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Which country's court is responsible?

Luxembourg

1 Should I apply to an ordinary civil court or to a specialised court (for example an employment labour court)?

In the Grand Duchy of Luxembourg, the ordinary court for civil and commercial matters is the district court (*tribunal d'arrondissement*). There are two judicial districts, Luxembourg and Diekirch, each of which has a district court.

The district court has jurisdiction in all civil and commercial matters for which the law does not confer jurisdiction on another court.

There are no specialised courts for commercial matters such as there are in some other countries. Commercial matters are dealt with by specialised divisions of the district court, but they follow a simplified procedure.

Specialised courts are mainly responsible for the following:

Small claims: if the claim is for less than €10 000, jurisdiction lies with the justice of the peace courts (*justices de paix*). There are three such courts in the Grand Duchy of Luxembourg, one in Luxembourg, one in Esch-sur-Alzette and one in Diekirch, each with jurisdiction for a particular territory.

Labour-law matters: the labour court (*tribunal du travail*) has jurisdiction in cases concerning contracts of employment. There are three labour courts in the Grand Duchy of Luxembourg, one in Luxembourg, one in Esch-sur-Alzette and one in Diekirch, each with jurisdiction for a particular territory. In practice, the labour court sits within the premises of the justice of the peace court.

Rental agreements: jurisdiction in disputes concerning rental agreements lies with the justice of the peace (*juge de paix*), whatever the value of the dispute. If the dispute concerns the amount of rent, it must be referred to the rent board (*commission des loyers*) for the particular municipality before being brought before the appropriate court.

Disputes between neighbours: most disputes between neighbours concern rights of way or boundary disputes and fall within the jurisdiction of a justice of the peace. However, if the case becomes more serious and damages are applied for, the decisive factor is the amount of the claim: above €10 000, jurisdiction lies with the district court.

Social-security matters: in social-security cases, jurisdiction lies with the Social Security Arbitration Board (*Conseil arbitral de la sécurité sociale*). The Board sits in Luxembourg and its jurisdiction extends throughout the country.

Problems of over-indebtedness: the justice of the peace has jurisdiction in such cases.

2 Where the ordinary civil courts have jurisdiction (i.e. these are the courts which have responsibility for such cases) how can I find out which one I should apply to?

2.1 Is there a distinction between lower and higher ordinary civil courts (for example district courts as lower courts and regional courts as higher courts) and if so which one is competent for my case?

The justice of the peace has jurisdiction in civil and commercial matters if the claim (excluding interest and costs) is for less than €10 000. Above that, the case goes to the district court.

The district court always has jurisdiction in cases that do not have a monetary value, for instance family cases.

2.2 Territorial jurisdiction (is the court of city/town A or of city/town B competent for my case?)

2.2.1 The basic rule of territorial jurisdiction

As a rule, the court with jurisdiction is the court in the place where the defendant lives. The purpose of this rule is to give a degree of protection to defendants, as it will be easier for them to defend themselves at the court nearest their home.

If the defendant is a natural person, therefore, the court with jurisdiction will be the court in the place where they are domiciled or resident.

Companies, associations, etc. may be sued not only in the court in the place where they have their registered office, but also in the court in a place where they have a branch or agency, provided that they have a representative there who is empowered to deal with third parties and the dispute is connected with the activities of that branch or agency.

2.2.2 Exceptions to the basic rule

2.2.2.1 When can I choose between the court in the place where the defendant lives (court determined by the application of the basic rule) and another court?

Contracts: claimants may bring an action either in the place where the defendant lives or, depending on the nature of the contract, the place where the goods are delivered or the services are performed.

In cases of liability for a harmful act (tort) and in civil proceedings joined to a criminal prosecution, the claim may be brought before the court in the place where the defendant lives or before the court in the place where the damage was suffered or the harmful act took place.

2.2.2.2 When do I have to choose a court other than that in the place where the defendant lives (court determined by the application of the basic rule)?

In the following matters:

1. marriage applications for minors, marriage annulment applications, applications for marriage deferments to be lifted or renewed, applications objecting to marriages and applications for such objections to be lifted;
2. applications concerning marriage contracts and matrimonial property regimes and applications for the separation of property;
3. applications concerning the respective rights and duties of spouses and contributions to the costs of the marriage or registered partnership;
4. termination of registered partnerships;
5. applications for maintenance;
6. applications concerning the exercise of access rights, living arrangements and contribution to the support and upbringing of children;
7. applications concerning the exercise of parental responsibility, excluding applications concerning the withdrawal of parental responsibility;
8. decisions on the legal administration of the property of minors and decisions on the guardianship of minors;
9. applications to prohibit the return home of persons removed from their home under Article 1, paragraph 1, of the amended Law of 8 September 2003 on domestic violence (*loi modifiée du 8 septembre 2003 sur la violence domestique*), applications to extend such prohibitions under Article 1, paragraph 2, of the same Law, and appeals lodged against such measures;

the district court with territorial jurisdiction is, unless otherwise specifically provided:

1. the court in the place where the family home is located;

2. if the parents live separately, the court in the place of residence of the parent with whom the minor children habitually reside where parental responsibility is exercised jointly, or the court in the place of residence of the parent who exercises this responsibility alone;
3. in other cases, the court in the place of residence of the person who has not brought the proceedings.

