Fighting Domestic Violence - Luxembourg

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# 1. Legal provisions

## 1.1 What are the relevant statutes and codes?

The relevant legislation is as follows:

Law of 8 September 2003

Law of 30 July 2013 amending the Law of 8 September 2003

Law of 20 July 2018 approving the Council of Europe Convention on preserving and combating violence against women and domestic violence

Criminal Code

Civil Procedure Code

Criminal Procedure Code

## 1.2 What is the controlling case law?

As a member of the Council of Europe and of the European Union, Luxembourg is subject to the case law of both the European Court of Human Rights and the Court of Justice of the European Union.

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

The district courts address criminal matters.

## 1.4 What are potential causes of action?

Assault and battery (*coups et blessures*) are potential causes of action.

# 2. Introduction: framework guiding domestic violence law

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

**Criminal**

Article 409 of the Criminal Code provides remedies in cases of domestic violence. In principle, the perpetrator of domestic violence will be punished by imprisonment of six months up to five years and will be subject to a fine of EUR 251 up to EUR 5,000. However, the penalty is even higher in the following circumstances:

If the assault or battery was premeditated, the sentence is one to five years of imprisonment and a fine of EUR 501 to EUR 5,000.

If the intentional assault or battery results in illness or personal incapacity to work, the sentence is as follows:

If the assault or battery was not premeditated, the sentence is one to five years of imprisonment and a fine of EUR 501 to EUR 25,000.

If the assault was premeditated, the sentence is five to 10 years of imprisonment and a fine of EUR 1,000 to EUR 30,000.

If the intentional assault or battery results in either a disease that appears incurable, a permanent incapacity for personal work, the loss of the absolute use of an organ or a serious mutilation, the sentence is as follows:

If the assault or battery was not premeditated, the sentence is imprisonment for a term of 10 to 15 years and a fine of EUR 2,500 to EUR 50,000.

If the assault was premeditated, the sentence is 15 to 20 years of imprisonment and a fine of EUR 3,000 to EUR 50,000.

If the intentional assault or battery causes death without the intent to kill, the sentence is as follows:

If the assault was not premeditated, the sentence is 20 to 30 years of imprisonment.

If the assault was premeditated, the sentence is life imprisonment.

**Civil**

The victim may request damages.

## 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 has not been explicitly identified as a human right but the other provisions indirectly capture it, such as the following:

"Right to life" (Article 2 of the European Convention on Human Rights)

"Prohibition of torture and inhuman or degrading treatment" (Article 3 of the European Convention on Human Rights)

"Right to respect for private and family life and correspondence" (Article 8 of the European Convention on Human Rights)

"Prohibition of discrimination" (Article 14 of the European Convention on Human Rights)

## 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.

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

Luxembourg has ratified the Convention through the Law of 20 July 2018 approving the Council of Europe Convention on preserving and combating violence against women and domestic violence.

## 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?

N/A

## 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

This is a gender-specific form of violence, commonly perpetrated against women, occurring in the private sphere, within the family or between members of the same household, and in interpersonal relationships, including intimate partner violence. Domestic violence can take many forms including physical, sexual, psychological and economic violence.

## 3.2 Stalking

The Criminal Code does not make any distinction between stalking and harassment, and it only mentions harassment (Article 442-2 of the Criminal Code).

## 3.3 Harassment

The Criminal Code does not make any distinction between stalking and harassment, and it only mentions harassment (Article 442-2 of the Criminal Code).

As the article is fairly broad (the Criminal Code punishes anyone who has repeatedly harassed a person when they knew or should have known that this behavior would seriously affect the peace of the person concerned), it should cover a variety of behaviors such as sexual harassment or moral harassment.

## 3.4 Victim

The victim is the person toward whom the offenses against life or physical or psychological integrity are directed. In the case of domestic violence, the victim is a *proche* (close person) of the abuser.

## 3.5 Abuser

In the case of domestic violence, the abuser is the *proche* (close person) who commits the offenses against life or physical or psychological integrity.

## 3.6 Civil protection order

A protection order is a legal document issued to protect a victim of domestic violence, abuse or sexual harassment. Such an order may include, but is not limited to, the eviction of the perpetrator from the home, a ban on contact with the victim and the requirement that the perpetrator maintain a prescribed distance from the victim.

## 3.7 Causes of action

The claimant files an action against a defendant on this legal basis.

## 3.8 Marital rape

N/A

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

Under the Law of 8 September 2003, the following are considered *proches* (close persons): the spouse or the person with whom the person subject to deportation usually lives, their ascendants and legitimate, adoptive or natural descendants, and the ascendants and legitimate, adoptive or natural descendants of the spouse or person with whom the person subject to the eviction order usually lives. With regard to the descendants of the spouse or of the person with whom the person being deported usually lives, only minor or disabled descendants are considered.

# 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. Under the Law of 8 September 2003 and Articles 1017-1 of the Civil Procedure Code, the police, with the authorization of the state prosecutor, can make a protection order of expulsion.

