

CRIMINAL PROCEEDINGS
AND DEFENCE RIGHTS
IN LUXEMBOURG

This leaflet covers:

- Information about Fair Trials
- Definitions of key legal terms
- Information about criminal proceedings and defence rights in Luxembourg
- Useful links

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About Fair Trials

Fair Trials is a non-governmental organisation that works for the right to a fair trial according to internationally-recognised standards of justice.

We believe the right to a fair trial is an essential part of a just society. Each person accused of a crime should have their guilt or innocence determined by a fair and effective legal process. But the right to a fair trial is not just about protecting suspects and defendants; it also makes societies safer and stronger. Without fair trials, trust in justice and in government collapses.

Despite the importance of fair trials being recognised by the international community, this basic human right is being abused day-in-day-out in countries across the globe. We're working to put an end to these abuses, towards realising our vision of a world where every person's right to a fair trial is respected.

If you think an important question is not covered by this note, please let us know. We would appreciate it if you could also take a few moments to give us some feedback about this note. Your comments will help us to improve our services.

"Fair Trials" includes Fair Trials International and Fair Trials Europe. Fair Trials International is a registered charity (no. 1134586) and in 2010 was incorporated with limited liability in England Wales (no. 7135273). Fair Trials Europe is a registered public foundation in Belgium (registered number 0552.688.677). We were initially founded in 1992 with the name "Fair Trials Abroad".

If you require this leaflet in large print, please contact using the details at to the end of this document.

IMPORTANT

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DEFINITIONS OF KEY LEGAL TERMS

Appeal (*appel*): An opportunity to dispute a decision made at trial by asking a higher court to review it. This can result in the decision being overturned or changed.

Arrest Warrant (*mandat d'arrêt*): A document authorising the police to make an arrest, search premises, or carry out some other action relating to the administration of justice.

Bail (*contrôle judiciaire*): The temporary release from police custody or prison of a person accused of a crime and awaiting trial.

Bar Association (*barreau*): An organisation whose role is to represent lawyers and help people in their dealings with lawyers.

Charge/Indictment (*accusations*): An official statement accusing a person of committing an offence.

Consulate (*consulat*): The section of the embassy whose task is to assist its citizens.

Court of Appeal (*Cour d'Appel*): The court that is competent to hear appeals (i.e. challenges) made to decisions of the lower courts

Court of First Instance: A lower court where a trial is initially heard.

Embassy (*ambassade*): The office of a government official who resides in a foreign country and represents his/her government's interests.

European Court of Human Rights (*Cour Européenne des Droits de l'Homme*): The Court is based in Strasbourg, France, and hears human rights cases against the 47 countries which make up the Council of Europe (which is different from the European Union).

Investigative Judge (*juge d'instruction*): A judge who performs an examining role and is actively involved in the conduct of investigations.

Judge (*juge*): A person with authority to hear and decide on cases in a court of law.

Judgment (*jugement*): A decision on a case provided by a judge in a court of law.

Lawyer (*avocat*): A person whose profession is to give legal advice and assistance to clients and represent them in court or in other legal matters.

Legal Aid (*assistance judiciaire*): Financial assistance provided to a person who needs a lawyer and who cannot afford to pay for one.

Offences: There are three categories of offences in Luxembourg: minor offence ("*contravention*"), major offence ("*délit*"), and crime ("*crime*").

Police Custody (*garde à vue*): Detention of a suspect by the police after arrest

Pre-trial Detention (*détention préventive*): Detention in prison during the investigations (and often during the trial itself as well), which happens before the decision on guilt or innocence is made by the court.

Public Prosecutor (*magistrat du parquet*): A person who conducts a case against a person who is accused of a crime.

Remand (*détention préventive*): The act of sending a person, accused of a crime, into prison until the trial.

Sentence (*peine*): The punishment assigned to a person convicted of a crime as fixed by a court of law.

Victim is known as "*victime*" in French.

Witness is known as “*témoïn*” in French.

INFORMATION ON CRIMINAL PROCEEDINGS AND DEFENCE RIGHTS IN LUXEMBOURG

We have prepared these notes with the assistance of local criminal lawyers, who tried to describe how things happen in practice, i.e. in the real world. Even within one country, however, practice can vary greatly from one place to another and it is therefore possible that your experience will sometimes differ from the descriptions below. This document does not constitute legal advice and only provides general information. If you need advice in relation to your specific case, or if you are concerned about a possible violation of your rights, you should discuss this with your local lawyer.

