

## **The Cost of Justice for Victims of Domestic Violence**



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## The Price of Justice for Victims of Domestic Violence

Introduction

What is domestic/conjugal/partner violence?

Economic Violence

The Istanbul Convention

Luxembourg's Approach to Domestic Violence

Luxembourg's Legislation on Domestic Violence

Regarding Divorce Applications

Legal Aid

What about legal aid in cases of domestic violence?

What happens if the victim is not entitled to legal aid and must therefore pay the lawyer's fees themselves?

1) In the case of eviction

2) In the case where no eviction is granted

Is free legal information/advice enough to protect the victim and prevent domestic violence? Or would prosecution of abusers through the courts be necessary in order to represent the victim in court? Example of Spain and Luxembourg

Financial Aid for Victims

Financial Situation of Victims in Luxembourg

Some Figures on Domestic Violence in Luxembourg

Perpetrators of Domestic Violence and Repeat Offenders

Preventing Violence through Victim Protection?

Empowering Victims of Domestic Violence?

Protecting Victims During Separation/Divorce

Perpetrators

The Justice System

Secondary Victimization

Lawyers:

Victims' Feelings

Minimizing Violence

Conclusion

Suggestion

## Introduction

To protect themselves from domestic violence, many victims face legal fees exceeding 10,000 euros. Indeed, in cases such as divorce requests, restraining orders against the perpetrator, and other measures, legal representation by a lawyer is required.

In the case of extending an eviction order, the victim can represent themselves in court. However, "judicial and administrative procedures are often very complex, and the assistance of a lawyer is a necessary measure to enable victims to effectively assert their rights.<sup>1</sup>" Unfortunately, many victims bear these legal fees alone, which are necessary to separate from and protect themselves against the perpetrator. Given the high hourly rates of lawyers in Luxembourg, victims often end up reimbursing these fees for decades after the separation or even the conviction of the perpetrator.

As a result, it becomes difficult for victims to heal from the trauma they have endured, as they are reminded of the violence they experienced every month when making payments to their lawyer, which continues for years. Even a standing order does not allow victims to forget the past. A feeling of being punished for having protected themselves persists.

The prevention of domestic violence involves:

- 1) Holding the abuser accountable for their acts of violence, which in turn leads to 2) Protecting the victim. Working with the perpetrator is equivalent to protecting the victims.

**What is domestic/intimate partner violence?** It broadly includes:

- 1) Psychological violence: A strategy of manipulation by the abuser to mentally and emotionally destabilize the victim, causing them to question themselves and submit to the abuser's control. The abuser breaks the victim's spirit to better control them. Manipulation tactics include lying, deceit, infidelity, "gaslighting", deflection, to pressure or harass, destroying especially the victim's belongings, making false accusations against the victim, humiliation, intimidation, insults, guilt-tripping, neglect, etc.
- 2) Economic violence<sup>2</sup>: The abuser financially ruins the victim to make them dependent on the abuser, thereby gaining control and keeping them under their influence.
- 3) Physical violence
- 4) Sexual violence

"Every act of physical violence is also an attack on the psychological integrity of the person. Psychological violence is always present and permeates all other forms of violence.<sup>3</sup>"

It can be acknowledged that, as with physical and sexual violence, being a victim of economic violence involves a history of psychological violence. **Economic violence is not yet recognized in Luxembourg.** It is not listed on the State's website: <https://violence.lu/types-de-violence/>

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<sup>1</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence. Council of Europe. 2011.

<sup>2</sup> It should be noted that Luxembourg does not take into account the financial violence that the majority of victims suffer at the hands of their abusers. <https://violence.lu/types-de-violence/>

<sup>3</sup> Report to the government for 2020 and 2021. Committee for cooperation between professionals in the field of combating violence.

## **Economic Violence**

However:

1) "Between 94-99% of domestic violence survivors have also experienced economic abuse. Between 21-60% lose their jobs due to reasons stemming from the abuse. 64% of survivors reported the abuse impacted their ability to work; 40% reported their abuser harassed them at work via phone and in person. 50% of victims/survivors of sexual assault either lost or left their jobs after being assaulted.<sup>4</sup>"

2) "Economic abuse is experienced by more than 95% of domestic violence victims. Economic abuse can have a profoundly devastating effect on women: it impacts mental health and impedes a woman's ability to leave an abuser, subsequently prolonging the amount of time she is vulnerable to harm. Economic abuse is experienced by women from all backgrounds and income levels. Black, racialized, and Indigenous women are at a higher risk of economic abuse.<sup>5</sup>"

3) "Financial abuse can leave women with no money for basic essentials such as food and clothing. They have no access to their own income or bank accounts and are left with debts built up by the abuser in their names. Even after a survivor leaves the home, financial control can be exerted regarding child maintenance. Economic abuse includes restricting access to essential resources such as food, clothing, transport, and denying the victim the ability to improve their economic status. It is designed to reinforce or create economic instability. It limits women's choices and access to safety. It results in women staying with abusive men longer, so experiencing more harm.

Nearly a third (31.9%) say that access to money during the relationship was controlled by the perpetrator. A quarter said that their partner did not let them have money for essentials during the relationship. A third had to give up their home as a result of the abuse or leaving the relationship, and one in eight survivors found themselves homeless as a result of leaving. 43.1% of survivors are in debt because of the abuse, and over a quarter regularly lost sleep worrying about debt. Economic abuse doesn't need physical proximity, so it can continue after separation. Women are often left in debt, and the lack of financial security impacts their ability to rebuild their lives after leaving.<sup>6</sup>"

Financial or economic violence is not only about the abuser managing all the money but also about the abuser putting their victim in impossible financial situations.

## **The Istanbul Convention**

"Article 57 – Legal Aid: The Parties shall ensure that victims are entitled to legal assistance and free legal aid under the conditions provided for by their domestic law."<sup>7</sup>

The Luxembourg Parliament approved the so-called "Istanbul" Convention its law of 20 July 2018.<sup>8</sup>

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<sup>4</sup> National Coalition Against Domestic Violence. USA. <https://ncadv.org/blog/posts/quick-guide-economic-and-financialabuse>

<sup>5</sup> Canadian Center For Women's Empowerment. Canada. <https://ccfwe.org/what-is-economic-abuse/>

<sup>6</sup> Women's Aid. UK. <https://www.womensaid.org.uk/information-support/what-is-domestic-abuse/financial-abuse/>

<sup>7</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence. Council of Europe. 2011.

<sup>8</sup> <https://mega.public.lu/fr/societe/Lutte-et-prevention-contre-la-violence-domestique.html>

## **Luxembourg's approach to domestic violence**

According to Luxembourg, domestic violence is not a private matter, but a social problem, and emphasizes the need to "dare to speak out" in order to initiate proceedings. It recognizes the role of the police and the courts in prevention.

## **Luxembourg legislation on domestic violence**

### **1) Psychological:**

- "Sexual and psychological harassment at work" of the Labour Code<sup>9</sup>. Is a lawyer mandatory?
- "Various articles of the Penal Code, articles 260-1 to 260-4 (acts of torture, inhuman and degrading treatment), 327 to 330-1 (threats by gestures or emblems/verbal or written threats), 371-1 (non-presentation of the child), 391bis (abandonment of family), 442-2, 443 (defamation or slander), 448 (insult offense), 561 (insult contravention), 563 and 564 (assault or minor violence). For certain forms of psychological violence, there are aggravating circumstances in cases of domestic violence."<sup>10</sup> Is a lawyer mandatory?

2) **Economical<sup>11</sup>**: For the request of "art. 1011 of the new code of civil procedure regarding the rights of spouses", a lawyer is mandatory.

