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3 - My rights after the (first) trial

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Can I appeal against a sentence or if the defendant is declared not guilty?

If you have entered a claim as a civil party to the criminal proceedings (*partie civile/burgerlijke partij*), you can appeal if the court dismisses your claim for damages or if you consider that the compensation awarded is too small. You cannot appeal if the defendant is found not guilty, or if you think the sentence imposed on the defendant is too mild. (The public prosecutor may appeal on those grounds.)

Make up your mind quickly, because in criminal cases any appeal usually has to be entered within 15 days. Appeals have to be submitted at the registry (*greffe/griffie*) of the court that delivered the contested judgment. You can obtain further information at the registry. If there is an appeal, the case will be considered afresh by a higher court. You will be given notice of times and places. The procedure on appeal is much the same as the procedure at the first trial. You do not have to register a second time as a civil party to the proceedings. But you cannot register as a civil party for the first time when the case has gone to appeal.

A full appeal, on points of fact and law (*appel/hoger beroep*), cannot be brought against the judgment of an assize court, but an appeal may be brought before the Court of Cassation on points of law only (*pourvoi/voorziening*).

Is further appeal possible?

A judgment delivered on a full appeal (*appel/hoger beroep*) is not open to a further full appeal.

A full appeal cannot be brought against the judgment of an assize court, but an appeal on points of law may be brought before the [Court of Cassation](#).

The Court of Cassation will not examine the facts of the case: it merely considers whether there was any breach of proper procedure and whether the law has been wrongly applied or wrongly interpreted. The Court of Cassation can only uphold or quash the judgment. It cannot take further evidence or judge the case afresh. If it does quash the judgment, it refers it back for retrial by another court at the same level as the court that delivered the earlier judgement. The judgment of the Court of Cassation is not binding on the new court.

What rights do I have after the court sentence enters into force?

It is important to realise at the outset that as a victim you will not be informed of the court's judgment automatically (unless you have entered a claim as a civil party to the criminal proceedings). If you or your lawyer were not present when the judgment was delivered in court, you need to contact the authorities yourself or ask the staff of the law centre (*maison de justice/justitiehuis*) to inform you.

As a victim you can under certain conditions ask to be informed or to be heard regarding the manner in which the

sentence is to be served, for example regarding prison leave, limited detention, electronic surveillance, provisional release with a view to deportation or surrender to another country, or conditional release.

If your civil claim is successful, you can under certain conditions ask to be informed or to be heard if the condemned person is granted any special arrangement for the service of the sentence.

Otherwise you can ask to be recognised as a victim by applying to the court for the application of sentences (*tribunal d'application des peines/strafuitvoeringsrechtbank*). Your request will be accepted if the court decides that you have a legitimate interest.

Under certain conditions you have the following rights as a victim:

- to be informed of decisions related to the application of the sentence (including initial prison leave, electronic surveillance, conditional leave, etc.);
- to propose specific conditions that might be imposed on the offender;
- to be heard in relation to specific conditions that might be imposed on the offender in your interest.

Examples

- you can ask to be heard by the court for the application of sentences regarding conditions that might be imposed on the offender if electronic surveillance is allowed;
- you can ask the court to notify you if it grants the offender conditional release;
- you can ask to be informed if the Minister for Justice grants the offender prison leave.

If you want to exercise any of these rights you must fill in a victim statement form, and hand it in or send it to the registry of the court for the application of sentences or to a justice centre.

At the hearings of the court for the application of sentences you can always be assisted or represented by a lawyer. You can also ask for help from one of the officially recognised victim support organisations, or by a victim support service or the victim reception offices at the court, for example when you are going to attend a court hearing

You can obtain more information from the law centre, from victim reception offices or from your lawyer.

During and after the application of the sentence, whether the offender is serving the sentence in prison or outside it, you can always have recourse to mediation.

More information:

- Law on the external legal position of persons sentenced to a custodial sentence and on the rights of victims in connection with the manner in which sentences are served - in [French](#) or [Dutch](#).

Notes:

1. Civil Party: You can register as a civil party before a judge, at any stage of the proceedings, even if you have not reported the crime to the police. This status gives you some additional rights:

- to become a party in the proceedings;
- to speak at the court hearing;
- to be able to claim for compensation before the court;
- to have your cost reimbursed after the trial; and
- to have the right of an interpreter free of charge during the proceedings.

You can also join the proceedings that were already put in motion by the public prosecutor through a statement. This remains possible during the whole stage of investigation and before the court, but never in the stage of appeal against a court's decision. In case of offence punishable by more than eight days of imprisonment you can take an action by filing a report with the investigating judge. The investigating judge is obliged to start a judicial investigation but after the end of the investigation it is still up to the judicial authorities to decide whether enough evidence exists to bring the offender before a court. If you submit a civil claim you do have to prove the damage you are claiming for. The court will assess the eligibility of your civil claim and will admit or dismiss it. If you act as

a civil party you have if the judicial investigation has not finished - within one year after the initiation, the right to bring the case before the Indictment Chamber of the Court of Appeals. This allows you an indirect form of control over the progress of the investigations.

2. The Assize Court The Assize Court (contact information available in [Dutch](#) and [French](#)) in Belgium is sitting in each of the ten provinces and in the judicial districts of Brussels. It has jurisdiction over all crimes punished by more than five years of imprisonment, political offences, press-related offences (except those inspired by racism or xenophobia), and crimes of international law such as genocide and crimes against humanity. Unlike the other courts, which have a permanent structure, the Court of Assize has to be constituted for each specific case. It comprises three professional judges and 12 jurors. The presiding judge is a judge of a court of appeal and is assisted by two judges of courts of first instance. The jury invariably consists of twelve members, who are elected from among all citizens having the right to vote at elections. Members of the jury must be between 28 and 65 years of age and must be able to read and write. The jury alone decides upon the facts of a case, and determines the penalty along with the judge. There is no appeal of verdicts, apart from one before the Court of Cassation.

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