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Imputati (procedimenti penali)

Belgio

Le presenti note informative spiegano che cosa succede qualora un individuo sia sospettato o accusato di un atto illecito che è giudicato in un'udienza dinanzi a un tribunale. Per informazioni riguardanti i reati minori come le violazioni al Codice della strada, che solitamente sono soggette a sanzioni fisse come l'ammenda, cfr. la Nota informativa 5. Se siete vittima di un reato, potete trovare tutte le informazioni sui vostri diritti cliccando qui.

Sintesi del procedimento penale

Di seguito sono illustrate le fasi ordinarie del procedimento penale.

Tribunale inquirente

La Camera di consiglio dei giudici e la sezione penale (di appello) sono tribunali inquirenti. Verificano che il mandato di arresto sia regolare, statuiscono sul fermo della persona in custodia cautelare, conducono le indagini e decidono se portare o meno la causa in giudizio dinanzi a un organo giurisdizionale competente nel merito.

Procedimento dinanzi alla Camera di consiglio dei giudici:

citazione a mezzo di raccomandata;

consultazione del fascicolo presso la cancelleria del tribunale;

richiesta di espletare ulteriori formalità prima dell'udienza;

udienza sull'accertamento di prove sufficienti per esaminare la causa;

delibera preliminare in camere e fissazione di una data per l'emissione dell'ordinanza;

emissione dell'ordinanza di rinvio a giudizio. Salvo diverse disposizioni di legge, l'accusato non ha diritto di impugnare l'ordinanza di rinvio a giudizio.

Tribunali penali

Se siete accusati di un illecito grave (illecito punibile con ammenda di minimo € 26 e/o reclusione da otto giorni a cinque anni), sarete citati in giudizio dinanzi al tribunale penale, che stabilirà se siete colpevoli delle accuse a vostro carico, vi assolverà o condannerà e, se opportuno, riconoscerà un indennizzo alle parti lese. Il tribunale penale può infliggervi una pena massima di reclusione fino a 20 anni in caso di reato ridotto a illecito grave ai sensi di legge.

Procedimento dinanzi ai tribunali penali:

citazione da parte dell'ufficiale giudiziario;

consultazione del fascicolo presso la cancelleria del tribunale;

udienza in aula;

il giudice ha un mese di tempo per deliberare;

emissione della sentenza;

diritto di impugnazione.

Corte d'assise

Se siete accusati di un reato (punibile con una pena massima dell'ergastolo), sarete citati in giudizio in corte d'assise. Una giuria composta da 12 giurati scelti tra la popolazione stabilirà se siete colpevoli delle accuse a vostro carico. In caso di verdetto di colpevolezza, i giurati decideranno insieme al collegio composto da tre giudici la pena da infliggervi. Solo il tribunale, tuttavia, è competente a decidere sull'importo dell'indennizzo da riconoscere alle parti lese, se ne fanno richiesta.

Procedimento dinanzi alla corte d'assise:

rinvio a giudizio su decisione del tribunale penale e citazione notificata da un ufficiale giudiziario;

consultazione del fascicolo presso la cancelleria del tribunale (copia gratuita su richiesta);

udienza preliminare: composizione dell'elenco di testimoni da sentire, e della giuria sorteggiata;

istruzione orale della causa;

discussione sulla colpevolezza, sull'eventuale pena, e in seguito sugli interessi di parte civile;

nessuna impugnazione (possibilità di ricorso per questioni di diritto).

Nelle note informative potete trovare una descrizione dettagliata di ciascuna fase del processo, nonché dei vostri diritti. Queste informazioni non sostituiscono la consulenza legale e sono intese soltanto come guida.

Il ruolo della Commissione europea

Occorre osservare che la Commissione europea non ha alcun ruolo nei procedimenti penali istruiti all'interno degli Stati membri e pertanto non vi può assistere nel caso dobbiate sporgere denuncia. Le informazioni fornite in queste note informative servono per sapere come potete sporgere una denuncia e a chi rivolgervi.

Cliccate sui collegamenti sottostanti per trovare le informazioni di cui avete bisogno

1 – Consultare un avvocato

2 – I miei diritti durante le indagini

Stato di fermo e interrogatorio della polizia

Indagine informativa

Istruttoria

Caso specifico: custodia cautelare

Chiusura delle indagini

3 – I miei diritti durante il processo

4 – I miei diritti dopo il processo

5 – Violazioni del codice della strada e altri reati minori

Ultimo aggiornamento: 24/05/2012

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1 - Consulting a lawyer

It is very important to obtain independent advice from a lawyer when you are involved in any way in criminal proceedings. The information sheets tell you when and under what circumstances you are entitled to be represented by a lawyer. They also tell you how the lawyer will help you. This general information sheet will show you how to find a lawyer and how the lawyer's fees will be covered if you are unable to pay him.

