

## Legal briefing destined to the Code Rouge participants

The Code Rouge legal team is composed of lawyer and non-lawyer volunteer activists. It acts as a link between the participants in the action and the lawyers.

If you have any questions before, during or after the Code Red action, the legal team is with you. We do our best to support you from a legal point of view in case of questions, specific situations, arrests, fines, legal proceedings, etc.

There are two ways to contact us: by email ([CRlegal@protonmail.com](mailto:CRlegal@protonmail.com)) or by phone (details tba) only during the action or, outside the action, by appointment prearranged by email.

### 1. IDENTITY CONTROL

The **strategy of anonymity** (not taking ID card AND not taking mobile phone or any other object allowing "easy" identification of the person) was proposed in the context of the Code Rouge action. Each person remains free to make their own choices.

In Belgium, only police officers in uniform or in civilian clothes (but the latter must justify their status), can ask you for your ID card in a public place, not security guards. They can use force to take an ID document that you refuse to give.

Nevertheless, if you are not carrying an ID, the police cannot force you to give your identity. However, in this case, you risk a fine of **€208 to €4,000** and/or an administrative arrest for identity verification. If you try to pass yourself off as someone else or if you have/use false documents, you are committing an offence.

**Caution!** If you are not Belgian and you do not show you have a residence status in Belgium, you can be placed in a detention centre for undocumented migrants (**see the specific point below in the text**), and then deported from the territory. In case of serious offences, your residence permit can also be terminated and you can be deported, but this has never happened for peaceful political actions.

### 2. ARREST

During the Code Rouge action, you may be subject to administrative or judicial arrest. Belgium differs from other countries by the coexistence of these two types of arrest, with different consequences and procedures:

- **Administrative arrest:** if you disturb public order, if you are preparing an offence, if you hinder traffic, you can be administratively arrested for **maximum 12 hours**. An administrative arrest does not in itself lead to a criminal trial, and therefore not to a criminal record.
- **Judicial arrest:** in case of obvious offence, or by decision of the Public Prosecutor or the investigating judge, you can be judicially arrested for **maximum 48 hours**. Beyond this period, only an investigating judge can decide to extend your deprivation of liberty. A judicial arrest can lead to a criminal trial, and therefore to a criminal record (if you are convicted). Please note that just because you have not been judicially arrested does not mean that you are not at risk of criminal proceedings.

The duration of your arrest starts from the moment you can no longer move freely (it is important to remember the time you were arrested), not the moment you arrive in custody.

The police may ask you to hand over all your belongings. You can be searched superficially (security search) or more thoroughly, either before you are placed in a cell (body search) or when they suspect you of holding objects related to a specific offence (judicial search). A body search can only be carried out by a doctor, either with your consent or by order of the investigating judge or the public prosecutor, otherwise it is an abuse of power. They may want to take a photograph of you, and if you refuse, they may charge you with rebellion and turn your administrative arrest into a judicial arrest.

#### A few practical advices:

- Make sure you have nothing incriminating on you (drugs, objects that could be considered as weapons, such as a knife, a box cutter, scissors, sticks, stones, etc.).
- Do not take address booklets or mobile phones with the names/numbers of your friends (even though the police are not allowed to search a mobile phone without the judge's permission), diaries, USB sticks, etc.
- It is also possible that you will not be searched and that you will be left with your personal belongings. Take something to eat, drink, read, etc.
- Take your medication with you in the original packaging (They should be identifiable, e.g. in their blister packs)
- Try to keep yourself occupied in a constructive way. An arrest is frustrating because you have no control over the situation: be aware of this beforehand. You can take a book, playing cards, etc.
- During your arrest, stay calm, do not seek unnecessary conflict, resist provocation, but be firm in the face of any police overreach.