### **3) Physical and sexual:**

- The amended law of September 8, 2003 on domestic violence consists, by decision of the "prosecutor, in expelling the perpetrator for 14 days."
- For the extension of this eviction, a lawyer is not mandatory.
- For the civil party, a lawyer is mandatory if the request concerns an amount greater than 10,000 euros.<sup>12</sup>
- For divorce, a lawyer is mandatory.
- For restraining orders, a lawyer is mandatory.

Are domestic violence proceedings civil or criminal? Aside from the request for an extension of the eviction order, victims are required to be assisted by a lawyer in all other steps to separate and protect themselves from their abuser.

Aside from the request for an extension of the eviction order, how many requests for the various procedures are filed by victims of domestic violence per year? How many of these requested procedures are granted a court hearing?

Regarding the civil party, how many requests involve an amount greater than 10,000 euros? How many requests involve an amount less than 10,000 euros? How many perpetrators are convicted in all these cases? Or how many judgments are ultimately granted in favor of the victim, in the case where the abuser no longer has the possibility of appealing?

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<sup>9</sup> <https://violence.lu/types-de-violence/>

<sup>10</sup> <https://violence.lu/types-de-violence/>

<sup>11</sup> It should be noted that Luxembourg does not take into account the financial violence that the majority of victims suffer at the hands of their abusers. <https://violence.lu/types-de-violence/>

<sup>12</sup> Information note for victims of crime. The Government of the Grand Duchy of Luxembourg. Ministry of Justice. 2010.

What are the figures and reasons for non-prosecution and non-conviction of the abuser in all matters relating to domestic violence, administrative and judicial procedures directly or indirectly linked to the violence suffered?

### **Regarding the divorce application**

Since the abuser does not accept the separation well, which is well described in the circle of abuse, it is often the victim who initiates the divorce via a lawyer, which is mandatory.

How many requests are made by the victim, how many by the perpetrator?

How many perpetrators appear at the divorce hearing?

How many request a reflection period in order to delay the divorce?

If the perpetrator does not appear at the hearing, a default judgment can be issued, but this triggers other procedures to enforce the divorce, which takes time and generates additional costs, which the victim must pay, and not the abuser. Why?

Why is the abuser not ordered to pay these costs caused by his absence?

Why is the victim's presence always required at various hearings such as the extension of eviction, article 1011 of the New Civil Code Procedure, divorce, civil party, eviction, etc. but apparently not that of the abuser. And if the presence of the perpetrator is required, how many are penalized for their absence?

Naturally, if the abuser does not appear at the summons or court hearings, he does not have to pay legal fees.

Can legal costs, legal fees, etc. constitute a barrier for a victim to take the necessary steps to protect herself from her abuser?

### **Legal Aid**

“To ensure access to justice for people who do not have sufficient income, the Luxembourg State provides them with free and complete legal aid to defend their interests in the Grand Duchy of Luxembourg. Legal aid may be requested during the proceedings for which it is sought, with, if admitted, a retroactive effect to the date of the commencement of the proceedings.<sup>13</sup>”\*

**\*It should be noted that in many cases, victims have their legal aid withdrawn, with retroactive effect to the date of the commencement of the proceedings, when, for example, after a stay in a women's shelter they begin to earn an income. Suddenly, they are faced with enormous debts to their lawyer, which causes an emotional and financial set back.**

“Prerequisites: The insufficiency of resources of persons applying for legal aid is assessed in relation to the full gross income and assets of the applicant and of the persons who live with him in a domestic community. Applicants are considered to have insufficient resources when they receive the social inclusion income (REVIS) within the legal limits. Persons who live in a domestic community with the beneficiary of the REVIS, and whose income and assets have been taken into consideration for the determination of the REVIS, are also considered to have insufficient resources.

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<sup>13</sup> <https://guichet.public.lu/fr/citoyens/sante-social/action-sociale/assistance-judiciaire/demander-assistance-judiciaire.html>

Also considered as persons with insufficient resources are persons who, without benefiting from REVIS, are nevertheless in a situation of income and wealth such that they would be entitled to the allocation of REVIS if they met the other legal conditions determining the granting of this income.

Special case: If the applicant has sufficient resources, legal aid may be granted if serious reasons relating to the applicant's social, family, or financial situation justify this admission.<sup>14</sup> 14

On the other hand: "The level at which legal aid is activated only kicks in at €1,502.91. This is exactly the amount that single parents without other income receive as REVIS. Those receiving REVIS are also entitled to legal assistance.

The social worker explains that she is currently handling the case of a person whose application for legal assistance was rejected. This person had income that exceeded the legal aid threshold by a two-digit euro amount. ... this person earned less than the guaranteed minimum wage. The legal dispute has been going on for several years now, and for the next few years, they will be paying their three-digit legal costs via standing order. This person currently lives in social housing, but the legal costs make it impossible for them to get off social assistance and move into their own apartment. This can push a person to their financial and emotional limits.<sup>15</sup>" An experience that many social workers share.

### **What about legal aid in cases of domestic violence?**

In reality, victims are often denied legal aid because their income is above the set threshold, a threshold limited to 1,544.98 euros/month. Thus, the question of the cost of justice for victims of domestic violence concerns adults only, as minors are automatically entitled to legal aid.

The Bar Association does not publish figures on legal aid (AJ) granted per year. The Minister of Justice's response to parliamentary question No. 7645 from 22.02.2023 on legal aid does not specifically mention cases of domestic violence. There is also no mention of whether these AJs were granted to minors (automatically eligible) or to adults.

According to the 2022 figures, 5,062 AJs were granted. How many of these cases were for minors? Of the 6,473 legal aid applications requested, how many were for domestic violence?

How many applications are made per year in the context of domestic violence by adults?

How many are requested by the adult victim and how many by the adult abuser?

On what basis are they refused? How many are accepted?

And how many of these legal aid applications initially granted to adult victims are subsequently withdrawn, with retroactive effect?

How many assessments (contestation of legal fees) are sent to the bar per year in the context of domestic violence?

How many assessments are granted, or even refused, in the case of domestic violence?

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<sup>14</sup> <https://guichet.public.lu/fr/citoyens/sante-social/action-sociale/assistance-judiciaire/demander-assistance-judiciaire.html>

<sup>15</sup> Der Preis der Gerechtigkeit. Bill Wirtz, Lex Kleren. 26.01.2021. Letzeburger Journal. <https://journal.lu/de/der-preis-dergerechtigkeit>

## **What happens if the victim is not entitled to legal aid and must therefore pay the lawyer's fees themselves?**

### **1) In the case of an eviction**

"The SAVVD (Service assistance to victims of DV) also supports victims, particularly in their application for an extension of the eviction order... and additional measures prohibiting them from approaching and making contact with the victim.<sup>16</sup>"

The SAVVD does not systematically inform victims in its care about the possibility of assisting them in submitting this application for an extension of the eviction order by petition to the court. The service only offers to accompany the victim in these procedures. In any case, their legal aid stops in legal matters after this application for an extension of the eviction order. The SAVVD is not competent in other matters such as additional measures like restraining orders or divorce where representation by a lawyer at the Court is mandatory, and others.

### **2) In the case where no eviction is granted**

"Police interventions in cases of domestic violence do not systematically result in eviction. When no eviction is granted, the police provide the parties present in the household in accordance with the amended law on domestic violence with an information sheet informing them that they have intervened in the context of a situation of domestic violence and invites them to take action for themselves and their children against this situation of violence by seeking help from victim support services and services supporting the perpetrators.<sup>17</sup>"

This sheet or information note, provided without explanation by the police to the victims in the case "where no eviction is granted", contains various information, but is described in a language that only a legal expert can understand. The only advice the police give to the victim is to separate/divorce.