How to find a lawyer

Every Belgian lawyer comes under the Bar of the judicial district where his chambers are located. In Brussels, it consists of two associations, one covering French-speaking lawyers, the other covering Dutch-speaking lawyers.

The French- and German-speaking Bar Association (O.B.F.G) consists of the bars for the Walloon region and the French association in Brussels.

The capital's Dutch association and the Flemish bars both come under the "*Orde van de Vlaamse Balies"* (O.V.B.)

The list of lawyers can be found in the alphabetical telephone directory or yellow pages, or on the Internet (https://avocats.be or http://www.advocaat.be/). You can search for a lawyer who normally specialises in defending people before the criminal courts by doing a subject search under the heading "criminal law" ("*droit pénal*" in French, "*strafrecht"* in Dutch).

You can also find a lawyer close to you by searching by judicial area or district.

The secretariat of each bar association can also give you a list of its lawyers.

You can also contact a lawyer who has been recommended to you directly by e-mail, letter or telephone.

How to pay a lawyer

As a rule, it is you who pays your lawyer. You may be asked for a payment on account before any work is carried out. Fees are not set by law. However, the lawyer must tell you how his bill will be calculated: hourly rate applied according to the time spent on your defence or set amount for each type of service (consultation, reading file, pleading, etc.).

In addition to this there are the costs incurred by his chambers and the disbursements paid to the judicial administration department.

If you do not have sufficient income to pay a lawyer, you can request free legal aid from the Legal Aid Office covering your lawyer. The list of offices for each district is available on the Internet:

in French,

in Dutch.

If you receive benefits from the C.P.A.S, guaranteed income for elderly persons, income replacement allowance for disabled persons, have a dependent child who receives guaranteed family allowances, are a tenant in social housing, a minor, are insolvent (bankruptcy ruling), in custody, a remand prisoner summoned by record or are mentally ill, you will obtain the assistance of a lawyer free of charge.

The same applies if you live alone and have a monthly income of less than €860, or if you are living with someone and the total income of the adults living with you is less than €1 104 (plus €145.16 for each dependent person).

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2 - My rights during the enquiries and investigation and before the matter is referred to the court

What is the purpose of the enquiries and criminal investigation?

They are used to gather evidence establishing the offence and to verify evidence which might exonerate the suspect or show that there has not been any offence.

What are the stages in the enquiries and investigation? Who conducts each of the stages?

The police investigate offences and offenders and gather evidence.

Where they suspect the existence of an offence, they notify the Crown Prosecutor who decides:

either to close the file without further action;

or to continue the enquiries himself (disclosure);

or to appoint an investigating judge, asking him to investigate a specific fact and not one person in particular (investigation).

The Crown Prosecutor has less extensive powers than the investigating judge. The investigating judge or the Crown Prosecutor directs the enquiries and gives instructions to the police who carry out the stated obligations to investigate (interviews, searches, DNA samples, etc.).

Once the investigations have been completed

Either the file is for disclosure ("*information*"), in which case the Crown Prosecutor can:

close the file without further action;

propose a settlement: public prosecution dropped (no criminal trial) in return for a sum of money (classic procedure in the case of a breach of the Highway Code);

propose mediation, in the case of minor offences: no trial, but the perpetrator must compensate the victim and, if necessary, undergo therapy or training;

bring the suspect to court directly before the judge hearing the merits of the case;

