Fighting Domestic Violence - The Netherlands

| Contents |
| --- |
| To generate table of contents, right-click here and select **Update Field.** |



                              

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**How to use and navigate this report**

# 1. Legal provisions

## 1.1 What are the relevant statutes and codes?

**Council of Europe Convention on preventing and combating violence against women and domestic violence**

The Istanbul Convention is the most comprehensive international treaty on combating and preventing violence against women and domestic violence. It was presented and opened for signature in 2011, signed in 2012 and was ratified in the Netherlands in March 2016; it follows that the Netherlands must therefore comply with this treaty. The Istanbul Convention is the first legally binding instrument that creates a comprehensive legal framework and associated approach to combat violence against women and focuses on preventing domestic violence, protecting victims and prosecuting offenders.

**European treaty**

Source available in

[English](https://wetten.overheid.nl/BWBV0006074/2016-03-01#Verdrag_1)

[Dutch](https://wetten.overheid.nl/BWBV0006074/2016-03-01#Verdrag_2)

**1979 Convention on the Elimination of All Forms of Discrimination against Women**

The United Nations Committee on the Elimination of Discrimination against Women (CEDAW), an expert body established in 1982, watches over the progress made for women in those countries that are parties to the 1979 Convention on the Elimination of All Forms of Discrimination against Women ("**1979 Convention**"). The Netherlands has signed and ratified this convention.

**Global treaty (UN)**

Source available in

[English](https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm)

**Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse**

This convention mainly regulates the criminal protection of children against new forms of abuse via the internet. The criminalization of child pornography, the corruption of children and the way in which pedophiles make contact with children, i.e., so-called "grooming," are tightened up. In the Netherlands, the convention has been approved and has therefore been in force since 26 November 2009.

**European treaty**

Source available in

[English](https://rm.coe.int/1680084822)

[Dutch](https://wetten.overheid.nl/BWBV0004127/2010-07-01#Verdrag_2)

**Convention on the Rights of the Child**

The United Nations Convention on the Rights of the Child is a human rights treaty that sets out the civil, political, economic, social, health and cultural rights of children. This convention was ratified in February 1995. The convention defines a child as any human being under the age of 18. This convention has been adopted under Dutch law.

**Global treaty (UN)**

Source available in

[English](https://www.ohchr.org/en/professionalinterest/pages/crc.aspx)

[Dutch](https://wetten.overheid.nl/BWBV0002508/2002-11-18#Verdrag_2)

***Wetboek van Strafrecht*(Criminal law)**

This law contains relevant articles on crimes against public order, crimes against morality, crimes against personal liberty, crimes against life, ill treatment, and causing death or bodily injury by guilt, destruction or damage.

Source available in

[Dutch](https://wetten.overheid.nl/BWBR0001854/2021-07-01)

***Burgerlijk Wetboek Boek 1*(Dutch Civil Code)**

The Dutch Civil Code contains the most important provisions that regulate the everyday life of citizens. This part of the Dutch Civil Code contains articles about personal and family law relating to, amongst others, marriages and divorces. The Dutch law provides for the tasks and powers of child protection that can be exercised in cases of domestic violence.

Source available in

[Dutch](https://wetten.overheid.nl/BWBR0002656/2021-01-01)

***Jeugdwet*(Administrative law dealing with Youth)**

This law states that the municipality must provide most care and help for children and young people. The purpose of the law is to prevent fragmentation of care for youth and to organize care and help. Municipalities are the third tier of public administration in the Netherlands and responsible for carrying out the duties that are delegated to them by the central government.

Source available in

[Dutch](https://wetten.overheid.nl/BWBR0034925/2020-07-01)

***Wet tijdelijk huisverbod*(Administrative law dealing with Temporary Restraining Orders)**

This law provides that a temporary restraining order can be imposed by the mayor on a person who poses a serious threat of domestic violence. For example, this law provides the mayor with the authority to impose a restraining order on a person if facts and circumstances show that this person poses a danger to the safety of others. Furthermore, the mayor has the power to mandate or authorize the auxiliary public prosecutor to carry out these powers and duties.

Source available in

[Dutch](https://wetten.overheid.nl/BWBR0024649/2020-07-01)

***Aanwijzinghuiselijk gewelden kindermishandeling* (2016A003) (Criminal law framework for dealing with domestic violence and child abuse)**

This designation provides a framework and rules for the criminal law approach to domestic violence and child abuse. Domestic violence and child abuse cover different forms of violence, always involving violence committed by someone close to the victim, where the victim is in a relationship of dependency and/or lack of freedom in relation to the perpetrator and where in some cases inequalities and stereotyped norms about women and men as a social group play a role. This can include partner violence, violence related to "honor," female genital mutilation, child abuse, parental abuse, marriage coercion, abandonment, bigamy and marital imprisonment, but also violence in (care) institutions. "Domestic violence" and "child abuse" is used as a collective term in this designation. Sometimes a short reference is made to "domestic violence" or "violence in the private sphere." These terms always have the same meaning and are considered a very broad definition of domestic violence compared to most European countries.

Source available in

[Dutch](https://wetten.overheid.nl/BWBR0037818/2016-05-01)

***Regeling specifieke uitkering aanpak huiselijk geweld en kindermishandeling*(Administrative law setting out specific benefit scheme for tackling domestic violence and child abuse)**

This scheme helps regions, through so-called central municipalities to put their plans and projects regarding domestic violence and child abuse into practice. This is done via the program team "Geweld hoort nergens thuis." The team helps regions in the transition from thinking to doing, in order to structurally solve bottlenecks in daily practice.

Source available in

[Dutch](https://wetten.overheid.nl/BWBR0043531/2020-05-16)

***Wet maatschappelijke ondersteuning 2015 - Hoofdstuk 4 VeiligThuis Uitvoeringsbesluit*(Administrative law framework for Social Support (See in particular: Chapter 4 Safe at Home))**

The Social Support Act (*Wet maatschappelijke ondersteuning*) is an act within the framework of aid and support. The purpose of the law is to help citizens so that they can continue to live independently at home and participate in society for as long as possible. Municipalities are responsible for implementing this law.

