



## FEDERATION INTERNATIONALE DES FEMMES DES CARRIERES JURIDIQUES

Rua Manuel Marques, 21-P, 1750-170 Lisboa ♦ Portugal

Telf. 00 351 21 7594499 ♦ Fax 00 351 21 7594124

[www.fifcj-ifwlc.net](http://www.fifcj-ifwlc.net) ♦ [headoffice@fifcj-ifwlc.net](mailto:headoffice@fifcj-ifwlc.net)

### *Louise and John*

*... a work hypothesis*

1- 2- John's behaviour constitutes an offence of injuring a family member under the Prevention of Family Violence Law, 5751-1991 ("the Prevention of Family Violence Law"), as well as, evidently, an offence of severe injury under the Penal Law 5737-1977 ("the Penal Law"), within the criminal sphere of the law.

3- A distinction between an act under the Penal Law, and an act under the Prevention of Family Violence Law. Violation of the law is followed by a police complaint, after which the police opens an investigation and subsequently transfers the case to the Bar, which files an indictment. In criminal cases, the State is the accuser. The Criminal Court conducts a trial and gives a verdict and a sentence to the defendant.

The Family Court deals with domestic violence, and the Prevention of Family Violence Law enables the Court to give a temporary restraining order and a temporary injunction for a period not exceeding one year.

4- The Prevention of Family Violence Law is a unique law, enacted on 1991.

5- 6- Domestic violence is not included in the Penal Law. Clause 378 of the Penal Law defines the offence of assault and determines that a person violating said provision shall receive a judgment of two years imprisonment.



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Clause 380 of the Penal Law deals with an assault that causes actual bodily harm, as in the case presented to us, and determines 3 years imprisonment. Both clauses serve as the legal basis to file an indictment against a person acting in violence. The same applies to John, regardless of his being a family member. The difference is that under family legislation it is possible to act according to the Prevention of Family Violence Law and immediately issue protection and restraining orders for a period of a year at the most.

7- 378. Definition of assault- if a person strikes, touches, pushes or otherwise applies force to another person, whether directly or indirectly, either without his consent or with his consent, which was obtained fraudulently, then that constitutes assault; for this purpose, “application of force” includes the application of heat, light, electricity, gas, smells or any other thing or substance, if it is applied to a degree that causes injury or discomfort.

380. Assault that causes actual bodily harm.

If a person commits assault that causes actual bodily harm, then he is liable to three years imprisonment.

8- An effective imprisonment of 2 to 3 years, depending on the offence.

9- In the event that another person takes part in the assault, John shall be punished for a crime plan.

10- No. Unless a complaint has been filed with the police and an investigation has been opened, no indictment will be submitted. Without a complaint, John shall not be punished.



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*11 and 12- Yes. Only the Family Court is authorized to provide Louise with protection and restraining orders against John, up to a period of one year, regardless of the police complaint.*

*13- A judge of the Family Court.*

*14- 15 - Surely, the protection provided to Louise shall be by means of a restraining order, thus John will be prohibited from arriving within half a kilometre from her house and her place of work, he will not be able to harass Louise by phone or by electronic means or make any contact with her, and by doing so he will be violating a court order.*

*16- Louise may file a private complaint to the Attorney General.*

*17- 18- Absolutely. It is possible that he will be detained until the end of the proceedings.*

*19- 20- In order to evaluate the danger ability, a dangerous test may be held by an authorized psychologist or psychiatrist. From time to time the police employs polygraph test, although the results thereof are not admissible as evidence.*

*21- Louise should file a request for protection order to the Family Court, which shall prohibit John from entering her home.*



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*22- 23- The period to deal with a grave criminal offence is 9 months, though only if the person is in custody.*

*24- 25- No. In order to receive compensation, she should file a tort claim under the civil law.*

*26- The causes for a tort claim are: violation of the duty of care, negligence pursuant to clause 35 of the Torts Ordinance (New Version), 5746-1986 ("Torts Ordinance"), assault pursuant to clause 23 of the Torts Ordinance, physical damage, mental damage, abuse, damage to reputation, loss of comfort, pain, suffering as well as aggravation.*

*27- The Israeli Court had already ruled, more than once, between NIS 50,000 to NIS 450,000 with regard to tort claim.*

*28- No.*

*29- Approximately a year and a half.*

*30- Were John Louis's father, it would have been possible to sue him for violating a statutory provision, violating the Legal Capacity and Guardianship Law, 5722.1962, and misusing his role and duties as a guardian.*

*31- The Prevention of Family Violence Law is effective particularly in light of the fact*



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*that no fees apply to the procedure, which is free, thus the complainant has no financial excuse for not acting accordingly. In addition, at the very same day the complainant has filed a request pursuant to the Prevention of Family Violence Law, she stands in front of a judge and receives relief and temporary restraining order without any need for proof, for at least a week, since the other party is obliged to submit his response with no delay. Therefore, within a week at the most, a hearing will be held and a decision will be received. Short and efficient.*