

# LUXEMBOURG

## Child-friendly justice

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## **1. The child's legal capacity**

### **1.1. Minimum age at which a plaintiff can bring a case to court in their own right**

In Luxembourg the minimum age at which a plaintiff can bring a case to court in their own right is 18 for all areas of law. Minors cannot bring a case to court unless they are emancipated.

## **2. Access to adapted proceedings**

### **2.1 Specialised institutions and competent authorities**

#### **2.1.1 Criminal justice**

The youth justice system of Luxembourg is governed by the Law of 10 August 1992 on youth protection. A specialised Court, the Juvenile Court, is competent to deal with child suspects and offenders, as well as ordering protection measures for children in need of assistance and protection. The Juvenile Court (Tribunal de la jeunesse) adopts education and preservation measures. Child suspects/offenders are not considered as offenders but as children who need protection and help. Consequently, criminal law does not apply as such to children.

Within the judicial police services a specific unit is in charge of children. The Law of 16 December 2008 on the support of youth and families, and the Code of Criminal Investigation. The Youth Protection section of the prosecution office is responsible for the following matters:

- domestic violence;
- abandonment of family;
- non-representation of children;
- guardianship of major and children;
- abduction of children;
- disturbing disappearances;
- criminal mediation.

The Youth Protection section of the prosecution office treats in general everything that affects children and their families. When child victims are involved in judicial proceedings, prosecutors work closely with the Youth Protection section of the judicial police.

No vetting procedures are in place to ensure the suitability of professionals working with children.

As such, there is no institution in charge of monitoring the youth justice system. The Ombudsman for children's rights (Ombuds-Comité fir d'Rechter vum Kand - ORK) monitors the respect of children's rights, including in judicial proceedings. The Ombudsman delivers yearly reports and children file a complaint before the Ombudsman.

#### **2.1.2 Civil justice**

Since there is a clear distinction between public and private law, the judicial system in the Grand Duchy of Luxembourg is divided into a civil court system and an administrative court system. Both systems are overseen by the Constitutional Court, which is in charge of ensuring that Luxembourgish laws are in conformity with the Constitution. The Constitutional Court may start this compliance check upon request of both administrative and civil courts.

Luxembourg has a specialised judiciary, the Juvenile Court, to deal with family law issues, child protection and guardianship cases. Juvenile and Guardianship Courts operate with specialized judges. Juvenile judges are competent to enforce the laws on youth protection, and in order to modify or enforce divorce decisions if they concern the parental authority of children. Guardianship judges are competent to hear cases related to the parental authority of children whose parents are separated and have not been married to each other. Guardianship judges also exercise supervision over the work of legal representatives or guardians. In this role, guardianship judges may ask a child's legal representatives and guardians for clarification, as well as the child him/herself.

Except for some family and child protection matters, civil law cases are tried before civil courts. The judicial division in Luxembourg is composed of Magistrate's Courts (Justice de Paix) and District Courts (Tribunal d'arrondissement).

Magistrate's Courts are competent to hear cases where the value at stake is not more than EUR 10,000. Magistrate's Courts are also competent as first instance courts to set the amount of the child support except during divorce proceedings. In each Magistrate Court there is a Labour law section competent for hearing cases in relation to employment contracts or contracts of apprenticeship.

District Courts are competent to adjudicate in disputes involving more than EUR 10,000. They are also competent as first instance courts to hear certain family law disputes such as divorce, adoption, inheritance, filiations, etc. They also have competence over cases that are not attributed to another court by the law. In each District Court, there is a Juvenile and Guardianship Court which is the only competent court to judge cases related to youth protection or guardianship (see above).

The Court of Appeal (*Cour d'appel*) reviews cases which have been heard at first instance by the District Courts, the Labour Courts and the Juvenile and Guardianship Courts. The Juvenile chamber of the Court of Appeal hears cases which were adjudicated at first instance by the Juvenile and Guardianship Court.

Appeals against the decision of Magistrates Courts are judged before the District Courts. The Public Prosecutor may participate in civil judicial proceedings. Article 388-1 of the Civil Code provides that the minor capable of discernment can be heard by the judge or by the person designated by the judge for this purpose.

The Central social assistance service (*service central d'assistance sociale (SCAS)*) is a service operating as part of the Public Prosecutor's Office and is thus part of Luxembourg's public administration. Within the SCAS, there is the Youth protection service (*Service de la protection de la Jeunesse (SPJ)*), responsible for the evaluation of the physical and psychological well-being of children who need or may need protection.

This service can provide support to children upon request of a court or the Public Prosecutor's office. The SPJ also collaborates and has established professional relationships with persons in charge of providing aid to children (including NGOs) and is in direct contact with families in need.

While completing its tasks, the SPJ often conducts investigations which are called social investigation (*enquête sociale*). This investigation is conducted, based on standardised tools and by inter alia specialised social workers who have undertaken training on youth protection. The SPJ is obliged to safeguard the child's best interests, over the family's interests.

There is no institution in charge of monitoring the youth justice system as such. However, the Ombudsman for children's rights (*Ombuds-Comité fir d'Rechter vum Kand - ORK*) monitors the respect of children's rights, including in judicial proceedings. The Ombudsman delivers yearly reports on the situation of children's rights. Children are allowed in their own right to file a complaint to the Ombudsman.

#### **2.1.2.1 National Childhood Office (Office national de l'enfance (ONE))**

The National Childhood Office is part of the Luxembourgish public administration and works as part of the Ministry of Family and Integration (Ministère de la Famille, de l'intégration et à la Grande Région). First of all, ONE can provide help to a child's parents who struggle to provide the child with basic services such as food, clothing and a decent home. One of ONE's missions is to provide an alternative to judicial measures. ONE also ensures the receipt, (including emergency cases) of children who are placed into institutional care by their parents. In this case, ONE provides help and support to the child during his/her period away from his/her home. The child who needs protection can contact the National Childhood Office by phone, email or by filling in a form available on the organisation's website. A member of the child's family, or a professional in the field, can also contact ONE.

#### **2.1.2.2 The Family Council (Conseil de famille)**

The Family Council is put in place when the parents have died. Its aim is to secure the child's best interests during the procedure and it supervises and monitors all important elements of a child's life. The Family Council acts under the supervision of the Guardianship judge. It is composed of four to six members. The meetings of the Family Council are chaired by a Guardianship judge who can also take the final decision when the Family Council does not come to an agreement. The Family Council must be convened by the Guardianship judge. A child who is over 16 years old can ask the Guardianship judge to convene the Family Council.

