

Luxembourg

1. Discrimination in the family

a) Overarching legal framework for marriage

The Civil Code provides women with the same rights as men to enter into marriage (art. 143). The Civil Code includes a provision stipulating that there is no marriage without the free consent of both spouses or if consent was obtained under violence or threat (art. 146). Additionally, the Criminal Code establishes that anyone who, by violence or threat, forces someone to enter into marriage is punishable by imprisonment of one year to four years and/or a fine (art. 389). The attempt to force someone to enter into marriage is punished by one to two years of imprisonment and/or a fine (Criminal Code, art. 389).

The law provides for official registration of customary/religious marriages. The Criminal Code prohibits the celebration of a customary/religious marriage before the celebration of the civil marriage (art. 267). Civil marriages must be celebrated in front of a civil officer (Civil Code, art. 165). Furthermore, life partners are recognised under the legal framework by the Law on the Legal Effect of Certain Partnerships – the couple (of the same or different sex) must register, by writing, to a civil officer at their common place of residence (art. 2 & 3).

b) Child marriage

The legal age of marriage for women and men is 18 years old (Civil Code, art. 144). The Civil Code provides that the guardianship judge can in extenuating circumstances allow marriage under the age of 18 (Civil Code, art. 145). The request can be made by the parents, the legal guardian or the minor (Civil Code, art. 145). There is no provision in the legal framework prohibiting child marriage specifically, but the Criminal Code (art. 389) and the Civil Code (art. 144) prohibits marriages under 18 and by force. There is no legal discrimination regarding the legal age of marriage, and there are no discriminatory practices that may restrict those rights.

c) Household responsibilities

The legal framework recognises women and men equally as heads of household (Civil Code, art. 213). The law provides women with the same rights as men to be legal guardians of their children during marriage and in informal unions (Civil Code, art. 372). The Civil Code stipulates that both spouses share the same rights and responsibilities with regards to their children during marriage (art. 203).

Spouses decide together where to live – in case of dispute, a judge will take the decision (Civil Code, art. 215). The law provides unmarried women with the same rights as unmarried men to choose where to live (Constitution, art. 12). There is no legal discrimination in terms of household responsibilities and there are no discriminatory practices that may restrict those rights.

d) Divorce

Divorce (fault-based divorce and by mutual consent) can be initiated and finalised by women and men equally (Civil Code, art. 229 & 230). Divorce by mutual consent is admissible only after two years of marriage and if both spouses are above 23 years old (Civil Code, art. 275). The law provides women the same rights as men to be the legal guardian of their children after divorce; the Civil Code establishes that the tribunal will decide custody according to the child's best interest and visitation rights will be accorded (art. 302). Further, the law stipulates that each parent (whether custody was accorded or not) keeps the right to supervise the maintenance and education of their children (Civil Code, art. 303). There is no legal discrimination regarding women's legal rights to initiate divorce nor to be guardian of their children after divorce and there are no discriminatory practices that may restrict those rights.

e) Inheritance

The Civil Code guarantees the right of children to inherit land and non-land assets without distinction of sex or primogeniture (art. 745). The surviving spouse inherits land and non-land assets in the line of succession, according to the law (Civil Code, art. 767). The Criminal Code stipulates that civil remedy will be applied in case of theft by the surviving spouse or the ascendants or descendants of the deceased person (art. 462). Women have the same rights as men to make a will (Civil Code, art. 895).

There is no legal discrimination regarding women's rights to inherit and there are no discriminatory practices that may restrict those rights.