For joint applications, the parties choose the court in the place where one or other party lives.

However, where the dispute concerns only spousal maintenance, contribution to the support and upbringing of children, contribution to the costs of the marriage, or urgent and provisional measures in the event of termination of a registered partnership, jurisdiction can lie with the court in the place of residence of the spouse or former partner receiving maintenance or parent chiefly responsible for the care of children, even where these are adults. Territorial jurisdiction is determined by the place of residence on the date of the application or, in divorce cases, on the date when the initial petition is filed. Legal aid applications in relation to the right of custody over children and access rights: jurisdiction lies with the court in whose district the child lives or is presumed to live.

Divorce and legal separation and their consequences: jurisdiction lies with the court in whose district the spouses have their common place of residence or, failing that, in whose district the respondent or, in the case of divorce by mutual consent, one of the spouses lives.

Succession: jurisdiction lies with the court in the place where the deceased last lived.

Rental agreements: jurisdiction lies with the court in the place where the property is located.

Labour-law cases: the court in the place of work has jurisdiction. In certain cases, however, where an employer brings an action against an employee living in another Member State, the court with jurisdiction is the court in the place where the employee lives.

2.2.2.3 Can the parties themselves attribute jurisdiction to a court that would not be competent otherwise?

Luxembourg law allows 'jurisdiction clauses' whereby the parties to a contract designate a specific court to settle their disputes.

Such clauses are particularly useful in the case of disputes between parties living in different Member States, as the court that will have jurisdiction in a given case can be decided in advance. The validity of such clauses between Member States of the European Union is governed by Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012.

Parties can also agree on which court has jurisdiction in purely domestic cases. In such cases, the parties may bring a dispute before a justice of the peace who would not normally have jurisdiction because of the amount of the claim or the rules on territorial jurisdiction. The parties' agreement may be explicit or may simply be implied by the fact that the defendant enters an appearance and starts to argue their case without previously objecting, before filing any defence, to the jurisdiction of the court hearing the case. However, parties cannot choose which district court hears their case as the rules on jurisdiction based on the amount of the claim are a matter of public policy.

A jurisdiction clause is valid only if it has actually been accepted by both parties. Evidence of this agreement must be submitted under the ordinary law rules. The parties' freedom to choose a court is in some cases restricted by statute. For instance, the Consumer Legal Protection Law (*loi sur la protection juridique du consommateur*) provides that clauses intended to deprive consumers of their right to bring actions in the ordinary courts are null and void.

3 Where specialised courts have jurisdiction how can I find out which one I have to address?

The specialised courts that exist under Luxembourg law – labour court, justice of the peace when hearing matters pertaining to rental agreements, administrative court of first instance (*tribunal administratif*), Social Security Arbitration Board – hear at first instance all cases within their jurisdiction, whatever the amount of the claim.

So, for example, although a justice of the peace normally has jurisdiction under ordinary law only in cases where the amount of the claim is less than €10 000, that limit does not apply in disputes concerning rental agreements.

Territorial jurisdiction:

The basic rule of territorial jurisdiction

Although jurisdiction in principle lies with the court in the place where the defendant lives, there are exceptions where the specialised courts are concerned. For example, the competent labour court is generally the one in the place of work rather than the place where one of the parties lives. Likewise, a dispute concerning a rental agreement must be brought before the court in the place where the rental property is situated.

This issue does not arise for the administrative court of first instance or the Social Security Arbitration Board, as they have jurisdiction throughout the Grand Duchy of Luxembourg.

Exceptions to the basic rule

The specialised courts enjoy only the jurisdiction expressly conferred on them and, as a rule, it is not possible for parties to choose a court other than the one designated by law.

Generally speaking, jurisdiction in this respect is regarded as a matter of public policy (in labour-law matters, for instance), which means that, even if the parties do not raise an objection to jurisdiction, the court must consider its lack of jurisdiction of its own motion. As explained above, an exception is made to this principle before the justice of the peace in cases where the amount of the claim exceeds his/her jurisdiction and there is explicit or tacit agreement between the parties. In this case, the justice of the peace cannot refuse to assume jurisdiction.

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