

**THE RIGHTS
OF THE FOREIGNERS
FACE
TO THE POLICE**

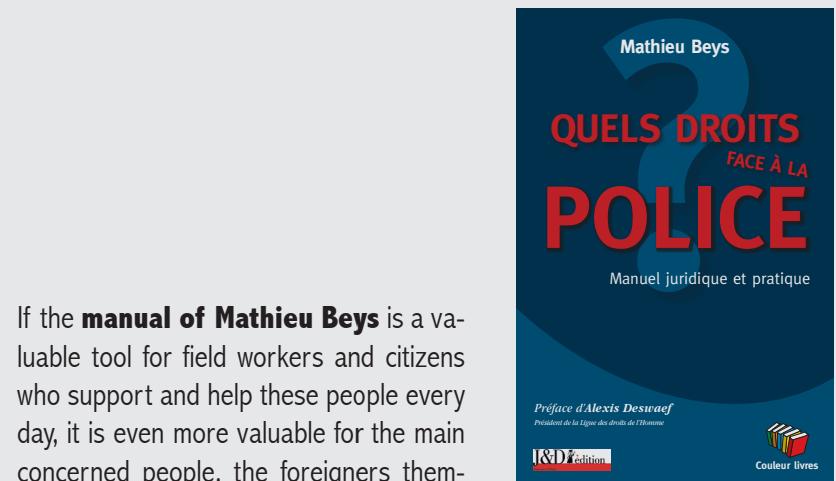
INTRODUCTION

The social crisis and the questioning of the welfare State to the advantage of the active welfare State and austerity policies leads to a downward trend and to individualism that discourages solidarities. When they emerge, they seem strange, suspicious and in fine condemnable. The closure of migration policies and the fury against those who attempt to open solidarity breccias are an obvious example.

The State is also in crisis, in loss of power, legitimacy and credit. It is as if he made up his powerlessness on the social, economic or international plan, by hardening its speeches and repressive attitudes, an over-investment of its regulatory functions related to the control of populations and of the territory, in other words of its police function. A function sustained by a speech and a safe obsession that lead to see security issues, physical and non-social, as main concerns of the population and of the politics.

This unpleasant context is conducive to a bigger weakening of the foreign residents in Belgium, fortiori when they do not have a residence permit.

The field work of the **Regional Picardy Lay** of the CAL is especially made to give to the migrant populations present in its territory accurate information about their rights, in full respect of their human dignity and guaranteeing them the complete confidentiality about their administrative situation.



If the **manual of Mathieu Beys** is a valuable tool for field workers and citizens who support and help these people every day, it is even more valuable for the main concerned people, the foreigners themselves.

By synthesis, the translation and the distribution of the chapter of this manual dedicated to the rights of the foreigners, **Regional Picardy Lay** intends to contribute to the enjoyment and the protection of the fundamental rights of all human beings and shows its support to the people among the most vulnerable ones in our society.

To achieve this, working and exchanging sessions are organized with groups of people in precarious living, to equip them the best way in terms of fundamental rights.

This work also has a political dimension: by this action, the **Regional Picardy Lay** wishes to express its strong disagreement with the largely safe answer given to the issues of asylum and migration.

SUMMARY

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1. FOREIGNERS AND THE POLICE

DO I HAVE THE SAME RIGHTS FACE TO THE POLICE IF I'M A FOREIGNER OR AN UNDOCUMENTED MIGRANT ?

YES, in theory, I have the same rights face to the police than any citizen if I'm a foreigner, even in illegal stay. «Undocumented migrants» doesn't mean without rights. All human rights described are also applied in principle to the «Undocumented migrants»: prohibition of degrading treatment and arbitrary detention, right to private and family life, etc.

BUT, if I don't have the residence permit in Belgium, I might risk, at each encounter with a policeman, including if I contact them to complaint, an arrest, an order to leave the territory, a detention in a detention center and an expulsion to my home country (or another country that accepts me).

AM I AN OFFENDER SIMPLY BECAUSE I AM AN « UNDOCUMENTED MIGRANT » ?

YES, in theory I might risk a conviction of eight days to three months in jail, a fine and a criminal record only because I am in an illegally stay in Belgium (that is to say if I am there without having to right for it, that is not always the case if I don't have with me my residence permit or if he is out-of-date or in waiting of renewal).

BUT, in practice, I will rarely be condemned only for my illegal stay.