Apart from legal aid, this note describes that "the victim may apply to the summary jurisdiction for the purpose of being granted an interim payment before the outcome of the dispute, provided that the existence of the obligation is not seriously contestable.<sup>18</sup>"

This point on the "RIGHT TO OBTAIN AN INTERIM PAYMENT" is a good example that shows the complicated and at the same time vague language. It invites a good number of questions: What interim payment? What is the summary jurisdiction? Before the outcome of the dispute? The existence of the obligation of what? What obligation? What conditions of contestability? Who makes this request? Where to file this request? etc. This provision refers to which article in the legislation?

The note proposes that, apart from a lawyer, "The victim can also inquire about their rights with the Legal Reception and Information Service."

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<sup>16</sup> Rapport au gouvernement pour l'année 2020 et 2021. Comité de coopération entre les professionnels dans le domaine de la lutte contre la violence.

<sup>17</sup> Rapport au gouvernement pour l'année 2020/Page 9. Rapport au gouvernement pour l'année 2021/Page 10. Comité de coopération entre les professionnels dans le domaine de la lutte contre la violence. 2020 et 2021. <https://mega.public.lu/content/dam/mega/fr/publications/publications-ministere/2021/Rapport-Comite-Violence-2020.pdf> <https://violence.lu/wp-content/uploads/2022/06/Rapport-violence-2021-QR-CODE-version-finale.pdf>

<sup>18</sup> Note d'information à l'attention des personnes victimes d'une infraction. Le Gouvernement Du Grand-Duché De Luxembourg. Ministère de la Justice. 2010. <https://police.public.lu/dam-assets/fr/aide-victimes/note-victime.pdf>

It is not easy to get an appointment with the service as quickly as possible. The waiting room of the Legal Reception and Information Service during office hours is not necessarily the safest place for a victim who may potentially meet their abuser who, also following an eviction, comes to inquire about their rights. In addition, the waiting room is always full, at any time. Imagine the victim with visible bruises in a waiting room full of people or with visibly red and swollen eyes? How can one feel safe in such an environment after having been recently assaulted?

There is no ticket to take a number or waiting list, so you have to be vigilant to not miss your turn with the counselor. Thus, there is tension and a bad atmosphere in the waiting room because everyone is making sure that no one gets ahead of their turn. The wait is extremely long, at least an hour and a half. The waiting room is noisy. All of these stressors can trigger a panic attack for a recently assaulted victim of violence. What effects does this confrontation have on the victim's mental health? When it is the victim's turn, she is anxious and cannot fully take advantage of her rights during the interview, since she is distracted by the desire to avoid losing face in public. With all these people in the waiting room, it is difficult for a victim to take the time to have a clear and effective meeting.

How many requests from victims of domestic violence does the service receive?

Since 2021 or 2022, "People wishing to be informed about family law can also contact the service provided by a lawyer. This service is open every Wednesday morning at the Cité judiciaire, from 8:30 a.m. to 11:30 a.m. Legal information is provided free of charge.<sup>19</sup>"

The service is very difficult to reach. Is the service still operational? How many requests from victims of domestic violence does the service receive?

**Is the free legal information/information enough to protect the victim and prevent domestic violence? Or would legal prosecution of abusers by the courts be necessary in order to protect the victim?**

We have seen that victims are obligated to be assisted by a lawyer in all steps to separate and protect themselves from their abuser, apart from the request for an extension of the eviction order.

The "civil party" case requires a lawyer if the claim concerns an amount exceeding 10,000 euros, which is often the case.

The Istanbul Convention explains that "since judicial and administrative proceedings are often very complex, the assistance of a lawyer is a necessary measure to enable victims to effectively assert their rights. In this case, it may prove difficult for the victim to effectively access a judicial remedy due to the significant costs associated with this process.

The Court considers that effective access to a court may require the free assistance of a lawyer. The Strasbourg judges consider that it is appropriate to determine whether the victim's appearance before a court without the assistance of a lawyer will be effective in the sense that the person concerned will be able to have their case heard satisfactorily. In this case, they took into account the complexity of the proceedings and the emotional nature of a situation – which may prove difficult to reconcile with the degree of objectivity required during pleadings before a court – to decide whether or not a person was in a

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<sup>19</sup> <https://justice.public.lu/fr/aides-informations/accueil-info-juridique.html>

position to have their case heard effectively. Assuming that this is not the case, the person concerned must be granted free legal assistance.

Thus, even in the absence of legislation providing for free legal aid in civil matters, it is important to determine whether, in the interests of justice, an applicant lacking financial means and unable to pay for the services of a lawyer should be granted such service.<sup>20</sup>

### **Example of Spain with Luxembourg**

In Luxembourg's first report to the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), including the report submitted by the National Council of Women of Luxembourg: "There is no free legal aid in Luxembourg specifically set up for women victims of violence. The only legal aid they may possibly benefit from is that provided by the Ministry of Justice and the National Council of Lawyers for low-income litigants. Once again, Luxembourg is far behind Spain.

Indeed, with the 2004 law, the country established a system of free legal advice for victims, as well as free representation by a duty lawyer and a prosecutor, both specialized in the field of domestic violence, during all administrative and judicial procedures directly or indirectly related to the violence suffered. This lack is even more visible when put into perspective with the existing services, for example, in Spain since the 2004 law for victims who can attest to a judicial decision or competent social services:

- Right to free legal assistance;
- Right to comprehensive social assistance (psychological, social, etc.);
- Right to specific economic aid;
- Right to priority access to social housing and retirement homes;
- Right to a reduction or adjustment of working hours, to geographical mobility, to a change of location, to suspension of the position while maintaining the employment contract, to termination of the employment contract, or to specific professional support programs.

Support for women victims of violence in Luxembourg does not include any specific financial aid, no support in finding accommodation other than in shelters, no assistance regarding employment, and is mainly limited to psychological assistance.<sup>21</sup>

**« A third had to give up their home as a result of the abuse or leaving the relationship and one in eight survivors found themselves homeless as a result of leaving. 43.1% of survivors are in debt because of the abuse and over a quarter regularly lost sleep worrying about debt.<sup>22</sup> »**

Psychological assistance for victims makes no sense if domestic violence, and the protection and prevention of this violence, have left the victim in financial ruin.

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<sup>20</sup> Rapport explicatif sur la Convention du Conseil de l'Europe sur la prévention et la lutte contre la violence à l'égard des femmes et la violence domestique. Conseil de l'Europe. 2011. <https://rm.coe.int/16800d38c9>

<sup>21</sup> Rapport explicatif sur la Convention du Conseil de l'Europe sur la prévention et la lutte contre la violence à l'égard des femmes et la violence domestique. Conseil de l'Europe. 2011. Rapport alternatif sur les mesures d'ordre législatif et autres donnant effet aux dispositions de la Convention du 21 Conseil de l'Europe sur la prévention et la lutte contre la violence à l'égard des femmes et la violence domestique (Convention d'Istanbul). Conseil National des Femmes du Luxembourg. 2022.

<sup>22</sup> Women's Aid. UK. <https://www.womensaid.org.uk/information-support/what-is-domestic-abuse/financial-abuse/>

Of the 249 evictions in 2021, how many victims remain in follow-up care for themselves with the SAAVD? That's not counting the follow-up care provided to victims as parents for child witnesses?

And for how long did they remain in follow-up care with a service like Women in Distress after divorce or separation from the perpetrator?

How many victims, supported by the SAVVD, experience economic violence?

How does the SAAVD support them against this economic violence?

What solutions, apart from budget management in an over-indebtedness service, are possible for these victims?

## **Financial Aid for Victims**

### Waisse Rank Letzebuerg

How many applications are made in the context of domestic violence per year? How long does it take to process each case? How many are granted? And what are the criteria for refusal?