Q1. WHERE DO THE LAWS OF LUXEMBOURG APPLY?

The laws of Luxembourg apply in the Grand Duchy of Luxembourg. They do not apply in the Belgian province that goes by the same name.

Q2. WHAT ARE MY RIGHTS UPON ARREST?

You may be held by the police for a maximum of 24 hours, after which you should be taken to an investigating judge, or be released.

(a) Right to information:

(i) Will the police inform me of my rights?

There are currently no local laws requiring the police to inform you of your rights when you are arrested. In practice however, police officers inform individuals they arrest of their right to legal assistance, and ask whether or not they wish to be

assisted by a lawyer. As of March 2015, these laws are due to be changed.

(ii) **Do I have the right to be informed of the allegations / charges against me?**

You have the right to be informed of the accusations against you in a way that you can understand. This information is usually given to you by the police officer, or by the investigating judge, at the beginning of the interrogation.

(b) **The right to inform people:**

(i) **Do I have a right to have the consulate informed of the arrest?**

If you are not a Luxembourg citizen, you have the right to have your embassy or consulate informed of your arrest and the investigation judge has to inform you about this right prior to the first hearing.

(ii) **Do I have a right to inform my family of the arrest?**

The police must inform you of your right to tell one person of your choice about your arrest. This could be a member of your family or a friend, but your request to speak to a specific person may be refused, if the police believe that it could interfere with ongoing investigations.

Under certain circumstances, the judge may also prohibit written correspondence between you and your relatives and/or friends for a maximum period of 10 days.

(c) **Do I have a right to a lawyer?**

In practice, police officers in Luxembourg inform suspects of their right to a lawyer after arrest.

(d) **Do I have a right to a translator/interpreter?**

If you do not speak the language being used by the police or investigating judge in your case, you should be given access to an interpreter free of charge.

Questioning takes place either in French or in German.

(e) Do I have to talk to the police or can I remain silent during police interrogation? Will it work against me if I am silent?

You have the right to remain silent. If possible, you should seek the advice of a local lawyer when trying to decide whether to answer questions or remain silent, but you should be aware that at this point, your lawyer will not have had access to much information about your case.

Q3. WHEN WILL I KNOW ABOUT THE CASE AGAINST ME?

You should be informed about the investigations against you at the latest before the beginning of your first hearing. The investigating judge should inform you of the accusations against you more clearly at a later stage.

Q4. HOW DO I FIND A LAWYER? WHAT IS THE ROLE OF MY LAWYER?

(a) How do I find a lawyer?

You can contact the Luxembourg Bar to obtain a list of lawyers. You can choose your own lawyer from the list, or you can ask the Chairman of the Bar Association to choose one for you.

If you have been arrested, you can ask the police to arrange a duty lawyer to come and assist you.

This lawyer may continue to assist at future hearings before the investigation judge.

(b) I cannot afford to pay for a private lawyer, what should I do?

You could be eligible for legal aid if you cannot afford to pay for your lawyer.

If you are not a Luxembourg citizen, you could be eligible for legal aid, if you live in Luxembourg, you are a citizen of the European Union, or your country and Luxembourg have an agreement in place that allows you to get legal aid.

It is up to the Bar Association to decide whether to grant you legal aid, depending on the level of your income and your wealth. As a general rule, you should be granted legal aid, if your income is below the legal minimum in Luxembourg.

You can apply to the Chairman of the Bar Association either at a court hearing or in writing. Your lawyer could also make this application on your behalf.

You can also request legal aid from the courts' judicial information service.

You can choose your own lawyer on legal aid.

(c) What is the role of my lawyer? Will s/he investigate the case?

Your lawyer's role is to advise you and to represent you in criminal proceedings, to ensure that your rights are protected.

Your defence does not take a direct role in the investigations in your case, but s/he can make requests and applications for certain investigations to be carried out.

(d) I am unhappy with my lawyer: How can I change lawyer? How can I complain about my lawyer?