The State has no right to condemn me or put me in jail for illegal stay without first having offered me a voluntary return or without using other methods (such as placement in a detention center) to try to make me leave, eventually by force.

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2.
**BORDER
CONTROLS**

AT WHICH BORDERS CAN I BE CONTROLLED ?

Policemen can control me, without having to justify, if I tempt to cross the external borders of the Schengen area. There are thirteen passage points at the external borders in Belgium: six airports (Brussels National, Deurne, Ostende, Gosselies, Bierset, Wevelgem), six ports (Anvers, Gand, Nieuport, Blankenberge, Ostende, Zeebruge) and the Eurostar terminal at the Brussels Midi's station.

In principle (and unless waived), the policemen can't make a systematic control if I cross an internal border (land borders with France, Germany, Luxembourg and the Netherlands) or if I get out of a train or plane from the Schengen area.

BUT, the controls at the internal borders may exceptionally be reintroduced in cases of «serious threat to public policy or threat to internal security» for a maximal period of thirty days or more if the «foreseeable duration of the serious threat» is more than thirty days. The State may extend this period if the threat continues and must inform the public of its decision to reintroduce the control, unless imperious reasons of security are against it. Belgium has already reintroduced this particular type of controls during football championship of the Euro 2000 to monitor supporters.→

Furthermore, the police can always control me unexpectedly within the territory in the border areas (if it is not a systematic control at borders), or in a port or airport, for example because the police considers me as a suspect or has received an order for public security reasons or of foreigners control.

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It depends if I have the nationality of one of those 28 EU countries or if I am a close member of the family of an EU citizen (spouse or registered partner, child of less than 21 years old or at charge of the citizen or spouse or partner, parent at charge of the EU citizen or his spouse or partner) or not.

If I am a citizen of EU or close member of the family of a EU's citizen, (regardless my nationality), the police can only realize a «minimal control», that is to say a simple and fast control of the document's validity that allows me to cross the borders. The police can check up if I am the same person that the person mentioned on the document and that this one isn't false. The police can consult national databases like the BNG (General National databases or Banque de données national générale) and European like the SIS (Système d'information de Schengen or System Information of Schengen) to check up if I don't represent a menace, actual and sufficiently serious to threat to internal security, public policy or international relations», but this consultation can't be systematic.

If I am not a citizen of EU or close member of the family of an EU's citizen, the police can realize a "maximal control" upon both entry and exit of the Schengen area. ➔

WHAT CAN THE POLICE CONTROL WHEN I CROSS THE BORDERS ?

They should also check:

- that I have not exceeded "the maximum duration of authorized stay";
- where I am in and out of the Schengen area (stamps in my passport) ;
- the evidence of the purpose of my stay (invitation letter for family or touristic visit, the evidence of my business contacts...);
- the evidence of enough livelihoods
- if my means of transport, the object that I am transporting or my person "aren't likely to jeopardize (means represent a menace) the public policy, public security, public health or international relations of Member State" by consulting the System Information of Schengen database "if necessary".

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CAN THEY TAKE MY FINGERPRINTS DURING A BORDER CONTROL ?

YES, if I'm asking asylum or if I've a short-term Schengen visa, police can check up if my fingerprints match with those of the person who received the visa. These fingerprints have been taken at the embassy and are in the information system about visas, the «VIS (Visa's Information System)».

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3. INVESTIGATIONS CONCERNING MARRIAGES OF CONVENIENCE

Policemen can launch an investigation if they suspect that «the intention of one or both (future) spouses are clearly not the creation of a sustainable living but merely seeks to obtain an advantage in terms of stay.» That's what we call a «white marriage», «a mock wedding» or «a marriage of convenience».

The investigation can be used to:

- Condemn me one month to three years in prison and a fine,
- Refuse the wedding or the legal cohabitation in project,
- Cancel afterwards a marriage or legal cohabitation.

In practice, policemen collect information especially beside the neighbouring, the owner, the concierge, the postman, the traders, the municipal office, my family (for example my ex, my children, the witnesses of my marriage...).

IN WHICH CASES CAN WE LAUNCH AN INVESTIGATION CONCERNING MY MARITAL RELATIONSHIP ?

HOW THE INTERVIEW IS CONDUCTED BY THE POLICEMEN IF I'M SUSPECTED OF MARRIAGE OF CONVENIENCE ?

