

Support for Belgian detainees abroad

(2022 Version)

Foreword

The Federal Public Service for Foreign Affairs, Foreign Trade and Development Cooperation regularly receives inquiries from compatriots who have been arrested abroad. **This brochure aims to answer any questions that both detainees and their families may have.**

If you have been arrested in a foreign country, this will prompt a difficult time for you and your family. You are in a country where you do not know the customs and court procedures, the judge does not speak your language, and where the legal and prison system is sometimes completely different. **Our Belgian embassy or consulate can offer support abroad.** The International Judicial Co-operation service in Brussels can guide your family members or partner.

However, you cannot use the fact that you are a foreigner to evade the legal proceedings of the country where, whether or not intentionally, you have broken the law. Nor can you receive preferential treatment as a foreigner.

The Belgian authorities cannot intervene to grant you immunity, overturn decisions by the local authorities or interfere in the course of legal proceedings. This is a direct consequence of generally accepted and globally applied principles of international law.

What can our embassies and consulates do?

If the country where you were arrested or detained does not respect your right to defence, treats you worse or discriminates against you because you are a foreigner, **you can communicate this to our embassy or consulate, who will then contact the competent services to make them aware of your rights.** After all, no matter where you have been apprehended, international treaties such as the Universal Declaration of Human Rights guarantee that you will receive proper and humane treatment.

What can you do if you are arrested or detained abroad?

If you want consular assistance, you must notify the **embassy or consulate in writing or by telephone of your arrest.** This is because the local authorities are not obliged to report your arrest to the Belgian authorities and, in fact, often fail to do so. You must explicitly ask them for it. You can therefore inform the embassy or consulate of who it is that you wish to be informed of your arrest. Family members or friends can also notify the embassy or consulate of your arrest.

Most countries are members of the 1963 Vienna Convention on Consular Relations. This treaty states (Article 36) that you have the right to inform your embassy or consulate of your arrest. If you are unable to do so yourself, you can ask your warder or the social worker. If Belgium has no representation in the country where you were arrested, as a resident of the European Union you have the right to have an embassy or consulate of another Member State of the European Union, which does have a presence in that country, alerted.

All the information you provide about your situation is strictly confidential, under the law on the protection of privacy in Belgium. If your family or friends contact the Federal Public Service (FPS) Foreign Affairs to get more information about your situation, it will only be communicated if you have given permission through prior contact with the Belgian embassy or consulate.

Support for family and friends of Belgians in a foreign prison

Your family and friends will also be left with many questions and uncertainties. They can contact the International Judicial Cooperation Department of the FPS Foreign Affairs, Foreign Trade and Development Cooperation. Staff will listen to their questions and concerns and answer them, to the extent possible. The service is available by phone on weekdays and by e-mail.

Tel: +32 2 501 81 11 (between 9am and 4pm)

E-mail: C1mail@diplobel.fed.be

The service's staff can provide them with general information about the legal system and the conditions of incarceration in a particular country.

If you give permission, the International Judicial Cooperation service can also answer your family members' or friends' questions about your personal situation. The service can also provide information on how to contact you or send packages/money.

Visiting a friend or family member in a foreign prison or sending a package or money

If relatives or friends want to visit or help you by sending clothes, food, money or other items, **it is important to know in advance what is and is not allowed.**

What is allowed in one country may be prohibited in another. Moreover, regulations or customs in the same country still vary from one prison to another. The visiting arrangements or the procedure for sending packages may also differ from country to country.

A general rule is that prison officials open packages, and usually letters, sent to detainees. Phone calls may be tapped.

Usually, there are also certain restrictions on visits: in some countries they are only allowed on certain days, in others the number of visits is limited or one must be able to prove a special relationship with the detainee (for example, by presenting birth certificates or marriage certificates). For example, visitation rights are sometimes denied to an unmarried partner.

In order to avoid disappointment (for example, in the event of a sanitary crisis, such as COVID-19, visitation may be prohibited or restricted), we recommend that you contact your

warders or social workers. **Before sending anything or making a visit, family or friends should consult with the International Judicial Cooperation Department at FPS Foreign Affairs (C1.2).** The staff of this service are in close contact with Belgian embassies and consulates around the world and can therefore provide valuable advice.

