

## **Juridical GUIDE in Belgium**

*Only general information not binding*

### **Demonstrations and actions in public places**

Stating your opinion is a fundamental right in Belgium, however demonstrations in a public space are often subjected to an authorisation procedure you need to file with the local public government. If you choose to follow this authorisation procedure, it's best to start this procedure a couple of days in advance. The procedure sometimes involves a negotiation with a local functionary about the practical side of the manifestation or action (presence of an own internal order service, the route for the demonstration, ...).

If the police considers a certain demonstration a real and genuine danger to the public order, they can stop and search people showing up to participate in the demonstration. The search consists of a superficial pat down of the body, clothes and bags by someone from the same sex.

Participating in a demonstration or action is not a crime in itself, but in the worst case you do risk an administrative arrest, (more info on this type of arrest below) administrative fines called SAC *Sanction administrative communale* that can amount to 350 euros or threats by the police to disband the demonstration or action. In practice however, police almost never disbands authorised demonstrations by the means of force, except if these demonstrations are coupled with criminal acts (threats, insulting, graffiti,...), heavy disruptions of the public order (simply hindering traffic can be considered a heavy disruption of public order) or if these demonstrations or actions are taking place in sensitive areas (the neutral zone in Brussels, certain embassies (e.g. embassy of Israel or US of A), EU institutions during European summits).

If you want a calm and troubleless action or demonstration, it's best to leave weapons or objects that can be equated with weapons (pocket knives, bats or batons, sprays..) these objects can be a cause for the disbandment of the demonstration or action. The visual presence of illegal drugs (including cannabis since possession is still a crime, though rarely prosecuted) is unwise also.

If the police wants to disband a demonstration they have the obligation to announce this clearly (using a bullhorn or P.A. e.g.) before disbanding the demonstration which is not always the case. The police handling of the situation has to be at all times legitimate and with a proportional use of power (of course police disrespects this more often than it respects this clause).

Police can photograph and film participants in demonstrations and actions. Wearing a mask or masking up is forbidden, and risk an administrative fine (max 350 euros).

If you observe illegitimate behaviour by the police (random arrests, beating someone already overpowered, ...) it is not forbidden to film or photograph the policemen. It is however advisable to be swift in order to avoid arrest or having your material destroyed, which happens often in Brussels. If the police confiscates or damages portable phones, photo- or video cameras of people who committed no crimes, it has to be considered as abuse. In that case it would be advisable to gather contacts of witnesses, to gather other evidence and to write down your story with as many details as possible, and consider filing a complaint. But be prepared for a long juridical battle.

### **SPECIFIC PRECAUTIONS FOR UNDOCUMENTED PEOPLE**

The right of undocumented people to put their opinions is, in theory, undoubted. In practice it is strongly limited by the risks of imprisonment and expulsion following contact with the police. Undocumented people will have to weigh the risks of participating in actions where police will be heavily present. The administrative arrest of a foreigner can take up to 24 h (the double of a Belgian citizen) after which an administrative order to leave the Belgian territory can be issued and the person can eventually be detained by the Foreigners Office.

#### **Arrestations**

##### **a. During the arrest**

In the case of an arrest it is advisable to ask people to call out their name so the legal team can work on their case and find out in which police station they are being held. You can ask for their liberation by taking contact with the police station (look for their contacts at the policewebsite :<http://www.infozone.be>).

## **b. Administrative arrest**

In " a case of pressing urgency" the police can do an administrative arrest of people hindering traffic (for example while doing a not permitted sit-in), disrupting public order, or preparing an infraction.

People can be held in administrative arrest until the public order is restored, with a maximum of 12 hours starting from the moment the police limits your freedom (so already before you arrive in the police station, or before you are being put in a police vehicle). The police is obliged to state your rights as arrestee, either orally or in writing, and this in the language that you can understand ( rights like your right to inform a trusted person of your arrest, medical aid, sufficient potable water, and a meal at appropriate times, sufficient access to sanitary infrastructure...). Insist on informing a trusted person of your arrestation ; if minors are arrested this is a legal obligation. With adults (18+ in Belgium) this can be refused if contacting a trusted person would be a danger to public order or security, but these motives have to be written down in the "register of arrests".

In the "register of arrest" there is the legal obligation to write down the starting time and the end time of your arrest, verify if this is correct ! The register has to mention the reason for your arrest, confiscated objects, and the identity of the policemen searching you. Police has to ask you, in theory, to sign this register when you are released. If the data in the register (circumstances, motives, times) is not correct or complete, do NOT sign (it may endanger future actions, and in some cases your juridical case).

You have not the right to as a lawyer .

## **c. Juridical arrest**

If the police accuses you of committing a crime (a punishable fact) they can hold you for longer than 12 h. In that case you are under juridical arrest, that can take up to max 24h (the time and duration of your arrest is being mentioned in the arrestation file.) If , after 24h, you are not released this means the research judge has issued an arrest warrant, and a trial will follow. the juridical council will have to decide on lengthening your arrest or liberating you after maximum 5 days.

NEW IN BELGIUM: Right to counsel by lawyer. You are entitled to have a confidential conversation with the lawyer of your choice BEFORE any police questioning or magistrate principle. The police-es must ask you if you have a lawyer if not you will be appointed a duty lawyer. This must be done within two hours and the consultation can only last up to 30 min. If the police es attempts to make you sign a paper stating the fact that you refuse the assistance of a lawyer, it is not mandatory to do so. To be known : renouncing the assistance of a lawyer does not always mean to shorten the arrestation.