### State-paid compensation as a victim of a violent crime - Ministry of Justice<sup>23</sup>

How many applications are made in the context of domestic violence per year? How long does it take to process each case? How long after the application is the victim informed of the commission's decision? How many are granted? And what are the criteria for refusal?

## **Financial situation of victims in Luxembourg**

The report of the cooperation committee describes the professional status of adult victims. In 2020 and 2021, the SAVVD recorded exactly the same figures: 72% of victims have an income, 14% have no income.<sup>24</sup>

How many of these 72% of victims "with income" were entitled to legal aid? And of this legal aid granted, how many were ultimately withdrawn, as the victim no longer met the conditions? How many of them were not entitled to this legal aid? How many of these 72% of victims remained in their violent situation due to lack of financial means?

The housing crisis in Luxembourg, the waiting list for shelters for victims of domestic violence, adding economic violence, legal costs and lawyers' fees, etc., no longer leave many options for victims to escape their abuser.

Since 2020, "the Luxembourg Red Cross's Riicht Eraus service has been running the HOLD (Men with Dignity) program under an agreement with the Ministry for Equality between Women and Men. It is aimed at men who are separating or thinking about the future of their relationship and allows them to find decent housing and benefit from a period of quiet reflection. It is a short-term emergency shelter for those who have been evicted from their home following domestic violence. The length of stay may, on a case-

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<sup>23</sup> <https://guichet.public.lu/fr/citoyens/citoyennete/voies-recours-reglement-litiges/indemnisation-victimes/victimes-infractionsviolentes.html>

<sup>24</sup> Rapport au gouvernement pour l'année 2020 et 2021. Comité de coopération entre les professionnels dans le domaine de la lutte contre la violence. 2020 et 2021.

by-case basis, extend to a longer period, depending on the specific needs and/or status of the men being cared for.<sup>25</sup>"

So, since 2020, there have been beds for evicted perpetrators, but a waiting list for victims of domestic violence to enter a women's shelter. Protect the victim or protect the abuser? Empowering the victim, but supporting the perpetrators? What message does it send to victims and abusers when housing centers are provided for abusers, while victims are placed on a waiting list and "invited to help themselves."

### **Some figures on domestic violence in Luxembourg<sup>26</sup>**

#### **Police:**

In 2021, out of 917 police interventions, 249 evictions were granted. 668 interventions remained without eviction.

In 2020, out of 943 police interventions, 278 evictions were granted. 665 interventions remained without eviction. There were 1,323 adult victims in 2021 compared to 1,341 in 2020. (60% female and 40% male).

Of these victims, how many are entitled to legal aid? Among those who are not entitled, how many have the means to hire a lawyer, without having drastic repercussions on the victim's financial situation? How many do not have the means? How many suffer economic and financial violence from their abuser?

#### **SAAVD:**

In 2021, the SAAVD counts 276 adult victims (225 women, 51 men) for the 249 evictions granted. In 2020, the SAAVD counted 291 adult victims (246 women, 45 men) for the 278 evictions granted.

In 2021, 66% of cases were domestic violence/couple relationships. In 2020, 75% of cases were domestic violence/couple relationships.

### **Domestic violence perpetrators and repeat offenders**

Police: The police counted:

1,365 perpetrators in 2021 (68% men and 32% women),  
1,356 perpetrators in 2020 (70% men and 30% women),  
1,206 perpetrators in 2019 (68% men and 32% women).

The public prosecutor's office is dealing with 1,420 cases in 2021.

#### **SAAVD**

In 2021: SAAVD recorded 63 repeat offenses, therefore by the same perpetrators (25.3%).  
In 2020: SAAVD recorded 81 repeat offenses, therefore by the same perpetrators (29.4%).

#### **Riicht Eraus**

1) In 2021, of the 249 perpetrators of violence, contact was made with 195 evicted persons, of whom 126 showed up for the first appointment. 123 evicted persons

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<sup>25</sup> Rapport au gouvernement pour l'année 2020. Comité de coopération entre les professionnels dans le domaine de la lutte contre la violence. 2020. <https://mega.public.lu/fr/acteurs/partenaires/partenaires-conventionnes.html>

<sup>26</sup> Rapport au gouvernement pour l'année 2020 et 2021. Comité de coopération entre les professionnels dans le 26 domaine de la lutte contre la violence. 2020 et 2021.

remained without contact or appointment. In 2020, of the 278 perpetrators of violence, contact was made with 213 evicted people, of whom 167 showed up for the first appointment. 111 evicted people remain without contact or appointment.

2) Of the 46 repeat offenders in 2021:

- 10 people were evicted 1x in 2020 and 1x in 2021
- 28 remain without contact

The gender distribution in 2021 is 9% women and 91% men.

Of 47 repeat offenders in 2020:

- 6 people were expelled twice in 2020
- 4 people were expelled 3 times in 2020
- 25 people were expelled twice between September 2013 and December 2020
- 6 people were expelled 3 times between September 2013 and December 2020
- 2 people were expelled 4 times between September 2013 and December 2020
- 3 people were expelled 5 times between September 2013 and December 2020.
- 28 people remain without contact.

The difference between the two sexes in 2020 remains identical compared to previous years. Women represent 9.9% (46 people), men 90.1% (419 people).

3) In 2021, the service notes that repeat offenses represent 20.5% of evictions. In 25% of first evictions, at least one police intervention for domestic violence had already taken place without leading to an eviction.

**This means that in 45.5% of evictions, or nearly half, the alleged perpetrator was already known for previous acts of domestic violence.**

In 2020, the service noted that repeat offenses represented 18.3% of evictions. In 28.4% of first evictions, at least one police intervention for domestic violence had already taken place without leading to an eviction.

**This means that in 46.7% of evictions, or nearly half, the alleged perpetrator was already known for previous acts of domestic violence.**

4) The Riicht Eraus processed 37 “court warning” files for the year 2021:

- 22 warnings followed an eviction, of which 59.4% of the perpetrators had presented themselves to the Riicht Eraus as part of their eviction;
- 4 warnings followed an eviction for which the person had not presented themselves to the Riicht Eraus at the time of their eviction;
- 18 warnings remained without follow-up, which means that 48.6% do not follow up as requested;
- 9 of the 18 warnings without follow-up had previously been the subject of an eviction (repeat offense);
- 51.4% of the perpetrators who received a warning started follow-up.

What does the prosecution do in the event of a repeat offense? How is it that repeat offenders can reoffend 3, 4, or 5 times without any consequences from the court?

After how many evictions is an abuser sentenced? Why aren't repeat offenders required to wear a bracelet to ensure their removal and the victim's safety?

What is the purpose of a court warning? How many warnings are sent per year to how many abusers? How many of these warnings are followed? How many warnings can an abuser receive before the prosecution intervenes at the sentencing level?

Why aren't perpetrators of violence sentenced more quickly after a second repeat offense, or even eviction? Why aren't repeat offenders, after a warning, immediately prosecuted, sentenced, and imprisoned?

Why aren't there fines to pay for the violence caused?

What is the court's motivation for releasing repeat offenders?

The number of repeat offenders during a police intervention remains quite high, at 50%, and half of repeat offenders were already known to the police for domestic violence. However, the number of repeat offenders counted by the Riicht Eraus service increased slightly from 2020 to 2021. Furthermore, a study on violence in Luxembourg carried out by STATEC and published in July 2022 reveals that "In Luxembourg, two-thirds of women report having been victims of physical, psychological, sexual, or economic violence at least once in their lives,<sup>27</sup>" which equates to 2 out of 3 women (66.66%) in Luxembourg who have experienced violence.