summon the accused to appear before a court hearing the case by report: the summons is sent to the accused while he is on remand (for a maximum period of 24 hours), or goes before the Crown Prosecutor in order to speed up the proceedings.
Or the file is for committal, in which case the file is sent to the public prosecutor's office, which will make the final submissions. The accused can then read the file. He is summoned to appear before the Judges' Council Chamber which, after reading the enquiry report from the investigating judge, any civil law parties (victims), the public prosecutor's application to commence proceedings and the defence pleadings, may:
either refer the file to the investigating judge for further investigation;
or, if the investigations are complete:
grant the suspension of the ruling where the public hearing could prejudice the accused;
issue a ruling internally in a social protection institution, if the person committed the offence while the balance of his mind was seriously disturbed, rendering him incapable of controlling his actions at the time of facts and is still in this condition;
refer the file for trial by the relevant court (police court or criminal division); if it considers that the facts come under the assize court, it issues an order for the documents to be forwarded to the Principal Crown Prosecutor, as only the indictments division can refer cases to the assize court.
The accused's right of appeal, which is confined to certain procedural matters, is exercised before the indictments division.
During the investigations, the investigating judge may issue an arrest warrant on certain conditions:
the existence of serious indications of guilt;
facts listed as punishable by at least one year's imprisonment;
and absolute necessity for public safety.
If the maximum penalty applicable does not exceed fifteen years' imprisonment, the warrant can only be issued if there are serious reasons to fear that the accused will abscond, re-offend or evade justice, or that evidence will disappear or there will be collusion with third parties.
The accused will appear before the Judges' Council Chamber within five days of the warrant being issued, then every month until the investigations are closed (every three months in the case of a crime reduced to a misdemeanour by statute).

My rights during the enquiries and investigation

Arrest and questioning by the police (1)
Disclosure file (2)
Investigation file (3)
Special case: remand in custody (4)
Closure of the investigation (5)

Arrest and questioning by the police (1)

Under what circumstances and for how long can I be detained by the police?

You can be detained in the case of a crime or offence discovered while or immediately after being committed, or at the request of the Crown Prosecutor or investigating judge where there are serious indications of guilt. You cannot be detained by the police for more than 24 hours.

Can I be searched?

Yes, at the time of your arrest or if there is reason to believe that you are carrying a weapon or dangerous object, or if there is a risk to law and order.

Can the police enter my home?

Yes, in the case of an offence discovered while or immediately after being committed or with your consent.

Can my office or car be searched?

Yes, in the same way as your home. However, certain places are sacrosanct and others are specially protected: searching them requires a special procedure (office of a diplomat, member of parliament, premises of those holding professional secrets, etc.).
Your car may be searched if there is reason to believe that it was used for committing an offence, for carrying wanted persons, incriminating documents or evidence, or objects which are dangerous to law and order.

Can I contact a member of my family, a friend, a doctor or a member of my embassy?

If the police consider it useful or upon request, you will be examined by a doctor. At this stage, the police decide whether or not to allow you to use the telephone. If you are a minor, the police are obliged to inform your parents, your guardian or the person looking after you, in writing or verbally, as soon as possible.

What are my rights while being questioned by the police?

You have the right to remain silent and not incriminate yourself, i.e. not to collaborate in producing evidence against you.
At the start of any questioning, you will be informed that :
you may ask that all the questions put to you and your responses are documented exactly as stated;
you may ask for a particular measure or interview to be carried out;
your statements may be used as evidence in court.
You may use the documents in your possession, provided that this does not involve questioning being delayed. You may, at the time of questioning or thereafter, ask that these documents be attached to the minutes of the hearing or filed with the court office.
At the end of questioning, the report is given to you to read, unless you ask for it to be read out to you. You will be asked whether your statements need to be corrected or added to.
If you wish to express yourself in a language other than the language of the proceedings, a sworn interpreter will be used, your statements are noted in your language, or you are asked to write your statement yourself. If questioning takes place with the help of an interpreter, his name and capacity are stated.
You will be informed that a copy of your examination may be issued to you free of charge.

Will information be sought about my criminal record?

The police services have access to the central records office.

Can my lawyer assist me?

Your lawyer cannot assist you at any questioning and cannot meet you during the 24 hour custody period.

Disclosure file (2)

The enquiries are conducted by the Crown Prosecutor. The preliminary disclosure session is inquisitorial: secret, written and ex parte.

What can the Crown prosecutor do during the disclosure phase?

Other than in the case of legal exceptions, disclosure measures cannot include any coercion or prejudice personal rights and freedom. Property may be seized under certain conditions.
The Crown Prosecutor may, inter alia:
go to the scene of the facts,

interview suspects or witnesses or have them interviewed by the police,
have someone arrested (except in the case of an offence discovered while or immediately after being committed) for 24 hours,
have a DNA analysis carried out with the suspect's consent,
intercept and seize post (but not open it),
obtain bank information subject to certain conditions,
carry out searches in the case of an offence discovered while or immediately after being committed or with the consent of the person actually using the premises,
have particular search methods carried out which may be very intrusive.

What can I do if a disclosure measure infringes my rights?

You can apply for it to be withdrawn by means of a request with reasons, the criminal summary application, for example if your property is seized as evidentiary items. Within 15 days, the Crown Prosecutor must give his decision. In the absence of a reply or in the event of a refusal, you may appeal to the indictments division.