Source available in

[Dutch](https://wetten.overheid.nl/BWBR0035362/2021-07-01)

***Wmo 2015 - Hoofdstuk 4 Advies- en meldpunt huiselijk geweld en kindermishandeling*(Implementation decree (Chapter 4) Advice and reporting center for domestic violence and child abuse)**

Source available in

[Dutch](https://wetten.overheid.nl/BWBR0035733/2020-01-01#Hoofdstuk4)

***Meldcode Huiselijk geweld en kindermishandeling (Besluit verplichte meldcode huiselijk geweld en kindermishandeling)*(Administrative law setting out framework for mandatory reporting code for domestic violence and child abuse)**

The Reporting Code on Domestic Violence and Child Abuse (*Huiselijk geweld en kindermishandeling*) provides the reporting guidelines for professionals who encounter suspected domestic violence or child abuse of women and children in their work as a professional (e.g., as doctors, teachers, etc.). Based on five steps, professionals can determine whether they need to report their concerns to Veilig Thuis (Safe Home, a governmental organization that collaborates with the police in investigating domestic violence) and whether sufficient help can be deployed.

Source available in

[Dutch - Link 1](https://wetten.overheid.nl/BWBR0033723/2019-01-01)

[Dutch - Link 2](https://www.rijksoverheid.nl/onderwerpen/huiselijk-geweld/meldcode)

***Richtlijn voor strafvorderinghuiselijk geweld*(2015R049) (Guidelines for criminal law procedure for domestic violence)**

This regulation covers various forms of domestic violence in cases brought to the criminal court (police court) or cases in which a conditional discharge/dismissal is sufficient. If, in the context of domestic violence, a child is a victim of abuse or sexual abuse, the regulation should be used for child abuse or sexual abuse of minors, respectively.

Source available in

[Dutch](https://wetten.overheid.nl/BWBR0036268/2015-03-01)

***Wet tegengaan huwelijksdwang*(Administrative/criminal law dealing with compulsory marriage)**

The purpose of this law is to further curb marital coercion in the Netherlands and to limit the recognition of marriages contracted abroad to marriages that correspond to the generally accepted nature of marriage in the Netherlands. Furthermore, the law regulates that foreign marriages contracted under duress, foreign child marriages and polygamous marriages with a connection to the Netherlands are no longer recognized in the Netherlands.

Source available in

[Dutch](https://wetten.overheid.nl/BWBR0037085/2015-12-05)

***Uitkering Schadefonds Geweldsmisdrijven voor slachtoffers geweldsmisdrijven*(Administrative/criminal law Violent Crimes Compensation Fund for Victims of Violent Crimes)**

The Compensation Fund for Violent Crimes (*Schadefonds Geweldsmisdrijven*) provides a one-off payment for (i) victims of violent crimes who have or have had serious physical and/or psychological problems (injuries) as a result of a violent crime, and (ii) next of kin of victims of violent crime or death by crime of guilt and close relatives of victims who have serious and permanent physical and/or psychological problems (injuries) as a result of a violent crime.

There is no specific definition of a "violent crime." A violent crime can be seen as an act whereby a person is put into a state of unconsciousness or impotence.

Source available in

[Dutch](https://www.rijksoverheid.nl/wetten-en-regelingen/productbeschrijvingen/uitkering-schadefonds-geweldsmisdrijven-voor-slachtoffers-geweldsmisdrijven)

## 1.2 What is the controlling case law?

Laws are divided into the following sections: (i) civil law: these laws deal with conflicts between individual members of the public and organizations, (ii) administrative law: this refers to the prescribed rules that public authorities must keep to in their decision-making and regulates relations between government and citizens, and (iii) criminal law: these laws deal with all offenses and results in cases being brought before the courts by the Public Prosecution Service (PPS). The PPS is one of the main parties involved in dealing with criminal cases and has the sole discretion to decide if a case should be prosecuted and if an offender must appear before the court.

The Netherlands is divided into 11 judicial districts, each with its own court, four appeal courts and one Supreme Court. Each district court is made up of a maximum of five sections (such as administrative law, civil law, criminal law and sub-district law sector; family and juvenile cases are often put into a separate fifth section) and cases are typically heard by a single judge. In addition to the district courts there are also special administrative tribunals.

The Dutch legal system is not a system of case law. However, the Dutch civil legal system knows jurisprudence (*jurisprudentie*), and this can be used to interpret the civil law.

## 1.3 What are the specific parts of the court system that address domestic violence?

The prosecution of domestic violence infractions occurs in the following three main courts that work together to combat domestic violence: the criminal court, the civil court, court of appeals, and finally, in rare cases also the Hoge Raad, which is comparable to the Supreme Court.

In terms of protection and prevention, please see Section 2.1 "Are there civil and criminal legal remedies for domestic violence victims?" which specifies all the regulatory measures and organizations that work together with the court system.

**Other parts of the public system that address domestic violence**

The state works together with municipalities to combat domestic violence. The municipalities are responsible for *Veilig Thuis* ("**Safe Home**") (formerly known as *Steunpunten Huiselijk Geweld*) and for women's shelters. This is stated in the Social Support Act (Wmo 2015). In the fight against domestic violence, municipalities work closely together with other sectors. For example, mental health care (GGZ), probation, youth care, police and the Public Prosecutor's Office (OM).

Victims of domestic violence can get help from Safe Home. This is the advice and hotline for domestic violence and child abuse. Safe Home is also for perpetrators or witnesses of domestic violence. The number 0800-2000 is free of charge and can be reached every day and every hour. In immediate danger, victims should call the police on 112.

Victims of sexual abuse can turn to the Sexual Abuse Helpline for help and advice. The helpline is also there for witnesses of sexual abuse or for people who want to help a victim of sexual abuse in their environment. The telephone number is 0900-9999 001. It can be reached on working days from 9 am to 5 pm.

Children up to the age of 18 can also use the Kindertelefoon, for example, in cases of abuse, domestic strife or sexual violence. The telephone number is 0800-0432. It is available every day from 11 am to 9 pm.