This figure has increased considerably since 2017: "It is estimated that in 2017 in Luxembourg, 38% of women experienced domestic violence.<sup>28</sup>"

Ministries highlight that police interventions decreased in 2021, but this does not mean that incidents of DV have decreased. Even if there is a decrease in police interventions, the fact remains that approximately 70% of women do not file a complaint<sup>29</sup>, and of those victims who do file a complaint, only a minority of incidents are reported<sup>30</sup>. Inaccurate information on the actual number of incidents can lead to the problem not receiving the attention and political and judicial commitment necessary to prevent it, thus victims are not taken seriously, and as at present, will be asked to protect themselves.

### **Preventing violence through victim protection?**

The focus is always on the victim, their protection, but also their responsibility to prevent this violence by protecting themselves through separation. There is so much pressure, disproportionate and unreal, on the victim to protect themselves from their abuser's behavior alone.

"A major concern of the service (Riicht Eraus of the Red Cross) remains that of multiple evictions (repeat offenses) and repeated police interventions that do not lead to an eviction. **The high percentage of police interventions before a first eviction highlights the need to invest more political, professional, and financial resources in the prevention of domestic violence, and this in all cultures and socioeconomic backgrounds.**<sup>31</sup>"

In 2020 and 2021, the police intervened 2 to 3 times a day for cases of domestic violence (943 times in 2020 and 917 in 2021). Between 2012 and 2021, the average number of

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<sup>27</sup> Les femmes face à la violence. Statec. 2022. <https://statistiques.public.lu/dam-assets/catalogue-publications/regards/2022/regards-05-22.pdf>

<sup>28</sup> Learning to identify abuse and violence. University Luxembourg. 2021.

<https://www.uni.lu/fr/news/learning-to-identify-abuse-and-violence/>

<sup>29</sup> Chapter 8: Why Survivors Don't Report. Balbir Gurm and Jennifer Marchbank. 2020. <https://kpu.pressbooks.pub/nevr/chapter/why-do-survivors-not-report-to-police/>

<sup>30</sup> Reporting Violence to Police: A survey of victims attending domestic violence services. Emma Birdsey and Lucy Snowball. 2013. <https://www.bocsar.nsw.gov.au/Publications/BB/bb91.pdf>

<sup>31</sup> Rapport au gouvernement pour l'année 2020 et 2021. Comité de coopération entre les professionnels dans le 31 domaine de la lutte contre la violence. 2020 et 2021.

police interventions was 828.4, which still amounts to at least 2 police interventions every day.

Not even 1/3 of these police interventions result in an eviction.

How many of these police interventions took place following a call from the victim? How many following a call from the perpetrator? And how many following a call from a third party, such as neighbors, family, friends, etc.?

What is the number of police interventions for domestic violence compared to other police interventions?

Why are so few eviction orders granted by the prosecutor's office?

What are the criteria for a prosecutor to issue an eviction order?

How many of the evicted domestic violence perpetrators, 249 in 2021 and 278 in 2020, have been convicted? How many of the repeat offenders, 46 in 2021 and 47 in 2020, have been convicted?

How many of the 18 perpetrators, warned by the public prosecutor's office in 2021, who failed to comply with their consultation with the Riicht Eraus service, have been convicted?

What about the nine repeat offenders among these 18 warned perpetrators? How many have been convicted? In these cases, the perpetrator is no longer presumed.

Why does the prosecutor order so few convictions of perpetrators, especially repeat offenders?

How many domestic violence abusers are convicted each year? And how many of these convicted abusers are in prison?

According to the prosecutor's office, victims don't want to separate from their perpetrators, but they do want the violence to stop, which is one of the reasons why evictions are not ordered. While this is indeed true, separation/divorce should not be confused with eviction. Eviction does not automatically imply separation/divorce. Even after eviction, many couples stay together. But this is no reason why courts should fail to hold perpetrators accountable.

### **Holding the victim of domestic violence accountable?**

By leaving the choice of whether or not to expel her abuser to the victim, doesn't the prosecutor's office go against the purpose of this 2003 law, which is to protect the victim from her abuser? According to the law, the prosecutor's office takes on these public responsibilities, and therefore makes this decision alone after a police intervention, precisely to avoid reprisals from the abuser against the victim. Thus, an eviction of the abuser could be ordered by the prosecutor's office without the victim having to file a complaint.

This is to prevent the abuser from blaming the victim, a strategy systematically used by abusers on the victim.

Guilt and blame is one of the reasons why victims do not dare to file a complaint; their abuser plays on their guilty conscience; the other reason being that the abuser justifies his violence by blaming her, so she fears revenge from her abuser.

For example, in the Netherlands, regardless of whether the victim wants to file a complaint or not, the police inform the public prosecutor/mayor who issues an eviction order and prosecutes the perpetrator or not.<sup>32</sup>

How many victims decide not to file a complaint after police intervention?

How many victims withdraw their police report after some time due to pressure from the abuser?

How many of them lack the financial means to escape from their abuser?

All these figures are necessary to assess domestic violence in order to better address it.

The pressure on the victim, from all sides, to separate from her abuser is enormous. If she manages to separate without injury, will her abuser, who is not convicted or imprisoned, start again in his new relationship?

What are the figures for perpetrators who, once the victim has separated, continue the violence in a future relationship?

Some women separate immediately after an incident of physical violence without filing a complaint. How many repeat perpetrators are there at large in reality, since approximately 70% of victims do not file a complaint?

How can we reach out to these women and truly support them if the legal procedures required to prosecute, convict, separate, and imprison their abuser are lengthy, costly, and without guarantees?

How can the victim be protected from the abuser throughout these proceedings, which are initiated against him and who is still at liberty?

Are these steps to protect themselves really worth it?

**ZKPF** Zentrum für Kriminalologie & Polizeiforschung

## Dilemma häuslicher Gewalt aus Opfersicht

- Entscheidungsmöglichkeit 1 – in Beziehung bleiben und in Kauf nehmen von Gewalt etc.
- Entscheidungsmöglichkeit 2 – Partner\*in verlassen und so in Kauf nehmen von:
  - Existenzverlust
  - Stigma
  - Rache
  - Bedrohliche Situationen
  - Zerbrechen der familiären Strukturen
  - Starke Interkulturelle Muster

**Opfer wünschen dass die Gewalt endet – aber nicht zwingend die Beziehung!**

### **Domestic violence dilemma from the perspective of the victim** (Translation slide)

<sup>32</sup> <https://evaw-global-database.unwomen.org/pt/countries/europe/netherlands/2008/summary-temporary-restraining-orderact--2008->

Choice/option 1 - stay in the relationship and take into account the violence, etc

Choice/option 2 - Leave and bear the consequences of:

- Loss of existence
- Stigma
- Revenge
- Threatening situations
- Breaking family structures
- Strong intercultural patterns

**Victims wish for the violence to end - but not necessarily the relationship.<sup>33</sup>**

Do we believe the victim anyway? Blaming her shifts the problem of violence from her abuser to the victim. Between two stools, the victim must appease her abuser in case the justice system cannot protect her; she must do what the authorities expect of her to remain credible without putting herself in danger with her abuser in case she must return to live with her abuser for whatever reasons, such as lack of financial means, no network, waiting list for shelters, etc.

And in case there is no prosecution.

Leaving the responsibility for eviction on the victim puts the victim in danger, since the abuser can blame the victim for having him evicted. Making the victim responsible, or even making her feel guilty, for the violence she suffered is defined as "victim shaming," a strategy used by abusers to their advantage. This approach is especially well-known during trials of sexual violence, such as rape.

Feminist movements have fought to ensure that a woman is not questioned or held accountable for her rape. Blaming a woman's clothing to excuse/justify rape is just one example.

It should be the same for domestic violence. The abuser alone is responsible for his actions. And making the victim responsible by pressuring her to separate from her abuser to protect herself without legal support is impossible.

