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3 - My rights before the trial

What jurisdiction does each court have?

Three sorts of lawbreaking exist, each of which is heard by a different court:

- Minor offence ("*contravention*") = before the police court (one judge)
- Major offence ("*délit*") = before the summary jurisdiction division of the district court (three judges, except for traffic violations: one judge)
- Crime ("*crime*") = before the criminal division of the district court (three judges)

The court may order the case to be heard in private, for example if the victim is a child.

To what extent can the accusations/charges be amended during the trial?

The principle is that the legal classification given is provisional and does not have to be retained by the court hearing the case.

In order for the accusations to be amended, the facts underlying the case must be the same.

What happens if I plead guilty to all or some of the accusations/charges during the trial?

You cannot plead guilty but you can admit an offence. Similarly, the judge may disregard an admission which he deems to be suspicious. However, the admission may count as a mitigating circumstance.

What are your rights during the trial?

Do I have to be present at the trial? Can it take place without me?

You must attend court, unless you provide an excuse, such as a medical certificate. In this case the trial may be postponed. You may also instruct your lawyer to represent you, unless the court requires you to be present. In the case of crimes, you must come in person.

If I live in another Member State, can I take part by video? Do I have to accept?

The law does not specify the possibility of taking part by video in the case of a person living in another Member State.

Do I have to be present throughout the whole of the trial?

Yes, as the judge may want to question you at any time.

Will I have an interpreter if I do not understand the language of the court?

The right to be assisted free of charge by an interpreter if you do not understand or speak the language used at the hearing is a fundamental right guaranteed by the European Convention on Human Rights. However, the documents on the file will not be translated.

Do I need a lawyer? Will I be allowed a lawyer? Can I change lawyers?

You have the right to defend yourself or to have the assistance of a defence counsel of your choice and, if you do not have the means to pay a defence counsel, to be assisted by a duty lawyer (legal aid). You may always change lawyers.

Can I speak at the trial? Do I have to speak at the trial? e.g. right to remain silent, self-incrimination?

You have the right to speak on all the accusations. You also have the right to remain silent in the face of the accusations against you.

What will be the consequences if I do not tell the truth during the proceedings?

If you do not tell the truth during the proceedings, you run the risk of a higher sentence.

Can I contest the evidence submitted against me? How? Why?

You may contest the evidence submitted against you, by any means, such as witnesses, documents, arguments or experts.

What sort of evidence can I submit in my favour?

The court must consider all kinds of evidence.

Under what circumstances can I submit this evidence?

This evidence may be submitted on two conditions, firstly, that it has been added to the file in the proper manner and secondly, that it has been freely discussed by the parties at a public hearing.

Can I use a private detective to obtain evidence in my favour? Is such evidence acceptable?

Using a detective to obtain evidence is not prohibited but the detective must have acted in an entirely legal manner.

Can I or my lawyer question other witnesses in the case? Can I or my lawyer contest what they say?

The right to examine witnesses is one of the defence rights specified in Article 6(3) of the European Convention on Human Rights. The defence may call and question witnesses to exonerate itself in the same way as witnesses against you.

Will information about your criminal record be taken into account?

Any previous conviction entered on your criminal record will be given to the court at the time of the trial.

Will previous convictions in another Member State be taken into account?

No, in the case of a repeat offence. Yes, in the case of the conditions for suspending sentences.

What are the possible outcomes of the trial?

You may be totally or partially acquitted. You may also be declared guilty. The sentence will depend on the lawbreaking of which you are guilty.

Criminal penalties are:

- Life imprisonment or imprisonment for a period of between 5 and 30 years
- A fine of at least €251
- Special confiscation
- The removal of titles, grades, functions, jobs and public offices
- Removal of certain civil and political rights
- Closing down of a business or establishment
- Publication or display, at the guilty party's expense, of the decision or an extract from the decision finding

him guilty

- Ban on carrying out certain professional activities.

Penalties for major offences are:

- Imprisonment (8 days to 5 years)
- A fine of at least €251
- Special confiscation
- Removal of certain civil and political rights
- Closing down of a business or establishment
- Publication or display of the decision finding the defendant guilty
- Ban on carrying out certain professional activities
- Ban on driving certain vehicles
- If the imprisonment is for less than 6 months, the judge has the option of replacing it with community service of between 40 and 240 hours.

Penalties for minor offences are :

- Fine of between €25 and €250 unless the law specifies otherwise
- Special confiscation
- Ban on driving certain vehicles

You are given a custodial sentence, what options do you have for serving this custodial sentence?

In Luxembourg, it is the State Public Prosecutor who decides how custodial sentences should be served without the involvement of a judge.

There are various possibilities:

Serving a sentence in instalments

Serving a sentence in instalments allows a prisoner who does not pose a risk to serve his sentence in agreed periods.

Semi-detention

This system enables the prisoner to carry out his professional activities or continue with education or training outside of prison.

Conditional release

This allows the prisoner to be released half way through the sentence.

Prison leave

Prison leave is authorisation to leave the prison, either for part of the day or for periods of twenty four hours, with this time counting towards the period of the sentence.

Suspended sentence

With a view to conditional or permanent release, a suspended sentence may be granted to those prisoners whose conduct during previously granted leave has been considered to be positive.

Electronic bracelet

No law has yet specified the use of this.

What is the victim's role during the trial?

The victim may be examined as a witness. He/she may also bring a civil action, i.e. claim damages. The victim may comment on the wrongdoing in question and its consequences. The victim may appeal against judgments, but only in respect his/her civil interests.

Related links

[Organisation of the courts](#)

[Criminal Code](#)

[Code of criminal procedure](#)

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