### **3. YOUR RIGHTS**

- The right to be informed of the legal and concrete reasons for your arrest, of its maximum duration (12//24/48 hours), of what will happen, of your rights in relation to the arrest, and of the possibility of using force if you resist. All this information must be given in a language you understand.
- Right to a lawyer (only in case of judicial arrest - if you are going to be interrogated and asked which lawyer you have chosen, **you can indicate Progress Lawyers Network**.
  - Indeed, in case of interrogation, you have the right, within 2 hours after contacting the lawyer, to a confidential interview of maximum 30 minutes before the hearing, as well as to his assistance during all your interrogations to check the respect of your rights and the regularity of the hearing. If a lawyer is not available within 2 hours, the police must allow you to make a confidential telephone call to the local Legal Aid Office.
- Right to notify a trusted person (the police officer will notify the person).
- Right to medical assistance + to be examined by a doctor (in theory of his/her choice, but in practice not).
- Right to be assisted by an interpreter

- Right to water and food
- Right to sanitary facilities
- We strongly advise you to wait until a lawyer is available to assist you in your interrogation. If, however, this is not the case, we remind you that you can make use of your right to silence.
  - During an interrogation, you have the right to say "I have nothing to say" or "I am using my right to silence" or to remain silent.
  - The police knows this attitude and, even if they act surprised, they know that you are within your rights. If you look determined enough, the interrogation will be over quickly.
  - You may be put back in the cell for a few hours before you try again. Keep the same line of action.
  - Do not get caught up in a sequence of questions that are initially harmless. Normally the police are not allowed to lie to get information.
  - However, they may lead you to believe that not saying anything will "make your case worse" or "extend your custody". It is advisable not to make any statements, as anything you say can be used against you.
  - In any case, it is in your interest to remain polite by defending your right to silence, even if some officers provoke you, otherwise you risk being charged with contempt of court.
- In principle, you will be anonymous. However, if your identity is revealed, we remind you of your right in relation to the hearing report: you have the right not to sign anything. You have the right to read the statement of offence again, but you are not obliged to sign it (no sanction). Signing a wrong report can be very damaging. In general, it is **ESSENTIAL not to sign any document** (minutes, register etc.) without being sure that it corresponds to what really happened.

#### 4. SPECIFIC RISKS TO FOREIGNERS

In principle, there are no specific sanctions for foreigners who will 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.

- Are you an undocumented person? We **cannot guarantee in any way that if you participate in the action, you will not be arrested**. Given the high risk, we advise you to think carefully before making the decision to participate. There are also other possible support roles that you can take to support the action. As soon as an undocumented person is arrested, the police send a report to the Immigration Office and wait for its decision. There is therefore a real risk of an order to leave the territory, a transfer to a detention centre or to the airport, etc.
- For Europeans who come to Belgium only to participate in the action, there is no particular risk. In the worst case, you risk being repatriated to their country of origin after the arrest.

- For Europeans with a residence permit in Belgium, there is very little risk that this permit will be jeopardised by participation in this action. This is not the case if you would commit more serious offences, such as assaulting a police officer.
- For non-European foreigners who wish to participate in the action, it depends on the precariousness of your stay in Belgium. We advise you to contact us individually in this regard.

## 5. SPECIFIC RISKS TO MINORS

We draw attention to the specific risks associated with being a minor during the action. We advise minors to **not take part** in the action for the following reasons:

- Minors do not commit offences but "facts qualified as offences". It will be the Juvenile Court that will make a decision. The law obliges the judge to favour so-called restorative measures. They aim at focusing on reintegration and education, but the juvenile judge can decide to place a young person in a Public Youth Protection Institution if there is a danger to society.
- Juveniles can be given a municipal administrative sanction. They can also be sentenced to pay damages in civil proceedings through their parents who will also be sentenced (even if they are not present during the Code Rouge action).
- If you are a minor and participate in the action and you are present at the scene of the action without an ID card, in case of arrest you risk being treated as an adult and this can be extremely traumatic (pressure from the police, non-respect of rights, etc.).
- On the other hand, if you decide to give your identity to the police in order to prove your minority, but the rest of the group remains anonymous, you will be one of the only people identified and may therefore **suffer major financial repercussions** in terms of compensation for the damage (unlike the adults present who will be unidentified).
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- If you are a minor and you still want to participate in the action, we advise that you take up a supporting role. There are a lot of tasks important to the success of the action that don't put you at risk of getting arrested. It is also important that your parents are informed. Do not hesitate to contact us (minors or their parents) for more specific questions.

## 6. SPECIFIC RISKS TO NON-WHITE PEOPLE, WOMEN, LGBTQIA+ PEOPLE

Without being able to be exhaustive about the risks facing activists, the legal team would like to draw attention to the following points:

- People of color (with or without a residence permit, with or without (dual) nationality) are likely to be more stigmatised and impacted during the action in contact with the police as well as in the context of their deprivation of liberty (non-access to rights that

are nevertheless linked to the deprivation of liberty - see in particular F. JOBARD, 2006; F. BRION, 1999).

