

# Legal Guide for Activists in Belgium

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by anonymous activists

This document contains information compiled from different legal guidebooks for activists across Belgium, supplemented by additional legal research. It is therefore a crowdsourced work from different actions, groups and organisations, and is truly a group product. Therefore, this guidebook is only available in English at the current moment.

There is one central penal code in Belgium. For administrative offences, municipalities and cities largely decide them themselves. Here, we use administrative offences as defined in Brussels and Ixelles. In other parts of Belgium, these may vary and we clearly indicate that we cannot possibly cover all cases and scenarios. This guide is a general guide, and should never be seen as absolutely exhaustive and accurate. The law can change, and so can the judicial interpretation of it.

This guide is for activists joining actions, and primarily oriented at people new to activism. We hope to give you a practical guide that can help you make decisions in difficult circumstances, rather than just one that names the applicable legal provisions. We prefer not to publish general risk assessment associated with a type of action, as the circumstances are always slightly different, and we can therefore not give an accurate general risk assessment. The guide is divided into Q&A about applicable law:

1. "[before an action](#)",
2. "[during an action](#)",
3. "[during an arrest](#)",
4. and "[after an arrest](#)".

## **General recommendations**

- Always bring your ID card, unless the participants of the action have a consensus to not do so.
- Do not drink alcohol and/or take drugs before and during an action.
- No knives, scissors or any other tools that could be considered a weapon.
- Leave your phone at home. If you bring your phone, remove sensitive information (names and numbers of other activists, message exchanges about the action), sign out or uninstall Signal and e-mail. Encrypt your phone and secure it with a PIN code.
- ALWAYS let an ambulance, fire engine or police car that is going somewhere else pass (lives may be at stake).
- Never react to police intimidation (and they are good at it!).
- Never resist when you are stopped, not even by shouting. Become a sack of potatoes - this is not resistance.
- Be very careful about what you sign, and we advise to remain silent and respond with 'no comment' when questioned.

## **What should I know as a foreigner in Belgium?**

In principle, there are no specific sanctions for foreigners who participate in the action (the possibilities of administrative sanctions and criminal and civil proceedings are the same as for nationals). However, criminal prosecution or conviction may have an impact on the residence status in Belgium.

We cannot guarantee in any way that undocumented migrants who participate in an action will not be arrested. Given the high risk, we advise them to think carefully before making the decision to participate. There are other possible support roles that they can access, because once an undocumented person is arrested, the police send a report to the Aliens Office and wait for its decision. There is therefore a real risk of an order to leave the country, a transfer to a detention center or to the airport, etc.

For EU citizens who come to Belgium only to participate in an action, there is no particular risk. In the worst case, they risk being repatriated to their country of origin after the arrest. For EU citizens with a residence permit in Belgium, there is very little risk that this permit will be jeopardized by participation in an action. This is not the case if the person commits more serious offences, for example assault on a police officer.

For non-EU citizens who wish to participate in actions and do not have a proof of legal residence status on them at the time of arrest, they are likely to be placed in a detention centre pending a determination of whether they are subject to a removal order.

## **What should I know if I am under 18?**

We do not recommend that minors (under 18) participate in arrestable roles in actions for the following reasons:

- Minors do not commit offences but "acts qualified as offences". It will be the Youth Court that will make a decision. The law obliges the judge to give preference to so-called restorative measures. These measures are intended to focus on rehabilitation and education, but the youth judge may decide to place a youth in an IPPJ if there is a danger to society.

- Minors can be given an administrative fine. They may also be ordered to pay damages in a civil proceeding through their parents who will also be ordered to pay damages.
- If you are a minor and you participate in the action and you are on the scene of the action without an ID card, by being arrested, you risk being treated as an adult and this can be extremely traumatic (pressure from the police, lack of respect for rights, etc.).
- On the other hand, if as a minor you decide to give your identity to the police to prove your minority, but the rest of the group decides to remain anonymous, you will be one of the only people identified and therefore risk suffering significant financial repercussions for the repair of the damage, via your parents or other legal representatives (unlike the adults present who will try to remain unidentified). Discuss this beforehand with your affinity group.
- If you want to participate as a minor in an action anyway, we advise you to take a supporting role. There are many tasks crucial to the success of the action that do not involve the risk of getting arrested. We also recommend, if possible, that your parents be informed.

# Before an action

## **Should I use any special digital security precautions?**

Use different communication apps ahead of and during actions, and stay away from Messenger, WhatsApp, Gmail, Hotmail, etc. To finance their activities, their algorithms gather data to offer us targeted advertising. ProtonMail or Riseup are email boxes where our exchanges are secured by end-to-end encryption. However, if only one person continues using Gmail etc., the whole encryption stops. For instant messengers, use Wire, Signal or Telegram, as these offer more digital security. For sharing documents, do not use Google documents, Google forms, or Doodle, instead use Frama (Framaform replaces Google form, for example), Cryptpad (document editing and sharing) and Mattermost (chat, document sharing). Instead of searching on Google, use Duckduckgo. Install a VPN on your computer and smartphone (such as Cyberghost), or use a browser with built-in VPN (Brave).

## **How can I mobilise people for my action without giving away too much information?**

You will notice that many times when other activists ask others to participate in actions, they give very little information. This is because we can never ensure that communication channels are completely safe, and only the bare minimum information should be communicated openly. We recommend to follow this practice, and to avoid mentioning names apart from your own when mobilising, so as not to implicate others.

## **Can I safely tell the press and outsiders about the action?**

While it may make sense to alert journalists to an action beforehand, so that they can be there to report on site, do not give them more information than absolutely necessary. Journalists are not bound by a confidentiality agreement with you, so they could alert the police. As a rule of thumb, do not tell the press or bystanders more than you would feel comfortable telling the police (which should ideally be nothing). This also applies to speaking to journalists and outsiders during an action: Anything you say can be used against you. Do not implicate others, for instance by saying that "person A was responsible for organising this part of the action", as this can be used against that person. Let people with a media spokesperson training speak to journalists, and avoid doing so if you didn't receive such a training.