As an example, the Family Council grants the guardian the necessary authorisations for managing the child's

property. If a guardian has been designated, the Family Council must accept this decision, unless it appears to be against the child's best interests.

Other services can provide help and support to children involved in civil judicial proceedings. Their main aim is to provide information to the child:

### **2.1.2.3 Legal information service**

Persons, including adults and children, can receive free of charge legal information from the legal information service. The legal information service is a public service which operates with the aim of informing any person about his/her rights and the way to enforce them. The assistance provided by the legal information service is not specific to children. The legal information service can provide, inter alia : Welcoming and guiding children and their parents to the competent services.

Children below the minimum age of criminal responsibility (MACR): in Luxembourg, a specialised judicial system deals with offences committed by children below MACR. The MACR in Luxembourg is 18 years of age. The treatment of children, who commit acts which if committed by adults would be considered as criminal offences, falls outside the scope of the competence of the administrative courts.

Judicial decisions in this respect are made by the Juvenile and Guardianship Courts (*Tribunal de la Jeunesse et juge des tutelles*). These courts adjudicate in accordance with the rules applicable to civil judicial proceedings.

Placement of children into care/institutions, i.e. foster families, residential or institutional care

The Juvenile Court and the Guardianship Court are competent to deal with cases that concern the placement of children into care. These courts adjudicate in accordance with the rules applicable to civil judicial proceedings.

### **2.1.3 Administrative justice:**

In Luxembourg there are no special family and youth courts in the field of the administrative justice.

#### **2.1.3.1 Decisions issued in the fields of asylum and migration**

In the field of asylum, decisions are reviewed by the administrative courts. The judicial review procedure is regulated by the amended Law of 5 May 2006 concerning asylum right and other forms of protection. This law sets a specific regime that applies alongside the general rules set out in the Law of 7 November 1996 and the Law of 21 June 1999. In this framework, some provisions of the New Code of Civil Procedure, applicable to administrative judicial procedures, set some relevant rules protecting children.

Regarding migration, decisions are reviewed by the administrative courts. The claim for judicial review against a decision related to this area is regulated by the amended Law of 29 August 2008 on the free movement of persons and immigration. This law cross-references with the general procedural rules contained in the Law of 7 November 1996.

In the field of citizenship, decisions are reviewed by the administrative courts as set in the Law of 23 October 2008 on Luxembourgish nationality.

#### **2.1.3.2 Mission of the Ombudsman for children's rights**

The *Ombudsman for children's rights* (*Ombuds-Comité fir d'Rechter vum Kand - ORK*) is in charge of promoting children's rights and their best interests. However, the Ombudsman cannot intervene in administrative judicial proceedings.

## **2.2. Legal and policy measures in place to avoid undue delay in the handling of cases involving children**

### **2.2.1 Criminal justice**

#### **2.2.1.1 The child as a suspect/defendant**

##### **2.2.1.1.1 Children subject to youth system**

The age of criminal responsibility in Luxembourg is set at 18 years old. With regard to the juvenile protection system, there is no mention in the law of a minimum age to which the juvenile protection system applies. A child does not commit 'crimes' under the Luxembourgish system; rather they commit 'acts qualified as crimes',

for which a specialised jurisdiction, the Juvenile Court, is responsible to apply measures of protection, care or/and education. As a result, a child, under the age of 18 when committing an act defined as an offence under criminal law, will not be referred to the Criminal court but rather to the Juvenile Court. As children are not considered as suspects or offenders but are rather considered as children who need protection, the Juvenile Court does not take measures defined as sanctions but rather measures of guardianship, education and preservation.

These measures can include the following:

- Reprimanding the child and placing him/her with persons who are legally in charge of the child, warning the legal representatives that the child has to be better supervised in the future;
- Committing the child to educational assistance;
- Placing the child under the supervision of a trusted adult or in an appropriate institution for treatment, education, instruction or vocational training;
- Sending the child to a rehabilitation facility.

#### **2.2.1.1.2 When the child reaches 18 years of age**

Measures taken by the Juvenile Court automatically end when the child turns 18 years of age. However in some cases, the Juvenile Court can choose to extend the measure after the child has reached his/her majority. The Court can prolong the measure until the child is 21 years of age, when the child commits an act qualified as an offence under criminal law. When the child commits an act qualified as a crime under criminal law, the period can be extended until the age of 25. Those measures can also apply when the child turns 18 years of age either before the proceedings or during the proceedings.

#### **2.2.1.1.2 Children subject to general criminal system**

There is one exception when children can be judged under general rules applying to adults. A child over 16 years of age can be judged by an ordinary criminal court if he/she commits an act qualified as an offence and where the Juvenile and Court finds the measures at its disposal inadequate (measures of guardianship, preservation or education). In this specific case, the Juvenile Court may authorize the prosecutor to prosecute the child under general rules for adults. This decision will have to be notified by registered mail with acknowledgement of receipt by the child, his/her parents, guardian or any other persons who legally represent the child. The court will not be able to refuse the request on the grounds that the suspect is under the age of 18. If the appeal is rejected, the child can be sentenced to the same sanctions as adults.

The Public Prosecutor, the child, the persons exercising parental authority or, where applicable, the persons who have custody by law, can appeal this decision. They have 10 days to do so from the day of the notification of the decision. If the Appeal Court declares null the decision of the Juvenile Court, the case will be sent to another Juvenile Court.

#### **2.2.1.2 Measures for children in danger**

When children are in physical or moral danger, the Juvenile Court can impose the following measures:

- The child is taken into educational custody/assistance (by probation agents or persons who work within establishments or organisms that help, advise or assist children and their families);
- Placement of the child under the supervision of a private person or in a home;
- Placement of the child in a State re-education establishment;
- Placement of the child in a State disciplinary establishment.

Children who are placed can benefit from a temporary return to the family home. This temporary return is meant to ensure the child's integration. The Juvenile Court awards such a return. Short returns or returns during the weekends can be awarded by the persons who have the custody of children or by the directors of the establishments where children are placed. The Juvenile Court must be informed beforehand.

The measures come to an end when the child is 18 years old. The measure can be prolonged in the following cases:

- If the child's interest so commands and if the child agrees, the measure can be prolonged until the young adult is 21 years old. In between the ages of 18 and 21 years, the measure must come to an end if the young adult or the Judge requests it;
- If the child committed a major offence (*délit*), the judge can prolong the measure until the young adult is 21 years old;
- If the child committed a crime, the judge can prolong the measure until the young adult is 25 years old.