**Protection of victims during separation/divorce**

« Abusers repeatedly go to extremes to prevent the victim from leaving. In fact, leaving an abuser is the most dangerous time for a victim of domestic violence. One study found in interviews with men who have killed their wives that either threats of separation by their partner or actual separations were most often the precipitating events that lead to the murder.<sup>34</sup> »

« The statistics outline the reality that the most dangerous time for a survivor/victim is when she leaves the abusive partner; 77% of domestic violence-related homicides occur upon separation and there is a 75% increase of violence upon separation for at least two years. Femicide is a leading cause of death among women in Canada.

Women in Canada are killed by intimate partners (husbands, lovers, ex-husbands or ex-lovers) more often than by any other type of perpetrator. Although homicide rates are

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<sup>33</sup> Repeat Offender Perspectives on Offender Work and Victim Protection. Bettina Rieder. Center for Criminology & Police Research. 2023.

<sup>34</sup> National Coalition Against Domestic Violence. USA. <https://ncadv.org/why-do-victims-stay>

generally higher for males than females, females are at a much higher risk of homicide by their male intimate partners. In 2015, close to a half (48%) of all solved homicides involving a woman victim were committed by a male spouse or other intimate partner.<sup>35</sup> »

« Femicide differs from male homicide in specific ways. For example, most cases of femicide are committed by partners or ex-partners, and involve ongoing abuse in the home, threats or intimidation, sexual violence or situations where women have less power or **fewer resources** than their partner.

More than 35% of all murders of women globally are reported to be committed by an intimate partner. In comparison, the same study estimates that only about 5% of all murders of men are committed by an intimate partner.

In addition to the ratio of women and men killed by their partner, evidence also shows that women killing their male intimate partners often act in self-defence following ongoing violence and intimidation. Women are more likely to murder their partner while they are in the relationship, while men are more likely to kill an estranged partner and that women are more likely to kill their partner as a result of arguments or quarrels, while men are more likely to have a motivation of jealousy for killing.

In 2021, current and former intimate femicide, accounts for an average of 65% of all intimate partner and family related killings.<sup>36</sup> »

Thus, it is important in order to better protect the victim, that their situation is taken seriously by lawyers, justice, police, etc. They must respect the needs and follow up on the requests of the victim who knows their situation and their abuser best instead of making them feel guilty and imposing steps that endanger their life.

## The Perpetrators

Given the number of repeat offenses, even among those who have had a court warning, the question arises as to the accountability of abusers. The victim is obligated to take the necessary legal steps to protect themselves, even if it is only divorce. Even if they have the financial means, they are not guilty or responsible for the actions of their abuser. So why make them pay for the actions of others?

Making the perpetrator responsible by making them pay all the costs incurred as a result of their violence would also be a way to scare off abusers, and thus prevent violence and protect the victim.

Aside from extending the eviction, other steps, such as divorce, should be taken with the representation of a lawyer. Why are abusers not subjected to the same pressure as victims to seek treatment and stop the violence?

How many repeat offenses can an abuser commit, how many court warnings can they receive, before the courts prosecute, penalize, or imprison them?

According to the report, between 25% and 50% of abusers are repeat offenders, who have been evicted between 2 and 5 times<sup>37</sup>. Data protection would be the basis for why abusers are more protected than victims.

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<sup>35</sup> Battered Women's Support Services. Canada. <https://www.bwss.org/after-leaving-domestic-violence-is-still-the-most-dangerous-time/>

<sup>36</sup> Understanding and addressing violence against women; Femicide. WHO. 2012. [https://iris.who.int/bitstream/handle/10665/77421/WHO\\_RHR\\_12.38\\_eng.pdf](https://iris.who.int/bitstream/handle/10665/77421/WHO_RHR_12.38_eng.pdf)

<sup>37</sup> Rapport au gouvernement pour l'année 2020 et 2021. Comité de coopération entre les professionnels dans le domaine de la lutte contre la violence. 2020 et 2021.

Wouldn't more intensive and long-term treatment for perpetrators be necessary, especially for repeat offenders? Is a mandatory psychological session with Riicht Eraus, the Red Cross, sufficient to support perpetrators with this high number of repeat offenses?

How many perpetrators voluntarily continue follow-up after the first session? And for how long?

The impunity of the abuser plays a major role in repeat offenses.

### **The Justice system**

The role of the judicial authorities plays an enormous role in preventing domestic violence, holding abusers accountable, and protecting victims. One of the goals of the Istanbul Convention is to "prevent and avoid secondary victimization." However, the violence of the justice system towards victims is visible in the figures for repeat offenses and the number of court warnings given to repeat abusers.

Is there justice if there are no convictions? Victims relive the violence by the justice system, as there is no justice for many victims, according to the numbers of repeat offenses and court warnings. Do the courts take their responsibility seriously regarding the abusers who committed offenses/crimes, when no one judges, convicts, and imprisons abusers for their actions?

According to the Cooperation Committee report: "Any police intervention leads to the establishment of an intervention report and, where appropriate, to an eviction with an eviction report.<sup>38</sup>" Is this true?

The law stipulates that: "The competent State Prosecutor receives complaints and assesses the follow-up to be given to them. The State Prosecutor notifies the victim, within 18 months of receiving the complaint, of the follow-up he is giving to the case. If the State Prosecutor closes the case, the victim has several options. Every victim has the right, according to the terms of the law, to be informed ex officio that his complaint has been closed without further action and the reason for it.<sup>39</sup>"

How can the victim exercise his options if he is not informed?

Of the 1,420 cases in 2021, which were referred to the public prosecutor's office, how many resulted in closure without further action? How many are prosecuted? How many victims are informed of the follow-up action taken?

### **Secondary Victimization**

Why does the perpetrator have a 40-day appeal period if he or she does not appear at the hearings or if there is a risk that the abuser will flee?

How can perpetrators be prevented from fleeing and disappearing after a conviction?

What law protects victims of financial violence against a spouse, in cases where there is no separation of property and the spouse has never contributed to the household, but has instead incurred debts in the victim's name?

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<sup>38</sup> Rapport au gouvernement pour l'année 2020 et 2021. Comité de coopération entre les professionnels dans le domaine de la lutte contre la violence. 2020 et 2021.

<sup>39</sup> Note d'information à l'attention des personnes victimes d'une infraction. Le Gouvernement Du Grand-Duché De Luxembourg. Ministère de la Justice. 2010.

Why does a victim risk paying alimony to her abuser in the event of a divorce? Why does she legally owe him "spousal support" used to the perpetrator's advantage in cases of domestic and economic violence, but not to protect the victim?

Why do victims risk losing their homes, or even being put on the street, during divorce proceedings in cases of domestic violence? Since it is often the woman who stays with the children, why not leave her in their home?

Why do judges order mediation during divorce, while in cases of domestic violence, mediation can be experienced as torture for the victim?

Why is Article 1011, on spousal support, not often used, or even recommended by lawyers in cases of domestic violence?

Once the perpetrator is convicted, who ensures the victim's safety until he is apprehended and imprisoned? Why is a restraining order against the abuser not immediately and automatically granted by the courts for divorce or civil matters in cases of domestic/conjugal violence, if the victim expresses the need?

Why does the abuser have a right to appeal against his conviction if there is a risk of him fleeing?

Why is the victim not informed when the perpetrator is incarcerated, instead of only when the perpetrator is released? If the victim is informed, they can at least breathe and live a normal life again during the time their abuser is imprisoned.

Why is an abuser entitled to a probationary stay after 1/3 of their sentence for good behavior even with a firm conviction?