## **Can an action be stopped before it even takes place?**

While you have the freedom to protest non-violently, an entity who expects to be the target of an action may move a court before the action, in order to get an order to prohibit you from continuing. If you continue, you would then have to pay a fine, which can be quite large. This fine is called an "astreinte". For example, a company may file a case against climate activists *before* a planned action demanding that activists do not do the civil disobedience action. If the company *before* the action *also* obtains a court order from a judge with a fine in case of non-compliance ("astreinte"), the company must notify the activists in the action of the order. They cannot simply notify them by generally publishing it about it in the press, on their website, etc, but it has to be by notified by a person called a "bailiff". If activists then go ahead, it can be demanded that they pay the astreinte. An astreinte is not a criminal fine and therefore does not appear in the criminal record. Note: The money payment will only be due if the activists violate the order, if the activists are identified, *and* the company notifies that they have violated it. The

company needs activists' identities to give them on to the court, so it is important to never talk to the company representative at the site of the action. Let the police do the talking. In practice, it is rare that penalty payments are actually sought, even after the individuals are identified. The goal is to stop the action by putting pressure on the participants given the financial risk they are taking. If you are contacted in the context of an astreinte, don't sign anything.

# During an action

## **Is it illegal to do an action/protest without permission?**

If you want to organize a demonstration or protest, you are required to ask an authorization. The exact rules differ from commune to commune, so we cannot generalize. According to the [General police regulation](#) of Brussels (Article 42), each gathering, demonstration or parade - of any kind - in public spaces is subject to the authorization of the government. The organizer of a demonstration must submit a written request to the Brussels Capital Ixelles police zone. Based on this request, the Mayor will or will not give permission for the demonstration. The [application](#) for the permit must be submitted online, by mail or by e-mail to the police at least 10 days before the scheduled date of the protest.

However, under international human rights law, every person has the right to protest peacefully. Generally, the police can therefore not disperse a protest simply because it was not registered. In practice, the police will likely order the protest to end based on disturbance of public order or a similar grounds, even if you insist on the human right to peacefully protest. Any police officer can make this order. Anyone who continues to protest will then be violating authority's orders, which can lead to administrative arrest. Even if the police allows the protest to continue, they will still try to identify who organised the protest, and then attempt to issue an administrative penalty against them for failing to register the protest.

## **Are there zones where the rules are stricter?**

It is completely prohibited to protest in a "neutral zone", and any protest will immediately result in administrative arrest. Even when you simply walk from A to B with a banner in your hand, and you pass through the neutral zone, this can be seen as a protest and be a crime. The "neutral zone" in Brussels is a perimeter including the main ministries, the two parliaments, and the Royal Palace, and also the European Parliament (but Place de Luxembourg is allowed). Protests are also generally prohibited at the Grand Place and the small roads leading up to it. Here is [an interactive map](#).

Neutral zones exist outside Brussels. One is around the seat of the Parliament of the German-speaking Community in the city of Eupen, and another one in Namur, delimited by the place Kegeljan up to the rue Bord de l'Eau, the rue Notre-Dame (from the place Kegeljan to the rue de la Sarasse) and the left side of the avenue Baron Louis Huart (from the rue de la Sarasse to the place Kegeljan), as well as inside the zone delimited by these public ways.

There may be more neutral zones.

## **What happens if I disobey law enforcement?**

According to Article 11 of the [general police rules Brussels](#), every person in a public space or in a space accessible to the public must immediately conform to the orders of police, if they concern maintaining security, public order, respecting laws, and facilitating emergency service and helping people in danger. If a police officer orders you to do something, it is therefore a violation of administrative law to disobey them. As Article 120 notes, an administrative fine can be imposed per police discretion (up to 250 Euros). Sometimes, the police order can entail

ordering you to leave the vicinity. In this case, make sure they specify as much as possible what they mean - whether a 50 meter radius, leave the entire street, and for how long.

Additionally, there is a criminal offence of rebellion against police authority [see below].

### **When can the police ask for ID?**

Attention: Only a police officer in uniform or in civilian clothes (after having justified his status with a police card) can ask you for your ID card. Security guards do not have this right. Any police officer has the right to ask for identification in a public place, from any person above 15 years old, at almost any time. Police officers may require you to give your card in the following cases: If you are arrested; if they see you committing an offence; if you wish to enter a "place where public order is threatened" or participate in a "public gathering that presents a real threat to public order"; if you are wanted, have disturbed or may disturb public order, or are preparing to commit an offence.

### **What happens if I refuse to give my ID?**

If you don't have any identification, you risk an administrative arrest for identity verification, and an administrative fine of approximately €200 to €4,000 (if they do find out who you are and know who to send the fine to). They can keep you for 12 hours to find out who you are. While there may be practical consequences (like an administrative fine or an administrative arrest), you are *not* committing a *crime* if you refuse to answer questions about your identity and nationality or remain silent (only an administrative offence). The police cannot deny you certain rights (notifying a relative, access to a doctor, lawyer, etc.) on the pretext that you have not given your identity.

In practice, they quite literally depend on you having your documents on you, and our experience shows that if you successfully keep your identity hidden for the 12 hours of arrest, you are let go. The strategy of anonymity (not taking one's ID card *and* not taking one's mobile phone or any other object allowing "easy" identification of the person) is therefore proposed in mass actions with many people. Of course, each person remains free to make their own choices.