### **2.2.1.3 Criminal records**

#### *Non-disclosure of the child's criminal record*

Decisions taken by the Juvenile judge will not be recorded on a criminal record but on a special register. Even when children above 16 has been judged by a criminal court, the decision of the ordinary court will not be mentioned on a criminal record but on the same special register.

The special register can only be consulted by judicial authorities and can also be transferred to administrative authorities when this information is needed for application of the law. This special registry is also available to the victim of the child if the victim asks for it in order to obtain compensation.

## **2.2.2 Civil justice**

### **2.2.2.1 The child as a plaintiff or defendant**

There are no specific provisions in place to ensure that civil judicial proceedings involving children, take place without undue delay. This means that in terms of procedural deadlines, the general rules (rules applicable to adults) apply. These rules are described below and differ depending on the court that hears the case.

Child-specific measures, that courts can take to protect children during the proceedings, concern only children in other roles. Before ordinary courts, general rules for adults apply to children.

#### **2.2.2.1.1 Magistrate's Court**

In case of emergency, the Magistrate's Court can take the necessary interim measures (*ordonner en référé*), such as conservatory measures or restoration orders. The putting in place of interim measures cannot hinder the continuation of court proceedings.

Similarly, the judge may take, for example, any necessary interim precautionary measures, if that is necessary for the prevention of imminent damages or for the stopping of an unlawful situation (*trouble manifestement illicite*).

If a judge decides to try the case within a short-time period, he/she can convoke the parties on a bank holiday or on a non-working day. The judge needs to ensure that sufficient time has passed between the date the plaintiff has brought the case to court and the date of the hearing. This aims at ensuring that the defendant has sufficient time to prepare his/her defence.

Article 388-1 of the Civil Code provides that the minor capable of discernment can be heard by the judge or by the person designated by the judge for this purpose

#### **2.2.2.1.2 District Court**

The District Court may judge a case without undue delay (*assigner à bref délai*) if the facts of the case require it. This decision must be taken by the President of the Court who will decide whether the facts of the case require it.

#### **2.2.2.2 The child as a witness**

The general rules described above also apply to witnesses, with the condition that child witnesses do not need to be represented.

### **2.2.2.3 Child protection**

In case of emergency, the Juvenile Court may decide to put the child temporarily under the care or custody of one of the child's parent, a private person, an association, a charity, a teaching institution, a re-education institution, a disciplinary institution, or any appropriate institution. This measure is used when the removal of the child from his/her family is deemed to be in his/her best interests, for example, when the judge considers that the child is put at risk by his/her parents.

The measure of temporary custody is meant to protect the child and thus has to be taken quickly. The Juvenile Court or the Juvenile Judge may order the examination of the child's personality, if it is deemed to be necessary. This can be done via social enquiry, medical examination of the child's psychological and psychiatric status, an observation of the behaviour of the child or via a career guidance exam. A judge, while deciding on the putting in place of temporary measures, can take into account any useful information provided by any person.

#### **2.2.2.4 Divorce**

A fast-tracked procedure exists and is often used in procedures where children are involved. In that case, the judge for urgency procedures (*juge des référés*) can take provisional measures which will regulate the situation of the spouses and their children. Luxembourgish legislation allows for the putting in place of such measures, as divorce cases might take a long period of time and during this period the child's situation cannot remain unregulated. Provisional measures should be taken within a short period after the filing of the suit, to protect as best as possible the child. While deciding, judges may take the child's opinion into account.

Article 388-1 of the Civil Code provides that the minor capable of discernment can be heard by the judge or by the person designated by the judge for this purpose.

#### **2.2.2.5 Parental authority**

Hearing on cases related to the delegation or termination of parental authority are public. During the proceedings, the court can order any necessary interim measure that concerns the custody and education of the child, or any other measure considered as necessary. These measures can be taken either *ex officio* or upon request of the parties of the procedure. Decisions on interim measures are provisionally enforceable (i.e. are enforceable before the court decision on parental authority is taken). The court may also revoke or amend interim measures ordered. The hearing of a child is always possible.

#### **2.2.2.6 Guardianship**

When one of the two parents files a claim to a Guardianship judge because of a disagreement on what is best for the child, the Guardianship judge will convoke the parties to appear before him/her. This measure aims to protect children from harm.

#### **2.2.2.7 Child abduction**

Child abduction cases are heard by District Court judges within fast-tracked procedures.

### **2.2.3 Administrative justice**

The general rules described below apply to judicial proceedings in the sectors of asylum, migration and education. However, certain specific rules exist and they are described below in separate subheadings. Civil procedural rules apply to the sector of health, placement into care, administrative sanctions and offences committed by children below the minimum age of criminal responsibility. Such rules are also described in separate subheadings below.

There are no child-specific provisions to ensure that the burden of being involved in an administrative judicial proceeding is minimised and that the child is supported throughout the process. Considering the lack of child-specific rules, the same rules apply to children and adults alike.

Children do not have legal capacity to file claims on their own. Therefore, the action against an administrative decision needs to be lodged by the *child's legal representative*, i.e. the parents, or any other person acting in the place of the parent (*in loco parentis*). Only an emancipated child can bring an action in his/her own name.

#### **2.2.3.1 General principles**

- *Commencement of proceedings without undue delay*  
There are no provisions in place to ensure that civil judicial proceedings involving children take place without undue delay. This means that in terms of procedural deadlines, the general rules – rules applicable to adults, apply. There is, *prima facie*, no mechanism to monitor the implementation of the urgency principle in respect of proceedings involving children.
- *Urgency principle and the imposition of precautionary and interim measures*  
During the course of the proceedings and in a case of emergency, the Juvenile Court can order the

psychological, behavioural and physical examinations of the child involved in the proceedings. In addition, the court can, at any time, summon the child, his/her parents, his/her guardian, or any other person who takes care of the child. The court may also order the temporary placement of the child into a disciplinary institution.

The child can also be put under the custody of a relative. The court makes its decision by assessing the best interests of the child. Children have a right to instigate safeguard measures. The decision has to be reexamined and the parents or the child must be heard within two weeks. No information has been found on the minimum age at which a child has a right to instigate measures on his/her own right.

### **2.2.3.2 Specific procedural rules applicable to children involved in migration and asylum proceedings**

Some child-specific rules with respect to administrative detention have been identified. The Minister of Immigration and Asylum can decide to place a child in a detention centre whilst a return decision is pending. However, according to the Law of 29 August 2008, the child should be detained in a place that is suitable for his/her age, and the detention should not exceed one month. Moreover his/her best interests should be taken into account.