### **At the police station**

Demand a doctor if you are hurt, preferably a doctor you choose. Make sure the doctor writes down a detailed testimony with a precise description of the wound, and, if possible, how this links with your testimony on the cause of the wound). It is you who must receive the original of the statement.

In Belgium, the right at a lawyer is not given. In practice you will never see a lawyer before being issued with an arrest warrant by a judge. If you are being arrested juridically, you have to demand a presence of a lawyer in the verbal report of the arrestation , however the chances that this will be noted down are rather small.

During an interrogation the police have to state that the declarations will be used as evidence. they are not obliged to remind you of your right to silence, even while there is no discussion about this right.

It is advisable to state you have NOTHING TO DECLARE and to say nothing else but that. Be aware not to say anything about some action and be aware that even answering simple or innocent questions (do you have a mobile phone nr, an email address) can harm your privacy and the privacy of the people you know. ANYTHING that you say can be noted down and serve as evidence against your or other persons. if policemen insist they want to interrogate you, demand to note the words "i have nothing to declare" in the written down report of the interrogation, for every question they ask you. Answering their questions will not get you out sooner or more easy (one answer leads to a series of follow-up questions, checking facts). If policemen say that they have proof against you or if they promise you that if you cooperate they will consider benign circumstances, do not believe them because these statements have no juridical value !!

If you do want to make a statement, verify if your words are being written down exactly how you want it. You can demand the interrogator to write down your answers word by word. do not hesitate to demand for a new statement if the policemen do not write down your declaration in your words. Verify if the description of the interrogation (threats by policemen, psychological pressure or physical pressure, racists or insulting remarks) is being mentioned in the written down statement (proces verbaal or PV) of the interrogation. Ask to add missing elements.

Always REFUSE to sign the PV. Not signing carries no consequences but signing an inaccurate pv could be

very damaging. You could for example give a written permission for the police to search your house without search warrant by a judge..

If the arrestation is being lengthened, the police has to provide meals at the usual time of meals. In brussels however, it is often difficult to get anything other than a waffle.

In Belgium there is no right to receive books, clothes, or other items during this stage of the arrest. Relatives can however try to come to the police station with some stuff and try to convince them to pass it onto you. if an arrest warrant is issued, you can deliver goods to the prison.

### **House searchings**

The police has the right to enter all public places (bars without member cards, pubs ;...) but does not have the permission to search these places without imminent danger, catching a crime being committed, or without order by a judge.

In private spaces, the police can enter without order of the judge only if there is serious danger (fire, floods, ...), if there is a crime being committed, if it is a case of a crime concerning illegal drugs (also cannabis !) or with the permission of the users (be aware not to sign documents permitting a search) If none of these cases apply policemen can only enter if they have a court order. You will have to ask them this document if they do not show it themself. A house search may only be conducted between 5 in the morning and 21 in the evening.

These rules do also apply to squats, occupations without the agreement of the owner or caravans if these are a main housing for someone.

### **Identity controls**

Police can control the identity of persons being investigated, being suspected of preparing a crime, who could disrupt public order (a vague description permitting a lot of interpretation by the police). If you do not carry an ID card or passport, you risk a fine, but you do have the right to identify yourself in other ways (driving permit, student card, ..) Without any documents you can be held for max 12h to check your identity.

### **Staying anonymous**

The fact of not having one's identity card on person is an offense which can lead to a fine but not an arrest warrant. It is not a crime to not reveal one's identity (as opposed to Declaring a false identity, which is a crime). In case of administration arrest, the risk is that the police will keep the person until the end of the period of 12 hours to try to get one's real identity. It even happens that the police consider, sometimes improperly, that the anonymous person is without paper and instead the arrestee is placed in detention center for foreigners, which allows for Administrative arrest for a 24-hour period (instead of 12).

In the case of judicial arrest, it is clear that the failure to give one's name will not prevent prosecution or conviction if evidence exists.

### **DEPORTATIONS OF FOREIGN ACTIVISTS**

In principle the police can not execute systematic controls at the internal borders of the Schengen space (at roads, airways, trains (except eurostar). They have no power to deny a foreigner acces to prevent them from participating in an action or demonstration.

A denial of entrance or deportation can only be demanded because of endangerment of public order and only personally with a decision stating the reasons for each person seperatly. The participation in a non-violent action or demonstration is a democratic right and can not be considered as disruption of public order in its own.

EU citizens have a specific protection and can not be denied acces or being deportated except if their behaviour is a threat to public order. Having prior convictions is no reason for a deportation. EU citizens can not be discriminated against by treating them less favorable. If for example the police releases all Belgians after an administrative arrest, but warrants a deportation order for the EU citizens, it is considered as discrimination. If this happens police will ask you to sign the deportation order. Do not sign this but write down that you make an appeal to the basic rights of EU-citizens stated in European order 2004/38. If you do not remember the number, write down that you appeal on the basis of European law.

If you are being denied the acces, or if you are issued a deportation order, look for a lawyer who can file an appeal with the special court (Council for foreigner disputes (RvV). The law demands that the appeal hinders the deportation, if it is filled three days before deportation. This rule also applies to non-EU foreigners.

If you are being deportated without the possibility to consult a lawyer, contact Belgium and try to get a conviction of the deportation or even a compensation.