### **Can the police use force to take my ID or finger prints, when I am arrested?**

The police can use "strictly necessary" force to take an identity document that you refuse to give, or to take a fingerprint or a hair for a DNA analysis leading to your identification if the conditions of the law are met. Be careful to differentiate between judicial and administrative arrest in this case. In the case of an administrative arrest, there can be no question of taking DNA. The advice is to note down the time and place this identity control was done, get a case number if possible, and write to the Supervisory Body for Police Information (COC) to ask for an audit of this file (afterwards): <https://www.controleorgaan.be/en/monitoring-body>. They should remove anything that should not be there legally.

### **Is this all also applicable if I am not Belgian?**

Attention, if you are not Belgian and do not show a residence permit in Belgium, you *can* be placed in a closed center for undocumented migrants (see the specific point above in the text), and then expelled. This can also happen if you *are* Belgian, but refuse to give your ID. Then, the police could claim that it is not certain that you are really legally allowed to be on Belgian territory. In case you "pose a threat to public order or national security", your residence permit

can also be terminated and you can be expelled, even as an EU citizen ([law of 24 February 2017](#)). This has never happened before for peaceful political actions, but the definition of "threat to public order or national security" is not completely defined, and only developed progressively by case law at the European Court of Human Rights.

### **Can I conceal my face during an action?**

You risk an administrative penalty of a fine of 90 to 150€ and/or imprisonment of one day to seven days if you appear in places accessible to the public with your face masked or concealed in whole or in part, in such a way that they cannot be identified. During COVID, this was not so much a problem. Now, COVID masks may not be a legitimate reason. However, you can try to insist on COVID, if you really want to stay anonymous, or apply color to your face that cannot be easily taken off. Note, however, that civil disobedience by definition involves standing for what you do. People engaging in civil disobedience are not a masked mob, but a group of peaceful, average citizens who take a stand against an unjust system that is causing climate collapse.

During police violence, you may want to cover your head and face for safety reasons, for example with goggles as protection against pepper spray, or a helmet against batons. In other countries, like Germany, this could count as a "protective weapon" and be illegal. In Belgium, however, there is no such prohibition.

### **In what ways can police search me?**

There are three types of searches:

1. A superficial "security search";
2. A more invasive "body search" at the cell at the police station;
3. A "judicial search" when they suspect you of having items related to a specific crime and have an arrest warrant against you.

### **When can police conduct a superficial "security search"?**

Superficial searches (known as "security searches") are authorized under Article 28 of the law on the functioning of the police without any particular formality when:

- A police officer has "reasonable grounds to believe" a person is carrying a weapon or an object that is a threat to public order
- A police officer is administratively or judicially arresting someone

They need to state these reasons to you when you ask.

The security search consists at most of searches of clothing, simple patting down of the body and clothing (*without* undressing), bag, suitcase and car. In practice, the police might remove any layers of clothes, without stripping you naked. Therefore, if you identify as a womxn, they may strip you to your bra as part of the security search. The search does not have to be carried out by someone of your gender. It cannot last more than one hour. Security guards (not police) may carry out this search.

### **When can police conduct a "judicial search"?**



[\[see below\]](#)

### **When can police conduct a "body search"?**

[\[see below\]](#)

### **If police grabs me, can I try to get them off me? Can I resist police?**

"Rebellion" is a crime (Article 271 Penal Code), and consists in resistance against the forces of law and order who are acting to enforce the laws, with violence (even slight) or threats (the police officer must fear a real and imminent danger). It is an offence punishable by eight days to six months imprisonment and a fine of 156 to 1200€ (if you are "unarmed") and 3 months to 2 years if you are armed (note that even a poster on a stick can count as a weapon).

You are not in rebellion if you merely refuse to obey an order; you passively resist (lie down on the ground, etc.); you lock yourself or glue yourself (this is not violence, as you are not physically resisting but are just stuck in place); you run away from an arrest; you make clearly imaginary "threats". You are in rebellion if you struggle when held by a police officer; you hit a police officer without self-defense; you violently run into a police roadblock.

You are in rebellion with aggravating circumstances (three months to two years of imprisonment) if you are "in a gang" (two people are enough); you are armed (with "any machine, any instrument, utensil or other sharp, piercing or blunt object, which is seized to kill, injure or strike, even if it is not used" - so this can really mean anything, including a sign). Of course, the police use and abuse the charge of rebellion, and this leads to a complex body of case law. While passively resisting by lying on the ground does not qualify as rebellion, activists have been prosecuted for rebellion 'because they stiffened up' when the police grabbed them.

### **Can I ever engage in self-defence against a police officer?**

The legal conditions for self-defence are very strict, so make sure you gather evidence and testimonies. You can respond to an attack (cumulative conditions):

1. If there is violence,
2. AND Accompanied by a serious threat (not only against the person who retaliates but also against other people),
3. AND Current or imminent (otherwise it is retaliation),
4. AND Unfair (illegal, arbitrary, which is not the case if the police use force in accordance with the legal conditions),
5. AND Directed against people, not property,
6. AND If you respond proportionally (you can't respond to a blow with an iron bar).

If the police officers commit an obviously abusive and grossly illegal act, you can resist, even actively, but always *proportionate* its resistance to the abusive act (you can cling to the agenda that the police officer tries to snatch from your hands, but not kick him). In principle, this is not rebellion. The best thing to do in this case is to call witnesses and explain to them what is happening, to ask that the scene be photographed or filmed, that the details be noted, your name. These images can be used in a trial against you, and sent to NGOs working on police violence (see below).

### **Can I film the police?**

It is not forbidden to film or take pictures of a police officer, but it is advisable to be quick to avoid arrest and/or having your equipment destroyed. If a police officer confiscates or damages an innocent person's camera, this is an abuse and you can file a complaint (preferably with witnesses). Warning: It is legal to film/photograph a police officer, but *not* to publish it on the internet, for example on social media. If you don't want to face potential legal consequences, you cannot make public use of these images and videos unless you hide the police officer's face.

Beware, in practice, the police really don't like it, so you have to evaluate if it's relevant to continue filming or not.