You can change your lawyer at any time by choosing another lawyer, or by asking the Chairman of the Bar Association to

choose another lawyer for you, even in the frame of legal aid benefit.

Complaints about lawyers can be registered with the bar association.

Q5. WILL I HAVE TO STAY IN PRISON UNTIL MY TRIAL STARTS? IF SO, FOR HOW LONG?

The information given below is specific to Luxembourg. For general information and tips about how to obtain your release prior to your trial, please refer to our note of advice on *Applying for Release Pending Trial*.

(a) Will I have to stay in prison until my trial starts?

You could be released from detention, but you will need to provide an address where you can stay in Luxembourg, and you may also be required to deposit money with the court as a form of security.

You may also be subject to certain conditions, and you may, for example, be barred from travelling somewhere, or from contacting certain individuals.

(b) How long can I be kept in prison before my trial starts?

At the end of your first court hearing, the investigating judge decides whether to keep you in detention, or place you under judicial control (i.e. to be released).

There is no legal time limit for your detention.

(d) How and when can I apply for release while waiting for trial?

If you are detained while waiting for your trial, you can for release at any time by making a request in writing to the

Judges' Council Chamber ('*chambre du conseil*'). This can be handed to the prison staff.

The Judges' Council Chamber at the district court will decide whether to release you taking into consideration the opinion of the investigating judge in your case.

If the district court decides not to grant you bail, you can file an appeal with the Court of Appeal. If you are released, the State Public Prosecutor can appeal against this decision within one day from the date the decision is made. You will not be released until the Court of Appeal has made its decision.

(e) Can I go back to my home country if I have been released pending my trial?

You should be aware that you could be prevented from leaving Luxembourg as a condition of your release. You should check with your lawyer to find out whether you are permitted to leave the country.

(f) What will happen if I breach the conditions of my release?

The investigating judge may decide to issue a new warrant for your arrest, and the public prosecutor may ask the council chamber to revoke judicial control, impose new conditions, or to detain you.

(g) Do I need a lawyer to apply for release?

You can apply for release with or without the assistance of a lawyer.

Q6. HOW LONG BEFORE MY CASE GOES TO TRIAL?

The timing of your trial depends on a number of different factors, including the complexity of your case. There is no legal time limit in which trials must take place, and it can be

difficult to predict when your trial will start. There is no legal limit on the length of your detention pending trial.

(a) **There are always delays with my case, does that mean my lawyer is doing a bad job?**

Delays can happen for a number of different reasons, so you cannot assume that your lawyer is responsible.

Q7. CAN I PLEAD GUILTY? WHAT ARE THE CONSEQUENCES OF PLEADING GUILTY?

You can confess to the accusations against you, but there are no legal procedures in Luxembourg that allow you to enter a guilty plea. The judge is not obliged to accept your confession, but if you do decide to confess, it could be taken as a relevant factor at sentencing.

Q8. WHAT HAPPENS AT TRIAL?

There are three categories of offences in Luxembourg: minor offence ("*contravention*"), major offence ("*délit*"), and crime ("*crime*").

If you are facing trial for a *contravention*, you will be tried at a police court ('*tribunal de police*') by a single judge. If you have been accused of committing a *délit* or a *crime*, you will be tried at the district court ('*tribunal d'arrondissement*') by a panel of three judges, unless you are being tried for a traffic offence.

(a) **Do I have to be present?**

If you are being tried for a *crime* (as opposed to a *délit* or a *contravention*), you are required to attend your trial in person.

If you are being tried for a lesser offence, you are, as a general rule, required to attend your trial, but you could instead choose to be represented by your lawyer in your

absence, unless the court has specifically requested your presence.

(b) Can I ask for the trial to take place in my home country?

No, you will be tried in Luxembourg unless the authorities of your home country are also interested in trying you for the same offence, and the Luxembourg authorities believe that the trial should take place in your home country.

(c) Is there a jury?

There are no trials by jury in Luxembourg. These have been abolished.

(d) Can my lawyer call and cross-examine witnesses?

Witnesses can be called and questioned in criminal proceedings. However, Luxembourg does not have a system that permits lawyers to cross-examine witnesses directly. It is up to the judge to ask questions to witnesses, and if your lawyer wishes to challenge the testimony, s/he can request the judge to ask specific additional questions.

