

A GUIDE TO NATIONAL PROSECUTIONS IN BELGIUM

FOR CRIMES COMMITTED IN SYRIA



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PURPOSE OF THIS DOCUMENT

If you experienced a serious violation of your rights in Syria, you might have an option to seek justice in Belgian courts. In this document, you will find the basic information needed to file a complaint in Belgium for either criminal charges against the person who perpetrated the crime or a civil action to receive compensation. The Belgian judiciary primarily relies on national laws to settle disputes and has fully implemented European and international standards for international crimes and guarantees of due process and respect for human rights. Fully independent from the legislative and executive powers, Belgian judges oversee trial proceedings and may play an active role throughout the investigation. Belgium has many limitations on filing a complaint when the crime happened outside of Belgium, so review this document carefully and contact legal counsel in Belgium to determine if you are eligible to file a complaint.

In this Guide, You Will Learn

1. Opportunities and limits for submitting a complaint;
2. How to file a complaint;
3. The process from investigation to trial; and
4. The rights of victims and witnesses.

The information in this document is true and complete to the best of SJAC's knowledge. This document is intended to provide helpful information on the Belgian legal system and is not meant to be used, nor should it be used, as a substitute for legal advice. It is highly recommended you contact a licensed lawyer with experience in Belgian law before initiating any proceedings. A frivolous complaint could lead to consequences, such as a defamation lawsuit or fines. Also, please be advised that litigation always carries costs and expenses. SJAC and the authors of this document are not responsible for legal actions taken in Belgium and are not liable for any costs or negative consequences incurred by any persons reading or following the information of this document.

1 | DETERMINING JURISDICTION

Does Belgium Have Jurisdiction to Hear My Case?

Ordinarily, Belgian courts cannot address crimes that happen outside their territory, but Belgian courts have the authority to prosecute certain serious international crimes, including genocide, crimes against humanity, and war crimes. Use the flowchart below to determine if Belgian courts have jurisdiction to hear your case.



Is There Anyone Belgium Will Not Try?

Certain persons are immune from prosecution while they currently hold public office, including the president, prime minister, and other ministers. Once they leave office, it is up to the Belgian courts to decide if immunity continues for the individual.

Is There a Time Limit for Filing a Complaint?

No, there are no time limitations to file claims for serious international crimes.

Does the Perpetrator Have to Be in Belgium?

If the suspect is not located in Belgium, then the prosecutor will begin investigations but has discretion whether to initiate a trial until the suspect comes to Belgium voluntarily or through extradition proceedings. In cases of genocide, crimes against humanity and war crimes, the presence of the suspect is not required to hold a trial, but is strongly preferred.



Photo by Lens Youngi Homs

Examples of Serious International Crimes

- Enforced Disappearance
- Sexual Violence
- Torture
- Indiscriminate Attacks Against Civilians

2 | FILING YOUR COMPLAINT

How Do I File a Criminal Complaint?

If jurisdiction is based on the suspected perpetrator being a Belgian citizen or resident at the time of the crime, you may submit a criminal complaint with either the prosecutor's office or an investigating judge.

If jurisdiction is based on you, the victim, being a Belgian citizen, recognized refugee or legal resident of Belgium for three years at the time of the crime, you have to submit a criminal complaint to the Prosecutor's office. The Prosecutor will then initiate the proceeding by determining if the case is admissible. Even though you cannot initiate a case, you may elect to be a civil party to the criminal proceeding.

What is the Difference Between Filing My Complaint to the Prosecutor's Office or to an Investigating Judge?

Unlike filing a complaint with the prosecutor's office, which has discretion over accepting the case for investigation, an investigating judge cannot refuse or dismiss your complaint.

What Goes Into the Complaint?

The complaint must be in an official language of Belgium— *French, German or Dutch*—and should describe the facts on which your complaint is based. Organizing the facts according to the legal elements of the crime, if possible, is helpful, though this usually done by a lawyer or legal firm. If you elect to be a civil party to the case, you must specify your intention in your complaint.

What Does it Mean to be a “Civil Party”?

Being a civil party gives you civil standing, which has 3 benefits:

1. Eligibility to receive compensation for your damages;
2. The opportunity to appeal an unfavorable verdict; and
3. More active and direct involvement during the trial.



Photo by Lens Youngi Homs

Other Grounds for Inadmissibility

Upon acceptance, prosecutors must first determine if your case is admissible. You may challenge their decision not to open an investigation to the Supreme Court, but only if the decision was based on one of the following grounds:

1. The complaint is manifestly unfounded or cannot lead to an admissible criminal prosecution; or
2. The facts do not qualify as a serious violation of international humanitarian law.
3. A prosecutor may also dismiss the case if it can be brought before another independent, impartial, and equitable domestic or international court, and this decision cannot be appealed. At the time of this writing, no such court exists for Syria.

3 | APPEARING BEFORE A BELGIAN COURT

What Happens Next?

There are four phases of procedure once the federal prosecutor accepts your complaint:

1. The Investigation;
2. Pretrial Determination;
3. The Trial; and
4. Sentencing and Appeals.

Phase 1: The Investigation

Once your complaint is accepted, an investigation will take place. The investigation is secret in nature. The procedure may include far-reaching investigative measures on Belgian territory, such as interrogation of the suspect, wiretapping, house search, etc.