The policemen often come at home to verify the life conditions and the reality of my cohabitation. I can refuse them and they don't have the right to come in with force but my refusal could lead to a refusal to celebrate my marriage or my legal cohabitation.

I'm an offender if I have concluded or attempted to conclude a marriage or a cohabitation of convenience. The interview should be conducted as a hearing of a suspect and I should consult a lawyer before being questioned. ➔

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AM I OBLIGED TO ANSWER TO THE POLICEMEN'S QUESTIONS ABOUT MY RELATIONSHIP ?

The police could also ask:

- How and when I met my spouse
- Who has introduced us to each other
- Who are the members of his family and what they're doing in life
- When and how we talked about marriage or legal cohabitation for the first time
- Which dish, colour, book, movie is his favourite?
- If a payment was done to conclude my relationship
- If we had sexual relationships, how often and when for the last time
- What are each other's incomes and how we deal with our household expenses

They could ask the same questions to my future spouse/partner. If there are big differences, the wedding or the legal cohabitation can be refused or cancelled.

As in any examination, I better not sign the statement unless I read it at my leisure and I fully agree with the content.

I better ask a copy of the statement but the policemen can wait a month before giving it to me.

NO, I'm not obliged to answer because my answers could lead to a conviction by a court.

BUT, in practice, if I refuse they could conclude that my relationship is simulated, what can lead to a refusal or cancellation of the marriage or legal cohabitation.

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CAN I BE
PLUGGED IF
THERE IS AN
INVESTIGATION
AGAINST ME
FOR A WHITE
WEDDING ?

YES policemen can plug me in the BNG (General National Data Bank) if a magistrate asks it as part of an investigation on my project of wedding or legal cohabitation. A postponement or a refusal of marriage or legal cohabitation will be included in the population register, especially to avoid that I'll tempt to try my luck in another town after a first refusal.

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4.
**ARRESTS AND
ADMINISTRATIVE
DETENTION
OF THE
« UNDOCUMENTED
MIGRANTS »**

WHEN IS IT POSSIBLE TO ARREST ME AS A FOREIGNER ?

If I'm a foreigner, the police can arrest me:

- In all cases leading to the arrest of a Belgian (person) or foreigner
- If I don't have with me a piece of identity or a residence permit in order.

CAN WE FORCE MY DOOR JUST BECAUSE I'M AN UNDOCUMENTED MIGRANT ?

In principle, NO, if I stay at home after receiving an order to leave the territory, I must expect to have the visit of policemen. If they find me at home, they could arrest me to bring me to a detention centre.

If I refuse to open my door, they can't use force to enter except in emergencies or if they have a decision of the judge.

But they can write a report to the Immigration Office that can write down my refusal and if I'm arrested thereafter, use it to place me directly in a detention centre. It could happen that the police use trick to enter in my home saying, for example, that they're coming for a non-existent gas leak, what is illegal.

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CAN THE POLICEMEN ATTRACT ME UNDER FALSE PRETENCES TO THE POLICE OFFICE TO FACILITATE MY EXPULSION ?

NO, If I'm a foreigner in illegal stay and that I'm not pursued for a serious crime, it's forbidden to trap me giving me a false and trivial reason (for example «complete your file») to attract me to the police office and then to arrest me, lock me and expel me in my home country (or another country that accepts me). It's forbidden to consciously trap a person, even in an illegal situation with the purpose of a convening, to better deprive them of their freedom.

CAN THE POLICE ARREST MY CHILDREN AT SCHOOL ?

YES, nothing forbids the police to come arrest my children at school for illegal stay.

The policemen should:

- Notify the school principal before their intervention and involve him in the execution of the mission «to provide a better support of the child»
- Be in civil and show their police card
- Not occur during school hours
- If possible to be accompanied by another member of the family

Policemen can't enter within the school without an authorisation of the school principal.

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If the policemen arrest me because I don't have my papers in order, they can only keep me the necessary time to send a report to the Immigration Office and to wait its decision. Policemen must release me as soon as they are aware that I have the right to stay in Belgium or that the Immigration Office doesn't want to lock me.