When the perpetrator is ordered to pay the victim damages, who ensures that the payment is carried out properly in the event the perpetrator fails to reimburse their victim? Once again, the victim must assert their rights through a lawyer they will have to pay for themselves, while the imprisoned abuser now receives a free lawyer to defend their rights. Thus, the damages that the victim should have received are immediately paid to cover the lawyer's fees. How is this possible? Ultimately, once again the victim loses, or even is punished, and the perpetrator is absolved of any responsibility for any action by receiving a free lawyer to defend them against their victim. They, the victim, even if they cannot afford it, must pay for a lawyer. Second or third victimization? When does the victim win?

### **Lawyers:**

The normal attitude of many lawyers in Luxembourg is that they are very enthusiastic and motivated at the beginning. Often, during the first meeting, the message conveyed by lawyers is that anything is possible, that there is nothing to fear, that the case is won.

But once the file is received and the legal fees are paid, there is too often a complete change in attitude from the lawyer. Suddenly, the victim is confronted with the reality of endlessly long procedures, the possibility for the opposing party to file appeals and oppositions, notifications if the abuser cannot be found, summons, 40-day deadlines, delays in the event of the abuser's non-attendance at court hearings, insolvency of the abuser if he is ordered to pay damages, foreclosures, arrest warrants, lawyer, bailiff, notary fees, etc.

There is a high risk that after all this time, effort, and money, the victim will end up in debt while the abuser remains free, even if he has been convicted.

"The highest costs of a trial are usually the lawyers' fees and expenses.<sup>40</sup>"

There is a certain negligence, lack of commitment and understanding that makes victims feel abandoned by those they pay to protect them. Victims relive with these lawyers the same types of violence (psychological, financial, etc.) as with their abuser. Lawyers make promises, as the abuser did during the couple's relationship, that they ultimately fail to keep.

How will psychological support to overcome the abuser's violence have any effect if many victims feel the same way about their lawyer as they do about their abuser? Their needs and requests are not taken seriously, the lawyer takes advantage of their vulnerability and difficult situation, empty promises, financial consequences, etc.

Instead of agreeing to handle cases, lawyers should refuse them if there is no chance of winning them and if the legal proceedings will put the victim in physical, moral and financial harm. Where is the empathy of some lawyers towards victims when the victim is charged insurmountable fee amounts? Why don't lawyers automatically request reimbursement of lawyer's fees from the abuser in all procedures necessary to protect the victim via Article 240 of the NCPC on procedural compensation? Or why is this article not automatically awarded by the courts in cases of domestic violence?

If working with lawyers is perceived by victims as painful and costly, it is not surprising that few victims "dare" to take action against the abuser. Instead of preventing violence and protecting the victim, these attitudes of lawyers not only endanger the victim during the most dangerous phase of domestic violence, separation, but they also put victims back into a state of shock.

How many lawyers who handle cases of victims of domestic violence are trained in this area? A lawyer specializing in divorce is not the same as being an expert in domestic violence. Divorce and separation are not always the best solutions for the victim at the time if there is no guarantee of legal security, given the high risk of femicide following separation from the abuser.

This experience with lawyers, lived by many victims as secondary victimization, does not heal the trauma suffered by the abuser's violence.

Last but not least, how can the victim recover from all the malicious experiences caused by her decision to break up with the abuser and put an end to the violence caused by her abuser, when she continues to pay the consequences of the abuser's actions long after they have separated? The price of justice for victims of domestic violence is expensive, and there is no guaranteed result in favor of the victim. How can she work through her trauma when it will take years for her to recover financially? How is it possible that a victim is ordered to pay lawyer's fees for years, while the abuser too often does not suffer the consequences of these acts, but his victim, and this at all levels. What is the bar's position on all this?

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<sup>40</sup> <https://guichet.public.lu/fr/citoyens/citoyennete/voies-recours-reglement-litiges/frais-avocat/frais-proces.html>

## **Victims' Experiences**

In order to ensure the prevention of violence and the protection of victims, it is primarily necessary to fully understand domestic violence. The fact that economic violence is not taken into account in Luxembourg shows that there is still a long way to go.

Similarly, psychological violence is underestimated. Psychological violence is not just shouting or insults, these being obvious forms of psychological violence. For example, manipulation through lies, twisting the truth, deception, gaslighting, false accusations, etc. are less visible and, for example, necessary in order to carry out economic violence.

On the other hand, on violence.lu, the term "reciprocal violence" is used: "In other cases, the violence is reciprocal between partners, that is, they are violent towards each other."

What violence are we talking about?

What violence is reciprocal? Psychological, physical, economic, or sexual violence?

Physical or sexual violence cannot be reciprocal. Even in sports like boxing or other combat sports, competitors are categorized by weight and height to ensure a fair match. Furthermore, a man's body is generally naturally stronger than a woman's. This is why female athletes are opposed to competing with transgender people. There is a difference in strength when a young adult hits an older person, or vice versa. So, how can violence against women be reciprocal?

The term "reciprocal violence" is used a lot lately when referring to domestic violence. However, the term "self-defense" is less popular. Nowhere on the website, violence.lu, is it considered, implied, or accepted that a victim defends herself against the psychological/economic/physical/sexual assaults she suffers. On the contrary, the victim is warned that if they defend themselves, they risk being evicted from the home for 15 days. Which unfortunately also happens.

Why is "self-defense" not taken into account in the issue of domestic violence in Luxembourg? A victim must allow herself to be attacked without being able to exercise her right to self-defense, an automatic defense mechanism that is blamed on the victim, but not on the abuser? Every human being reacts differently to a crisis: fight, flight, or fright. A victim who discovers that her abuser has sexually cheated on her, and the abuser refuses to let the victim leave him; she must accept his physical harassment without defending herself? An abuser who physically sequesters his victim, blocks her path, and corners her so that she cannot escape; he did not hit his victim, is this violence? For the victim, the only way to escape from such a situation is through physical force. Who is at fault? The abuser or the victim? Is this a question of "reciprocal violence" or "self-defense"?

In some cases, lawyers and police give conflicting advice to victims. For example, lawyers advise victims to call the police for every incident of domestic violence to keep a record, as do non-profit organizations. At the same time, the police accuse victims of using/abusing the law. A clear line is needed to effectively ensure victim protection.

Finally, complaints filed with the police by the victim are not used by lawyers in legal proceedings as support. As a result, the courts do not pursue prosecutions. A waste of time, energy, and money for the victim. A desperate situation for the victim.

The frustration of the police when the victim contacts them more frequently is visible and palpable during their interventions, to the point that many victims are afraid, feel intimidated, and refrain from calling the police for help. Often, contact with the police, described from the perspective of many victims, is violent and confrontational. The number of police interventions in Luxembourg decreased in 2021. Is this the reason?

It is important to differentiate between "self-defense" and "mutual violence." Otherwise, professionals risk falling into the same pattern of the parties involved, particularly the victim, and the abuser himself, who excuse and minimize the latter's violence.

### **Minimizing Violence**

When we talk about violence, we often talk about physical violence. But psychological violence precedes physical violence. The goal of psychological violence is to attack the psyche in order to better control the victim, destroy the victim's mind in order to reduce them to nothing so that they question themselves and finally submit to the will and desire of the abuser. Psychological violence is carried out in particular through manipulation, a form of verbal and non-verbal violence.

In a society that lives according to the theory of "survival of the fittest", manipulation has become commonplace in our society. Victims are often confronted with attitudes and reproaches such as "she should have known better", "she's not very intelligent if she was fooled", "she should have left him sooner", "if it's true, why doesn't she leave him", etc. Stereotypes about "the hysterical/jealous woman who needs to be calmed down", "the tenacious woman who exaggerates", etc. are imprinted, even in the prevention of domestic violence and the protection of women. We question the "crazy woman" whose man is the victim.

Even if a victim takes all the steps to protect herself (divorce, eviction and extension, prohibition order, art 1011, civil party, etc.), what guarantee is there that the abuser will be prosecuted, sentenced to a fine or damages, or imprisoned?