You may also, in this case, ask the Crown Prosecutor to authorise the central body for seizure and confiscation to sell the property or return it in exchange for a guarantee.

Can I access the file?

Unlike the investigation system, there are no particular rules regarding the total or partial communication of the file to the parties in question at the disclosure stage. You may request access to the file from the Crown Prosecutor, who has the discretionary power to accept or refuse.

Can I influence the outcome of the file?

No. The Crown Prosecutor alone will take the decision to close the file without further action, appoint an investigating judge, summon you or invite you in writing to appear before the court hearing the facts of the case, or offer you an alternative means of settling the prosecution (settlement or mediation: in this case there will not be a trial if you pay the fine or comply with the conditions imposed at the time of mediation).

Investigation file (3)

The investigation is conducted under the direction and authority of the investigating judge, appointed by the Crown Prosecutor, or the alleged victim of an offence by means of an action for damages in a criminal case.

What can an investigating judge do?

He can use all the measures available to the Crown Prosecutor, and substantial coercive measures: issue an arrest warrant, have telephone conversations monitored, have searches carried out without consent, even wider particular search methods, etc.

Must I be interviewed by the investigating judge?

Questioning by the investigating judge is only compulsory where an arrest warrant is issued.

Does the judge have to tell me that there is a case to answer?

In principle, the judge must charge you if there is serious evidence of your guilt. You are charged after being questioned or by letter and it gives you the right to request access to the criminal file and the right to demand additional investigations.

Can the judge monitor my telephone calls?

Yes, subject to complying with very specific legal conditions.

Can I object to a search?

Your home may be searched if a search warrant has been signed by the judge, and if the search is carried out between 5 am and 9 pm, unless agreed otherwise.

Can the judge physically force me to give a DNA sample ?

Yes, under certain conditions.

What can I do against an investigation which infringes my rights?

You can submit a criminal summary application (cf. Disclosure).

Can I access the file during the enquiries?

If you are charged but not held, you may request access to the file by means of a request sent to the investigating judge, who may refuse access but must give reasons for his refusal. In the absence of any response from the judge or a refusal, you have the right to appeal to the indictments division.

Can I ask for certain investigations to be carried out?

Yes, whether or not you are held in custody. You may ask for this by submitting a request. The investigating judge may refuse if he does not consider the measure to be indispensable to uncovering the truth or considers it to be harmful to the investigation. A possibility of appeal exists.

Special case: remand in custody (4)

How must questioning before the judge be conducted?

Questioning prior to the issue of an arrest warrant must take place within 24 hours of being detained, otherwise the arrest warrant is void. Questioning must include in particular the possibility of issuing a warrant and the facts in question.

Your lawyer cannot be present.

Can I be interviewed by the judge subsequently?

You can ask for summary questioning. It is the only questioning at which your lawyer is allowed to be present.

When can I see my lawyer?

After your first examination by the investigating judge.

Can I contest the legality of or reasons for the arrest warrant?

You cannot appeal against the decision to be placed under an arrest warrant.

Within five days of the warrant being issued, you will appear before the Judges' Council Chamber. On the day before, you will have had access to your file. Your lawyer or you yourself may request your release.

Your lawyer may only raise an irregularity in the warrant at the time of this first appearance before the Judges' Council Chamber (and on appeal). If the arrest warrant is confirmed, you have a right to appeal. You will appear before the indictments division within 15 days. If these deadlines are not complied with, you will be released immediately.

The custody confirmation is valid for one (or three) months. You may, at each hearing, contest the relevance of the arrest warrant and/or the serious indications of guilt. The file will be available to you two days prior to each appearance.

Can I communicate with third parties while in prison?

You can always communicate with your lawyer.

However, the investigating judge may ban you from communicating with any other person for a maximum of three days.

When can I be released?

At any time by the investigating judge, or by a decision of the investigating courts when you appear. Your release may be subject to conditions or bail.

I am a national of another country. Do I have to be present during the investigation?

An arrest warrant may be issued if there is a risk of evading justice. The investigating judge or investigating courts may release you on bail. You will recover the sum of money paid if you appear at all stages of the proceedings.

If you are allowed to remain free, you will be asked to appear at hearings and, in principle before the court hearing the merits of the case. The investigating judge may make it a condition of your release on bail that you do not leave the country. These conditions may be extended for periods of three months. You may contest them before the Judges' Council Chamber.