2. Restricted Physical integrity

a) Violence against women

Luxembourg has signed the Istanbul Convention. An inter-ministerial working group was set up in 2016 to work towards the ratification of the Convention (EIGE, n. d.). There is no specific law in Luxembourg on violence against women. However, the Criminal Code includes provisions regarding assault (art. 392-417), murder (art. 392), rape (art. 375), insults (art. 434-442), threats (art. 434-442), stalking (art. 442), exploitation of prostitution (art. 379-382), pimping (art. 379-382) and trafficking (art. 382). According to a study by the European Union Agency in 2014, 38% of women in Luxembourg have experienced physical and/or sexual violence, 30% of women have been stalked, and 67% have been sexually harassed (EIGE, n. d.).

b) Domestic violence

The Law on Domestic Violence plans for immediate eviction by the police of persons against which there is an indication that they will commit or commit again an offense against the life or physical integrity of someone they live with (art. 1). Additionally, the law includes a provision stating that the police will inform the Assistance Services to the Victims of Domestic Violence (art. 2). The law also provides for gender-disaggregated data to be produced with regards to domestic violence (art. 3). Moreover, a committee of cooperation between professionals is created by law, gathering state representatives and representatives from services assisting victims to study the implementation of

the law and to highlight possible problems in its enforcement (art. 4). The Law does not include psychological violence (Luxembourg Institute of Health, 2015).

The Code of Civil Procedure provides for victims of domestic violence the right to ask the president of the district court to extend the eviction period for three months after an immediate eviction order under the Law on Domestic Violence (art. 1017-1). The victim can also require that the offender be forbidden to take certain routes, to approach the familial house or to contact family members (art. 1017-8). The Code of Civil Procedure encompasses in its definition of domestic violence former partners and psychological violence. The Code provides for victims who live or have lived with the offender to apply for a civil protection order (art. 1017-7).

The Criminal Code, under article 409, provides for the criminalisation of domestic violence. Physical violence against a spouse, a divorced spouse, a cohabitant or former cohabitant, an ascendant, a descendant, a brother or sister is punished by six months to five years of imprisonment and a fine. The Criminal Code provides for protection orders (requested by the Public Prosecution Service to the Court) (art. 409).

The Plan for Equality between Men and Women 2015-2018 includes in its priorities the fight against domestic violence through prevention measures, the protection of victims and accountability of perpetrators as well as strengthening partnership between all involved actors (MEGA, 2014). The Plan also includes budgetary commitments on the part of the Ministry of Equal Opportunities to provide fund for social actors working with victims and perpetrators of domestic violence (MEGA, 2014).

Assistance services to the Victims of Domestic Violence are available in Luxembourg. Their missions are to assist, guide and advise victims of domestic violence, including children who witness violence. Health centres and hospitals provide medical help for victims. Shelters for victims of domestic violence are available throughout the country – approximately 220 beds are available (EIEG, n. d.). The Luxembourg National Domestic Violence Helpline is accessible in several languages (Luxembourgish, French, German, English and Portuguese) (EIEG, n. d.). Both State and NGOs provide helplines (EIGE, 2012). The Ministry of Equal Opportunities leads awareness-raising campaigns, notably there was a Preventive Theatre on domestic violence targeting Portuguese communities in Luxembourg. The Ministry also funds shelters and counselling centres (EIGE, 2012).

The Luxembourg Institute of Health (2015) conducted a study on domestic violence. The findings of the study established that since 2003, there was an increase in police interventions and evictions related to domestic violence cases (Luxembourg Institute of Health, 2015).

In terms of shelters, the report observes a high occupation rate. While there is a decrease in the number of women entering shelters, they usually stay longer and are accompanied by their children (Luxembourg Institute of Health, 2015). Domestic violence is the main reason why women come to shelters (other causes for seeking refuge are social and relational problems, material or health problems) (Luxembourg Institute of Health, 2015). Shelters can welcome women for a stay of up to three months. The study points out to difficulties women may face upon leaving the shelters such as precariousness, difficulty in accessing employment and in finding housing (Luxembourg Institute of Health, 2015). These constitute a risk for recidivism (Luxembourg Institute of Health, 2015). There is

a high rate of persons going to counselling centres – which dispense legal aid and advices on a number of issues (Luxembourg Institute of Health, 2015). The majority come to counselling centres for domestic violence issues (Luxembourg Institute of Health, 2015). The study shows that domestic violence is linked in some cases to precarious conditions of living and economic, social and emotional instability (Luxembourg Institute of Health, 2015). It appears that in Luxembourg, the majority of cases of domestic violence concerns violence between intimate partners (Luxembourg Institute of Health, 2015). Children are also a target of violence directly or indirectly (by witnessing it). The report notes a high percentage (21%) of Portuguese women being accepted to shelters for domestic violence cases (in Luxembourg, 16% of the population is Portuguese) (Luxembourg Institute of Health, 2015).