## 4.1.2 Who can petition for civil protection orders?

The condemned abuser can petition for a civil protection order. However, the petition will not automatically delay or suspend the issuance of the order.

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

Yes, pursuant to Article 1017-8 of the Civil Procedure Code.

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

Yes (Article 1017-1 and Article 1017-7 of the Civil Procedure Code).

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

There are two types of civil protection orders in relation to domestic violence:

one for cases where the physical integrity of the victim is in danger (Article 1017-1 of the Civil Procedure Code)

one for cases where the psychic integrity of the victim is in danger (Article 1017-7 of the Civil Procedure Code)

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

For direct victims, yes; for indirect victims, this is not specified; and for legal representatives, yes.

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

The expulsion order is temporary in nature, as it lasts for 14 days and it can be extended for three months at the request of the victim.

To obtain lasting protection, the victim should file a proper complaint in a criminal court.

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

Yes.

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

Yes, the measure can concern all "persons who cohabit in a family setting" as stated in the Law of 30 July 2013.

## 4.1.10 How long do the orders last?

The expulsion order ends on the 14th day following the day it comes into force at 5 pm, unless the protected person has filed a request for an extension with the family court judge. This extension may last for a maximum of three months.

This request is made by a simple petition, without the need to be represented by a lawyer. The person who has been expelled can petition against the expulsion order. However, the petition will not automatically delay or suspend the order.

## 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.

N/A

## 4.2 Steps for receiving a protective order

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

The victim must file a complaint with the police, with evidence that the abuser is preparing to commit an offense against the life or body of the victim (again or for the first time).

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

The victim does not need to attend a hearing to obtain a civil protection order.

## 4.2.3 Can you request remedies?

In parallel to the expulsion procedure, the Public Prosecutor's Office takes a decision regarding following up on domestic violence cases, which is dependent on the seriousness of the case. The decision may involve the direct summons of the perpetrator before the criminal court to open a judicial investigation against him or to classify the case without a penal follow-up (with or without a written warning to the perpetrator).

If there is a trial, then the abuser may be condemned to the criminal sentences mentioned below. The victim will also be able to request some damages.

## 4.2.4 Are there time limits?

Yes, depending on the gravity of the offense, as follows:

crimes: 10 years (Article 637 of the CPP)

misdemeanors: five years (Article 638 of the CPP)

exceptions for certain offenses (Articles 635-643 of the CPP)

## 4.2.5 Are there different rules in emergencies?

N/A

## 4.3 Judicial discretion

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

The police, with the authorization of the prosecutor, issue the protection order.

However, requests to extend an order for deportation, beyond 14 days and up to a maximum of three months, must be requested from the president of the district court (judge) by way of a petition.

The president decides whether to extend the protection order.

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

No.

## 4.4 Restitution and remedies available to victims

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

Yes.

## 4.4.2 Can they recover wages and profits lost?

Yes.

## 4.4.3 Is a separate civil process required?

A separate civil process is not required but it is possible to obtain compensation for damages. Compensation for damages can also be requested during criminal proceedings when the victim has constituted herself as a *partie civile*.

# 5. Prosecutorial considerations

## 5.1 Police procedures

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

The police have the authority to issue the first protection order.

## 5.1.2 What circumstances effect law firm involvement?

The victim does not need to be represented by a lawyer to request a protection order.

## 5.2 Standard of proof

## 5.2.1 Is proof required by any legal means?

N/A

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

To obtain a civil protection order, the victim must file a complaint with the police, with evidence that the abuser is preparing to commit an offense against the life or body of the victim (again or for the first time).

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

N/A

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

N/A

## 5.3 Affirmative defenses

## 5.3.1 Are affirmative defenses available to the accused?

Yes.

## 5.3.2 Is willful intent required?

Willful intent is required for certain offenses, but it is not required for others. The penalties for offenses that lack intent are generally lower than for those that require intent. For example, the penalty for unintentional assault and battery is less than that for intentional assault and battery.

## 5.3.3 Are false accusations punishable for the victim?

Yes. False accusations are punishable by (i) incarceration, the term of which depends on the gravity of the accusation, and (ii) a fine.

## 5.3.4 How is consent discussed in the law?

Consent is not defined in the Criminal Code. In the Civil Code, Article 1109 provides that "there is no valid consent if the consent has been given only by mistake or if it has been extorted by violence or surprised by fraud."

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

Yes. Self-defense is a defense provided under Article 416 of the Criminal Code. Insanity is a defense provided under Article 71 of the Criminal Code.

## 5.4 Witness status

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

Before testifying, the witness must take an oath to tell the truth. The judge asks the witness to raise their right hand and say "I swear."

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

Family members are allowed to testify at the trial of their relatives. Children, parents, brothers, sisters, spouses, etc., are not disqualified from testifying in trials in which their relative is involved.

However, the spouse is only allowed to testify if they have no personal interest in the outcome of their spouse's litigation. A spouse **would** have such an interest if the spouses were married under the regime of legal community and one had an obvious financial interest in the outcome of the other's litigation.