Closure of the investigation (5)

What can I do if the enquiries drag on?

After one year, you may submit a reasoned request for the case to be referred to the indictments division, which will review the conduct of the enquiries.

Can the accusations/charges be changed prior to the trial?

The Crown Prosecutor reads the file sent by the judge and specifies the charges on which the accused is to be tried before the court. He may also make submissions that there is no case to answer or ask the judge to undertake certain additional enquiries. The criminal classification may also be changed by the Crown Prosecutor at this time, or by the Judges' Council Chamber which decides on the outcome of the case.

Can I plead guilty prior to the hearing in respect of all or some of the accusations/charges?

No, you are presumed innocent until you are finally convicted by a court hearing the merits of the case.

How is the case closed?

The Judges' Council Chamber decides, after hearing the report from the investigating judge, any party claiming damages in the criminal case, the prosecutor and the defence:

to commit the accused for trial by the appropriate court;

to rule that there is no case to answer;

to grant a suspension of the ruling: the facts are deemed to have been established, but no sentence is given. The judge sets a probation period, which may be subject to conditions which have to be met;

to apply the law of social defence (confinement).

What are my rights during this phase?

You can read your file and copy documents prior to the hearing before the Judges' Council Chamber. You may also request that further enquires are carried out. If the investigating judge refuses to carry them out, you have the right to appeal to the indictments division.

Can I appeal?

You cannot appeal against committal for trial, except in the event of an irregularity, omission or ground for nullity affecting part of the investigation, the obtaining of evidence or the committal order, or if you cite a reason for inadmissibility or termination of the criminal prosecution.

Can I be charged with an offence for which I have already been prosecuted in another Member State of the European Union?

In principle no.

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3 - My rights before the court

Where will the trial take place?

The police court hears the least serious cases (offences punishable by a fine of between €1 and €25 (breaches of the Rural Code, etc.) and all breaches of the Highway Code (fatal accidents, etc.);

The criminal division hears offences or crimes reduced to misdemeanours by statute (those to which mitigating circumstances have applied immediately);

The assize court hears the most serious crimes (those for which it's not possible or desirable for mitigating circumstances to apply).

Will the trial be held in public?

In principle, the trial is held in public in a room accessible to everyone (onlookers, journalists), unless this is not possible for security reasons.

Where you are affected by a sexual offence (rape, etc.), you can ask the court to hear the case in private, i.e. to restrict access to the court room to those persons to whom the trial relates.

If it is a matter of detaining an offender who is not responsible for his actions because he is seriously mentally disturbed, the latter may ask for the case to be heard in private, to which the Public Prosecutor's Office may object.

Who will hear the case?

Professional judges before the police court or criminal division. However, before the assize court, 12 jurors will alone rule on whether the accused is guilty. They will then decide on the penalty with three judges.

Can the accusations/charges be amended during the trial?

The facts of which you are accused may be treated differently by the Prosecutor's Office and by the judge. For example, if you have broken a car window, the Prosecutor's Office may prosecute you for attempted theft, whereas in fact you only intended to break it. The court may classify it differently and consider that it was a case of damage. However, it must notify you in order to enable you to defend yourself on this new basis.

What happens if I plead guilty to all or some of the accusations/charges during the trial?

The sentence will not be reduced automatically.

What are my rights during the trial?

Do I have to be present at the trial? Do I have to be present throughout the trial?

You can always be represented by a lawyer. In exceptional cases, you will have to appear in person where the court has deemed this to be necessary by means of an order which it must ensure that you receive prior to the hearing.

Can it take place without me?

If you are not present or represented by a lawyer to reply to the accusations, the trial will take place without you and you will be judged in absentia.