Furthermore, the report of activities from the association “Femmes en détresse” (2016) – which gathers information from several associations providing services to victims of domestic violence - suggests that the degree of violence has increased, linked to more detention of fire arms and excessive abuse of alcohol. The report also shows that 85% of victims reported having suffered psychological violence. Half of victims declared consulting a doctor after the expulsion of the offender; victims can request a medical certificate following the consultation (Femmes en détresse, 2016). The Assistance Services to Victims of Domestic Violence reported 256 evictions in 2016 (Femmes en détresse, 2016).

c) Rape

The Criminal Code penalises indecent behaviour and any illicit act of nature by imprisonment of one month to two years and a fine if it was committed without violence nor threats and imprisonment of one to five years and a fine with violence or threats (art. 372). Rape is criminalised under article 375 of the Criminal Code and is punishable by imprisonment of five to ten years. Rape is defined as all act of sexual penetration, of any nature and by any means, committed on a person who is not consenting, with violence or serious threats, by trick or artifice, or by abusing a person not capable of expressing free consent or to oppose resistance (Criminal Code, art. 375). In cases of marital rape or rape on an ascendant or descendant, the sentence is doubled (art. 377). Increased penalties for aggravated forms of rape and sexual violence are included (Criminal Code, art. 376 & 377).

The definition of rape in Luxembourgish law is restrictive as it implies that the victim has to prove that there was no consent or that she/he was unable to give consent or that threats or violence were used (European Women’s Lobby, 2013). The European Women’s Lobby (2013) reports that in court, the fact that the victim didn’t give consent is not found to be sufficient to establish rape. In addition, according to the European Women’s Lobby (2013) some cases in court refer to the lack of criminal intent by the perpetrator or the contradictory behaviour of the victim that could lead to different interpretations. The report also suggests that there is a lack of official data on sexual violence (European Women’s Lobby, 2013).

d) Sexual harassment

The legislative framework coverage of sexual harassment in Luxembourg is limited. The Labour Code prohibits sexual harassment in the workplace (art. L. 245-2). The employee victim of sexual harassment can terminate the contract with immediate effect and benefit from reparation at the charge of the employer (art. L. 245-7). The Law on Equality of Treatment between Men and Women in Accessing Services and Goods prohibits sexual harassment in the access to goods and services (art.

2). Stalking is criminalised under the Criminal Code (art. 442-2) and is punishable of imprisonment of 15 days to two years and/or a fine. The legal framework does not cover specifically sexual harassment in educational establishments, sporting establishments, public places or cyber harassment.

The European Union Agency for Fundamental Rights (2014) found that Luxembourg has one of the highest rate in European countries (7%) of women being victims of stalking (receiving repeated offensive or threatening communications from the same person). Additionally, 39% of the respondents of the survey in Luxembourg declared avoiding certain situations or places for fear of being sexually or physically assaulted (EUAFR, 2014).

e) Female genital mutilation

The legal framework does not criminalise female genital mutilation (FGM). Nonetheless, the Criminal Code includes a provision punishing mutilation (art. 400) and with additional sentence for mutilation done to a child under 14 years old (art. 401 bis). FGM does not constitute a practice of concern in Luxembourg.

f) Abortion

The reform of the Law on Sexual information, Prevention of Clandestine Abortion and the Regulation of the Voluntary Interruption of Pregnancy in 2014 sets no restriction for seeking a legal abortion. Abortion on request can be performed until the 12th week of the pregnancy (art. 12-1). Abortion must be practiced by a doctor in a hospital or an authorised institution. A woman who seeks an abortion does not need the approval of a doctor. Article 13 stipulates that no doctor or health professionals can be forced to perform an abortion. A minor can seek an abortion with the consent of one of the persons exercising parental authority or her legal guardian (art. 12-3). However, if she wishes, she can choose instead to be accompanied by a trusted adult (art. 12-3).