My detention at the police office can last maximum 24 hours, twice longer than an administrative arrest for a Belgian. If the Immigration Office doesn't take any decision in that period, I must be released. I better not sign the deprivation of liberty register which contains detention hours that don't correspond to the reality. Depending the decision of the Immigration Office, policemen could:

- Let me go without order to leave the territory for example because an asylum procedure or of regularisation is launched
- Deliver me an order to leave the territory with a specified period (maximum 30days) and release me
- Lead me to a detention centre with an order to leave the territory or confide me to the «Collaborating safety drivers» of the Immigration Office
- Lead me to the airport with an order to leave the territory

HOW MUCH TIME CAN THEY ARREST ME IF I DON'T HAVE MY PAPERS IN ORDER ?

TO WHICH INFORMATION HAVE I THE RIGHT CONCERNING MY ARREST ?

I have the right to know the reasons of my arrest in a short time and in a language that I understand. In practice, this right is rarely respected by the policemen that often simply give me to sign for the receipt of confinement of the Immigration Office written in French or Dutch. I'll receive in principle more information at my arrival at the detention centre but there is little chance that I could have an interpreter. To avoid any misunderstanding, I better not sign any document. The fact to refuse to sign a decision doesn't prevent me to get a copy of it.

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WHAT ARE MY RIGHTS DURING MY ARREST AT THE POLICE OFFICE ?

As an arrested foreigner for a check of my situation or in waiting of an order to leave the territory, I have the same rights that each arrested person. I can also:

- Prevent someone of trust of my arrest
- Have a free medical consultation
- Drink, eat at the normal meal hours and have access to the toilets.

In principle, I'll don't have the right to a lawyer's assistance but nothing prevents me to ask for one.

Before my expulsion, I have the right to pack my bags and to receive an inventory of the police describing objects that I could take and objects that I let in Belgium with information on the safe taken so that I can retrieve them later.

AM I OBLIGED TO ANSWER TO THE QUESTIONS OF THE POLICEMEN ?

NO, I've the right to keep silence like in any interview.

If I don't have identity documents, Immigration Office should know where I'm from and negotiate with my country of origin before expelling me. So the policemen will ask me questions about who I am and where I'm from.

They could also ask to an interpreter to detect my origin from the language I speak and my accent (it happens for example, that foreigners who pretend to be Palestinian are considered as Moroccans, Tunisians or Algerians).

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CAN WE EXPEL ME ONLY BECAUSE I SQUATTED A BUILDING ?

NO, the simple fact of squatting a building without permission of the owner is not a crime. If my papers are in order (visa or valid residence permit) and that my behaviour is not a problem for the public order, authorities can't expel me only because I had occupied peacefully a building.

Contrariwise, if I refuse to give my identity, the police could consider me as a foreigner in illegal stay and take me to a detention centre because the law defines a foreign «anyone that does not provide proof that he has the Belgian nationality». If the police consider me as a foreigner even if there is no reason to doubt of my Belgian nationality, we should consider that it's an abuse of procedure.

THE RIGHTS OF THE FOREIGNERS FACE TO THE POLICE

5. THE USE OF FORCE IN CASE OF EXPULSION

The police may use force if I oppose to my removal or when I present a risk of danger during my removal but must always respect the general rules of the use of force (namely only use this one if it's absolutely necessary to pursue a legitimate aim taking into account the risks and by using a proportionate force).

In a detention centre, we should show a DVD that explains the different steps of the procedure for expulsion, which normally occurs gradually as following:

1. In principle, I should first have the possibility to get on a plane alone without the presence of the police so that I get on into it (more) discreetly. In that case, I could get a starting bonus of up to 100€ if I ask for it.

2. If I refuse to leave without violence, a police escort will come to take me. They will accompany me to the plane and ask me to get on the plane. If I refuse without violence, they will bring me in principle in a detention centre without forcing me to leave.

3. In case of failure, policemen will come back to take me and may force me to get on the plane and travel all the way with me until my home country (or other country that accepts me) →

IN WHICH CASES CAN THE POLICE USE FORCE AGAINST ME TO EXPEL ME ?

4. If this step fails because I resist, policemen can retry to take me with force on another regular flight thereafter. In some cases, I can be repatriated in a secure flight specially chartered for the occasion, possibly organised with others EU countries. A doctor and a controller of the general inspection of the police will normally be present with an interpreter to allow me to speak with the doctor in my language.

But this scheme isn't always followed and is not compulsory. If Immigration Office has good reasons to think that it is not necessary to tempt the steps 1 and 2, for example because I'm aggressive, that I always said I don't want to come back in my home country or that before there already has been attempts of expulsion during an arrest, policemen will use force and take me into the plane applying directly the step 3.