The only exception is that descendants (i.e., children and grandchildren), as well as their spouses or cohabitants, can never testify in relation to grievances invoked by spouses in relation to a divorce application.

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

Only spouses and direct relatives or allies — children, grandchildren, parents and grandparents — of one of the parties may refuse to testify.

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

Children can testify, but they can also refuse to testify.

## 5.4.5 Can children be called upon to testify?

In principle, a minor can testify. It is up to the judge to assess, on a case-by-case basis, whether the minor has sufficient discernment to testify in court, taking into account the age of the child, their maturity, their degree of understanding, the circumstances of the case and the nature of the dispute.

Where appropriate, the judge may also hear the minor without swearing an oath. This procedure allows the judge to take statements from the child without being bound by them. In penal matters, children under 15 years old are always heard without being sworn in.

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

A person who commits assault and battery on their son/daughter who is 14 years old or older will be sentenced as follows: (i) to six months to five years of imprisonment; and (ii) to a fine of EUR 251 to EUR 5,000 (Article 409 of the Criminal Code).

A person who commits assault and battery on their son/daughter who is under 14 years old will be sentenced as follows: (i) to three to five years of imprisonment; and (ii) to a fine of EUR 251 to EUR 5,000 (Article 401-*bis* of the Criminal Code).

These penalties may be higher where there are aggravating circumstances, particularly if the assault and battery causes illness.

## 5.5 Penalties and sentencing; penalty enhancements

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

The penalties are those described above under Article 409 of the Criminal Code.

## 5.5.2 Are there criminal penalties?

Yes, the penalties set out above that relate to domestic violence offenses are criminal penalties.

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

If the evicted person enters or attempts to enter the home or its outbuildings despite an eviction order, they will be subject to the penal sanctions provided for in Article 439 of the Criminal Code (imprisonment from six months to two years and a fine from EUR 251 to EUR 3,000).

If the entry or attempted entry is made with either threats or violence against any person, by means of breaking and entering, climbing or using false keys, or even by means of keys or other devices designed for opening doors, the maximum fine will be increased to EUR 5,000 and the maximum prison sentence will be increased to five years.

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

None.

## 5.6 Post-release restrictions

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

N/A

# 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.)

Even if it does not explicitly refer to battered woman syndrome, the Criminal Code recognizes the concept of self-defense. Article 416 of the Penal Code states that "there is no crime or misdemeanor when the homicide, injuries and blows were ordered by the present necessity of self-defense of oneself or others."

## 6.2 Domestic violence in the workplace

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

Women suffering from domestic violence can benefit from protection orders regardless of their employment status.

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

Labor law does not recognize domestic violence as a departure "for good cause," as it is not linked with the professional situation of the individual. Under Luxembourg employment law, an employee is not required to provide the employer with grounds for their resignation.

## 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 Labor Code does not provide specific leave to help a family member seek treatment or obtain help and services. In general, the victim would be granted sick leave due to their mental or physical suffering. The family member would have to take some days from their annual paid leave, unless otherwise agreed with the employer.

## 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, there are specific provisions prohibiting the trafficking of human beings and imposing sanctions on them. These apply to persons residing in Luxembourg or Luxembourg citizens who bring non-Luxembourg residents into Luxembourg to marry them and abuse them.

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

Article 78 (3) of the Law of 29 August 2008 on the free movement of persons and immigration, as amended by Article 5 of the Law of 20 July 2018 approving the Council of Europe Convention on preserving and combating violence against women and domestic violence, provides the following:

Provided that their presence does not constitute a threat to public order, health or safety, the Minister may grant a residence permit on humanitarian grounds of exceptional gravity to a third-country national [...]. The authorization is necessary either in view of the victim's personal situation, i.e., his or her safety, state of health, family situation or situation in his or her country of origin, or if it is necessary for the purposes of the victim's cooperation with the competent authorities in the context of a criminal investigation or proceedings.

## 6.3.3 Does domestic violence law discuss asylum accessibility?

Yes, please see Section 6.3.2.

## 6.4 Armed forces

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

If a military abuser commits violence on a civil victim, he will be subject to the general provisions of the Criminal Code with no specificities.

## 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?

Judges determine custody based on the best interests of the child.

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

Yes, those testimonies can be considered.

## 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?

The law does not explicitly include such a barrier.

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

No, there is no specific provision in the law allowing a tenant to terminate their lease early due to domestic violence. A tenant who wishes to terminate their contract must respect the conventional or legal notice period.

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

Yes. Victims who have obtained the protection of an expulsion order based on Article I of the amended Law of 8 September 2003 on domestic violence may ask the family court to order the expelled person to refrain from returning to the home for a maximum period of three months following the expiration of the expulsion order. Such a request is regardless of any real or personal rights the evicted person may have in relation to the home, provided that the victim lived with the evicted person in a family setting before the eviction and they can prove that the home meets their urgent housing needs (Article 1017-1 of the Civil Procedure Code, among others).

## 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 person who is the subject of an expulsion order may not invoke any real or personal rights in relation to the home to oppose the measure.

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