What is the risk that the abuser will still be free, even after conviction and after the victim is forced to pay lawyer's fees easily exceeding 10,000 euros for these procedures?

What is the risk of femicide if the abuser who has been convicted, has fled and therefore cannot be imprisoned? The victim is faced with lawyer's fees, moreover their safety is not guaranteed since no one knows where the abuser is. The victim must remain in a state of vigilance for fear that the abuser will take his revenge. When can the victim finally breathe?

Are these lawyer fees and legal proceedings worth it? Is it better to try to separate while maintaining a good relationship with the abuser, with all the risks of femicide that this entails? Or is it simply easier to stay with the abuser knowing that violence is guaranteed?

How many repeat offenses or court warnings can a perpetrator receive before criminal proceedings are initiated by the State?

How many perpetrators are prosecuted for failing to comply with the conditions of the court warning?

How many perpetrators fail to appear at a police summons or court hearing? How many are punished for their absence?

If there is a risk of absconding, why do convicted abusers still have a 40-day period against conviction? How many perpetrators abscond before the civil party summons or after conviction? How many convicted abusers are found and actually imprisoned?

If there is imprisonment, who ensures that the abuser who has been ordered to pay damages to his victim, reimburses this money? A lawyer for the victim? More expenses for the victim? In prison, the perpetrator has a free lawyer who defends his or her rights to reimburse the amount ordered to be paid to the victim for the damages. As a result, the

perpetrators receive a free lawyer to represent them and defend them from their victim. Protection of the victim or the perpetrator?

Non-profit organizations working with victims do not engage in political work. However, it is the associations that do the field work, and therefore are very well aware of what is happening, the patterns or cycles of violence, the needs of victims, etc. They can make recommendations and advise where changes and improvements are needed regarding the protection of victims, the prevention of violence and the accountability of abusers.

Of course, Luxembourg is making efforts to prevent domestic violence by raising awareness among the general public through, among other things, the forum theater "Together against domestic violence." But it is even more important to raise awareness and train the professional body dealing with the prevention of domestic violence. The prevention of domestic violence is done 1) by making the perpetrator accountable for his actions by sentencing him to pay legal fees, a fine and/or imprisonment, which automatically results in 2) the protection of the victim to a large extent.

### **Conclusion:**

If the victim is not entitled to legal aid, she is obligated to pay all her legal fees to separate and protect herself against her abuser. In addition, she must be represented by a lawyer during the many procedures, such as divorce.

It is known from the cycle of violence that the abuser does everything in his power, during the separation phase following violence, to prevent his victim from leaving him.<sup>41</sup>

Thus, it is rare for an abuser, in the case of a marriage, to request a divorce. It is mostly the victim who makes this request. The increased risk of femicide during this phase requires efforts by the courts to hold abusers accountable.

In all these cases, why are the lawyers' fees for these various procedures such as the extension of eviction, divorce, article 1011, the civil party, the restraining order, article 240 of the NCPC on procedural compensation, etc., not automatically the responsibility of the perpetrator of violence? Why is the victim not exempt from paying the costs to protect themselves? Why is the perpetrator not held responsible by paying these costs, without a request by the victim's lawyer being necessary?

As soon as it affects the physical and moral integrity, a victim should not also have a financial penalty to defend themselves against their aggressor.

### **Suggestion**

Following a personal survey conducted in Luxembourg in 2022 in the Afro-descendant community, which is the most affected by poverty in Luxembourg<sup>42</sup>, the question was asked to victims or survivors (former victims): "If help and legal assistance were free, would you dare (or would you have dared to) report domestic violence?" The majority answered yes. All were in favor of the system put in place by Spain to prevent domestic violence.

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<sup>41</sup> L'auteur d'un féminicide témoigne: « J'ai dû accepter que je suis un meurtrier ». Maxime Gonzales. 2021. <https://5minutes.rtl.lu/actu/luxembourg/a/1795783.html>

<sup>42</sup> Being Black in Luxembourg. European Commission. 2019. [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/migrant-integration/migrant-integration-hub/news/rassismus-luxemburg\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/migrant-integration/migrant-integration-hub/news/rassismus-luxemburg_en)

It should be noted that very few women in the Afro-descendant community, victims of domestic violence, resort to police or judicial orders in cases of domestic violence, apart from seeking divorce when the violence becomes unbearable. They are even hesitant to call on support services for victims of domestic violence.

The reasons are diverse: no financial means, no networks, difficulties in finding other affordable housing, no resources, no place to take refuge, no trust in the authorities or psychological services due to previous bad experiences, etc. Among the victims there are those who defended themselves against the physical violence of the abuser, and thus, were afraid to seek help as they would be accused of "reciprocal violence". However, according to their accounts, they were rarely the ones who had initiated the violence, or even physical violence.

The National Council of Women of Luxembourg in their alternative report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention of 2022), referred to Spain.

“The Spanish example is, in our view, a good example of the establishment of both civil and criminal jurisdictions specializing in violence against women, specialized police units, as well as synergistic work between stakeholders in the field of violence against women, going beyond a Consultative Committee. The VioGén platform, bringing together law enforcement agencies, prisons, courts, forensic medicine institutes, victim support offices, prosecutors' offices, government sub-delegations, social services and equality bodies, allows for a systematic risk assessment by specialized units each time a complaint is filed, with a reassessment of the risk every 3 to 60 days depending on the level of danger.

Whatever the latter, protective measures are put in place, such as providing the victim with the telephone number of the police, evicting the aggressor from the family home, restraining measures (electronic bracelets), granting the victim the use and enjoyment of the shared accommodation, determining the parental authority regime to protect the children or even 24/7 physical police protection. 56,000 women benefited from one or more of these protections in 2019.<sup>43</sup>”

Establishing in Luxembourg, as in Spain, a "system of free legal advice for victims, as well as free representation by a duty lawyer and a prosecutor, both specialized in the field of domestic violence, during all administrative and judicial procedures directly or indirectly related to the violence suffered," would be a more effective measure, because it combats the problem of domestic violence at all levels, but especially at the root of the problem, namely the perpetrators of domestic violence.

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<sup>43</sup> Rapport alternatif sur les mesures d'ordre législatif et autres donnant effet aux dispositions de la Convention du Conseil de l'Europe sur la prévention et la lutte contre la violence à l'égard des femmes et la violence domestique (Convention d'Istanbul). Conseil National des Femmes du Luxembourg. 2022. <https://rm.coe.int/mise-en-uvre-par-le-luxembourgde-tout-ou-partie-de-la-convention-d-is/1680a5e1b6>

Meanwhile, the reimbursement of legal costs by "compensation payable by the State as a victim of a violent crime<sup>44</sup>" could cover part of the victim's legal fees, and if the perpetrator is convicted, guarantee the reimbursement of the losses, damages and interest suffered by domestic violence.

On the other hand, the state is reimbursed by the abuser, which is more impressive for the abuser than reimbursing his victim, where he will try to get out of his payments by any means. This compensation to victims at the expense of the state could motivate the courts to pursue the abusers with more persistence. Thus, the victim, instead of chasing the abuser for money, can break all contact with his abuser, and therefore start over and continue with his life without interference from or contact with him?

Finally, in order to guarantee the protection of the victim, it is necessary that the assistance offered by professionals in the field correspond to the reality of the victims' experience.

Thus, including one or more victims of domestic violence in the cooperation committee between professionals in the field of combating violence would be of great interest.

**"Let's teach our boys not to rape/abuse, instead of teaching our girls not to "be" raped/abused. Protecting our girls means educating our boys."**

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<sup>44</sup> <https://guichet.public.lu/fr/citoyens/citoyennete/voies-recours-reglement-litiges/indemnisation-victimes/victimes-infractionsviolentes.html>