The choice of a lawyer

Choosing a lawyer is a very important decision that should be made with the utmost care, especially if you are in a country whose language and customs you do not know.

You must make that choice yourself; our embassies and consulates cannot do it for you. Nor can they defend you in court. Just as in Belgium, the preparation of your defence is made exclusively between you and your lawyer.

However, our staff can provide you with a list of local lawyers with certain specialisms (e.g. criminal cases) or lawyers who have previously defended other Belgians.

This list is purely to help you in your choice. It says nothing about the competence of the lawyers and declares itself incomplete. You are, of course, free to choose the lawyer who seems most suitable to you. Experience shows that it is useful to consider the following factors:

- the experience of the lawyer in question with the type of lawsuit you are involved in; his/her reputation;
- ability to express themselves in a language you understand;
- willingness to fix their fee for the entire duration of the process, including any appeal process.

The embassy or consulate cannot intervene in your lawsuit. The internationally recognised principles of separation of powers and non-interference in domestic affairs do not permit any intervention by an embassy or consulate.

The consular services

The services offered by our embassies and consulates vary depending on the case and the country where you were arrested. Within Europe, support is more limited.

For illustrative purposes, the following is **an overview of the various services** that our embassies and consulates may be able to provide you with, **at your request:**

In general, the embassy or consulate can:

- notify your family and friends of your arrest;
- provide you and your family with information about the country's prison system;
- contact the competent services to make them aware of your right to defence and/or the right to equal treatment, if the country where you have been arrested or incarcerated does not respect your right to defence or treats you worse or discriminates because you are a foreigner.

If you were apprehended outside of Europe, the embassy or consulate can also:

- help you establish/maintain contact with your family members by, among other things, delivering letters to you (if permitted and if mail delivery is poor) or conveying messages to you (if you cannot make normal use of telephone services);
- maintain contact with you by making a consular visit, for example;
- to the extent permitted and at your expense, purchase for you and deliver to you food, clothing or other basic necessities that you cannot obtain in prison. The consulate itself does not provide monetary support to detained Belgians. For this, you will consequently have to draw on your own resources or appeal to family or friends;
- facilitate the transfer of funds if existing channels are unreliable or out of use.

However, under special circumstances (e.g. a sanitary crisis), a consular visit may be impossible or subject to certain conditions.

More specific aid may be provided depending on the situation and the country you are in.

Nonetheless, you should know that for legal and ethical reasons, the embassies and consulates cannot under any circumstances:

- act as legal counsel or interpret local legislation;
- choose, recommend or impose a lawyer, or get involved in preparing your defence;
- pay for the court costs, fines, translation costs or your lawyer's fees;
- violate or circumvent the prohibitions on bringing into or taking out of prison certain items of importance to you;
- arrange for the travel or accommodation of persons coming to visit you.

The transfer of convicts

In certain cases, individuals who were convicted abroad and are also serving their sentences there may be transferred to a prison in their home country. This is to better prepare them for a new and normal life in their own country.

There are 3 agreements that allow for the transfer of convicts

1. The "Convention on the Transfer of Sentenced Persons" concluded in Strasbourg on 21 March 1983 and ratified by Belgium on 6 August 1990. **The Convention is in force in the following countries:**
Andorra, Armenia, Australia, Azerbaijan, Bahamas, Bolivia, Bosnia-Herzegovina, Bulgaria, Canada, Chile, Costa Rica, Denmark, Ecuador, Georgia, Ghana, Holy See, Honduras, Ireland, Iceland, India, Israel, Japan, Liechtenstein, North Macedonia (former Yugoslav Republic), Mauritius, Mexico, Moldova, Mongolia, Montenegro, Norway, Ukraine, Panama, Russia, San Marino, Serbia, Tonga, Trinidad and Tobago, Turkey, Venezuela, United Kingdom, United States, South Korea and Switzerland.
It could be that other countries have since ratified the treaty. You can find out about this from both our International Judicial Cooperation Department (C1.2) and from the Belgian embassy or consulate in the country of conviction.