### **If police tries to arrest me, can I try to flee?**

It is not an offence to attempt, without violence or threats, to escape from police officers who want to arrest you. But this must really be non-violent, and without anything can be interpreted as a weapon. If you are wanted for serious offences or if the police consider that you are likely to commit serious violence against people, they can prevent you from escaping by using force. If you try to flee when the police are trying to arrest participants in a peaceful action or demonstration, you will usually only be charged with "disobeying orders", which you are likely already doing by refusing to stop your civil disobedience (fines of up to 250 euros). The law does not itself specify whether there is a difference if you flee by foot, bike or car. As long as there is no violence (and if you are not speeding/going against the flow of traffic), there is no additional crime.

Police reprisals to punish you for trying to flee would be abusive. We nonetheless recommend to not flee, just as you should not physically resist when you are arrested, as you risk additional charges, even if they do not hold up in court.

### **Can I get arrested as a bystander? What is the law on aiding and abetting and criminal association?**

A criminal organisation is defined in Article 324bis of the Penal Code as "the structured association of more than two people, established over time, with a view to committing in a concerted manner, crimes and misdemeanors punishable by imprisonment for three years or a more serious penalty, to obtain, directly or indirectly, financial advantages". Note that this requires at least one element that excludes climate and social justice actions: The financial advantage element. However, there is still the possibility for people to be arrested as accomplices to a crime.

As police are allowed to make administrative arrests (max 12 hours) of people reasonably suspected to be *preparing* an offence that seriously endangers public safety, people who are helping in an action (for instance by driving equipment to the action site) could also be pre-emptively arrested. In fact, article 66 of the Penal Code states that "those who, by any act, have given such help to the execution of the crime or offence that, without their assistance, the crime or offence could not have been committed" can be punished as perpetrators of a crime or offence.

Additionally, people supporting an action can be considered as an "accomplice". A person can be convicted as an accomplice/co-perpetrator of a crime if he or she has directly cooperated in its execution, or if he or she has, by any act, given such help in the execution that, *without their assistance, the crime could not have been committed*. According to article 69 of the Penal Code, the accomplice can be punished with the penalty immediately lower than the one he would incur

if they were the author of the crime. In principle, the possible penalties are effectively pronounced according to the degree of responsibility. It is absolutely possible (although unlikely) for people taking pictures or providing activists accommodation to be arrested as accomplices. However, if someone is a journalist, they technically have special protection and be allowed to document without repercussions. There is at least one case in Belgium in which a person doing social media for a climate action was charged as an accomplice. All persons who will be linked to this action by the public prosecutor's office, and whose identity is known by the law enforcement agencies/prosecutor, should expect to be put under surveillance. Cell phones, laptops etc. can be confiscated. There is a tendency in the public prosecutor's office to prosecute all persons who have given any assistance to the facts. However, it is possible that the prosecutor will not prosecute if there is a higher number of participants.

As a bystander, you can also be arrested during an action for 12 hours as an "administrative arrest". As the police can conduct administrative arrests to remove people from the site until "order" is restored, they can then keep you as a sort of precaution until they deem that the risk is over.

# During an arrest

During non-violent direct action and civil disobedience, you may be arrested.

Please note that just because you have not been arrested, or your ID hasn't been taken, does not mean that you are not at risk of administrative and criminal proceedings. The police can always identify you and contact you later on.

There are two types of arrests in Belgium.

## What is an administrative arrest?

Administrative arrest is not an arrest of a person suspected of a crime. However, it is a preventive deprivation of liberty, which can be carried out regardless of whether the suspect has committed a crime. It is for maintaining public order.

- Article 31 of the Police Act lists the circumstances in which the police may make an administrative arrest. **In practice**, an administrative arrest is **possible everywhere and almost all the time**. **In principle, it is only possible in the following cases:**
  - if you interfere with the police officers' duty to ensure freedom of movement;
  - if you are disturbing the public peace;
  - if there are reasonable grounds to believe, based on your conduct, material evidence or circumstances, that you are **preparing** to commit an offence that **seriously** endangers public peace or safety, and to prevent you from committing such an offence;
  - if you commit an offence that seriously endangers public peace or safety, for the purpose of stopping the offence.
- An administrative arrest “may never exceed the time required by the circumstances that justify it “ and with a maximum of 12 hours from the moment you no longer have the freedom to move freely (so not from arrival at the police station, but already before).
- If you stay at the station for **more than 12 hours**, it means that your arrest has to be **judicial** (i.e. you are accused of having committed an offence and an investigating judge has decided to extend the deprivation of liberty).

## What is a judicial arrest?

- A judicial arrest takes place either in case of **in flagrante delicto (if you are caught in the act/are currently engaging in an action)**, or by **decision of the Public Prosecutor** or the investigating judge if you have been charged with an offence and there are indications of guilt against you.
- **A judicial arrest has been extremely rare during climate actions in Belgium.**
- If you are subject to an administrative arrest that becomes a judicial arrest, the deprivation of liberty can last a **maximum of 24 hours in total**, from the moment you no longer have the freedom to come and go. So in practice, once 12 hours of administrative arrest have passed, and the police and public prosecutor decide to impose judicial arrest, they can only add an additional 12 hours.
- Beyond this 24-hour period, **only a judge** can decide to extend your detention, in three ways:

- by issuing a warrant to bring you in for personal questioning, valid for 24 hours, which can be combined with the 24 hours of judicial arrest (maximum of 48 hours before seeing the judge);
- by issuing an extension order for 24 hours in case of "special circumstances" (maximum 48 hours before seeing the judge);
- by issuing an arrest warrant (with a copy of all your interrogations), after having heard you, which will result in a preventive detention in prison.

In theory, this means that a climate activist could be arrested during an action and not be released until months later. For instance, if a person has a judicial arrest, is brought before a judge, and is placed in preventive detention until the court date and conviction/acquittal.