## 1.4 What are potential causes of action?

Domestic violence is covered by general provisions of criminal law (i.e., common assault, rape, sexual assault, murder and stalking) but intimate partner violence is considered an aggravated circumstance that is likely to result in longer penalties for the convicted abuser.

# 2. Introduction: framework guiding domestic violence law

## 2.1 Are there civil and criminal legal remedies for domestic violence victims?

Yes. There are three types of laws that provide prevention, protection and prosecution measures for domestic violence victims:

**Administrative law**

Atemporary restraining order (*huisverbod*) is provided under the *Wet Tijdelijk Huisverbod* 2008. When a victim reports an incident to the police, a restraining order can be imposed within 24 hours.

Teachers, family doctors or care workers that suspect domestic violence can use the reporting code for domestic violence and child abuse. Under the Reporting Code for Domestic Violence and Child Abuse Act, in place since July 2013, organizations and independent professionals working with families, children or adults are required by law to use a reporting code for domestic violence. The law obliges these organizations to implement a procedure on what to do when a professional suspects domestic violence or child abuse.

**Civil law**

Civil law offers protection in the form of restraining orders. There are three types of restraining order: 1) those that prohibit entering a designated area or street (street restraining order); 2) those that prohibit entering a house (no-entrance order); and 3) those that prohibit any contact with the applicant in any way (no-contact order). Victims need to initiate civil interlocutory proceedings to apply for any of these.

Compensation for damages resulting from criminal acts can be claimed either by the victim filing a civil claim based on Section 6:162 of the Dutch Civil Code in the context of criminal proceedings or through a claim for damages in civil proceedings.

**Criminal law**

A criminal protection order can be imposed 1) as a condition to suspend pre-trial arrest, 2) as a condition to suspend prosecution, or 3) as a condition to a suspended sentence.

The Directive on Domestic Violence and Honor-Related Violence (*Aanwijzing huiselijk geweld en eergerelateerd geweld*) has been specifically developed for use by the PPS. The focus is on preventing repetition of violence through implementing protective measures, e.g., asking the victim if they would like to pursue a street or contact ban, informing the victim about the possibility of omitting their address and contact information out of the police report, etc.

There is no criminal act of "domestic violence" as such. Domestic violence is covered by general provisions of criminal law, like common assault, causing grievous bodily harm, manslaughter, murder, rape, sexual assault and stalking. However, intimate partner violence (IPV) is an aggravated circumstance within the context of common assault or grievous bodily harm (Article 304 of the Criminal Code). The punishment can be raised by one third of the maximum penalty in cases where the victim is the wife, husband, parent or child of the perpetrator.

No special criminal procedures are needed in cases of IPV. Cases of IPV can be brought to court without the victim being obliged to make a complaint. A formal complaint is only needed in cases of stalking.

A court can also impose a compensation order on any person convicted of a criminal act (Section 36f of the Criminal Code) if and insofar as the suspect is liable under civil law for damage that was inflicted due to the criminal offense. Collection of the compensation and its transfer to the victim is arranged by the Central Judicial Collection Agency.

## 2.2 Is domestic violence identified in national law as a human right (noting that at a European level protection from domestic violence has not been explicitly identified as a human right but is indirectly captured by the other provisions)?

Domestic violence is explicitly condemned in the 1993 UN Declaration on Violence against Women. Domestic violence is a private crime, but is considered a violation of human rights if the government fails to prevent it and bring the perpetrators to justice (negligence).

On 1 March 2016, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence ("Convention") entered into force in the Netherlands. The Convention is a human rights treaty and violence against women and domestic violence infringe on people's rights and integrity.[1]

The definitions from this Convention are consistent with the definitions used by the government. More specifically, in the Social Support Act of 2015, domestic violence is identified as "physical, mental or sexual violence or threat by a family member, housemate, spouse or former spouse or caregiver." In the Youth Act, child abuse is defined as threatening or violent interaction of a physical, psychological or sexual nature, by the parents or other persons with whom the child is in a relationship of dependence.[2] Dutch policy focuses on allvictims and allforms of violence in dependency relationships and is therefore formulated to be gender-neutral. Therefore, there is no separate approach to violence against women.[3]

The Netherlands has also signed other international conventions and resolutions on this topic, such as the Convention on the Elimination of All Forms of Discrimination against Women adopted by the United Nations, Goal Five of the Sustainable Development Goals 2015-2030 and UN Resolution 71/170 from 2016 (i.e., Intensification of efforts to prevent and eliminate all forms of violence against women and girls: domestic violence, 19 December 2016).[4]

Nevertheless, protection against domestic violence is not explicitly identified in national law as a human right, but is addressed indirectly through other provisions (including the ones mentioned above) and the right to equal treatment enshrined in Article 1 of the Dutch Constitution and a number of laws addressing gender inequality.[5]

## 2.3 Has your country signed and ratified the Council of Europe's Istanbul Convention (2011) preventing and combating violence against women and domestic violence (CETS No. 210)?

Yes, the Netherlands signed the Istanbul Convention on 14 November 2012. It was subsequently ratified on 18 November 2015 and came into force in the Netherlands on 1 March 2016.

## 2.4 If it has ratified the Istanbul Convention, how has this convention been implemented into national law?

The Istanbul Convention has been implemented in multiple Dutch laws. As indicated in Section 2.2, combating domestic violence is enshrined in the Social Support Act, which broadened the concept of social support to include safety in the domestic setting and decentralized responsibility to municipalities, the Report Code Act and the European Directive on Minimum Standards for the Rights, Support and Protection of Victims of Criminal Offences.[6] The Netherlands has also adopted a comprehensive program called "Violence does not belong anywhere" for 2018-2021. The intention of the program is to build a comprehensive national network of regional centers (Safe Homes). These Safe Homes provide prevention, protection and support to victims of domestic violence. There are a total of 26 Safe Home organizations.[7]

Please find an overview of the implementation [here](https://www.rijksoverheid.nl/documenten/convenanten/2018/09/01/wetsartikelen-verdrag-van-istanbul).