Abortions can be performed after 12 weeks of pregnancy when two qualified doctors have established that the pregnancy represents a threat for the woman's health or life or for the foetus (art. 12-4).

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

Regarding land, the law provides married/unmarried women with the same rights as married/unmarried men to own, use, make decisions and use as collateral (Civil Code, art. 544, 578 & 2114). Regarding property and other non-land assets, the law provides married women with the same rights as married men to own, use, make decisions and use as collateral (Civil Code, art. 224 & Constitution, art. 16). Regarding land, property and other non-land assets, the law provides women and men with the same rights after divorce or separation to own, use, make decisions and use as collateral (Civil Code, art. 1393). Marital property is administered jointly by the spouses (Civil Code, art. 1421).

There is no legal discrimination regarding access to land, property and non-land assets and there are no practices which may restrict these rights.

b) Secure access to formal financial resources

The Civil Code stipulates that each spouse can open a bank account, without the consent of the other (art. 221). The Law on Equality of Treatment between Men and Women in Accessing Services and Goods guarantees that women have the same rights and equal access to financial institution and to obtain credit (art. 1 & 3). There is no legal discriminatory and there are no practices that may restrict these rights.

c) Workplace rights

The Labour Code prohibits discrimination on the ground of sex, directly or indirectly, and with regards to matrimonial or familial status (art. L. 241-1). The principle of non-discrimination on the ground of sex concerns the conditions of access to employment, including selection criteria and recruitment conditions, and promotion; the access to training and professional formation; the conditions of work and employment, including salary and termination of contract; and the affiliation in a union or other work organisations (Labour Code, art. L. 241-2). The Grand-Ducal Regulation on the Equality of Remuneration between Men and Women stipulates that all employers are obliged to ensure that for a work of equal value there is equal remuneration between men and women (art. 1). The legal framework does not prohibit women from entering certain professions and women are allowed to work the same night hours as men. Employers who publish employment offers or job advertisements not conform to the principle of equality between men and women are punishable by a fine (Labour Code, art. L. 241-11).

Paid maternity leave of 16 weeks is mandated by law (Labour Code, art. L. 332-1 & art. L. 332-2). Women are paid 100% of their wages during maternity leave (Social Security Code, art. 8, 10, 25). Workers can take an exceptional leave for familial reasons of two days once a year, which are paid at 100% of their wages (Labour Code, art. L. 234-52). Each parent is entitled, upon his/her request, for a parental leave from four to six months (Labour Code, art. L. 234-44). The law protects women's employment security when they are on maternity leave (Labour Code, art. L. 332-3). Further, the Civil Code establishes that each spouse has the right to have a profession, an industry or a business without the consent of the other (Labour Code, art. 223).

The Plan for Equality between Men and Women 2015-2018 aims to promote equal representation of women and men in administrative boards of public institutions (MEGA, 2014). The target is set to attain 40% of women by 2019 (MEGA, 2014). The Plan also ensures the promotion of positive actions in the public and private sector and the promotion of training, information and awareness-raising (MEGA, 2014).

Due to the under-representation of women in decision-making positions, the Ministry of Equal Opportunities elaborated a Strategy for an Equal Representation of Women and Men in Decision-making Positions (MEGA, n. d.). Propositions include that the Government observes systematically the 40% quota within the composition of administrative boards of public institutions and to launch a database of women who would serve in administrative boards (MEGA, n. d.). The Government works with the private sector on positive actions and programmes (MEGA, n. d.). Corporate boards are encouraged to self-regulate regarding gender equality, however the European Women's Lobby (2013a) notes that this has been ineffective.

The European Commission (2013) reports that women are more affected by unemployment than men and they are more involved in part-time work. The study highlights that women are under-represented in economic decision-making in Luxembourg (European Commission, 2013). The gender pay gap is persistent but remains moderate: women earn 8% less than their male counterpart (European Commission, 2013). In terms of involvement in different sectors, there is little difference between men and women. The report points out that this is partly due to the service driven economy of Luxembourg (European Commission, 2013). There is a slight differentiation in health care and social work where women are predominant and in construction and manufacturing where men are predominant (European Commission, 2013).

