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2 - My rights during the enquiries and investigation and before the matter is referred to the court

What are the stages in a criminal investigation?

The enquiries and criminal investigation are intended to gather evidence relating to a criminal offence which has been committed and to determine whether one or more suspects committed the said offence.

The State Public Prosecutor opens a preliminary investigation which is handed to the police, who question the potential perpetrators, gather evidence and describe the case in a report.

Once the enquiries have been completed, the State Public Prosecutor decides whether to close the file without any further action or to commit the accused for trial before a court.

Where a crime has been committed or in the case of complicated lesser offences, the State Public Prosecutor appoints an investigating judge, who gathers and checks the facts and circumstances for and against the accused. The judge charges any accused who appears to be involved in the case and may himself or via the police, carry out house searches, seize property or conduct other operations. He may decide to imprison any accused.

In the case of an investigation, at least in criminal matters, the judge reports on the case to the State Public Prosecutor. The latter decides either to close the file without any further action or to commit the accused for trial before a court. The Judges' Council Chamber at the district court decides whether or not to follow the State Public Prosecutor's submissions.

My rights during the enquiries and investigation

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Questioning/preliminary enquiries by the police (1)

What happens during the preliminary enquiries?

Following a complaint by a victim or a report of a crime or offence by the police, the State Public Prosecutor directs the preliminary enquiries and tries to find out who committed the wrongdoing. He may hand the case to an investigating judge to gather information about any offence. In the case of crimes, the investigating judge must be brought in. Any witness may be heard. You may therefore be called to appear before the State Public Prosecutor, the police or the investigating judge to explain any part you may have played in the case.

What does being "charged" mean?

Your rights during the enquiries and investigation arise as soon as you are classified as "charged" by the investigating judge, i.e. accused of having committed an offence. However, you are considered to be innocent until such time as your guilt is proven and accepted by a court.

What will I be told about what is happening ?

You have the right to be informed about the nature of and reason for the accusation, i.e. about the facts of which you are accused and the legal basis. This right of information enables you to prepare your defence in the best possible way. The information must be comprehensible and complete and will be given to you either by the police officer, or by the investigating judge.

Will I have an interpreter to help me if I do not speak the language ?

If you do not speak one of the languages in use before the judicial authorities (police or investigating judge), an interpreter is used. He will translate all the questions for you and all your replies.

Arrest (including European arrest warrant) (2)

What happens in the case of a crime or offence discovered while or immediately after being committed?

In the case of a crime or offence discovered while or immediately after being committed, i.e. if an offence has just occurred, you may be arrested immediately by the police if you are suspected of having committed this offence. You may be held by the police for a maximum of 24 hours. Objects which may have been used to commit the offence may be seized. Your fingerprints may be taken, together with photos of you. A sample of your DNA may also be taken. You are then brought before an investigating judge.

When can I have access to a lawyer and how?

If you are held by the police for a crime or offence while or immediately after it is committed or are questioned by the investigating judge, the police officers or the investigating judge are obliged to advise you of your right to be assisted by a lawyer and will enable you to contact him so that he can help you. You are advised of this before they start questioning, in writing and in return for an acknowledgement from you in a language which you understand.

Can I contact a member of my family or a friend?

The police must inform you in writing, in return for an acknowledgement from you in a language which you understand, about your right to tell one person of your choice and you are given the use of a telephone. This may be a member of your family or a friend, unless this goes against the interests of the investigation.

Can I contact a doctor if I need one?

As soon as you are held, you are informed in writing, in return for an acknowledgement from you in a language which you understand, about your right to be examined by a doctor without delay. The State Public Prosecutor may also appoint a doctor to examine you, either on his own initiative or at the request of a member of your family.

Can I contact my ambassador if I am from another country?

You may contact one person of your choice, so this can be your country's embassy if you so choose.

Can I be searched?

If, while you are being held, you are suspected of concealing objects useful to uncovering the truth or objects which could be dangerous for you or anyone else, you may be searched by a person of the same sex.

Can my home, office, car etc. be searched?

As part of preliminary enquiries, your property may only be searched if you have given your express, handwritten consent to such a search. In the case of a crime or offence discovered while or immediately after being committed, this consent is not necessary and the search may be conducted at any time of the day or night. Your car may also be searched if there are indications suggesting that you have committed a crime or offence.

In the course of an investigation, a search of your property can only be carried out between six thirty am and eight

pm. You may obtain a copy of your documents which have been seized and ask for seized property to be returned to you. The State will return this property to you if it does not need it for investigating the truth or to safeguard the rights of the parties involved and if this return does not constitute any danger to persons or property. The return of property may be refused where confiscation is stipulated by law.