Even in the step 3 or 4, the policemen can't undermine my dignity neither my physical integrity and in case of doubt, they should suspend the expulsion and the use of force even if I resist, to respect the principle no removal at all costs.

The policemen and agents of the Immigration Office could frisk me before each attempt of expulsion to see if I have nothing dangerous.

If I have money or valuables, they must be placed in an envelope with my name and the policemen must inform me about it. I must recover them at the arrival. →

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WHICH MEANS THE POLICE CAN USE TO EXPEL ME ?

On the route from or to the detention centre, the «collaborating safety drivers» from the Immigration Office can use coercion (the arm-bar, handcuffs or the «physical coercion»)

- To maintain me if my behaviour represents a danger to my own physical integrity or to the other persons or if I upset the order.
- To ensure a good transfer, if I have reasonable reasons to believe (depending my behaviour, material evidences or circumstances) that I will constitute a danger to my own physical integrity or to other persons or that I will upset the order.

If they use force, policemen must always consider my health and my security and also of the other passengers. According to my behaviour, they can also use, with the consent of the captain:

- Handcuffs but strictly exceptional and never attaching me to a fixed point of the plane.
- Belts quick release (which is easily removed)
- Nylon ties
- Velcro strips to the feet and the knees
- Helmets of boxing (only on secure flights)

But they can't use dangerous or degrading means such as:

- Weapons
- Objects that block or hinder my breathing (cushions, gag,...)
- Medicines especially anaesthetic or sedatives
- Techniques to bend me in two or compress my chest
- Bring me diapers →

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CAN I SEE A DOCTOR ?

At least forty minutes before departure, policemen must warn the captain of my expulsion and the security measures taken. The pilot can always refuse to embark me if he considers that flight safety is not guaranteed. Those who do not obey the instructions of the captain including policemen become offenders.

During the flight. I'm an offender if :

- I destroy or damage voluntary the plane's equipment (seats, tablets,...)
- I don't obey the instructions of the captain concerning the safety or the correct order of the plane or the passengers
- I threaten the crew or the passengers
- I offend by word, act or deed a member of the crew or a passenger

At the arrival, the police must remove me the handcuffs or other types of objects before they deliver me to the authorities of the destination country.

YES, I need to see a doctor before and after each attempt of expulsion that failed and also if I'm ill during the transfer between the detention centre and the airport. I have the right to see free of charge the doctor of the detention centre before 48 hours after my return from the airport and this one will have to write a report. This doctor is supposed to keep his professional independence toward the centre's director and its evaluations and decisions relating to my health must be only based on medical criteria. If I can pay him, I have the right to call a doctor of my choice.

If I'm expelled with three others foreigners or more, a doctor and an independent observer must accompany the escort on the plane.

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6.
**UNDOCUMENTED
MIGRANTS
AND VICTIMS
OF OFFENCES**

CAN I COMPLAIN TO THE POLICE IF I'M AN UNDOCUMENTED MIGRANT ?

YES BUT I better be careful and consult a lawyer before any action if I'm not in a situation of immediate danger.

If I'm a victim of an offence, I have the right, like any citizen, to complain even if I'm in an illegal stay. The policemen must bring me assistance as to any victim and can't refuse to help me or act my complaint just because my stay isn't in order. But if I'm in an illegal stay, the policemen may also consider me like an offender and denounce me to the public prosecutor. He may also «seize me» and obey to the instructions of the Immigration Office that will deliver me an order to leave the territory and eventually put me in a detention centre.

The policeman should help me as a victim and at the same time denounce me as undocumented migrant.

In practice, I might be arrested if I just spontaneously complain to the police even for serious offences like a rape. It is impossible to assess the risk because it depends on factors I can't control (sensitivity of the police and its hierarchy, attitude of the prosecutor and of the Immigration Office, availability in detention centres). If I'm not in immediate danger, I better first consult a lawyer.

THE RIGHTS OF THE FOREIGNERS FACE TO THE POLICE

7.
**REACT
TO DEFEND
THE RIGHTS OF
THE FOREIGNERS**

WHAT TO DO IF I HAVE A CLOSE MEMBER LOCKED IN A DETENTION CENTRE ?