A child, via his/her legal representative, can appeal against an administrative decision ordering detention on the ground that such a decision restricts his/her liberty. The urgency principle is implemented in this type of applications.

Some rules generally apply to both children and adults. For instance, to ensure the defence of the child's interests, the child has a right to assistance from an interpreter free of charge. In addition, an ad hoc administrator is designated as quickly as possible to assist an unaccompanied child.

The requirement for judicial authorities to use detention as a measure of last resort and for the shortest possible time, has only been found in Article 37(b) of the UNCRC248. No independent system for monitoring the appropriate use of administrative detention has been identified.

## **2.3 Child-specific support mechanisms and procedures and ways of ensuring the voice of the child is heard**

There are no specific legal measures in place, in Luxembourg, to provide special protection and assistance to more vulnerable children.

### **2.3.1 Criminal justice**

The central social assistance service (*service central d'assistance sociale (SCAS)*) is part of the public Prosecutor's Office. In the SCAS, there is the Youth protection service (*Service de la protection de la Jeunesse (SPJ)*). The SPJ evaluates the physical and psychological well-being of children whose situation has been reported to the Juvenile Court or to the public prosecutor office. The central social assistance service can only be entrusted with such tasks by judicial courts and administration which ensures cooperation between the two. The SPJ also collaborates and has established professional relationships with the persons in charge of children's aid and in direct contact with families. The social investigation (*enquête sociale*) from the SPJ is based on standardised tools and dedicated training in youth protection offered to specialised members within the SPJ. For the SPJ, the child's best interest and the child's right take precedence over the family's interests. The SPJ focuses on the physical and psychological well-being of the child.

#### **2.3.1.1 Support provided by professionals**

In criminal law, the hearing of the child is normally done by the judge. A lawyer can be appointed to hear the child and then provide this information to the judge. The lawyer can also assist the child if the latter is heard by the judge. In these cases, he/she can provide moral and psychological and legal support and help the child to express his/her feelings.

Article 48-1 of the Code of criminal procedure provides that the audition of a child may be the subject of a sound recording or an audiovisual recording.

In civil law, article 388-1 of the Civil Code provides that the minor capable of discernment can be heard by the judge or by the person designated by the judge for this purpose.



The interview of witnesses, as well as any child, can be carried out by audio or audiovisual recording upon the authorisation of the public prosecutor.

The same rules apply to child victims and witnesses. Audiovisual recording is only mentioned concerning children's hearings. Similarly, the publication or reproduction of any element that could allow the identification of the child or that concern the child's personality is forbidden. As an exception, the victims of an offence committed by a child can have access to the elements of the file to the extent that this information supports their claim for compensation. In addition, the elements that concern the child's social and family background can be consulted exclusively by the legal counsels of the parties (the child victim and the offender). In addition, the file is kept by the clerk of the court who will only give it to the lawyers.

### **2.3.1.2 Main principles/objectives for children's involvement in judicial proceedings**

In Luxembourg, children cannot bring a case before domestic courts in their own right, as they do not possess full legal capacity to act. Legal capacity to act refers to the capacity of natural persons to exercise their rights and undertake obligations in their own right. Children under the age of 18 need to be represented by a legal representative, such as by their parents or guardian except emancipated minors.

#### **2.3.1.2.1 Definition of child**

Any person who is younger than 18 years old is considered as a child in Luxembourg unless he/she is emancipated.

#### **2.3.1.2.2 Principle of evolving capacities**

The legislation in Luxembourg refers to 'the child's ability to discern' (*l'enfant capable de discernement*), which captures the child's ability to judge the consequences of his/her acts clearly and soundly. Article 388-1 of the Civil Code provides that the minor capable of discernment can be heard by the judge or by the person designated by the judge for this purpose.

This notion is central to determine whether a child can be heard or not, in a way that courts do not hear children who do not possess the 'ability to discern'. Luxembourgish legislation does not contain reference to an age limit under which children cannot be heard. There are no guidance documents for judges with respect to the assessment of the children's ability to discern. The child can request to be heard, in which case, the judge must hear him/her.

In the juvenile Court, minors have to be present during hearings which may concern them, except if there is a discharge allowed by the Juvenile Court.

In criminal matters, children who are not yet 15 years old attend the hearings only if the Court considers that their presence is necessary in cases where their interest is at stake, and only as long as their presence is necessary. Children under 15 years old are not obliged to testify under oath. The judge can thus collect the information provided by the child but will not be bound by it.

In criminal matters, in practice, the consideration given to the testimony of children very much depends on the circumstances of each case and on the age of the child. When the child is under six years of age, the practice is that other elements will be looked for in order to support the child's testimony. A psychologist will (in almost all cases) perform an analysis of credibility: the psychologist will either interview the child again or listen to the recording. This is almost exclusively the case for sexual abuse cases committed against the minor.

#### **2.3.1.3 Protection from discrimination**

The Centre for Equal Treatment – which is accessible by both adults and children, provides assistance to persons who feel that they have been discriminated.

Furthermore, children who consider that their rights have been infringed can contact the Ombudsman for children's rights (*Ombuds-Comité fir d'Rechter vum Kand - ORK*) which monitors the respect of children's rights and delivers annual reports. The ORK receives information and complaints on the violation of children's rights and listens, in this respect, to any child who asks to be heard. After having heard the child and gathered information, the ORK formulates recommendations or advice to ensure a better protection of children's rights and interests. A child, via his/her legal representative, can also use formal judicial proceedings to seek

compensation. Victims can claim compensation within the criminal procedure. For claims where compensation would be difficult to obtain, the victim can apply for state compensation if:

- the criminal perpetrator could not be identified;
- the criminal perpetrator is identified, but could not be located;
- the criminal perpetrator is insolvent;
- the offence led to serious damages (death, disability, physical or mental damages, etc.).

### **2.3.2 Administrative justice**

#### **2.3.2.1 Support services**

There are no specific child support services that could help the child cope with the proceedings and there is no specific provision allowing parents or other trusted persons to accompany the child during the proceedings. Children and adults alike, are represented by a lawyer in administrative judicial proceedings. Due to the written nature of administrative judicial proceedings, the parties do not need to be present before the administrative court.

When a child goes to school, a social service is normally available in the school. This Psychology and School Guidance Service (SPOS) can advise a child who is in danger of harm. The SPOS can explain what the child can do and what will happen if he/she chooses to inform the public prosecutor or a judge. In addition, the SPOS provides information on the child's rights by providing leaflets written in a child-friendly language. Furthermore, a leaflet drafted in Luxembourgish and French is available online. It gives information on the services provided by the SPOS to help children. The services of SPOS are available to all children regardless of their ages.

