matter before the court's indictment division if the criminal investigation is still ongoing one year after it began. This option gives you indirect control over the investigation's progress.

2. Assize court The assize court (contact details available in [Dutch](#) and [French](#)) is a temporary criminal court that can be convened in any province or in the Brussels district. Assize courts are empowered to deal with all serious crimes (crimes/misdaden, i.e. murder and other serious criminal offences punishable by a custodial sentence of five years to life), political offences, and press offences (save for those which are racist or xenophobic in origin). Unlike a permanent criminal court, the assize court has to be reconstituted for each new case. Its president is a court of appeal judge. The president is assisted by two judges from the court of first instance. The jury is made up of 12 members of the general public, chosen by lot, no more than two thirds of the initial members being of the same sex. Members of the jury must be entitled to vote and enjoy full civil and political rights, they must be aged between 28 and 65, must be able to read and write and must not have any criminal convictions for which they were sentenced to a term of imprisonment of more than four months or to community service of more than 60 hours. The jury alone decides whether the accused is guilty or innocent. To decide the sentence the jury sits together with the professional judges. The judgments of the assize court can be appealed only on points of law to the Court of Cassation.

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