If I have a close member arrested in illegal stay, I can contact:

- The Immigration Office and the detention centre to know if a date of repatriation was already fixed
- A lawyer so that he introduces an appeal against the order to leave the territory and another appeal against the decision of detention and give him all useful information and documents (evidence of emotional ties of the foreigner in Belgium, court and identity documents)
- A militant group, an NGO or the Centre for Equal Opportunities that visits detention centres and that can sometimes support the convict.

HOW CAN I VISIT A CLOSE MEMBER LOCKED IN A DETENTION CENTRE ?

I can visit him only if I have an identity document and that I prove a relationship (spouse, partner, parent, child, brother, sister, uncle, aunt) unless exceptions granted by the centre's director. If I'm married or legal cohabitant or that I prove a lasting relationship of 6 months with the convict, I can get an intimate two-hour visit each month after a month of detention. They can refuse me the authorisation of visit only if the foreigner doesn't want to see me, if I can't prove a legitimate interest, if my visit can constitute a danger to national security, public safety, public order and the good functioning of the centre or if the moral and physical integrity of the occupant is in danger. I can bring him food and objects that aren't prohibited by the internal rules (no alcohol or objects that can be considered as dangerous).

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If I'm a convict, I better:

- Ask to contact my family and a lawyer as soon as possible
- Ask a copy of all the documents and send them to my lawyer to allow him to examine the file and to introduce the necessary appeals
- Sign nothing without being sure of the content because they could try to make me sign a document in which I accept an expulsion or in which I withdraw me of an asylum procedure or an appeal that was introduced by my lawyer

What to do if I'm a victim if violence during an attempt of expulsion?

The given advices in case of violence against every person are also applied to the expelled foreigners.

As an added precaution, I can prevent the general inspection of the local police or P Committee (Permanent Committee of control of the police's services) by fax that I fear the use of violence during my planned expulsion in a few days or ask my lawyer to do it. I can ask that they send an incognito observer to monitor the behaviour of the policemen during the next attempt of expulsion.



WHAT TO DO IF I'M A CONVICT IN A DETENTION CENTRE ?

If I'm a victim if abusive violence during an attempt of expulsion, I can also:

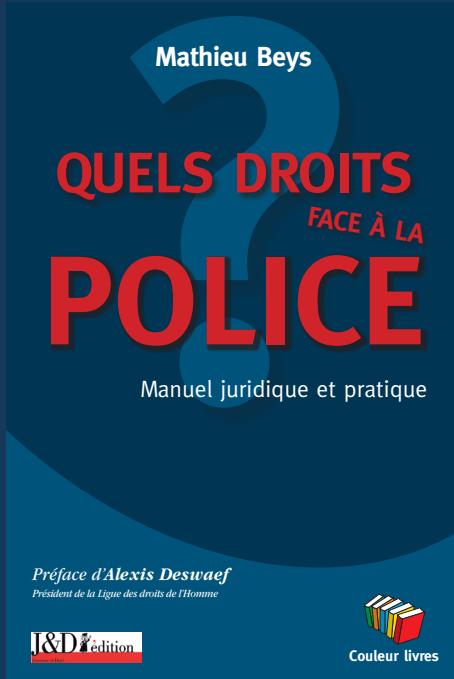
- Ask to the Immigration Office, to the police or to the general inspection a copy of the police report before the attempt of expulsion containing the identity of the involved policemen or of the report written by the general inspection if controllers were presents or of the report of the responsible of the transfer if the incident occurred during the transfer.
- Send quickly a fax to the detention centre to ask a quick medical examination and a copy of the full report that the doctor has the obligation to write after each attempt of expulsion and the report that the social worker or the psychologist must write if I'm complaining about brutality.
- Possibly, require a doctor of confidence that I will have to pay myself to see me and to make a full report
- Introduce a complaint beside the P Committee or possibly to the general inspection or of the internal control

I better consult quickly a lawyer that could also depend on the circumstances:

- help me with some steps described above
- Introduce a penal complaint and ask to the public prosecutor to request the suspension of my expulsion as long as necessary for the investigation
- Introduce a civil procedure against the public authorities if I have suffered damage due to illegalities related to my attempt of expulsion or my effective removal from the territory.

■ *Tiré du manuel de Mathieu Beys*

These records are written based on the following books, which contains references to legal bases and useful jurisprudence:



**Mathieu BEYS,
Quels droits face
à la police ?**

Manuel juridique et pratique,
Bruxelles-Liège,
Couleur livres
Jeunesse & droits, 2014,
596 p, (prix : 24 euros)

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