Fighting Domestic Violence - Malta

6. Special issues

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# 6.1 Battered woman syndrome

# 6.1.1 Can lawyers present evidence of battered woman syndrome or other domestic abuse as an affirmative defense to crimes that the battered woman has committed? (Note: Battered Woman Syndrome is accepted by courts in certain jurisdictions to show that battered women can use force to defend themselves and sometimes kill their abusers due to abusive and life-threatening situations.)

While there is no specific term used in Malta's laws, self-defense is stipulated and can be used as an affirmative defense to crimes the battered woman has committed. The Criminal Code of Malta provides that no offense is committed when a homicide or a bodily harm is ordered or permitted by law or by a lawful authority, or is imposed by actual necessity either in lawful self-defense or in the lawful defense of another person. While the Criminal Code does not explain what exactly factors into a claim of self-defense, it does explain that there are cases of lawful defense where self-defense is to defend one's own chastity or the chastity of another.[55]

Every person is also exempt from criminal responsibility if at the time of the act or omission complained of, such person was either:

in a state of insanity

constrained thereto by an external force that they could not resist[56]

# 6.2 Domestic violence in the workplace

# 6.2.1 Can courts issue orders to protect employees suffering from domestic violence?

The only orders contemplated by Malta's laws are protective orders issued to victims in general, as discussed in detail in Section 4.3.

# 6.2.2 Can departure be deemed "for good cause" if related to domestic violence?

No specific information found on this matter.

# 6.2.3 Can family members of domestic violence victims take reasonable leave to help the victim seek treatment or obtain help and services?

While Malta's employment laws do not specifically contemplate any measures specific to victims of domestic violence, the Employment and Industrial Relations Act provides leave for urgent family reasons to which an employee will be entitled and the conditions regulating such entitlement, which the minister may establish. Such rules and regulations set forth that an individual can request leave for *force majeure* events for urgent family reasons in cases of sickness or accident making the immediate presence of the employee indispensable.

The employee is allowed a minimum of 15 hours with pay per year as time off from work for urgent family reasons. The total number of hours availed of by the employee for urgent family reasons will be deducted from the annual leave entitlement of the employee.

# 6.3 Immigration

# 6.3.1 Does the law include provisions that are intended to prevent abusers who are citizens or permanent residents from using immigration laws to perpetrate domestic violence against their spouse?

The Family Reunification Regulations,[57] which transpose EU Directive 2003/86/EC,[58] make it possible for a migrant woman to obtain an autonomous residence permit. Such a permit is issued in the case of the death of a sponsor, difficulties resulting from a marriage breakdown, domestic violence, forced marriage or forced return by the sponsor to the country of origin. The validity of the autonomous residence permit issued on the basis of S.L. 217.06 is not affected by the expulsion of the sponsor, especially in the case of an abusive marital relationship.

 A third-country national may also apply for a temporary residence permit on the basis of humanitarian reasons, as such victims of domestic violence may apply for temporary residence. Such a residence permit may be renewed if the conditions upon which it was originally issued do not cease to exist.[59]

# 6.3.2 If battered immigrants cooperate with law enforcement in domestic violence, can they obtain immigration remedies?

Yes, the Permission to Reside for Victims of Trafficking or Illegal Immigration who cooperate with the Maltese Authorities' Regulations[60]makes it possible for victims of human trafficking and smuggling to be issued with a residence permit. Residence permits are also issued to third-country nationals whose presence is required in Malta in relation to ongoing investigations or court proceedings. During such period of residence, the third-country national may submit an application for a work permit.[61]

# 6.3.3 Does domestic violence law discuss asylum accessibility?

Yes, please refer to the answer in Section 6.3 (i) above.

# 6.4 Armed forces

# 6.4.1 Can a victim seek a military protective order if the abuser is in active military?

Military active individuals are subject to the Criminal Code in addition to also being subject to military law; therefore, protective orders can be issued against military personnel without having to seek specific military protective orders.

# 6.5 Child custody and child/spousal support

# 6.5.1 Do judges follow special rules to determine custody or visitation of children in domestic violence cases?

Family court judges have discretion to evaluate and determine custody and visitation rights according to each and every case. Decisions are based considering the specific circumstance of each case and are aimed at avoiding putting children in harm's way and always putting the best interests of the child first. Emergency protection orders can be put in place so that victims, children or both can be protected. In addition, visitation rights can be supervised when there is a specific concern about the particular parent exercising such right.

# 6.5.2 Can the judge consider the testimonies of the other spouse and the children when determining custody?

No specific information found on this matter.

# 6.6 Housing rights of domestic violence victims

# 6.6.1 Does the law include any barriers to prevent landlords from forcing a tenant to move out because they are victims of domestic violence?

No information found in our research.

# 6.6.2 Does the law allow a tenant to terminate his/her lease early due to domestic violence?

N/A

# 6.6.3 Can an order exclude the abuser from the residence?

Yes. The order itself may prohibit the accused from approaching or following the injured party, prohibit or restrict access to premises in which the injured party lives, works or frequents, or prohibit the accused from contacting the injured party. These orders can remain in force for up to five years, but can be revoked or extended, as seen fit.

# 6.6.4 Can abusers be forbidden by court orders to alienate or mortgage the property in his/her name if it is the family domicile?

Malta's Civil Code provides that the matrimonial home, even if wholly owned, may only be alienated with the consent of the other spouse, or, if consent is unreasonably withheld, by a court order.

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