#### **2.3.2.2 Obstacles to access court and access to interpretation and translation services**

In administrative judicial proceedings it is compulsory to have a legal counsel. The child's legal representative – parents or guardian, will be in charge of appointing a lawyer. Children can have access to free legal aid through their legal representatives. In case of a conflict of interests between the child and the legal representative, the judge can appoint an ad hoc administrator to represent the child. Child witnesses and subjects do not need to be assisted by legal representatives or lawyers.

The court can appoint accredited experts, translators and interpreters. A list of accredited interpreters and translators is available on the Luxembourg Justice Portal. The costs linked to interpreters or translators is covered by legal aid. A child party, his/her legal representative, or ad hoc administrator, have a right to be assisted by an interpreter and a lawyer free of charge.

In order to have access to free legal aid, the child's representative will have to fill out a form available both on the Justice Portal of Luxembourg and on the Bar Association's website.

Free legal aid is also accessible to any foreign national with limited financial resources in the ambit of an asylum and migration proceeding.

## **3. Multidisciplinary aspects**

### **3.1 Co-ordination of their activities by relevant organisations:**

The central social assistance service (*service central d'assistance sociale (SCAS)*) is part of the public Prosecutor's Office and is thus part of the Luxembourg civil administration. In the SCAS, there is the Youth protection service (*Service de la protection de la Jeunesse (SPJ)*). The SPJ evaluates the physical and psychological well-being of children whose situation has been reported to the Juvenile Court. This service operates under an order from a Court or from the Public Prosecutor's office. This means that the central social assistance service can only be entrusted with such tasks by judicial courts and administration, which ensures cooperation between the two. The SPJ also collaborates and has established professional relationships with the persons in charge of children's aid and in direct contact with families. The social investigation (*enquête sociale*) from the SPJ is based on standardised tools and dedicated training in youth protection offered to specialised members within the SPJ. For the SPJ, the child's best interest and the child's right take precedence over the family's interests. The SPJ focuses on the physical and psychological well-being of the child.

Reports can be transmitted to the Juvenile Court by people and organizations who have information about the child and they can be heard during the hearing.

The National Children's Office (ONE) is a government of the Ministry of Education, Children and Youth established by the Law of 16 December 2008 on child welfare and family.

ONE is a single point contact providing information on support measures and assistance to children in need and their families. The child, young children, a family member or a professional counselor can apply directly to the ONE to ask for help.

In coordination with the childcare providers, ONE offers suitable aids to psycho-social distress of children, youth and their families.

#### **4. Training of professionals**

##### **4.1 Training requirements for professionals who are in contact with the child during the proceedings**

There is no training requirement for actors who are in contact with the child during the proceedings, neither in civil, administrative nor criminal proceedings, nor in the laws regulating the work of social workers.

However, in the basic qualification for trainee judges children's rights are covered during the programme and judges or public prosecutors can choose to take some courses or a training programme if they find it useful for the exercise of their functions. These courses might relate to the children's involvement in judicial proceedings but this training is not compulsory and there is no specific framework for such training.

There are no specific training requirements for lawyers who represent children. However specific training is highly recommended and many lawyers representatives of minors are doing this.

Luxembourgish national police has a specific department dedicated to cases where children are involved called 'Protection of Youth'. The regional police service also has some specialized and trained officers who deal with the protection of children.

All the members of the Youth protection police department, and sometimes other members of the police, receive specialized training on issues relating to children in judicial proceedings.

Officers who form part of the Youth Protection Department of Luxembourg's national police force must attend a three-week training course with a multidisciplinary programme at the Police Academy of Freiburg (in Germany).

This is followed by another two-week training course that focuses on the specific issue of sexual abuse of children. Other forms of training are made available by different Ministries (Ministry of Family, Ministry of Justice and the Home Ministry) which help to foster a spirit of cooperation between the different services. The Youth Protection department of Luxembourg's national police force also organizes a seminar on 'cognitive hearing', which is a special interview technique aimed at creating a positive relationship between the child and the investigator in order to avoid traumatization. There is also training for judges given by the School of Magistrates in France.

##### **4.1.1 Content of the training**

The multidisciplinary programme for police covers the following areas:

- Juvenile criminal law;
- Child psychology (e.g. special training on how to welcome children to police stations);
- Communication with children (e.g. special interview techniques);
- Social questions of particular relevance children (e.g. children and new social media, children in schools, children and drugs);
- Crime prevention (especially prevention of sexual abuse); and
- Forensics and forensic science.

During the other two-week traineeship provided on the specific issue of sexual abuse, police officers learn about interview techniques, the psychology of the child and they receive forensics training.

The police department specialised in the protection of children also takes part in a seminar of special training techniques in cognitive interviewing. This technique, already successfully used by other police services, ensures better listening to the victim and is suitable for the hearing of children. One of the effects of the technique is that it helps create a good relationship between the child and the investigator, which does not traumatise the victim.

#### **4.2. Vetting of professionals**

As a general rule, professionals dealing with children are not obliged to undertake trainings and are not subject to regular vetting.

#### **4.3 Cooperation with other MS on training**

There is a continuous training between Luxembourgish judges/prosecutors and French judges/prosecutors. The continuous training in this specific matters takes essentially place with the German police often together with French or German Magistrates.

### **5. Best interests of the child**

#### **5.1. Measures in place to ensure that the child's best interests are a primary or paramount consideration**

The meaning of the term 'best interests', is not defined in applicable legislation.

The assessment of the child's best interests falls under the competence of judges. Judges may take into account several factors, while assessing the child's best interests, including, for example, the child's well-being, social factors, etc. Despite the legal requirement in place, the court may take into account the child's views while defining his/her best interests. The child can express his/her views while being heard in civil matters for example concerning the parental authority.

The Juvenile Guardianship Court (Tribunal de la Jeunesse) must take into account the best interests of the child while adjudicating. When the representatives of the child do not guarantee the best interest of the child during the civil judicial proceedings, judges can designate an ad-hoc administrator for the representation of the child. Article 388-1 of the Civil Code provides that the minor capable of discernment can be heard by the judge or by the person designated by the judge for this purpose.

In case of an administrative decision linked to asylum and migration – including detention, the court will take into account whether or not a child is well-integrated into his/her environment, and if he/she is enrolled at school. The assessment of the child's best interests is conducted during the trial.