2. In addition, a European Framework Decision (European Framework Decision 2008/909/JHA) was adopted on 5 December 2011, regulating the transfer of prisoners within the European Union. This framework decision currently applies to 24 of the 27 Member States of the European Union:
Belgium, Cyprus, Denmark, Germany, Estonia, Finland, France, Greece, Hungary, Italy,
Croatia, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Austria, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Czech Republic and Sweden. Only Ireland, Denmark and Bulgaria still need to incorporate this Framework Decision into their national legislation; for these countries, the 1983 Convention still applies for the time being.
3. The possible transfer may also be laid down in an **agreement between Belgium and one particular country**. To date, there are bilateral treaties with the Dominican Republic, Hong Kong, Morocco, Albania, Kosovo, Brazil, China and Thailand. Where possible, bilateral treaties with other countries on this topic will continue to be considered.

However, your possible transfer to Belgium is subject to a number of conditions, which are briefly summarised below:

1. Your court decision must be final; therefore, as long as an appeal against the judgement or sentence remains possible, transfer proceedings cannot be initiated.
2. The crime underlying your request for transfer must be punishable under the laws of both states.
3. You must, in most cases, agree to the transfer. This implies that you must explicitly request the transfer yourself. However, under the Framework Decision, the procedure is also possible without your consent.
4. The state of conviction (which is the state where you were incarcerated) and the state of implementation (Belgium) must both agree to your transfer. Thus, your transfer is not a right that is automatically granted to you. You can only express the wish to be transferred.
5. At the time your request is received, you must still serve at least six months of the sentence. After all, experience shows that, in most cases, the transfer procedure takes more than these six months.
6. The FPS Foreign Affairs is not involved in the transfer procedure. It belongs to the competence of the FPS Justice in implementation of the 1983 Strasbourg Convention and bilateral treaties. The Brussels Prosecutor's Office manages the cases for transfers under the European Framework Decision.

Therefore, all questions regarding the status of the proceedings should be addressed directly to these departments. The FPS Foreign Affairs cannot act as an intermediary in this.

Aid organisations in Belgium

Your arrest abroad may cause several difficulties in Belgium. For help with, for example, the termination of your rental and insurance agreements, the regularisation of your working situation or your contacts with the PCSW and other service organisations, you or your family can turn to the [Centres for General Welfare Work \(CAW\)](#).

We do draw your attention to the fact that aid organisations in Belgium are only allowed to provide social aid in their own countries.

There are 11 CAWs. They provide diversified aid and services to all persons whose well-being is at risk. The CAW for the place where you and/or your family are domiciled or for your last domicile in Belgium can provide support tailored to your specific problems. Among other things, the CAWs provide first-line legal aid for any legal consequences in Belgium of your imprisonment abroad. They do not provide any financial aid to detainees abroad.

The CAWs can also help with your reintegration into Belgian society. To this end, they will act as a bridge for you and your family, paving the way to the competent PCSW, the National Employment Office, the employment services for your region, temporary employment agencies, etc.

In conclusion

Being arrested or detained in a country where you do not know the customs or court procedures, appearing before a judge who does not speak your own language, is not easy for you or your family.

It is good to know that our embassies and consulates have experience with this type of situation.

We will summarise the most important information and advice:

1. The local authorities are not required to notify your embassy or consulate of your arrest or detention and, in fact, often fail to do so.
2. Under the 1963 Vienna Convention on Consular Relations, **you must specifically ask the local authorities for support from:**
 - the Belgian embassy or consulate in the country where you are;
 - an embassy or consulate of another European country providing assistance to Belgians, if there is no Belgian embassy or consulate in that country (under the European Consular Assistance Agreement).
3. **In Belgium, your family or friends can contact the International Judicial Cooperation Department** (see address below) with questions about support for the detainee, the legal system and prisons in a particular country, visiting rights, sending packages or letters and for more specific information.
4. You decide who must and who may be informed.
5. Choosing a lawyer should be done with due care.
6. **The embassies and consulates have a list of lawyers** in the country where you are. This list is purely informative and the final choice rests solely with you.

7. The embassies and consulates can provide information and support, but cannot make decisions or take legal action on your behalf or advocate for any preferential treatment.
8. All the information provided by you, or your family and friends, to FPS Foreign Affairs, embassies and consulates is strictly confidential.

Contact details:

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