## 2.5 If it has not ratified or signed the Istanbul Convention, is it envisaged that your country will do so?

N/A

## 2.6 If it has ratified the 1979 Convention, how has the recommendations part of General Comment No. 35 been implemented into national law?

The 1979 convention has been ratified. The general recommendation No. 35 seems to have been implemented into Dutch law, but it is not entirely clear in which Dutch laws and regulations this has been done.

## 2.7 If the 1979 Convention has not been ratified or signed, is it envisaged that your country will do so?

N/A

# 3. Similarities and differences in terminology

## 3.1 Domestic violence

The Social Support Act 2015[8] defines domestic violence as covering physical, mental or sexual violence or threat by a family member, housemate, spouse or former spouse or caregiver.

In the Youth Act 2015,[9] child abuse is defined as threatening or violent interactions of a physical, psychological or sexual nature, by the parents or other persons with whom the child is in a relationship of dependence.

Domestic violence is not defined as a crime in and of itself and there is no specific offense that captures the conduct typical of domestic violence cases. However, violence against a family member is considered an aggravating circumstance.[10]

## 3.2 Stalking

"Any person who unlawfully, systematically, intentionally violates another person's personal privacy with the intention of compelling that other person to act or to refrain from certain acts or to tolerate certain acts or of instilling fear in that person, shall be guilty of stalking and shall be liable to a term of imprisonment not exceeding three years or a fine of the fourth category."[11]

## 3.3 Harassment

Harassment is influencing someone's behavior by frightening them or by threatening them with negative consequences. These consequences can be physical violence, for example, but other negative consequences are also conceivable. A distinction can be made between:

physical harassment, in which the harassment takes place through physical behavior and actual action (imminent approach, vandalism, (light) violence, threatening gestures, etc.)

verbal harassment, in which the threat is implicitly or explicitly verbally conveyed

written intimidation, whereby the threat is conveyed in writing (by letter or email)[12]

## 3.4 Victim

A "victim" is a person who has experienced a shocking event (outside the usual human experience), witnessed it or heard about it and has been killed or injured and/or harmed and/or reacted to it with an intense feeling of powerlessness and intense fear. These are normal reactions to an abnormal event in which the victim's own experience mainly determines the impact of the event.

## 3.5 Abuser

No specific definition.

## 3.6 Civil protection order

A civil protection order may be any provisional or definitive measure imposed for the protection of the victim in civil, criminal or administrative proceedings. It can be either an injunction or a prohibition. The aim is always to regulate the behavior of offenders.[13]

## 3.7 Causes of action

If what has happened is punishable, the police will investigate it. If they arrest the perpetrator of the violence, then the perpetrator will go to the police station. The police will carry out further investigations into the circumstances of the violence and any criminal offenses. The public prosecutor will decide whether the perpetrator of the violence is to be brought before a judge or allowed to go home with a summons. The mayor — or, on their behalf, the assistant public prosecutor — may impose a restraining order on the perpetrator of domestic violence. In that case, the perpetrator of domestic violence may not enter his or her home for 10 days. During this period he or she is also not allowed to contact the victim and any children involved. During this cooling-off period, the necessary assistance can be provided for all those involved and further escalation can be prevented. After these 10 days, the mayor can extend the house ban to a maximum of four weeks. Domestic violence perpetrators can be prosecuted and possibly sentenced to imprisonment. For assault, the sentence can even be increased if a family member is involved. Where no report been made, the police, together with the Public Prosecutor's Office, will endeavor to prosecute the case *ex officio*. This means prosecution without the victim having made a report.

## 3.8 Marital rape

Marital rape, also known as conjugal rape, is the unwanted sexual intrusion of a person's body by their spouse. It is both a form of domestic violence and sexual abuse.

## 3.9 Are there any other important domestic violence terms defined in relevant domestic violence statutes and codes?

Intimate partner violence, which is an aggravating circumstance within the context of common assault or grievous bodily harm (Article 304 of the Criminal Code).

# 4. Protection for domestic violence victims and relief granted

## 4.1 Civil protection orders

## 4.1.1 Are there civil protection orders available to victims of domestic abuse?

Yes, there are civil protection orders available to victims of domestic abuse. Dutch law provides for three types of protective orders:

Administrative law: According to the Temporary Restraining Order Act (*Wet tijdelijk huisverbod 2008*), the mayor may impose a restraining order on a person if the facts or circumstance show that their presence in the house seriously and immediately endangers the safety of one or more people who live with them in the house.[14]

Civil law:

street restraining order — prohibits entering a designated area or street

no-entrance order — prohibits entering a house

no-contact order — prohibits any contact with the applicant

Criminal law

Article 509hh of the Criminal Procedure Code: Restraining or protection orders can be imposed under this rule, but there has to be a concrete suspicion that a criminal act has been committed or is about to be committed. It can come in the form of a restriction from going to a certain place, a reporting requirement, an order to attend court or a code of conduct. These are valid for 90 days and can be extended three times (up to a maximum of one year). These orders can be imposed immediately. They can also be imposed (i) unilaterally by the prosecutor irrespective of the wishes of the victim, or (ii) a victim may also contact a prosecutor to ask for such a ban.

Article 38v of the Dutch Criminal Code: As part of a decision on a criminal prosecution, the judge can impose an eviction or no-contact order as a condition of pretrial detention or as a custodial measure.

## 4.1.2 Who can petition for civil protection orders?

Protection orders can be issued to victims of crimes that are characterized by their repetitive nature, such as stalking and intimate partner violence (IPV), and can be issued for victims of instantaneous crimes (e.g., rape victims).

Temporary restraining orders under administrative law can be requested by the victims (Article 4:1 General Administrative Law Act) in exceptional cases, but mostly are requested by the public prosecutor or mayor. Only victims (i.e., claimants/ plaintiff) can apply for a protection order pursuant to civil law. Under Criminal laws, victims do not officially apply for the protection order but they can inform the police or prosecution that they need such an order.