All the Courts comply with International legal instruments such as the European Convention on the Exercise of Children's Rights, and the case law of the European Court of Human Rights.

#### **5.1.1 Involvement of several children in the same procedure**

There is no legal requirement that the interests of each child are separately supported by one personnel lawyer. It is customary that a lawyer represents the brothers and sisters. In case of major conflict the nomination of a second lawyer is always possible.

#### **5.1.2 Inclusion of General Comment No 14 of the UN Committee on the Rights of the Child on the Right of the child to have his or her best interests taken as a primary consideration, in guidance/training/checklists**

Luxembourg ratified the United Nations Convention on the Rights of the Child (UNCRC) and therefore, the obligations deriving from this instrument must be fulfilled. Article 3 of the UNCRC expressly states that the best interests of the child must be a primary consideration in actions concerning children including, inter alia legal proceedings.

The protection and promotion of children's rights is ensured by the Law of 25 July 2002 creating the Ombudsman for Children Rights (ORK). The ORK analyses the measures taken to protect and promote children's rights in order to suggest further improvements. In addition, the ORK issues opinions on laws and reform projects concerning children's rights. One of the other objectives of the ORK is to control the sound application of the United Nations Convention on the Rights of the Child, The ORK also gives recommendations to ensure better protection of children.

The National Children's Office (ONE) is an organisation of the Ministry of Education, Children and Youth established by the Law of 16 December 2008 on child welfare and family.

ONE is a single point contact providing information on support measures and assistance to children in need and their families. The child, young children, a family member or a professional counselor can apply directly to the ONE to ask for help.

In coordination with the childcare providers, ONE offers suitable aids to psycho-social distress of children, youth and their families.

## **6. Monitoring and enforcement of decisions in proceedings involving children**

### **6.1. Child-friendly justice after judicial proceedings**

#### **6.1.1 The child as a victim or offender**

##### **6.1.1.1 Provision of information**

In case of a removal of children, some rules are meant to ensure that family ties are preserved. The parents of a child who is in custody or placed can ask the judge that he/she sets out visiting and correspondence rights. The Juvenile and Guardianship Court takes a decision and can, if the best interests of the child require it, suspend the parents' right to visit and to correspond. Also, the parents periodically receive information on their children.

In criminal cases, some measures are meant to protect the victim (child or adult) regarding the release of the offender.

- The victim's interests are taken into account before any decision is taken to release the offender. The victim can submit, before the decision, written observations within 15 days;
- The victim can request the judge to order the offender not to receive, meet or get in touch with the victim, if he/she is temporarily or conditionally released or his/her sentence is reduced or modified.

##### **6.1.1.1.1 Non-disclosure of the child's criminal record**

Decisions taken by the Juvenile judge or the Juvenile Court will not be recorded on a criminal record but on a special register. Even when children above 16 has been judged by a criminal court, the decision of the ordinary court will not be mentioned on a criminal record but on the same special register.

The decisions of the Juvenile Court can only be consulted by judicial authorities and can also been transferred to administrative authorities when this information is needed for application of the law. The decisions are also available to the victim of the child if the victim asks for it in order to obtain compensation.

## **6.2 Civil justice**

### **6.2.1 Enforcement of civil court judgements**

#### **6.2.1.1 The child as a plaintiff and as defendant**

Children are not informed in their own right about decisions of civil courts and the rules applicable to the enforcement of the decisions. Such information is provided to the child's legal representative. In cases where the participation of a lawyer is mandatory in the proceedings, the lawyer will explain the decision to the parents or legal representatives. The child's legal representatives are not legally bound to explain the court decision to the child. The lack of explicit legal provision however does not prevent them from doing so. Legal representatives who decide to explain the court decision to the child are free to choose the manner and language of presenting the information to the child. There are no legal provisions requiring that the language of the courts while drafting their decisions should be adapted to the child's level of understanding.

Children cannot seek the enforcement of a court's judgement in their own right. Their legal representative exercises this right on their behalf.

There are no specific measures available during enforcement proceedings to protect the child from harm from any individual involved in the proceedings or related to the case.

Luxembourgish law does not allow for the immediate enforcement of decisions that concern child parties.

#### **6.2.1.2 The child as a plaintiff**

The general rules described in 6.2.1.1 apply.

### **6.2.1.3 The child as a defendant**

When a decision has been issued against a child defendant, enforcement of the decision must take place against the child's property. However, a specific rule exists when the property of the child -even when he/she is emancipated- is subject to seizure saying that before seizing the property of the child, all of the child's furniture should be sold. If the price of the furniture does not cover the full amount of the debt, other property of the child could also be seized.

Child defendants, who do not fulfil their obligations arising from the court decision, cannot be subject to the coercive measure of detention.

### **6.2.2 Child protection**

In case of emergency, the Juvenile and Guardianship Court can have the child temporarily put into care or custody. The judge can temporarily entrust the child to a parent, a private person, an association, a charity, a teaching institution, a re-education institution, a disciplinary institution, or any appropriate institution. This measure can be taken at any stage of the proceedings, including during the enforcement phase of the proceedings.

If the Juvenile and Guardianship Court ordered the provisional enforcement of its decision, it will be executed immediately, despite the fact that it has been appealed against. If the Juvenile and Guardianship Court did not order the provisional enforcement of the judgement, it can be enforced after the timeframe for voluntary compliance with the court judgement lapses. In case of appeal, the decision of the Juvenile and Guardianship Court can only be executed after the court decides on the appeal.

During child protection proceedings, child protection law allows the Juvenile and Guardianship Court to order the placement of the child in a local prison for up to one month (in case of absolute necessity and if the care or custody measures described above are impossible). The child is kept isolated from adults and benefits from a special treatment that is regulated by the local prison. Even though this provision can apply to both civil and criminal proceedings, it is likely that this measure will apply to children who committed an act defined as an offence or a crime.

In child protection cases, the child represented by a lawyer can seek enforcement of a Court's judgement in his/her own right.

In any other case where the child is the subject of the proceedings, the child cannot seek enforcement of a court's judgement in his/her own right.

### **6.2.3 Parental authority**

Decisions on parental authority are provisionally enforceable.

### **6.2.4 Child support**

Child support cases are those where one of the parents of the child initiate a proceeding against the other on the grounds that this other parent has failed to fulfill his/her obligations relating to child support, the nature and value of which has been previously determined by a court. If, despite the requisitions of the judge, the parent continuously fails to comply with his/her obligations, the judge can ask the parent to appear before the court at a date and time he/she chooses. This measure is in place to ensure that children are protected from harm.

