

## Prima pagină>Drepturile dumneavoastră>Inculpați (proceduri penale)

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### Inculpați (proceduri penale)

Luxemburg

Prezentele fișe informative explică ce se întâmplă atunci când o persoană este suspectată sau acuzată de comiterea unei infracțiuni care face obiectul unei acțiuni introduse în fața unui tribunal. Pentru informații referitoare la infracțiuni minore, precum încălcări ale Codului rutier, sancționate, de regulă, cu o pedeapsă fixă, precum aplicarea unei amenzi, a se vedea fișa informativă 5. În cazul în care sunteți victima unei infracțiuni, puteți accesa aici informații complete referitoare la drepturile dumneavoastră.

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### Rezumatul desfășurării acțiunii penale

În continuare este prezentat un rezumat al etapelor obișnuite ale unei acțiuni penale:

procedura este inițiată prin denunțarea unei infracțiuni, printr-o plângere înaintată de către o victimă sau prin constatarea unei infracțiuni sau a unui delict de către poliție;

procurorul de stat dispune efectuarea unei anchete preliminare;

poliția interoghează suspectii, pe care îi poate reține pe o perioadă maximă de 24 de ore;

în cazul în care procurorul de stat numește un judecător de instrucție, acesta decide incriminarea dumneavoastră, respectiv punerea oficială sub acuzare pentru comiterea unei infracțiuni, iar ulterior vă supune unui interogatoriu;

judecătorul poate dispune arestarea dumneavoastră de către poliție și vă poate plasa în detenție: aveți dreptul de a solicita punerea provizorie în libertate, adresând o cerere, în acest sens, camerei de consiliu a tribunalului districtual;

judecătorul de instrucție instrumentează cazul având în vedere elementele incriminatoare și dezincriminatoare;

în momentul finalizării instrucției, judecătorul de instrucție transmite dosarul procurorului, iar acesta propune o decizie de scoatere de sub urmărire (finalizarea urmăririi fără consecințe) sau trimiterea dumneavoastră în fața unei instanțe, pentru a fi judecat. Aveți dreptul de a introduce o cale de atac împotriva deciziei de trimitere în judecată;

vă prezentați la tribunalul penal, în vederea audierii;

în urma judecății, puteți fi achitat sau condamnat;

aveți dreptul de a formula o cale de atac și de a fi rejudecat de Curtea de Apel.

În fișele informative, puteți găsi detalii cu privire la toate aceste etape ale procedurii, precum și la drepturile dumneavoastră. Aceste informații nu trebuie să substituie consultarea unui avocat, având doar scop orientativ.

### Rolul Comisiei Europene

Vă rugăm să rețineți că, în cadrul procedurilor penale desfășurate în statele membre, Comisia Europeană nu are niciun rol și nu vă poate acorda asistență în cazul în care intenționați să înaintați o plângere. Prezentele fișe informative vă arată cum puteți proceda pentru a depune o plângere și cui trebuie să vă adresați.

**Accesați secțiunile de mai jos pentru a găsi informațiile de care aveți nevoie.**

#### 1 – Consultarea unui avocat

#### 2 – Drepturile mele în timpul anchetei

Interogatoriul/ancheta preliminară a poliției

Arestarea (inclusiv mandatul european de arestare)

Interogatoriul efectuat de către judecătorul de instrucție și plasarea în detenție

Audierea efectuată de către camera de consiliu pentru a decide asupra punerii în libertate

Instrumentarea cauzei de către procurorul de stat/judecătorul de instrucție și drepturile de apărare

Procedura de finalizare a instrucției și de trimitere în judecată


#### 3 – Drepturile mele în cursul procesului

#### 4 – Drepturile mele după proces

#### 5 – Încălcări ale Codului rutier și alte infracțiuni minore

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## 1 – Consulting a lawyer

It is very important to obtain independent advice from a lawyer when you are involved in any way in criminal proceedings. The information sheets tell you when and under what circumstances you are entitled to be represented by a lawyer. They also tell you how the lawyer will help you. This general information sheet will show you how to find a lawyer and how the lawyer's fees will be covered if you are unable to pay him.

### How to find a lawyer

You have the absolute right to be assisted by a lawyer in all cases. You can either call upon the lawyer of your choice or contact the  Luxembourg Bar to obtain the list of lawyers in order to choose one to your liking.