## 4.1.3 Are there temporary custody of a child or child support orders?

When a child witnesses domestic violence it is considered child abuse and child abuse is dealt with under the Safe Home protocol. The Safe Home Handling Protocol and the Quality Framework of the Child Care and Protection Board state that the investigator must always seek to speak to the child.

Furthermore, violence by an intimate partner can also be a reason to deny access or terminate parental authority if that is in the child's interest. Article 1:266 of the Dutch Civil Code (Grounds for a removal of parental authority) stipulates that the district court may remove a parent from the right to exercise authority over one or more of their children on the ground that the parent is unfit or unable to comply with their duty of care and unable to raise their children. Article 1:268 of the Dutch Civil Code lays down the grounds for such removal of parental authority, which include: abuse of parental authority, poor lifestyle, an irrevocable conviction (willfully participating in a crime), a serious disregard for the Youth Care Act and the existence of well substantiated grounds to fear that the interests of the child will be neglected when the parent claims the child back from other persons.

In cases where it is "urgent and necessary" and the court suspends both parents from authority, pending investigation, the child may be put in an interim guardianship (Article 1:271 of the Dutch Civil Code).

## 4.1.4 Is there a provision to order the abuser to move out or stay away from places that the victims frequent?

See Section 4.1.1 "Are there civil protection orders available to victims of domestic abuse?" above (for example, no-entrance order and street restraining order).

## 4.1.5 Are there any other types of emergency, preventive and civil protection orders?

See Section 4.1.1 "Are there civil protection orders available to victims of domestic abuse?" above for an overview of all possible protective orders.

## 4.1.6 Can these orders be requested by direct or indirect victims or legal representatives in children's cases?

See Section 4.1.1 "Are there civil protection orders available to victims of domestic abuse?" above.

## 4.1.7 Are there different types of civil protection orders, e.g., for a short- term period?

See Section 4.1.1 "Are there civil protection orders available to victims of domestic abuse?" above.

## 4.1.8 Are ex parte orders permitted without the aggressor being present?

Civil protection orders can be issued without hearing the offender during the interlocutory trial in absentia. It is important that the summons is served on the defendant correctly, so that they have at least the opportunity to be present.

Administrative and criminal temporary restraining orders and protective orders need both parties present to be heard by the court.

## 4.1.9 Do emergency orders also extend protection for abuse and intimidation to family members of the victim?

Yes.

## 4.1.10 How long do the orders last?

Administrative temporary restraining orders may last for 10 days,[15] but can also be extended for a maximum of four weeks after being imposed if the threat of danger, or the serious suspicion thereof, continues.[16]

Criminal restraining orders can last up to 90 days and can be subject to renewal up to three times per year (see Section 4.1.1 "Are there civil protection orders available to victims of domestic abuse?" above).

## 4.1.11 Please provide any data or hyperlinks to government or NGO websites that include information on how often civil protection orders are issued, and any relevant demographics information, e.g., police reports, convictions, etc.

<https://rm.coe.int/grevio-report-on-netherlands/1680997253>

[https://rm.coe.int/netherlands-state-repot-grevio/16808d91ac](https://wetten.overheid.nl/BWBV0006074/2016-03-01)

<http://poems-project.com/wp-content/uploads/2015/02/Netherlands.pdf>

## 4.2 Steps for receiving a protective order

## 4.2.1 What documentation is needed to obtain a civil protection order?

For administrative temporary restraining orders, the usual procedure involves police being called to the scene of domestic violence (regardless of whether they were called by the victim or a witness). The police then assess whether this type of order is necessary. Following this risk assessment, it is up to the mayor or the public prosecutor to impose the protective order.

## 4.2.2 Does the victim need to attend a hearing?

For administrative protective orders, the victim does not have to attend a hearing.

## 4.2.3 Can you request remedies?

Compensation for criminal acts can be claimed either by the victim filing a civil claim based on Section 6:162 of the Dutch Civil Code in the context of criminal proceedings or through a claim for damages in civil proceedings.

A court can also impose a compensation order on any person convicted of a criminal act (Section 36f of the Dutch Criminal Code) if and insofar as the suspect is liable under civil law for damages that were inflicted due to the criminal offense. Collection of the compensation and its transfer to the victim is arranged by the Central Judicial Collection Agency.

If the perpetrator does not comply, the victim has recourse to the advance payment scheme under Section 36f(6) of the Dutch Code of Criminal Procedure, whereby the state warrants the payment of the compensation order.

## 4.2.4 Are there time limits?

Yes, the mayor can extend an initial protection order (10 days) by an additional four weeks.

## 4.2.5 Are there different rules in emergencies?

In the case of administrative temporary protection orders, if the situation is urgent, the protection order can be given verbally without being put in writing.

## 4.3 Judicial discretion

## 4.3.1 What discretion does a judge have in granting a civil protection order or other protective orders?

Administrative temporary protection orders are issued by the mayor or the public prosecutor's office;[17] however, the judge has discretion to revoke the temporary restraining order within the 10 days.[18]

## 4.3.2 Are there age limits on who can obtain orders?

Minors (18 and under) can receive civil protection orders through administrative law regulations (e.g., a protective order through the mayor's office).

## 4.4 Restitution and remedies available to victims

## 4.4.1 Can victims obtain reimbursement for costs and restitution paid?

Yes, the victim can claim costs and damages within a criminal or civil procedure.

## 4.4.2 Can they recover wages and profits lost?

Yes, they can be claimed as damages.

## 4.4.3 Is a separate civil process required?

The victim can claim costs and damages within a criminal or civil procedure.

# 5. Prosecutorial considerations

## 5.1 Police procedures

## 5.1.1 When do the police get involved in domestic disputes or legal actions?

When the charges are criminal, the police will lead an investigation (the police will also inform an organization called ['Safe at home](https://veiligthuis.nl/)' that can offer additional support to the victim).

A domestic violence prosecution is typically triggered in one of the following ways:

**1. If there is a threatening situation but no crime has been committed and/or it is not reported**

If the police encounter a threatening domestic situation in someone's home, but a crime has not yet occurred, the police cannot arrest the offender and no prosecution would occur. Nevertheless, in these threatening situations, the police can request a [Domestic Exclusion](https://wetten.overheid.nl/BWBR0043531/2020-05-16) Order to exclude the offender from the home to prevent the violence or potential for violence from escalating.