4. Restricted Civil liberties

a) Citizenship rights

The Law on Nationality provides women with the same rights as men to acquire nationality (art. 10). The Law provides women with the same rights as men to change and retain their nationality (art. 39 & 57 & 88 & 25). Women have the same rights as men to confer nationality to their spouse and their children (Law on Nationality, art. 25 and 1). The legal framework provides women and men with equal rights to register the birth of their children (Civil Code, art. 56).

The Constitution does not recognise intersectional discrimination but stipulates that women and men are equal in rights and obligations and that the State ensures actively the elimination of barriers to gender equality (art. 11) and guarantees individual freedom (art. 12).

There is no legal discrimination regarding citizenship rights or women's legal rights to register the birth of their children and there are no practices that may limit those rights.

Women are provided with the same rights as men to apply for identity cards (Grand-ducal Regulation on Identity Card, art. 1). Additionally, the law provides married women with the same rights as married men to apply for passports and provides women with the same rights as men to acquire passports and other travel documents for their minor children (Grand-ducal Regulation on the Procedures for Obtaining a Biometric Passport, Biometric Travel Document for Foreigners, Stateless Persons and Refugees and Establishing a Right of Chancery for Legalization of Access, art. 4).

The Constitution guarantees inter alia the right of married/unmarried women to travel outside the country, through the provision guaranteeing individual freedom (art. 12).

Delayed registration for unregistered adults and children is possible by a judgment of the court (Civil Code, art. 55).

b) Voting

The legal framework provides women and men with the same rights to vote in legislative, communal and European elections (Law on Election, art. 1, 2 & 3). There is no legal discrimination in terms of voting rights and there are no discriminatory practices that may restrict those rights.

c) Political voice

The Constitution guarantees women with the same rights as men to hold public and political office, including in legislature, executive and judiciary (art. 10bis). Quotas of women and men on the candidate lists are voluntary for political parties. Political parties establish independently targets regarding gender equality (European Women's Lobby, 2013a). The Plan for Equality between Men and Women 2015-2018 aims to modify the legislation to sanction political parties by decreasing their public funding if they do not comply with a 40% quota of women on their candidate lists for legislative and European elections (MEGA, 2014). The Strategy for an Equal Representation of Women and Men in Decision-making Positions also addresses the political sphere (MEGA, n. d.). Women are under-represented in the political sphere at the national and local level, especially at decision-making levels (Freedom House, 2015). The Ministry of Equal Opportunities launched an awareness-raising campaign entitled "Would politics suit you Madam?" to sensitise the population to the low representation of women in politics (European Commission, 2017).

d) Access to justice

Married/unmarried women have the same legal capacity as married/unmarried men to be sued and to sue and women's testimony carried the same evidentiary weight in court as men's in all types of court cases, through the principle of equality before the law which is enshrined in the Constitution (art. 10bis). In addition, the Civil Code stipulates that marriage does not modify the legal capacity of each spouse (art. 216).

Legal aid and counselling centres for citizens are available throughout the country headed by the Ministry of Justice. The Code of Criminal Procedure includes victims should be informed about services available to them – such as medical and psychological help, access to housing, access to protection, access to lawyers and legal aid, interpretation and translation, possible reimbursement of the expenses linked to the criminal procedure (art. 3-7).

The Ministry of Equal Opportunities is the dedicated body regarding gender equality. It is tasked with elaborating and implementing national policies and action plans regarding gender equality, integrating a gender dimension in all ministerial actions, planning for positive actions and monitoring the Inter-Ministerial Committee on Gender Equality. In addition to the Committee, delegates for equality have been appointed in ministries and public administration (MEGA, 2014). Each ministry is also dotted with a gender cell (MEGA, 2014).

There is no legal discrimination regarding access to justice and there is no indication that discriminatory practices may restrict these rights.

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