If I live in another Member State, can I take part by video?
No.
Will I have an interpreter if I do not understand the language of the court?
Yes.
Do I have to have a lawyer ?
No, except in the assize court.
Will I be given a lawyer?
Yes, on certain conditions (see sheet 1).
Can I change lawyers?
Yes, even without giving a reason.
Can I speak at the trial?
Yes.
Do I have to speak at the trial?
It is not compulsory.
What will be the consequences if I do not tell the truth during the proceedings?
You have the right not to incriminate yourself and to develop your defence strategy as you see fit. This also includes the right to remain silent.
What are my rights in respect of the evidence cited against me?
Can I contest the evidence submitted against me?
Yes.
How?
By asking the judge at the hearing to have further investigations carried out.
Why?
To demonstrate the unlikelihood of the accusation.
What sort of evidence can I submit in my favour?
Submission of any document, request for a second expert opinion, hearing a new witness, etc.
Can I use a private detective to obtain evidence in my favour?
Yes.
Is such evidence acceptable?
Yes.
Can I ask witnesses to speak in my favour?
Yes.
Can I or my lawyer question other witnesses in the case?
Yes, through the police or the judge.
Can I or my lawyer contest what they say?
Yes.
Will information about my criminal record be taken into account?
Yes.
What type of information?
Previous convictions.
In what circumstances? At what stage?
They enable the maximum sentence to be doubled and may prevent the application of measures in your favour.
Will previous convictions in another Member State be taken into account?
Yes, they may be forwarded to the judge.
What will happen at the end of the trial?
What are the possible outcomes of the trial?
The prosecution may be declared inadmissible, if an important rule has not been complied with. However, a new trial may be possible;
Acquittal, if there is insufficient evidence to demonstrate your guilt beyond all reasonable doubt;
Conviction.
In the event of a conviction, the judge has 5 options, depending on the nature of the offences and your criminal history:
custodial sentence;
community service order: to carry out within one year unpaid work for the community, subject otherwise to receiving a prison sentence or fine;
fine;
stay of execution of the conviction or suspension of the ruling, with or without conditions (not committing any further offences, undergoing training, not frequenting certain areas, etc.) for a period of between 1 and 5 years;
simple declaration of guilt.
What is the victim's role during the trial?
The victim may speak on the facts relating to him/her and claim monetary compensation.
How?
Verbally or by submitting a written claim.
At what stage?
At the hearing, just after you have been questioned by the judge.
For more information, see the sheets on the rights of victims.
Related links
Addresses of the courts
Ministry of Justice website
Addresses of prisons
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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?

The same rules as before the first judge (see sheet 3).

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.

As part of the execution of a European arrest warrant issued by your country of origin (cases 2 and 3), the **urgent applications** judge carries out an initial verification and review within 15 days of the arrest by the **Judges' Council Chamber**. An **appeal** may be filed within 24 hous of the ruling being given by the Judges' Council Chamber before the **indictments division** (see sheet 3). A further appeal may also be filed within 24 hours of the ruling of the indictments division before the Court of cassation.

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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La versione originale in lingua nl di questa pagina è stata modificata di recente. La versione linguistica visualizzata è attualmente in fase di traduzione.

Il nuovo testo è stato già tradotto nelle lingue seguenti: fr.

5 - Minor offences

How are minor Highway Code offences dealt with?

If the local police discover breaches of the Highway Code, they may send the owner of the reported vehicle a form in order to find out the identity of the driver at the time of the facts. The Crown Prosecutor may then offer you the option of avoiding criminal prosecution by paying, by bank transfer, a sum of money to the value added tax authorities, land registration and estates department.

Payment of this amount avoids you having to be called to appear before the police court, and therefore incurring a higher fine and having to pay further court courts.

However, agreeing to pay in this way implies acknowledgement of your fault and liability with regard to any victims where your offence caused damage to another user.

Who deals with these offences?

The relevant police prosecution authorities are in charge of proposing these settlements. The criminal fines department within the tax authorities manages the accounting side of the payments made and informs the Public Prosecutor about them.

Procedure?

The proposed settlement is sent to the person who has committed the offence by recorded delivery letter or by means of a notice issued by a police officer. The deadline for payment varies between 15 days and 3 months, or even 6 months in exceptional cases.

Sanctions?

If you do not pay or refuse the proposed settlement, the Public Prosecutor summons the offender to appear before the police court in order to obtain his conviction to a penalty (fine, imprisonment, loss of driving licence) in accordance with the law.

Are nationals of other Member States prosecuted for these offences?

Yes.

How?

The police officer who discovers the offence proposes the settlement.

If it is refused, he can demand immediate payment of the minimum statutory fine, subject otherwise to immediate confiscation of the vehicle involved.

If the settlement is not accepted, the amount paid in advance may be reimbursed or deducted after the judgement by the police court.

How are other minor offences dealt with?

Antisocial behaviour (parking charges, public cleanliness) is managed by the district authorities. In the event of non-payment, you may be prosecuted before the local justice of the peace.

In social and tax matters, security at football matches, travel by rail and other public transport, specialist authorities are authorised to take receipt of administrative fines. Various legal remedies are available before the civil courts.

Are these offences listed on my criminal record?

Road traffic offences are noted on the criminal record. Administrative fines and fines relating to the law on football are not listed on the criminal record.

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