The goal is to collect all available evidence that proves or disproves guilt. Belgian criminal law has no restrictions on the types of evidence that are allowed. It is for the trial court to take all evidence into account (except for certain evidence obtained through illegal means) and judge according to its best judgment. The stronger your facts and proof, the more likely the investigation will result in a trial.

Social media, hearsay, and videos are all admissible, though the magistrate will likely accord less weight to unverifiable evidence. Testimonial evidence can be in writing or through digital recording. If you have multiple testimonies that help your case, it is generally recommended to include all of them.

Phase 2: Pretrial Determinations

The results of the investigation will be bundled in the criminal file, and a pre-trial chamber will decide whether the case should go to trial. If the pre-trial chamber rules in favor of trial, it will also decide on the proper court, but for serious international crimes, the court is most likely to be the court of assizes.

Phase 3: The Trial

The court of assizes is presided over by a judge who will likely be accompanied by a jury consisting of twelve randomly selected Belgian citizens.

Trials are usually open to the public and consist of oral proceedings, in which the presiding magistrate will question the accused, witnesses, experts, and victim(s). The prosecution will explain the case and suggest a sentence, but the final sentencing decision rests with the magistrate. Then, the defense counsel will be heard and parties will exchange arguments, with the accused being granted the last word. The magistrate will then close the trial and set a date on which the judgment will be delivered.

Phase 4: Sentencing and Appeals

If the defendant is found guilty of a serious crime (felony), the law prescribes a minimum sentence of five years imprisonment and possibly a fine, and the assizes court's decision is not open to regular appeal. However, either the defendant or prosecution can appeal an unfavorable decision to the court of cassation within fifteen days, in writing, to challenge procedural errors.

Following the criminal trial, if you petitioned for civil standing before or during the trial, there will be a hearing to determine if and how much compensation should be awarded to civil parties. You must petition for civil standing before the close of the trial to be eligible, which also gives you the right to appeal if you believe the court awarded insufficient compensation.

4 | KNOW YOUR RIGHTS

Victim Rights

- The right to respectful and correct treatment by police and justice authorities from the time of the facts until the enforcement of the final judgment;
- The right to receive information, e.g. on how to receive legal counsel or the ongoing investigation (the pretrial chamber is the competent authority to settle disputes between you and the examining magistrate on this matter);
- The right to give information, ensuring authorities take your story and interests into account during all stages of the proceedings;
- The right to protection and respect for your privacy. Justice and police authorities have a legal obligation to protect you in case you are being threatened, at any stage during the proceedings; and
- The right to legal counsel and (legal) aid, which allows for the waiver of certain costs and expenses related to criminal proceedings as well as psychological assistance when required.

Witness Rights

- The right to protection also applies to witnesses, who may request partial or even complete anonymity in certain cases (defined by law), and who maintain this anonymity throughout proceedings. Further protection measures for threatened witnesses may include: providing a secret telephone number or emergency contacts with authorities, moving the witness to a different location for a maximum of 45 days, etc;
- Although witnesses must answer questions during interrogations, they do not have to answer questions that would incriminate themselves in a crime.

Interpretation

Authorities will provide victims and witnesses with a sworn interpreter who will assist those who do not speak an official Belgian language during the proceedings.

Legal Representation

Although Belgian law does not obligate you to be represented by a lawyer during any stage of the proceedings (with the exception of appeals before the court of cassation), it is highly recommended you do so. Belgian criminal procedures can be complicated and time-consuming. While the duration of the trial phase is relatively short (between a day to three weeks), the preceding investigation can take months or, in case of the most serious crimes, several years. Having a lawyer will ensure proceedings continue swiftly, while ensuring your evidence is submitted on time and your rights are respected.

Below is a list of Belgian NGOs and law firms that may be able to assist you:

International Federation for Human Rights- Litigation Action Group

17 Passage de la Main d'Or 75011 Paris

+33 1 4062 9960 | gaj@fidh.org

Nansen asbl/vzw (partner of UNHCR in Belgium)

Avenue du Roi Albert II, 28-30, 1000 Bruxelles

+32 0487 846 540 | info@nansenrefugee.be

Quartier des Libertés

Rue du Congrès, 49-1000 Bruxelles

+32 02 210 0203; +32 02 210 02 00

v.vanderplancke@quartierdeslibertes.be;

a.deswaef@quartierdeslibertes.be

Syria Justice and Accountability Centre (SJAC) is a Syrian-led, multilaterally supported nonprofit that envisions a Syria defined by justice, respect for human rights, and rule of law. SJAC promotes transitional justice and accountability processes in Syria by collecting and preserving documentation. The purpose of the documentation SJAC collects is to create a record of the conflict and to push for appropriate justice mechanisms that will respond to the needs and interests of Syrians.

If you are unable or unwilling to file a formal complaint but would like your experiences securely recorded with the **Syria Justice and Accountability Centre (SJAC)**, please contact SJAC at info@syriaaccountability.org. The benefits of participating in a private interview with SJAC are that you:

1. Preserve your personal experience and suffering;
2. Have lodged your personal experience with an organization that can connect you with future justice mechanisms if and when they arise; and
3. Will help build a record that can be used to drive justice and accountability overall for Syria.



Photo by Lens Youngi Homs

Syria Justice and
Accountability Centre