**2. If a person presses charges or files a report**

The [police](https://wetten.overheid.nl/BWBR0035362/2020-07-01) will get directly involved (i) when there is immediate danger reported through 112 (police emergency phone number) or (ii) when an individual reports to a police station to press charges.

In addition to pressing charges (*aangifte*), one can also choose to report domestic violence anonymously (whether it occurred in the past or if one is in danger of it occurring in the future), leaving the decision to investigate or not to the discretion of the police. A report can be submitted by the victim or by others on behalf of the victim. A report can be submitted by the victim or by others on behalf of the victim, such as medical professionals and others.

**3. Professionals who suspect domestic abuse**

Doctors, nurses and other professionals may encounter victims of domestic violence through their work. The Reporting Code for Domestic Violence and Child Abuse stipulates and guides how such professionals act in situations where there is suspicion of domestic abuse. Every aid organization and independent professional may develop their own reporting code as long as it contains at least the five basic steps shown below:

Step 1: Map out the signals.

Step 2: Consult a colleague and, if necessary, consulting *Veilig Thuis* (Safe at Home — the advice and reporting point for domestic violence and child abuse).

Step 3: Interview the person(s) involved.

Step 4: Evaluate the circumstance of suspected domestic violence or child abuse with the following questions:

Do I have a suspicion of domestic violence or child abuse on the basis of steps 1 to 3?

Do I have a suspicion of acute or structural insecurity?

Step 5: Make a decision on next steps:

Is reporting necessary? Reporting is necessary if there is acute or structural insecurity.

Is it possible to provide or organize help (also)?

Assistance is possible in the following cases:

The professional is able to provide or organize effective/appropriate help.

The person involved cooperates with the offered or organized help.

The help leads to sustainable security.

If it is not possible to provide help on the basis of one of these points, reporting to *Veilig Thuis* (Safe Home) is necessary.

## 5.1.2 What circumstances effect law firm involvement?

Domestic violence is a criminal offense. Legal help for victims is available for pressing charges (preparing and going with the victim to the police station), advice about collecting evidence/proof of abuse, requesting a restraining order, and during a criminal trial (beyond law firms, it's good to know that [Victim Support Netherlands](https://wetten.overheid.nl/BWBV0002508/2002-11-18) offers legal support during the criminal trial, requesting a temporary restraining order and more).

If the prosecutor (*officier van justitie/openbaar ministerie*) eventually decides not to prosecute due to, for example, a lack of evidence, it is important to know that within a term of three months, an attorney can help the victim start a complaint procedure against this decision at a higher court (*gerechtshof*). This procedure is called the Article 12 *Wetboek van strafvordering* procedure. If the higher court decides that a prosecution has enough legal basis, then the prosecutor (*officier van justitie/openbaar ministerie*) will be forced to prosecute the suspect/abuser. In this case, an attorney can possibly still make sure prosecution takes place. Technically this procedure does not require law firm involvement; however, it is a challenging and highly technical process that the victim will likely find difficult to do alone.

In addition, there is also an option to claim damages, whether in a criminal procedure (*voeging als benadeelde partij*), where representation by a lawyer is not required but is highly advisable to substantiate damages, or a civil lawsuit (the threshold of mandatory legal representation is a claim larger than EUR 25,000 in a civil procedure).

## 5.2 Standard of proof

## 5.2.1 Is proof required by any legal means?

Yes. Evidence of the abuse is required, for example, pictures, reports from a medical professional, reports from witnesses, emails, text messages, letters, etc. If possible, it is advisable to collect evidence before pressing charges and hand it over to the police as part of the process.

**Criminal law**

The procedure starts with pressing charges (*aangifte*). Then the police will investigate and, after that, the prosecutor will decide if the suspect will be prosecuted. The problem is that in these cases, there are often only two witnesses — the perpetrator and the victim. Therefore, for the victim, it is important to collect as much evidence as possible in order to convince the prosecutor to prosecute. If that happens, the judge can only convict the perpetrator if there is enough lawful and convincing evidence.

**Civil code**

It is up to the victim to prove in court that the perpetrator physically and/or emotionally damaged their children, and also to prove the extent of the damages.

## 5.2.2 Are there any requirements regarding evidence and documents?

See above.

## 5.2.3 Is proof "beyond a reasonable doubt" required?

Evidence in a criminal procedure needs to be (1) lawful and (2) convincing. In a civil procedure, the main rule is that a party who states a certain act or fact must prove this act or fact. This means, for example, that if one claims that someone hurt them, and there are damages because of that, then one must also be able to prove both these points, including the extent of the damage.

## 5.2.4 Is the standard of proof different for ex parte orders?

This is not used in the Netherlands in criminal law or civil law when it comes to domestic violence (*ex parte* is only used in IP infringement cases).

## 5.3 Affirmative defenses

## 5.3.1 Are affirmative defenses available to the accused?

Yes. For example, self-defense (*noodweer*).

## 5.3.2 Is willful intent required?

Yes, the prosecutor needs to prove willful intent (*opzet*).

## 5.3.3 Are false accusations punishable for the victim?

Yes, false accusations are a criminal offense (if proven).

## 5.3.4 How is consent discussed in the law?

Rape in The Netherlands includes penetration by any body part of a perpetrator into the body of a victim. However, rape is only punishable if there is proof of force or violence (*dwang of geweld*) that meant the victim could not escape the situation. That is hard to prove (e.g., showing bruises or physical evidence of force is not always possible) and victims can also freeze and not be able to try to escape/fight back/speak/say no, etc., in which case a perpetrator can claim the victim never said "no" or resisted. Currently there is a new pending legislation that the government wants to add to the law, named 'sex against your will.' This means that a sexual act will be punishable if the perpetrator could have known that their act was against the will of the victim (e.g., by body language, communication, common sense, etc.). The difference is that proof of force or violence is not needed (e.g., a claim that a victim didn't scream/fight is no longer relevant).