If you do not choose a lawyer or if the Chairman of the Bar Association [Bâtonnier de l'Ordre des Avocats] considers your choice to be inappropriate, it will be up to the Chairman to appoint him. The lawyer is obliged to accept the instruction given to him, unless he is unable to do so or has a conflict of interest.

If you have been detained, you may ask the investigating judge at the start of the proceedings to arrange for you to be assisted by a duty lawyer or by the lawyer of your choice.

### How to pay a lawyer

Lawyers set their own fees. If you do not have sufficient income to pay a lawyer, you can request legal aid from the courts' judicial information service.

A judicial information service exists in Luxembourg, Diekirch and Esch-sur-Alzette:

Luxembourg: Cité Judiciaire, Bâtiment CR, L-2080, Luxembourg, Tel : 22 18 46

Diekirch: at Aler Kiirch, B.P.66 L-9201 Diekirch, Tel: 80 23 15

Esch-sur-Alzette: place de la Résistance, L-4002 Esch/Alzette, Tel: 54 15 52

You are considered to be someone with inadequate resources if you do not have financial means in excess of the statutory guaranteed minimum.

### Related links

 [Ministry of Justice – Legal aid](#)

 [Ministry of Justice – Legal assistance](#)

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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

[Questioning/preliminary enquiries by the police \(1\)](#)

[Arrest \(including European arrest warrant\) \(2\)](#)

[Questioning by the investigating judge and detention \(3\)](#)

[Hearing of the Judges' Council Chamber to decide on release \(4\)](#)

[Case investigated by the State Public Prosecutor/investigating judge and defence rights \(5\)](#)

[Procedure for closing the investigation and committal to the court \(6\)](#)

### 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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## **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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## **4 – My rights after the trial**

### **Can I appeal?**

You have the right to appeal against a judgment within 40 days from the date of the judgment by means of a declaration to the court. This appeal may be confined to an appeal against the amount of the sentence or against the civil claim.

### **Jurisdictions**

Minor offence ("*contravention*") = before the police court; the appeal is heard by the criminal court.

Major offence ("*délit*") = before the criminal court; the appeal is heard by the Court of Appeal.

Crime ("*crime*") = before the criminal division of the district court; the appeal is heard by the criminal division of the Court of Appeal.

### **What will happen if I appeal?**

The State Public Prosecutor at the court where the appeal is to be heard is informed within 24 hours of the appeal. A date will be set for hearing the appeal and will be notified to you.



**How long will it take for the appeal to be heard?**

It will take several months for the appeal to be heard.

**Will I be able to submit new evidence for the appeal? What rules are applicable?**

You have the right to submit new evidence as part of the appeal. The rules of evidence apply. The court accepts all the legal evidence which is presented. It will not accept, however, procedural evidence such as the nullity of a document which should have been raised during the initial hearing.

**What will happen at the appeal hearing and what may the court's decision be?**

The judges re-examine the facts, but in principle witnesses are not heard again unless the court deems this to be necessary. Similarly, it may hear new witnesses if required.

Generally speaking, the appeal court cannot increase the sentence given in the lower court if it was only the defendant who has contested the ruling. In this case, the court may only maintain or reduce the defendant's sentence. An increase in the sentence is only possible where the State Public Prosecutor has also appealed against the judgment, which is generally the case if the accused appeals against the criminal part of the ruling.

**What will happen if the appeal is upheld/dismissed?**

You have the right to make a further appeal ("*cassation*"). The Court of Cassation confines itself to verifying the law but no longer concerns itself with the facts.

**If the first decision was wrong, will I get damages? How much? How?**

You are only entitled to compensation in the event of wrongful imprisonment. This right is open to any person who has been remanded in custody for more than three days on condition that the custody or the continuation thereof is not your own fault.

**If my appeal is upheld, will the ruling against me remain on my criminal record?**

If your appeal is accepted and results in your being acquitted, the ruling against you will not be entered on your criminal record.

**Is another appeal possible if the first appeal fails? To whom? Under what circumstances?**

A review may still be requested by any person recognised as the perpetrator of a crime or offence by a final decision in the following circumstances:

Where, following a conviction for a crime or offence, a new legal decision has convicted another person for the same act and the two convictions cannot coexist, in this case their contradiction is proof of the innocence of one or the other.

If the witnesses heard are subsequently convicted of perjury.

Where, after the conviction, a fact arises or unknown evidence comes to light which is such as to totally or partially establish your innocence.

Where, following a conviction for homicide, evidence is presented which provides sufficient indication of the existence of the alleged victim.