### **When do I get a criminal record?**

Just getting arrested, either administratively or judicially, does not give you a criminal record. However, it stays in the internal police arrest records. If you receive an administrative fine (SAC), you also do not get a criminal record. To get a criminal record, you need to be convicted in a trial.

### **At what point am I "arrested"?**

**The duration of your arrest starts from the moment you can no longer move freely.** It is therefore important to remember the time you were deprived of your liberty, as they are obliged to release you 12 hours (administrative arrest) or 24 hours (judicial arrest) later. So this is not from the moment you arrive at the police station, but from the moment an officer places you at the side of the road and prohibits you from moving. You may want to ask someone nearby for the time, and remember it well.

### **Can police handcuff me?**

Police officers and agents may **handcuff** you only in the following cases: when transferring, extracting and supervising detainees or when supervising a person who has been arrested administratively or judicially, if this is necessary under the circumstances. That is, if the person is agitated, violent, or the police have good reason to believe that he or she might try to escape. In practice, administrative arrest is almost always accompanied by the use of handcuffs (which is of dubious legality). You can ask them to loosen the handcuffs if they are too tight.

### **What kind of information does the police have to give me?**

The police must **inform** you, orally or in writing, in a language you understand, in simple, non-technical words (legal bases alone are not enough), at the time of your deprivation of liberty:

- the legal and concrete reasons for your arrest.
- the maximum duration (12 hours or 24 hours depending on whether the arrest is administrative or judicial); what will happen if you are put in a cell (search, seizure of certain objects, etc.);
- your rights related to the arrest (notifying a trustworthy person, access to a doctor, sanitary facilities, food and water, etc.);
- the possibility of using force if you resist.
- the police must also tell you, before an interrogation, that you have the right not to accuse yourself. This is a fundamental human right, protected by the European

Convention on Human Rights. This means you have the right not to answer a question. This also means you have no obligation to answer truthfully during a questioning.

- that during a judicial arrest, you have the right to a free lawyer.

**You must be given a written statement of all these rights.** Police officers may only give **oral explanations once for a whole group of arrested persons.** The Brussels police usually present a **leaflet** (available in several languages), containing general information about the rights of the arrested persons.

### **Will I be able to take things with me to the cell?**

It is possible that you will not be searched and that you will be left with your personal belongings, including phone, food, and books. However, it is more likely that you will be searched and items stored aside, at least for the duration of the arrest, if not longer. The police can seize anything that was used to commit an offence, or any “suspicious” object. You have the right to request a list of the items seized (they must be returned in the event of an acquittal, if no proceedings are instituted, or if the confiscation was not been pronounced by the court which would have condemned you). Make sure you have nothing on you that could be incriminating (drugs, objects that could be considered as weapons, such as a knife, a cutter, scissors, ...).

### **How can the police search me when I am in their custody?**

You can be **searched** when you are arrested.

1. The police can always search you superficially to make sure that you cannot attack them during the transfer to the vehicle and the police station, and pat you down before you go into a cell (**security search**). See the [section above](#) for more information.
2. They may search you more thoroughly, while you are naked (this is called a "**body search**", or "exploration corporelle" in French). Such a body search can be very intrusive, and usually entails that your "sexual integrity" is being offended (a condition which is interpreted quite narrowly by the courts). Because of its intrusive nature, a body search can usually only be ordered by a judge, and can only be conducted by a doctor (Art. 90bis Code of Criminal Procedure). You have the right to ask the doctor of your choice to conduct the search. The duration and exact details of a body search are not delimited by law. According to Article 90 of the Code of Criminal Procedure, if you give written consent to a more intrusive body search, the police do *not* need the order by judge. Therefore, even if they intimidate you, or say you will get out quicker, we strongly recommend to politely decline and not consent to such a search. While you may think "but I have nothing to hide", do not consent to the search, as it is absolutely your right to decline such an intrusive search.
3. They may search you when they suspect you of having items related to a specific crime and they have an arrest warrant (this is called a "**judicial search**"). A judicial search can last at most 6 hours. It must be carried out in accordance with the instructions and under the responsibility of a judicial police officer (Art. 28, §2, para. 2 of the 1990 Police Act). However, the exact details of a body search are not specified by law, which gives the judicial police officer discretion.

### **What should womxn and LGBTQIA+ people know about body searches?**

In the context of a body search, persons are obligatorily searched by persons of the same sex as that written on their passport/ID card. In fact, for this type of search, the law requires that it be carried out by a police officer of the same sex as the person being searched. As soon as a person is asked to undress, he or she may be asked to do so in an enclosed area where only the searchers are present (the law does not specify this, but it is not prohibited). For people in the LGBTQI+ Community, the gender on your ID card is the only gender that counts for the police. If you have made a legal status change in your passport/ID card, the new registered gender is valid.

### **Can police confiscate my phone for longer? Or simply access it during an arrest?**

The police can confiscate your belongings **administratively**. For this, they need permission from a prosecutor, who will give permission if they all believe the item was used to commit a crime. This confiscation can be up to several months.

The police can confiscate your belongings **judicially**. For example, if the police believes your phone contains important evidence, they need permission from the judge to seize and view the phone. This cannot be permanently seized unless the police prove that it was stolen or used to commit an offence, and a judge has so decided. Such decisions do take place, and the item is then confiscated until the final judge in the criminal court makes a decision, and the case is closed.

The police theoretically cannot consult your phone without official permission from either a prosecutor or a judge, but in practice, they will if they can get access. Therefore, if you leave your phone unlocked, or give the access code, they will very likely look at the content. We recommend you do not give access to your phone, even if they threaten you, or tell you that you will get out quicker if you do.

In practice, anything people take to an action can be confiscated for several weeks or even months. Therefore, we recommend to not bring anything that is very precious to you.