(e) I don't speak the language of the court, do I have a right to an interpreter? Is it free?

You should be assisted by an interpreter for free, if you cannot speak the language of the court.

(f) Will the written evidence be translated for me?

Written evidence is not, as a general rule, translated. If you would like them to be translated, you will need to pay for the cost of translation privately.

(g) Will the interpreter also help me if I need to talk to my lawyer?

Yes, the interpreter may provide services for communications between you and your lawyer.

(h) Why is the victim taking part in the trial?

Victims are often called as witnesses, and they can also seek compensation for damages as part of the trial.

(i) Will I be informed of the decision of the court on the day of the trial?

Judgments are usually pronounced two to three weeks after the end of the trial.

(j) Can I receive a copy of the judgment in my mother tongue?

This may be available to you, if you make a request.

(k) I was tried in my absence and was not informed of this, what can I do?

If you have been convicted in your absence, you can 'oppose' the judgment, and if successful, you can get a re-trial. You can also appeal against the judgment.

Q9. I AM NOT HAPPY WITH THE DECISION, CAN I APPEAL AGAINST IT? HOW DO I APPEAL?

Yes, you can appeal against your conviction, sentence, and/or the civil compensation decision.

You can also submit new evidence as part of the appeal, but do not have the right to call witnesses again.

Your appeal must be made in writing within 40 days of the decision in your case being handed down.

You should always consult your lawyer if you wish to appeal as there are strict deadlines to respect.

(a) **Do I need to pay my lawyer more money if there is an appeal?**

Unless your lawyer is assisting you on legal aid, you may need to pay him/her more money for the appeal proceedings.

(b) **What is the timeframe for an appeal to take place?**

It usually takes several months before your appeal hearing takes place.

(c) **Could things get worse during the appeal? If I am acquitted, can the prosecution appeal?**

Things cannot get worse if you are the only one who appeals. However, it is not uncommon for the prosecution to file a counter appeal to seek a harsher sentence in your case if you do appeal. If this happens, there is a likelihood that things could get worse.

The prosecution can appeal against an acquittal.

Q10. I HAVE EXHAUSTED ALL LEGAL REMEDIES. WHAT OPTIONS DO I HAVE?

(a) **Is it possible to get my case reviewed?**

You may be able to get your conviction reviewed on the basis of a subsequent judgment made by the European Court of Human Rights. Under certain circumstances, it may also be possible to get your case reviewed, if there are newly discovered facts.

(b) Can I apply for a pardon?

The Grand Duke of Luxembourg has the power to grant full or partial pardons. Pardons are very rarely granted.

Q11. WHAT RIGHTS DO I HAVE AS A PRISONER?

(a) Do I have rights as a prisoner? Where can I find out about my rights?

As a prisoner you have some rights that cannot be taken away from you (e.g. the right to food and water; to see your lawyer; to be protected from bullying, violence, and racial harassment etc.).

Your lawyer can provide you with more information on your rights.

(b) What can I do if my rights are violated? Where can I get assistance regarding my welfare issues, regarding abuse and mistreatment?

If your rights are violated you should inform the prison governor. If this does not resolve the problem, you must complain to the ombudsman (details included in the 'useful links' section), who may be able to investigate the allegation

You should ask your lawyer for further advice, and if you are not a Luxembourg citizen, your local embassy or consulate may be able to help.

Q12. CAN I GET MY SENTENCE REDUCED?

You can appeal against your sentence, but you can also apply for conditional release after serving half of your sentence.

(a) What would help me get an early release?

Good conduct in prison could help to get an early release. If you do not normally live in Luxembourg, and you agree to return to your home country voluntarily, you will not normally be refused early release, unless you have behaved very badly in prison.

(b) I have been sentenced to pay a fine, what will happen if I don't pay it?

If you do not pay your fine, this could be converted into imprisonment. As a general rule, you need to serve one day in prison for every 50 Euros of your fine. This means, for example, that you may need to serve a 30 day sentence, if you fail to pay a 1,500 Euro fine.

Q13. CAN I GO BACK TO MY HOME COUNTRY?

(a) Can I serve my prison sentence in my home country?