Will I be asked for DNA samples, digital fingerprints or other bodily fluids?

By order of the State Public Prosecutor or investigating judge and with your prior, written consent, a police officer may take cell samples from you in order to establish a DNA profile for comparison.

You may be compelled to allow cell samples to be taken from you if there appears to be a direct link between you and the carrying out of the acts in question and if these acts are punishable by a sentence of two years' imprisonment or more.

You cannot be compelled to give a blood sample.

The State Public Prosecutor may order digital fingerprints to be taken if it appears that you have taken part in a crime or offence discovered while or immediately after being committed and during the preliminary investigations. These fingerprints may be used later by the Police for the prevention, research and discovery of criminal offences.

If digital fingerprints are absolutely essential for proving your identity, you may be asked to provide them as part of investigations for a crime or offence discovered while or immediately after it is committed or preliminary investigations or questioning or the execution of a search warrant issued by a court authority on the authorisation of the State Public Prosecutor or investigating judge. These fingerprints may be used later by the Police for the prevention, research and discovery of criminal offences unless you are not the subject of any police investigations or enforcement measures.

How can the investigating judge bring you in for questioning?

If you are free, the investigating judge may call you in by letter, i.e. by means of a summons. He simply gives you notice to attend on the date and time indicated and you are heard immediately by the investigating judge.

However, he may also have you sought by the police with a warrant to bring you in for questioning, where the investigating judge considers there to be a danger that you will abscond, that evidence will disappear or that you will not attend when requested. In the case of a crime, the danger of absconding is presumed if the act is punishable by law as a criminal offence.

An arrest warrant may be obtained if the accused is on the run or lives abroad and if the acts attributable to him render him liable to a custodial sentence.

If I come from another country, do I have to attend the investigations and can I take part by video?

You must be present at a hearing. The law does not allow you to attend by video.

Questioning by the investigating judge and remand in custody (3)

What is the purpose of questioning by the investigating judge?

The investigating judge confirms your identity and tells you what has been done during the proceedings. He then informs you that you have been charged, i.e. that you are now officially accused of having committed certain wrongdoing and questions you about the alleged acts (or the acts "of which you are accused").

What are your rights during questioning by the investigating judge?

You have the right to be informed about each of the acts of which you are accused and about the actions carried out during the procedure relating to the crime or offence discovered while or immediately after it is committed or during the preliminary investigations.

The investigating judge must inform you of your right to be assisted by a lawyer of your choice. He must do so before questioning you, in writing and in return for an acknowledgement from you in a language which you understand. If you do not make a choice, the investigating judge must appoint a duty lawyer for you, if you ask for one.

You may only be questioned in the presence of your lawyer, unless you expressly waive this.

You are entitled to appear but refuse to reply. You must be informed of this right.

You are always entitled to retract statements which you have made; a confession can only be used against you if it has been made freely and voluntarily.

You have the right to ask witnesses questions.

You do not have the right to communicate with your lawyer until the end of the initial questioning. The judge may, by means of a reasoned decision, prohibit you from communicating (in writing) with your relatives/friends for a maximum period of 10 days.

Will I have an interpreter to help me if I do not speak the language?

The investigating judge must use an interpreter for questioning, who will translate all the questions and replies and will translate your statement for you when it is read back to you.

Can I be sent back to my country of origin?

No. Unless the authorities in your country are seeking you for the same offence and the Luxembourg authorities agree to the investigation or enquiries taking place in your country, you will be forced to remain in Luxembourg, if necessary in prison.

Will information be sought about my criminal record?

In practice, the police authorities will check your background, and therefore also your criminal record, as part of their investigations.

Will I be told which witnesses have given statements for the prosecution and about the other evidence which exists against me?

As part of your right to view the file, normally through your lawyer, you may find out which witnesses have given statements for the prosecution and about the other evidence which exists against you. You have access to your file after the initial questioning. You may also, at any time, ask the investigating judge for permission to view the evidence in your file.

Will I be released or held?

After charging and questioning you, the investigating judge may release you. He may also remand you in custody by issuing a detention warrant. You will then be taken to prison by the police. The investigating judge may prohibit you from communicating with the outside where this is necessary for the investigations. If this prohibition is lifted, you may telephone your relatives/friends from prison, subject to complying with the prison's strict regulations.

You have the right to ask to be provisionally released at any time during the proceedings. This release may be subject to the obligation to provide bail and requires you to elect domicile in Luxembourg.

Can I leave the country during the investigations?