### **What happens if I am hiding my identity in arrest, and they try to get my fingerprints?**

It is possible that the police want to take **pictures or fingerprints during an arrest**. This is not regulated by law but by circulars. It is therefore a legal grey area. You are advised to politely refuse, as the police can only keep them for the purpose of identity check for a maximum of 12 hours (Article 34.4). It is not a crime to refuse, but it means that you may be forced to do so by the police, so be aware of this. If you refuse pictures and fingerprints with physical resistance (such as tensing up the arm, clutching a fist, ...), in practice you can be charged with "rebellion", and the police may in practice turn the arrest into a longer judicial arrest.

### **Do I need to sign any documents?**

In contrast with other countries, there is no document you *have* to sign in Belgium when you are arrested. Of course, you can choose to, but there are some things to keep in mind. In short: If you are not sure if a document is accurate, or if you are confused about its purpose, we advise that you do not sign it. If you are sure it is accurate and understand its purpose, it is in your interest to sign it.

It is crucial that you do not sign any document (minutes, register, etc.) unless you are sure that it corresponds to what really happened, that the time mentioned corresponds exactly to the moment when you were arrested, and above all, that you do not sign any document that is blank

or written in a language that you do not understand. A seemingly harmless document may contain your agreement to a "consent visit" to your home, that is, a search without a warrant and in your absence.

- Your identity is noted in the **arrest register**. You can sign it after careful reading (if it is incomplete, not correct, not understandable, ... do not sign it). You do not have to sign it.
- You may be asked to hand over all of your **personal belongings** which are placed in a sealed bag in your presence. You will be asked to sign a slip at this time (certifying that these belongings are yours), and at the time you are given this bag, upon your release. This document is not a court document. Some police officers will release the items despite refusing to sign the receipt, others will not. In practice, you can sign this document, but know that if something is missing/was confiscated, you will not get it back if you signed the slip, as the police will say that you confirmed you got everything back.
- The police may ask you to sign a document that lists your **rights** during arrest. You are not obliged to sign this document. If this sheet does not contain the concrete reasons for the arrest or is not clearly understandable, it is also not in your interest to sign.
- You may be asked to sign a document confirming **that a lawyer has been offered** (in the case of a judicial arrest). Only sign this document if you indeed have received access to a lawyer successfully.
- The police officers (or magistrates, in case of judicial arrest) who question you must inform you of your right to obtain a free copy of the text of your hearing. This "**Process Verbal**" (PV) (basically the minutes of the interrogation) is one of the most important documents in a criminal case. It is strongly advised to reread the PV in order to verify everything that is put down because anything you say can be held against you! You will receive this copy immediately or at the latest within one month. **You have the right to reread the police report**, but you are **not obliged to sign the report after the hearing**. At worst, the police will be unpleasant with you or will try to make you believe that it is in your interest to sign, or that you will get out faster if you sign (which is not true). **Signing the wrong ticket can be very damaging. If you decide to sign anyway**, you have the right to demand to **read** the report **carefully** (or have it read to you by a police officer) and have your statements corrected or completed. In most cases, police officers refuse to correct the text of the answer. They leave the contested version as is and add your corrections separately at the very end of the document. Insist that your exact words are written down.
- Before you are released, you will be asked to **sign the register** again for your release. There is no reason to not sign it, if everything on it is accurate (your name, the time of arrest, the time of the release). But again, you do not have to.

### **Do I really have the right to remain silent, or even to lie to the police?**

You have the choice to make a statement, to answer the questions put to you, or to remain silent.

**We recommend you use your right to remain silent.** Although in movies it always looks like being uncooperative can be used against you in court, you have the right to remain silent and not say anything that could incriminate you. You also have the right not to say anything that could incriminate others. You do not have to help in the case against you. They need to be able to prove the case on their own. You don't have to do their work for them. You do not even have the obligation to answer truthfully, so you can indeed lie. **During your interrogation**, we advise that you say only your name, nationality and address. For the rest, simply repeat: "*I have*



*nothing to declare*", or "*I am using my right to silence*" (and not "I know nothing" because this could work against you later). Don't let yourself be drawn into a series of questions that are at first harmless ("*what do your parents do?*"). Repeat calmly "*I have nothing to declare*", or "*I am using my right to silence*" fifty times if they ask fifty questions. When you say, "**I am exercising my right to silence**", this must appear **as such on the minutes**, at each question of the hearing. During a first questioning, it more often than not is safest to use your right to remain silent. You have no obligation whatsoever to give information to the police. The least stressful and quickest way to get out of an interrogation is to invoke your right to remain silent. The police know this attitude, and if they act surprised to make you believe that it is "exceptional", they know that you are within your rights. The police will threaten you and get very unfriendly. If you look stubborn or determined enough, the interrogation will be over quickly. You may be put back in the cell for a few hours to "soften" you up for another attempt. Keep the same course of action. The police officers' arguments that this will "*aggravate your case*," "*prolong your custody*," "*embarrass the justice system*," "*upset the public prosecutor who will then charge you with a crime*" etc., are just tricks to get information. Don't mind about that. It's a tactic to pressure you. Normally, **the police are not allowed to lie** to get information from you but they very often do. Just remain peaceful, calm and silent and the questioning will be over in no time. At any time in the future, you have the possibility to ask to be questioned again, to give information at that time if that seems useful. It is better to have the time to reflect, before answering questions.

You also have the **right to make statements**, without having to answer the police officers' questions, which the police officers are obliged to note down on the transcript of the interrogation (word for word if you ask). However, it is advisable not to make **any statements**, because anything you say can be used against you.

Don't tell your potential cellmates about your life, but remind them of their rights, inform them of the limits of administrative arrest, etc. Don't say too much, as microphones may be placed in the cell, or as one of your companions may be very talkative in their own statement.