You could be transferred to your home country, if there is an agreement between Luxembourg and your home country that allows this. For more information, please refer to our 'Prisoner Transfers' note of advice.

(b) Can I be expelled instead of serving my sentence?

No, but if you are a citizen of a non-EU country, you can be expelled after serving half of your sentence, if you agree not to return to Luxembourg ever again after your expulsion.

(c) Is there a risk that I will be deported after serving my sentence?

Depending on various factors including the nature of the offence with which you have been convicted, the length of your sentence, and your nationality, there is a risk that you could face deportation after serving your sentence. You can

appeal against deportation decisions to the Administrative Court.

USEFUL LINKS

ORGANISATION	MANDATE	CONTACT DETAILS
LAW GOVERNING BODIES		
<p>Ordre des Avocats du Barreau de Luxembourg</p> <p>(Luxembourg Bar Association)</p>	<p>The Luxembourg bar association regulates and represents lawyers in Luxembourg. It is responsible for handling individual complaints about lawyers, and it has a directory of registered local lawyers on its website.</p> <p>The bar association is also responsible for providing legal aid services.</p> <p><u>Languages</u>: French</p>	<p>Website : www.barreau.lu</p> <p>E: info@barreau.lu</p> <p>T: +352 46 72 72-1</p> <p>45, Allée Scheffer L-2520 Luxembourg</p> <p>B.P.361 L-2013 Luxembourg</p>
OMBUDSMEN and COMPLAINTS COMMITTEES		
<p>Ombudsman – Le médiateur du Grand-Duché de Luxembourg</p>	<p>The Ombudsman of Luxembourg acts as the mediator between individuals and public authorities, in cases where there are allegations of abuse of powers or unfair treatment.</p> <p>You cannot complain to the Ombudsman about court decisions, and you need to have attempted to resolve the complaint with the relevant public authority before you can take the matter to the Ombudsman.</p> <p><u>Languages</u>: Website available in French, German, and English. Written complaints can be made in Luxembourgish, French, German, and English.</p>	<p>Website: www.ombudsman.lu</p> <p>E: ombudsman@ombudsman.lu</p> <p>T: +352 26 27 01 01 F: +352 26 27 01 02</p> <p>Le Secrétariat de la Médiateure 36, Rue du Marché-aux-Herbes L-1728 Luxembourg</p>

INTERPRETERS		
Association Luxembourgeoise des Traducteurs et Interpretes ('ALTI')	<p>ALTI is a non-profit organisation that brings together interpreters and translators working in Luxembourg.</p> <p>It was a directory of local interpreters which can be searched by language skills and area of specialisation.</p>	<p>Website: www.traducteurs-interpretes.lu</p> <p>E: contact@traducteurs-interpretes.lu</p> <p>6, rue de Weiler L-3328 Caruthem</p>
NGOs		
HUMAN RIGHTS		
La Ligue des Droits de l'Homme (ALOS-LDH)	<p>ALOS-LDH is a non-profit organisation that works to promote human rights in Luxembourg according to internationally-recognised standards.</p> <p>Individuals wishing to raise concern about possible violations of their rights can get in touch with the organisation.</p> <p><u>Languages:</u> French</p>	<p>Website: www.ldh.lu</p> <p>E: ldh@ldh.lu</p> <p>T: +352 (0)43 83 33-1 / 691 52 40 17 (hotline) F: +352 (0)42 08 71</p> <p>10-12, rue Auguste-Laval L-1922 Luxembourg</p>
ASSISTANCE FOR MIGRANTS		
Association de Soutien aux Travailleurs Immigres (ASTI Luxembourg)	<p>ASTI Luxembourg provides a range of services for the benefit of immigrants in Luxembourg. In particular, they can provide information about life in Luxembourg, and provide advice on asylum and immigration matters:</p> <p><u>Languages:</u> Website is in French. Some information is also available in English and German.</p>	<p>Website: www.asti.lu</p> <p>E: ensemble@asti.lu</p> <p>T: +352 (0)43 83 33-1</p> <p>10-12, rue Auguste-Laval L-1922 Luxembourg</p>

FAIR TRIALS

Our vision: A world where every person's right to a fair trial is respected.

THANK YOU

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www.fairtrials.org/get-involved/supporters/

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