- Women and people from the LGBTQIA+ community are also at greater risk of experiencing such situations (stigma, mockery, harassment, violence, lack of access to the rights attached to deprivation of liberty, etc.).

The strategy of anonymity in Code Rouge was chosen to protect activists as much as possible. However, it is necessary to specify the following in the event that you are identified by law enforcement.

- In the context of a body search (see definition above), people are necessarily searched by people of the same gender as that shown on their passport/ID card. Indeed, for this type of search, the law requires it to be carried out by a police officer of the same sex as the person.
- As soon as a person is asked to undress, they may ask to do so in a closed area where only the searchers are present (the law does not specify this but it is not prohibited).
- For people from the LGBTQIA+ community, the gender on your ID card is the only gender that matters to the police. If you have made a change of marital status in your passport/ID card, the new registered gender is valid.
- If you are taking hormones, this is part of your medical follow-up. People have the right to take them and can insist on having them in the cell. However, the medicines must be in their packaging.
- For menstruating women, there is no legal provision. However, access to sanitary facilities may be requested (see above).

**Caution!** The legal team has highlighted the specific risks referred to in points 4,5,6 (foreigners, minors, non-white-LGBTQI+ people) so that **everyone can discuss these risks within the affinity groups / pairs**. What to do if this happens? How can we support each other? How can I objectify what happened to me? etc.

#### **Some tips for supporting people who are more at risk from the police:**

- **Don't let the police isolate people.** Critical moments: getting into the van, getting out of the van, getting into the cell
- **Watch the dynamics around you**, how the police behave towards others
- Support trans people to be **treated properly according to their gender**
- **Follow-up** after the action: check-in, maybe support to mediate violence (if desired), ...

#### **7. LEGAL RISKS RELATED TO THE ACTION**

For the same offence, you cannot be given a municipal administrative sanction and prosecuted criminally. In practice, if a behaviour is sanctioned by a municipal administrative sanction or a criminal sanction, it is the municipal administrative sanction that is most often imposed.

- Municipal Administrative Sanctions

- In the framework of Code Rouge, the municipalities concerned may decide to impose a Municipal Administrative Sanction, in particular for the following behaviours: unauthorised posting, degradation (destruction of fences), failure to comply with a police injunction, meeting not authorised by the police, concealment of the face, obstruction of traffic, climbing of buildings or fences, obstruction of the entry to public or private buildings.
- The amount of a Municipal Administrative Sanction is maximum 350€.
- If you want to contest it, you must send your defence within 15 days of receiving the Municipal Administrative Sanction by email or by registered post (for example, by explaining that the 6-month period between the offence and the receipt of the Municipal Administrative Sanction by post has passed). Do not hesitate to ask the legal team for help in writing the contestation. If the sanction is upheld, you can appeal the official's decision before the police court within a month, but this is usually more expensive than paying the penalty. The Municipal Administrative Sanction does not lead to a criminal record.

- Criminal prosecution

- The following behaviours are criminal offences, for which you can be prosecuted: damage to property (e.g. damaging fences); distribution of leaflets and posters; concealment of face; night-time disturbances; malicious obstruction of traffic (blocking); trespassing; refusal to show ID to the police or bailiff (if the person is eventually identified), slander or libel (depending on the messages on the banners), etc.
- You can also be charged with rebellion if you resist the police who are acting to enforce the law, with violence (even if it is only mild, a muscle twitch when touched is enough) or threats.
  - You are not in rebellion if you resist passively, you stay on the ground without moving; you run away without violence or threats to escape arrest (hit-and-run is not a criminal offence).
  - You are in rebellion with aggravating circumstances if you are "in a gang" (two people are enough) or if you are armed (even if only with a sign, a bolt...).
- You can be charged with contempt (by acts, words, gestures or threats) or violence against a law enforcement officer.
- If a police officer commits a serious, abusive and flagrant blunder (hitting a demonstrator on the ground), you can legally resist, always proportioning the resistance to the abusive act. Before taking action, it is prudent to ensure that you will be able to prove the illegal action of 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 have 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).
  - **Caution:** it is legal to film/photograph a police officer, but not to publish it on the internet. You cannot make public use of these images (or you have to hide the police officer's head).