Where the European Court of Human Rights rules that a criminal conviction has been handed down in violation of the Convention on Human Rights.

The Supreme Court of Justice, acting as Court of Cassation, will rule on the review applications.

**When does a conviction become final?**

A conviction becomes final when all available appeals have been exhausted, including when the periods for bringing an appeal or further appeal have expired.

**Can I be deported after the trial if I come from another Member State?**

You may be deported after the trial as a national of another Member State in the event of current serious disturbances affecting the maintenance of law and order. A national of a third country may ask to be released half way through his prison sentence if he gives a written undertaking never to return to the country.

You may appeal to the Administrative Court against the Ministry of Immigration's decision to deport you.

**What happens to the information about the accusations/conviction?**

The information about your conviction will be entered on your criminal record, the file in which convictions by the Luxembourg criminal courts are recorded.

**How and where will this information be kept?**

The criminal record is kept at the General Prosecutor's Office under the authority of the State Public Prosecutor in the form of a computerised database. You are shown in the database under your surname and first name, the surname and first name of your father and mother and, where applicable, your spouse, with your date and place of birth, place of residence and profession, or by means of an identification number.

**How long will it be kept for?**

Convictions handed down by a Luxembourg court are deleted from the criminal record once you are deemed to have earned legal or judicial rehabilitation.

**Can it be kept without my consent?**

Keeping information on the criminal record is obligatory and may be done without your consent.

**Can I object to this information being kept? How? To whom?**

You have the right to object to entries on the criminal record; you have the right to appeal to the Judges' Council Chamber at the district court.

**Related links**


 [Criminal record](#)

 [Criminal Code](#)

 [Code of Criminal Procedure](#)

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**5 - Breaches of the highway code and other minor offences**

Road traffic offences are set out in the Highway Code, which contains in particular alcohol-related offences, speed-related offences and offences relating to behaviour in the event of an accident.

**What are alcohol-related offences?**

A distinction needs to be made between levels of alcohol. The base level from which the consumption of alcohol becomes punishable is 0.5 g per litre of blood. From this level upwards, the police court has jurisdiction (serious minor offence) up to a level of 1.2 g per litre of blood, the point from which the criminal court has jurisdiction (major offence).

The law also mentions the case of obvious signs of drunkenness. Indeed, if you have less than 0.5 g per litre of blood, but show obvious signs of drunkenness, you will be treated as if you had had at least 0.5 g per litre of blood. Similarly, in cases where the level is between 0.5 and 1.2 g per litre of blood, but the driver is showing obvious signs of drunkenness, he will be treated as if he had at least 1.2 g per litre of blood.

**What are the potential penalties?**

The potential penalties are as follows: imprisonment, fine, loss of licence (temporary, permanent, immediate withdrawal) or confiscation. The sanctions vary according to the seriousness of the offence.

**What are speed-related offences?**

There are three speed-related offences:

**Simple minor offence**

This is each case of speeding which does not come under any other category. The penalty for a simple offence will be the payment of a penalty notice and the case will be closed.

**Serious minor offence**

The penalty will be a fine (€25 to €500).

**Highspeed (major) offence (only in the event of a repeat offence following an initial serious minor offence)**

The penalty will be a fine (€500 to €10 000) and a custodial sentence (8 days to 3 years) or one or other of these penalties.

For more details of the thresholds relating to speeding and how they are categorised according to severity, see  [the Ministry of Transport](#)

**What are the offences relating to behaviour in the event of an accident?****The offence of leaving the scene**

In the event of an accident (irrespective of the nature or extent of the damage) you must stay at the scene of the accident until all investigations have been completed, otherwise you have committed the offence of leaving the scene of an accident.

In the event of an offence of leaving the scene of an accident, you may be sentenced to imprisonment, a fine and a driving ban.

**Failure to assist a person in danger**

Failure to assist a person in danger is punishable if, without there being serious danger to yourself or others, you fail to voluntarily come to the aid of a person in serious danger, whether you have discovered the situation of such a person yourself or the situation has been described to you by those seeking your assistance.

In the event of failing to assist a person in danger, you may be liable to imprisonment of between eight days and five years and a fine of between €251 and €10 000, or just one of these penalties.

**Unintentional injuries and manslaughter.**

The case will be treated by the court as a separate, non-drivingrelated matter.

**Related links**

 [Department of transport, speeding](#)

 [New developments in road transport](#)

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