### **Do I always have the right to a lawyer? And should I use my right to a lawyer?**

**In case of an administrative arrest**, there is **no contact with a lawyer**. In principle, the police do not have a crime to accuse you of, and therefore have no reason to question you since no investigation or trial is planned. However, they might try to question you informally (for example about the action you have just organized, your political movement, your support committee, your contacts, etc.). This fishing for information will be used to flesh out their files. **It is therefore strongly advised to refuse to answer**. It is important to remember that you are **never obliged to answer** their questions, except when you are summoned as a witness.

**In case of judicial arrest**, you have the **right to the assistance of a lawyer before your hearing**, except exceptionally if a magistrate of the public prosecutor's office or an examining magistrate has taken a motivated decision judging "that there are imperative reasons" to deprive you of a lawyer. You can refuse to be questioned without having a lawyer present, but it is **strongly advised to ask for assistance of a lawyer** in case of judicial arrest. Don't wave your right to a lawyer, no matter what the police say (It will take longer, it's not a serious questioning, it's not an important incrimination, ...). If questioned by an investigating judge (not the police) it is strongly recommended that you are assisted by a lawyer. The police must ask you if you already have a lawyer. If you have not chosen a lawyer or if he or she is prevented from attending, a lawyer will be chosen by the permanence organized by the Bar Associations. When contact is made with your lawyer, you have the right to a **confidential interview of up to 30**

**minutes within 2 hours of the contact being made, before the hearing begins. If no lawyer is available** within this time, the police (or the magistrate) can start questioning you but only after letting you **make a confidential phone call** to the local lawyer's office. **If the lawyer is available**, he or she has the right to assist you during all your interrogations until the investigating judge decides to issue a warrant for your arrest or to release you. **During the hearing**, you will have the right to a **new confidential interview with your lawyer of maximum 15 minutes**, either at your request, at the request of the lawyer, or if new offences in which you are involved are revealed.

### **Can I inform someone if I am arrested?**

Any person who is the subject of an **administrative or judicial arrest** may request that a **person of his confidence be notified**. When the administrative police officer has serious reasons to believe that notifying a third person would endanger public order and safety, they may decide not to comply with the request. They shall then note the reasons for this decision in the record of deprivation of liberty. Normally, you should be granted your request. You do not get to call the person yourself, but the police will call them.

### **Do I have the right to medical assistance during arrest?**

Ideally take your medication before the action. If you are taking hormones, it is part of your medical care that you have a right to. People have the right to take them and can insist on having them in the cell. However, the medication must be in its packaging so it is clear what it is. You can ask to consult a doctor, but this will be at your expense (in case of administrative and judicial arrests). If you have been brutalized, ask the doctor for a detailed statement of the injuries according to your declaration within 48 hours (remember that bruises only appear after a few hours). If you have been beaten, collect testimonies (e.g. photographs), demand medical attention and a visit to the hospital.

### **Do I have to go through the arrest in French/Dutch, even if I don't speak it? Do I have the right to an interpreter?**

You are entitled to a sworn translator if you do not speak the language in which the police are speaking to you or in which you are being questioned (in case of administrative *and* judicial arrests). The police is legally required to document everything in a Belgian official language, so even if an officer speaks fluent English, and you do, too, a translator will be needed. You have the right to a translator in the language you are most comfortable in - so even if you have a German nationality, but grew up in the United States, you can insist on an English translator rather than a German one.

### **Will I get food and water while arrested?**

You have the right to be provided with an adequate amount of drinking water for the duration of your arrest and a meal "as appropriate at the time" (in the case of administrative and judicial arrests). Therefore, if you are arrested over night, you should expect and ask for a breakfast. If police officers deprive you of food and drink during a deprivation of liberty, they may be guilty of inhuman and degrading treatment.

### **Do I have the right to sanitary facilities?**

You have the right to use adequate sanitary facilities. The police must respect the distinction between men and women, between children and adults and between able-bodied and disabled people (in case of administrative *and* judicial arrests). For menstruating persons, there is no specific provision in the law.

# After an arrest

## If I think something was wrong with how the police treated me, what should I do?

There are several things you can do.

**During your arrest interrogation**, you can make a statement instead of answering the police's questions. This statement needs to be documented. You can make a statement about the way you were arrested, describing precisely the chronology and the possible acts of violence, demanding the rapid interrogation of the police officers involved so that they do not construct a version that clears them; the searches you underwent and why you consider them vexatious; the objects or valuables the police officers took from you, and demanding their rapid return; the non-respect of certain rights (informing my family, doctor, lawyer, interpreter, etc.); insults, threats, intimidation and questions from the police officers, ... You should not say that you struggled, because the police may use it to charge you with rebellion. You should also tell them about your rights (to inform my family, doctor, lawyer, interpreter, etc.); the insults, threats, intimidation and questions from the police that you feel are inappropriate; the facts of which you are accused (specifying that you are limiting yourself to giving my version of the facts and refusing to answer any other questions). It is possible that the police officers will try to ask you questions based on your statement in order to get you to say things that you do not want to say, so we recommend that you give your statement to your own satisfaction, and do not engage with the questions you may receive from the police.

**After you are released**, if you have suffered injuries, take pictures of them as soon as possible, ideally with a clock or newspaper next to it to show the date, and also write down in as much detail as possible what happened. If possible, go to the doctor and get a medical attest of the injuries - this can be both for physical as well as mental suffering.

We also encourage you to **contact the following actors**:

- Police Watch (<https://policewatch.be/page>). It is the observatory of violence police of the [League for Human Rights](#), joined in 2021 by the Liga Voor Mensenrechten. This organization organizes telephone hotlines and is a place to listen, inform and advise.
- The observatory of police violence (<https://www.obspol.be/>). This observatory will not be able to provide you with detailed help, but it is a space for testimonies of police violence as well as a tool to reach politicians.
- The Committee P. (<https://comitep.be>) (standing committee for the control of the police services, i.e. the organ of external oversight of police services). Committee P receives and investigates complaints. It does not sanction police officers (neither criminally nor disciplinarily), but it can point out certain points of attention and sends onwards a complaint for investigation in case of a suspected offence by a police officer.