## 5.3.5 Is self-defense or insanity a defense?

Yes. A perpetrator can claim affirmative defenses such as self-defense or insanity.

## 5.4 Witness status

## 5.4.1 What is a witness's duty to testify honestly and completely?

Witnesses have a duty to testify honestly and completely. If a witness received a summons to give testimony in a criminal or civil case, in general the witness is obliged to show up in court. If a witness fails to show up without a valid reason, the police can pick the witness up to testify. Both in a civil case and a criminal case, a witness is obliged to give a statement and answer questions truthfully.

## 5.4.2 Who may abstain from testifying in certain situations?

In a criminal case, it is possible that where the witness is married or related to the suspect, or has a professional obligation to maintain secrecy (e.g., a psychologist), then the witness must disclose this to the judge, who will decide if the witness should answer the questions on record.

## 5.4.3 What potential "excuses" can a witness raise to refuse to testify in a domestic violence action?

See Section 5.4.2 "Who may abstain from testifying in certain situations."

In practice, all witnesses can claim that they cannot remember the event(s) in question, that they did not witness anything, that they had a blackout, and so on.

## 5.4.4 What is the impact of domestic violence on witnesses who are children?

Minors who are witnesses or victims themselves are treated with the appropriate sensitivity, and will be heard by a judge in a different setting and not in a traditional court setting. Depending on the situation, a legal guardian can be present.

## 5.4.5 Can children be called upon to testify?

Yes. See above.

## 5.4.6 What is the effect of a child victim on the charges against the offender?

If the victim is a minor, the perpetrator, if convicted, will face higher charges.

## 5.5 Penalties and sentencing; penalty enhancements

## 5.5.1 What are the penalties and sentencing laws for first-time domestic violence offenses?

That depends on the specific form of violence (e.g., rape, stalking, physical abuse, etc.). If a violent act happens within the context of the domestic environment, it is treated as intimate partner violence, which entails sentencing that is higher by a third. For example, in the case of "standard" violence, the maximum sentence is three years in prison, but in the case of violence against a spouse or a child, then the offender can receive a sentence of four years in prison. The aggravating circumstance of intimate partner violence adds a third to the maximum sentence.

In practice, a first time offender probably will get a lower sentence than the legal maximum, depending on the circumstances. Repeated offenses will lead to higher and higher sentences.

## 5.5.2 Are there criminal penalties?

Yes. Depending on the circumstances, criminal penalties can be given, such as imprisonment, limitation of movement (house arrest), payment of damages, community service arrangements, prohibition of entering a certain area, a restraining order, and so on.

## 5.5.3 What is the result of a violation of an existing order for protection?

Depending on the terms, it can vary between paying a fine and going to jail.

## 5.5.4 What fines and other penalties are imposed besides incarceration and liberty restriction?

See above.

## 5.6 Post-release restrictions

## 5.6.1 Does the law notify the victim of the offender's release from custody?

Yes.

# 6. Special issues

## 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.)

There is no separate legal concept of battered woman syndrome; however, affirmative defenses are available (e.g., *noodweer* or *psychische overmacht*).

## 6.2 Domestic violence in the workplace

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

The labor laws that govern the Dutch employment market do not contain any particular treatment around domestic violence. It is, however, noteworthy that the Dutch law, in general, treats employees favorably. It is very problematic in any case, regardless of domestic abuse, to 'easily' fire an employee with a permanent contract (in the third year of employment, a labor contract is by law considered permanent). If an employer wants to fire an employee with a permanent contract, they must seek approval from the UVW (the governmental labor organization; this also has to occur in situations where there is a reorganization or other economic reasons), prove certain specific legal grounds that are clearly illegal (e.g., theft by the employee) or come to a mutual agreement with the employee. All these measures will take time and effort and could potentially result in a situation where a judge disagrees with the employer's standpoint and, therefore, the employee must remain employed. Therefore, most of these discussions are settled in a mutual agreement between the employer and the employee.

If an employee has a temporary contract, it is similarly challenging to fire them before the end of the contract.

In addition, the Dutch labor law requires employers to uphold "being a good employer" (*goed werkgeverschap*) guidelines, which is a broad definition. Firing a domestic violence victim does not seem to be in line with that obligation.

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

In cases where immediate departure of a victim of domestic violence is required for their own safety, it's likely that the employer will view the situation as reasonable and just (*Redelijkheid en billijkheid*) under the Dutch civil law.

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

The Dutch government has a [mandatory minimum number of vacation days](https://www.rijksoverheid.nl/onderwerpen/vakantiedagen-en-vakantiegeld/vraag-en-antwoord/op-hoeveel-vakantiedagen-heb-ik-recht) in the Netherlands (about 160 hours per year for a 40-hour work week). There are additional paid [special vacation days](https://business.gov.nl/regulation/leave-schemes/#:~:text=Short%2Dterm%20care%20leave%20(in,live%20at%20home%20or%20partners.&amp;text=During%20the%20period%20of%20leave,you%20pay%20the%20minimum%20wage.), where one of the instances that allows special leave is ["emergency leave"](https://business.gov.nl/regulation/leave-schemes/) in unforeseen personal circumstances. This leave is not specifically related to domestic violence, but it can be used in such circumstances. Beyond vacation days required by law, each company may give their employees additional "special vacation days," depending on individual company policy and/or a collective employment agreement.

## 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?

[Yes](file:///C%3A/Users/gsbdxb/AppData/Local/amsart1/Desktop/Pro%20bono%20project%20-%20GRW/Results/%E2%80%A2Does%20the%20law%20include%20provisions%20which%20are%20intended%20to%20prevent%20abusers%20who%20are%20citizens%20or%20permanent%20residents%20of%20your%20country%20from%20using%20immigration%20laws%20to%20perpetrate%20domestic%20violence%20against%20their%20spouse).