## **6.3 Administrative justice**

### **6.3.1 General rules applicable to enforcement of administrative court judgements**

General procedural rules applicable to children involved in judicial proceedings including proceedings reviewing administrative authorities' decisions in the sectors of asylum, migration and education.

The general rules described below apply to judicial proceedings in the sectors of asylum, migration and education. However, certain specific rules exist and they are described below in separate subheadings. Civil procedural rules apply to the sector of health, placement into care, administrative sanctions and offences committed by children below MACR. Such rules are also described in separate subheadings below.

### **6.3.2 The child as a plaintiff/defendant/subject of proceedings**

Given the fact that a child does not have full capacity to lodge an application, there is no provision requiring the child to be informed about the decision of the administrative court in his/her own right. The decision should be notified by the Registry of Court to the child's representative, at his/her domicile. The legal representative, is not under legal obligation of communicating the court decision to the child in a child-friendly manner or in a language adapted to the child's level of understanding. Consequently, there is no guidance or code of conduct available for the child's legal representative to ensure that information is communicated to the child in a child-friendly manner. Lawyers are under the legal obligation to act in the interests of their clients. Their role is to counsel, assist and defend their clients. It results from the foregoing that lawyers have to explain the courts' decisions to the children's legal representatives.

There is a provision, applicable both to children and adults, related to the suspensive effects of the decisions in cases of serious and definitive risk of harm. This can be requested during the appeal proceeding. The same condition must be fulfilled – namely that the enforcement would result in a risk of serious and definitive harm to the child.

No statutory/policy provisions, to ensure that decisions which concern children are directly or immediately enforceable, have been identified.

There is no specific provision with regard to the use of force as a measure of last resort in a family case when a child is involved.

### **6.3.3 The child as an intervener**

The same rules apply to child interveners as to child parties.

### **6.3.4 Procedural rules applicable to children involved in health proceedings**

#### **6.3.4.1 The child as a plaintiff/defendant**

The decision should be notified by the Registry of Court to the child's representative at his/her domicile. However, no provision states that the child must be informed in his/her own right about the decision of the administrative court.

#### **6.3.4.2 Rules applicable to children involved in proceedings for placement of children into care, offences committed by children below the minimum age of criminal responsibility and administrative sanctions relevant to children**

The child as a plaintiff/defendant/subject of proceedings.

The general rules described in 6.3.1 also apply to the enforcement of the decisions of the Juvenile and Guardian Court.

The Juvenile and Guardian Court can temporarily place the child.

The Juvenile and Guardianship Court has the power to order the provisional enforcement of its decision in spite of the fact that the public prosecutor, the child or any other person, could file an appeal.

## **7. Access to remedies**

### **7.1. Criminal justice**

#### **7.1.1 Right in law or policy for child victims in case of decision not to prosecute**

There is the possibility to lodge a complaint accompanied by criminal indemnification or a direct quote.

#### **7.1.2 Access any complaint, legal appeal or judicial review mechanisms**

Children who consider that their rights have been infringed can contact the Ombudsman for children's rights (*Ombuds-Comité fir d'Rechter vum Kand - ORK*) which monitors the respect of children's rights and delivers annual reports. The ORK receives information and complaints on the violation of children's rights and listens, in this respect, to any child who asks to be heard. After having heard the child and gathered information, the ORK formulates recommendations or advice to ensure a better protection of children's rights and interests. Furthermore, children can always contact the Juvenile judge.

### **7.1.3 Mandate to take all necessary steps to claim for damages/compensation during or after criminal proceedings in which the child was a victim**

Legal assistance to the child claimant in judicial proceedings can be provided to him/her, irrespective of the financial resources of his/her parents or of the persons living with the child.

A child, via his/her legal representative, can use formal judicial proceedings to seek compensation. Victims can claim compensation within the criminal procedure. For claims where compensation would be difficult to obtain, the victim can apply for state compensation if:

- the criminal perpetrator could not be identified;
- the criminal perpetrator is identified, but could not be located;
- the criminal perpetrator is insolvent;
- the offence led to serious damages (death, disability, physical or mental damages, etc.).

### **7.1.4 Statute of limitations**

In principle in criminal matters, there are no special rules on limitation periods for children who do not pursue their claims before they reach the age of majority. General rules on limitation periods apply in this case. (Crimes 10 years, offence 5 years, the deadline starting at the day of the acts)

Nevertheless, for some infringements the general rules do not apply and the usual deadline only starts when the child has reached the age of majority:

- Rape
- Indecent assault
- Human trafficking
- Exploitation of the prostitution
- Pimping
- « l'homicide volontaire non qualifié meurtre »
- Intentional bodily injuries

In civil matters the only exception to the general rules is the right for children to contest a parent-child relationship (*contestation d'une reconnaissance*). In cases of disputes regarding the assumption of paternity, the right for children to pursue their claims is imprescriptible. They can contest their parent-child relationship at any time of their life. However, before the age of 18, children must be represented by a parent or legal representative to contest a parent-child relationship.

The limitation period for the prosecution of acts constituting a crime is 10 years from the date of the facts. The limitation period for crimes referred to in Articles 372-377 (the molestation and rape) and Articles 382-1 and 382-2 (Trafficking in human beings) of the Criminal Code committed against minors, begins to run from the majority of the victim.

The limitation period for the prosecution of acts constituting an offense is 5 years. When the victim is a minor and when the acts are provided for in Articles 372 (the molestation), 379, 379bis (exploitation of prostitution and procurement), 400, 401bis, 402 or 405 (manslaughter) of the Criminal Code, the period of limitations for public action begins only to run only from the majority of the individual.

## **7.2 Civil justice**

### **7.2. Access to any complaint, legal appeal or judicial review mechanisms**

The child who wants to file a complaint, a legal appeal or a notion for judicial review in front of an ordinary court must be represented by his/her legal representative. An exception is made for emancipated children who can appeal on their own behalf.

Also decisions taken by the Juvenile Court can be appealed by the child with the support of a lawyer. The child can also directly take contact with the Juvenile Judge.

#### **7.2.1 Possibility for the legal representative make submissions instead of the child without his/her consent**

As the child's legal representative represents the child and takes every act in his/her name, he/she can make submissions or appeals without the child's consent.



### **7.2.2 Support provided to the child in order to access such mechanisms**

The child can benefit from the services of free legal counsels, or be assisted by a lawyer or receive help from legal information services. They can provide support to the child in accessing legal remedies.

### **7.2.3 Actions to be taken if there is a conflict of interests with parental interests**

The court can appoint an ad-hoc administrator if there is a conflict of interest between the parents and the child.