You should especially contact these actors if you think were arbitrarily or illegally arrested. An arrest is illegal if it has no legal basis, or if it does not conform to the law. It becomes arbitrary if the police proceeds to it by caprice, by reprisal ("you shut up or I'll take you in"), if the police officer commits a serious fault, if the police has a will to harm and to not respect the law. The police officer only commits a crime if the arrest is illegal AND arbitrary.

There are different types of police officers which are important to note down in the case of abuse – it will be necessary to make the complaint in function. Note therefore that there are local police and federal police. Additionally, during mass events or militant actions in particular, specialized teams of federal police officers can intervene, who have nicknames such as the “tear gas team”, “the sprinkler team”, “the lock-on team”, “the video team”, the “tractor and truck team”, the “arrest team”.

### **What kind of fine can I get?**

Municipalities/cities can impose a Communal Administrative Sanction ("SAC") in many cases. In practice, it is the SACs that are more often imposed. The amount of a SAC is maximum 350€. The SAC does not lead to a criminal record.

Most actions are punishable by a SAC, as shown in these extracts from the regulations of the commune of Ixelles and Brussels. Depending on the circumstances, your behavior, etc., the police officers or the municipality will decide whether to impose a penalty on you in view of the many possibilities at their disposal:

- "Except with the prior authorization of the competent authority, it is prohibited to draw any sign or make any inscription by means of any product on public space."
- "It is forbidden to throw anything on a person that may cause discomfort or defile him or her." (This can include paint, soup, etc.)
- "The distribution and/or sale, in particular, of leaflets, printed matter, advertising samples, writings, engravings, photos or drawings in the public space is subject to prior authorization from the competent authority when such distribution or sale in certain places or at certain times is likely to impede traffic, disturb public order, prejudice the cleanliness of the roadways and even cause traffic jams."
- "No person shall affix, cause to be affixed, or paste any posters, pamphlets, stickers, or flyers in any place in the public space or in any place, in the open air, visible from the public space, without having received permission from the proper authority and the owner of the premises or by failing to comply with the conditions determined by the proper authority in the act of permission."
- "Unless authorized, the following are prohibited in public space: 1. vocal, instrumental or musical performances and/or auditions; 2. the use of loudspeakers, amplifiers or other devices that produce or reproduce sound waves; any other artistic, divinatory or esoteric performance or activity. The placement of any sound or ultrasonic device, the propagation of which causes or is likely to cause discomfort to any person in the vicinity of such device, is also prohibited."
- "Unless authorized, it is forbidden to conceal one's face in the public space, by grimacing, wearing a mask or any other means."
- "Except as authorized in the following article, it is forbidden to cause or participate in any gathering on public property that may impede the movement of vehicles or inconvenience users of public property. "Any gathering, demonstration, entertainment or procession, of any kind whatsoever, on the public space shall be subject to the authorization of the competent authority."
- "It is prohibited to climb fences, trees, poles, structures or installations of any kind."
- "It shall be unlawful for any person: to obstruct the entrance to public or private buildings and edifices."
- ... etc.

### **What is the procedure for imposing a SAC?**

- The official-sanctioning officer considers that a SAC is appropriate and communicates this to the offender by registered letter within 6 months after the facts have been established.
- The person suspected of the facts may respond to explain his or her defense within 15 days from the date of notification of the letter. This can be done in writing, by registered letter, or orally (unless the fine is less than 70€).
- The sanctioning official may decide to impose an administrative fine either after the 15-day defense period, or within 15 days of notification if the suspect has indicated that he does not contest the facts, or after the oral defense. He shall inform the suspected person of the facts by registered letter of the decision.
- The person found responsible may appeal the official's decision within one month of notification of the administrative fines decision, to the police court, by unilateral petition.

You can contest your fine. Please note that the deadlines are quite short (see the 15-days deadline above). If the challenge is upheld, you can appeal the decision of the official to the police court within one month, but this is usually more expensive than paying the SAC. It is important to know that if you appeal to the police court, the amount of the fine can be increased considerably from the original amount (up to 8x the amount).

### **Can I be subjected to an administrative fine and a criminal prosecution?**

For the same offence, you *cannot* be given a SAC *and* at the same time be criminally prosecuted. In practice, the authorities prefer choosing to impose a SAC, instead of criminal prosecution. A prosecutor may offer you a financial settlement in order to avoid a court appearance. In this case you have the option to pay and avoid criminal prosecution.

### **What do I do if my case goes to trial?**

If your case goes to trial, some initial information is available from page 19 onwards in [this document](#). It is important to note, for example, that you do not necessarily need to be present at your trial (since your lawyer is speaking for you), even though it is in your interest to be there.

### **What if I am sued in a civil liability action, rather than a criminal case?**

Contact a lawyer. Even if you are not charged with a crime, you can still be sued in a civil suit by a person who thinks they were harmed. In legal terms, if you commit a "fault" (any imprudent behaviour) which causes damage (for example financial loss), you may be subject to a liability action. For example, if you block an airplane, the airline company could sue you. You may be ordered to compensate for the damage in its entirety, which can sometimes be a large amount (material damage, hospital and health costs, moral damages, financial losses suffered by the company or companies targeted by the action, etc.). A civil conviction can be combined with a criminal conviction if there is damage to be repaired. However, a civil conviction does not result in a criminal record, only the payment of compensation for the damage caused. It is the responsibility of the party who believes he or she has suffered damage to demonstrate the full extent of the damage, including supporting documents and exhibits, which must be provided to all parties to the proceedings and to the Court for discussion.

*You have reached the end of the legal guide.*