Generally speaking, you are allowed to leave the country during the investigations unless you are in prison. However, if you are sentenced to a short term of imprisonment or receive a heavier penalty (where the maximum is equal to or more than two years' imprisonment if you live in Luxembourg), the investigating judge or Judges' Council Chamber may order a judicial review which will include an obligation, for example, not to go outside the territorial limits set by the investigating judge.

I have already been prosecuted in another Member State for the same crime. What will happen?

Where the facts are the same, you can be punished only once for the same wrongdoing, but double prosecution remains possible where there has not been any final judgment in a country. If investigations are in progress in this Member State, you may be extradited to this country to be tried and judged in this other Member State and no longer in Luxembourg.

Hearing of the Judges' Council Chamber to decide on your release (4)

If I am detained, how and to whom can I apply to be provisionally released ?

You can request your release in any event, i.e. at any time during the investigations and without any limit of the number of times you make the request. It is a simple request to the Judges' Council Chamber at the district court.

But if you are provisionally remanded in custody, you may also ask to be provisionally released by means of a simple written request handed to the staff.

What is the procedure and how long does it take ?

Your request will be heard as a matter of urgency and no later than three days after submitting your request for provisional release. As the accused you, and where appropriate your lawyer, must be heard. The Judges' Council Chamber at the district court rules on the basis of a written and reasoned opinion from the investigating judge.

Can I be provisionally released in return for payment of a sum of money (bail)?

Indeed, the Code specifies the bail term. The court may release you provisionally in return for payment of whatever sum it sees fit. This sum guarantees that you will attend again before the investigating judge and at the court and for enforcement of the sentence, and for the fines and court costs.

Will I be supervised if I am released provisionally?

Your release may be subject to your being under court supervision. The authorities may make you subject to certain obligations, such as not seeing certain people or not travelling for example.

Is there any appeal against the decisions of the court ?

If you are released, the State Public Prosecutor may, within a period of one day from the decision order, appeal against the decision. In this case, you will remain in custody pending the decision of the Court of Appeal.

You may always file an appeal before the Court of Appeal against the court's decision not to release you.

Investigation of the case by the State Public Prosecutor/investigating judge and defence rights (5)

What can the investigating judge do?

During the investigations, the investigating judge may resort to a range of different means to establish the reality of the facts based on the wrongdoing committed.

For example, the judge may organise a search, hear witnesses, arrange confrontations, or order an expert investigation or even telephone "tapping" or tracking and possibly an undercover operation.

Can I file an appeal against an act which is part of the investigation proceedings?

You have the right to ask the Judges' Council Chamber at the district court to annul an act which is part of the investigation proceedings.

This application must be made during the course of the investigations, within a period of five days from when you become aware of the act. Unless the application for annulment is made during the investigations, you are no

longer permitted to apply for or it during the trial proceedings.

What other appeals can I make?

Apart from these cases of nullity, you may also request, during the investigations, compliance with or the exercise of an entitlement or right granted by law. If your request is not acted upon or is refused, you may rely on it subsequently in another court by pleading that the trial was not fair.

What can I ask the investigating judge to do?

You may ask the investigating judge, through your lawyer, to carry out actions intended to prove your innocence. Thus, for example, you may request a search, a new hearing, that certain witnesses be heard in your defence, a confrontation organised or an expert investigation initiated.

You may submit to the judge any document intended to prove your innocence or apply for the withdrawal of seizures made by the judge on documents, property or bank accounts.

Procedure for closing the investigation and committal to the court (6)

What happens when the investigations are complete?

The investigating judge issues an order closing the investigations. He therefore considers that he has carried out all the necessary duties for the truth to be revealed and for the accused perpetrators to be brought to trial.

What are your rights after the order closing the investigations?

The file, together with any opinion from the investigating judge, is made available to you and your lawyer at least eight days prior to the date agreed for the file to be examined by the Judges' Council Chamber at the district court. You have the right to see all the information resulting from the investigations.

You have the right to make observations, in practice through your lawyer, before the Judges' Council Chamber takes its decision either to grant a discharge (prosecution dropped for lack of evidence) or to commit the case for trial before a court (to judge the accused).

You have a right to appeal against the decisions of the investigating judge and the Judges' Council Chamber before the Judges' Council Chamber of the Court of Appeal.

Can I plead guilty prior to the hearing in respect of all or some of the charges?

There is currently no procedure for pleading guilty in Luxembourg.

Can the charges be amended prior to the hearing?

The charges may be amended prior to the hearing depending on the facts which are discovered as the enquiries or investigations progress.

Related links

[Criminal Code](#)

[Code of criminal procedure](#)

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