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

The Aliens Act, Aliens Decree and Aliens Act Regulations govern issues of residence in the Netherlands and are supplemented by guidance from the Immigration and Naturalization Service (IND). Ordinarily a migrant woman living in the Netherlands on a derivative residence permit tied to her spouse or partner must establish five years of continuous residence on family migration grounds and pass the civic integration test before obtaining an autonomous residence permit (Article 14 of the Aliens Act). However, in cases of domestic violence, an application can be made for a permanent humanitarian residence permit before the expiry of the five-year period and there is no requirement to pass the civic integration test.[19]

There may be some difficulty in accessing these measures due to the evidential requirements necessary to rely on these measures, such as evidence of domestic violence from boththe police/ prosecution service anda care provider (e.g., shelter, the healthcare sector or a support service).[20]

## 6.3.3 Does domestic violence law discuss asylum accessibility?

[Yes](file:///C%3A/Users/gsbdxb/AppData/Local/amsart1/Desktop/Pro%20bono%20project%20-%20GRW/Results/%E2%80%A2Does%20the%20law%20include%20provisions%20which%20are%20intended%20to%20prevent%20abusers%20who%20are%20citizens%20or%20permanent%20residents%20of%20your%20country%20from%20using%20immigration%20laws%20to%20perpetrate%20domestic%20violence%20against%20their%20spouse). If there are threats of violence related to "honor" against a victim in the Netherlands, and possibly also in their country of origin, the victim can apply for asylum. While their application is being processed, the victim is entitled to accommodation in an asylum seekers' center.[21]

The Netherlands recognizes gender-based violence as a form of persecution, including sexually discriminatory social practices, religious rules, etc.[22] A residence permit may also be granted as a result of trauma suffered in the country of origin if it is not reasonable to require the asylum seeker to return.[23]

## 6.4 Armed forces

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

There are specific military laws in the Netherlands, military criminal law and military disciplinary law, but these have been written for military personnel. No provisions have been found that confirm that a victim can seek a military protective order.

## 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?

Yes, in consultation with the Child Care and Protection Board/PPS.

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

No specific provisions were found that would exclude consideration being given to such testimony.

## 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. It is noteworthy that Dutch law, in general, is favorable toward tenants. It is very problematic in any case, regardless of domestic abuse, to force out a tenant. It usually takes landlords lengthy court proceedings to "force out" a tenant, with court sentiment leaning toward protecting the tenant.

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

Not specifically due to domestic violence, but if the domestic violence causes extreme nuisance, this allows the tenant to terminate the lease at an earlier stage.

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

Yes, initially for 10 days, but this may be extended up to four weeks. See above for additional information about the process.

## 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?

The Netherlands recognizes three types of family arrangements between spouses: marriage, registered partnership, and living together. For a couple that is married or in a registered partnership, no specific court orders are required. The Dutch Civil Code (1:88 lid 1 sub c BW) stipulates that a person must gain approval from their partner for acts relating to the family domicile and it includes other broader financial issues such as giving gifts, and providing deposits and/or financial guarantees. This is true even if the couple has a prenuptial agreement and/or if only one of the partners fully owns the family domicile. However, this is no longer the case for people who are recognized as "living together" only. In this case, abusers can indeed alienate or mortgage the property in their name if it is the family domicile.

# 7. Endnotes

[1]   GREVIO Baseline Evaluation Report Netherlands (2018), p. 6.

[2]   GREVIO Baseline Evaluation Report Netherlands (2019), p. 11.

[3]   GREVIO Baseline Evaluation Report Netherlands (2018), p. 7.

[4]  GREVIO Baseline Evaluation Report Netherlands (2018), p. 6.

[5]   GREVIO Baseline Evaluation Report Netherlands (2019), p. 12,

[6]    GREVIO Baseline Evaluation Report Netherlands (2019), paragraph 36.

[7]   ibid., paragraph 37.

[8]    GREVIO Baseline Evaluation Report Netherlands (2019), paragraph 11.

[9]   *ibid.*

[10]  "The protection of IPV victims: legal framework and criminal procedures," INASC, The Netherlands, L. Drost, T. van der Kooij and K. Lunnemann

[11]    Section 285b Dutch Criminal Code *(Wetboek van Strafrecht*) NTD: add full citation.

[12]    GREVIO Baseline Evaluation Report Netherlands (2019), p. 48.

[13]   "The protection of IPV victims: legal framework and criminal procedures," INASC, The Netherlands, L. Drost, T. van der Kooij and K. Lunnemann, section 4.3.

[14]    Wet tijdelijk huisverbod, 9 October 2008. Accessed via: <https://wetten.overheid.nl/BWBR0024649/2013-01-01>.

[15]   Wet tijdelijk huisverbod, 9 October 2008. Accessed via: <https://wetten.overheid.nl/BWBR0024649/2013-01-01> (Article 2).

[16]    Wet tijdelijk huisverbod, 9 October 2008. Accessed via: <https://wetten.overheid.nl/BWBR0024649/2013-01-01> (Article 9).

[17]   Wet tijdelijk huisverbod, 9 October 2008. Accessed via: <https://wetten.overheid.nl/BWBR0024649/2013-01-01> (Article 2 and 3).

[18]   Wet tijdelijk huisverbod, 9 October 2008. Accessed via: <https://wetten.overheid.nl/BWBR0024649/2013-01-01> (Article 6).

[19]   Section 1 ("Partners") of the IND Leaflet "Domestic violence, honour-related violence, human trafficking, abandonment and your residence permit" (October 2018) https://ind.nl/en/Forms/3092.pdf

[20]    Chapter B8(2), Section 2.3 of the Aliens Act Implementation Guidelines.

[21]   See Article 14 of the Aliens Act, Section 3.48(1)(e) (honour-based violence) and Section 3.48(1)(f) (domestic violence) of the Aliens Decree, and Chapter B8(2) Section 2.1 of the Aliens Act Implementation Guidelines for fixed-term permits and Chapter B9 (11) for extension of permit on humanitarian grounds where the threat continues.

[22]   Aliens Act Implementation Guidelines 2000, C2/3.3, Article 3.36(2)(a) and (f) of the Regulations on Aliens 2000.

[23]    Article 29(1)(b) of the Aliens Act.

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