- **Beware**, in practice, police officers really don't like it, so you have to assess whether it is relevant to continue filming or not.
  - Self-defence is provided for in the Penal Code, but it is a "theoretical" right, very little recognised in practice. Moreover, the legal conditions are very strict. One can respond to an attack: proportionally, if there is actual or imminent violence, accompanied by a serious, unjust threat, directed against persons (not property). However, proof must be kept.
  - In the event of blocking traffic: the main risks in the event of blocking traffic are to be arrested administratively for disturbing the peace. However, you **could be criminally prosecuted** for malicious obstruction of traffic, for rebellion if you did not agree to leave the blockade and for material damage if you used and damaged street furniture. You could also be prosecuted for any other criminal offence that may occur during a blockade: blocking an ambulance, injuring a civilian or a police officer, etc. All of these possibilities apply to lock-ons, guardian angels as well as people around supporting the blockade.
- The risk of civil action
  - In Belgium, when you commit a fault (any criminal offence or imprudent behaviour can constitute a fault) which causes damage, you are likely to be sued in a civil lawsuit, during which you can be ordered to compensate the damage in its entirety, which can sometimes be a large amount (material damage, hospital and health costs, moral damage, 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 lead to a criminal record, only to the payment of compensation for the damage caused.
  - It is up to the party who believes he or she has suffered damage to demonstrate the full extent of the damage, with supporting documents and exhibits, which must be communicated to all parties to the proceedings and to the Court for discussion.
- The arrival of the bailiff at the place of the action and the risk of penalty payments
  - What is a penalty payment? A penalty payment is a sum of money that can be demanded by a court decision (e.g. at Total's request) in order to ensure compliance with that decision. Without a decision from a judge, Total cannot send a bailiff and ask for penalties. A penalty payment is not a criminal fine and therefore does not appear in the criminal record.
  - If, in the days or weeks preceding the action, Total obtains a court decision (intended to prevent the blockade) with penalty payments, a bailiff must necessarily bring this to the attention of the participants in the action.
  - The bailiff can bring the decision to the attention of the participants either individually or by posting it. Penalties will only be payable when the bailiff has officially established that the court decision is not being respected by **identified persons**.
  - If the participants stop the action once the decision is communicated to them, there is no risk of a penalty payment.

- Often, the police assists the bailiff in identifying individuals, **and as long as there is no identification, penalty payments cannot be claimed.** But it is not excluded that the person who has been notified of a decision and who does not comply will have the penalty payment imposed on him later if he is subsequently identified. In all cases, we encourage you not to speak/communicate with the bailiff. This will reduce the risk that certain individuals will be identified.
- The amount of the penalties is decided by the judge who takes the decision. It is rare that penalties are actually requested, even once the persons have been identified. The aim is to stop the action by putting pressure on the participants given the financial risk they are taking.

## 8. WHAT CAN YOU DO IN CASE OF POLICE VIOLENCE?

If you are a victim of police violence (stigmatisation, mockery, harassment, beatings, lack of access to rights during deprivation of liberty, etc.), we can only encourage you to contact the following organisations:

- Police Watch (<https://policewatch.be/page>). This is the police violence observatory of the Ligue des Droits Humains, which will be joined in 2021 by the Liga Voor Mensenrechten. This organisation organises telephone hotlines and is a place for listening, information and advice.
- The Police Violence Observatory (<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 question politicians.
- The Comité P. (permanent committee for the control of police services, i.e. the external control body of the police services). Comité P receives and investigates complaints. It reports on the functioning of the police to Parliament. It does not sanction police officers (neither criminally nor disciplinarily) but can highlight certain points of attention with regard to the function (<https://comitep.be>).

We also invite you to keep as much evidence as possible (if you can) of these actions (testimonies from other people, medical certificate from your doctor, etc.).

Finally, for your information, the legal team has set up, as a preventive measure, a team of legal observers (who do not participate in the action but who will be independent witnesses: they will take notes during the action and film the "critical" episodes, in order to be able to produce a certain number of elements/ images intended to objectivise the situation during the action with regard to the activist-police relationship).

These legal observers will be recognisable. As they should be as neutral as possible during the whole action (both towards the activists and towards the police), you should only turn to them as a last resort or in case of absolute necessity, if the situation cannot be solved in your pair/affinity group (in order to ask them to take note/images of your concerns).

It is possible that these legal observers may also be arrested by law enforcement. They will do their best to monitor the situation while they can.