### **7.2.4 Appeal by child care authority against certain court decisions involving children**

A child care authority cannot appeal against court decisions involving children.

## **7.3. Administrative justice**

### **7.3.1 Statutory/policy provisions enabling a child to appeal against the court's decision.**

There are no child-specific rules regarding appeals against court decisions taken as the result of administrative judicial proceedings. Therefore the general rules applicable to adults also apply to children. The procedural provisions concerning the appeal are similar to those related to the first instance administrative judicial proceeding. In accordance with these rules, a child's representative can lodge an appeal within 40 days following the notification of the first instance court decision.

### **7.3.2 Statutory/policy provisions allowing the child's legal representative to make submissions instead of the child without his/her consent**

There is no specific provision allowing or forbidding the child's legal representative to appeal without the child's consent.

### **7.3.3 Statutory/policy provisions to provide support to the child in order to access such mechanisms.**

No statutory/policy provisions have been identified to provide support for the child to access an appeal mechanism.

### **7.3.4 Legal obligation on judicial authorities to secure the right of a child involved in judicial proceedings to claim compensation for damages caused by violation of rights**

No legal obligations exist for judicial authorities to secure the rights of children involved in judicial proceedings to claim for compensation for damages caused by violation of their rights. But the victim has to be informed about the hearing.

### **7.3.5 Actions to be taken if there is a conflict of interests with parents' interests**

In case of a conflict of interests with his/her legal representative, an ad hoc administrator can be appointed.

### **7.3.6 Statutory/policy provisions allowing a child care authority to appeal against certain court decisions involving children**

There is no provision allowing a child care authority to appeal against a court decision involving children.

### **7.3.7 Possibility for a child to exercise rights in their own right or through a representative.**

A child who is under 18 years old has no full capacity to exercise his/her rights and undertake obligations. Consequently, a child has no legal capacity to make an appeal to a court against an administrative decision. According to the Civil Code, a claim brought by a child in his/her own name will be inadmissible. He/she has to be represented by his/her parents or guardian who, as the child's legal representative, will file a claim.

There is a legal exception which confers to a child the right to bring a claim in his/her own name. An emancipated child has full legal capacity to exercise his/her rights and obligations and can therefore lodge an appeal against an administrative decision. A child can be emancipated through marriage.

### **7.3.8 Existence of different provisions for different age groups**

In Luxembourg, a specialised judicial system deals with offences committed by children below MACR (Minimum Age of Criminal Responsibility). The MACR in Luxembourg is 18 years of age. The treatment of children, who commit acts which if committed by adults would be considered as criminal offences, falls outside the scope of the competence of the administrative courts.

Judicial decisions in this respect are made by the Juvenile Courts (*Tribunal de la Jeunesse et juge des tutelles*).

### **7.3.9 Laws/policies ensuring best interests of the child and their dignity.**

According to the Law of 16 December 2008 on the support of youth and family, the child's best interest must be a paramount consideration in any proceedings involving a child. There is no explicit mention of such a principle in administrative procedural rules.

## **8. Family life**

### **8.1. Procedure for adoption, including international adoption.**

Au Grand-Duché, l'adoption est ouverte aux résidents luxembourgeois, nationaux ou non, ainsi qu'aux non-résidents qui veulent adopter une personne qui réside au Luxembourg.

Les conditions requises pour adopter sont régies par la loi nationale du ou des adoptants.

En cas d'adoption par deux conjoints de nationalité différente ou apatrides, la loi applicable est celle de la résidence habituelle commune au moment de la demande.

Pour l'adopté, la législation de son pays d'origine est appliquée, sauf si l'adoption projetée confère à l'adopté la nationalité de l'adoptant. En cas de conflit entre les règles de compétence, la loi du pays où l'adoption est valablement conclue s'applique.

Toute personne intéressée à adopter un enfant doit d'abord s'adresser au Ministère de l'Education Nationale, de l'Enfance et de la Jeunesse (MENJE) pour y déposer la candidature à l'adoption. Ensuite, elle doit participer à un « cycle de préparation à l'adoption » organisé par le MENJE en collaboration avec la Maison de l'Adoption de la Croix Rouge luxembourgeoise<sup>1</sup>. Ce « cycle de préparation à l'adoption » se situe avant l'évaluation d'aptitude à l'adoption.

La Maison de l'Adoption est un service de consultation en matière d'adoption pour les personnes concernées par l'adoption (candidats adoptants, adoptés, familles adoptives, professionnels interpellés par des situations d'adoption).

Ce service, géré par la Croix-Rouge luxembourgeoise et conventionné par l'Etat, est indépendant des organismes d'adoption agréés nationaux<sup>2</sup> et n'intervient donc ni dans l'évaluation des demandes d'adoption, ni dans la réalisation proprement dite des adoptions au Luxembourg ou à l'étranger.

Tout au long de la procédure d'adoption et en post-adoption, ce service offre un accompagnement par des consultations personnalisées.

Ce cycle sert à l'information générale et à la sensibilisation des intéressés par l'adoption nationale et/ou internationale.

A la fin de ce cycle, un certificat de participation est émis et les adoptants sont dirigés vers un service d'adoption qui les informe, prépare et évalue.

#### **8.1.1 Procédure pour les adoptions nationales**

S'ils ont régulièrement recueilli l'enfant à adopter, les adoptants doivent s'adresser à un avocat à la Cour qui déposera une requête en adoption devant le tribunal d'arrondissement.

Cette requête en adoption devra être contresignée par les adoptants, l'adopté s'il a plus de 15 ans, et les personnes dont le consentement est, le cas échéant, requis.

La requête et les pièces sont communiquées au procureur d'Etat qui prend des conclusions écrites. L'instruction de la demande et les débats auront lieu en chambre du conseil en présence du ministère public.

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<sup>1</sup>Maison de l'Adoption de la Croix Rouge luxembourgeoise  
<http://www.croix-rouge.lu/objectifs-de-la-maison-de-ladoption/>

<sup>2</sup>Organismes agréés <https://www.hcch.net/fr/instruments/conventions/authorities1/?cid=69>

Un jugement d'adoption est prononcé en audience publique. Un délai d'appel de 40 jours existe, la voie d'appel n'est cependant pas ouverte pour les parents adoptants.

Après le délai d'appel, le dispositif du jugement ou de l'arrêt prononçant l'adoption est transcrit à la demande du ministère public sur les registres de l'état civil du lieu de naissance de l'enfant adopté (s'il est né à l'étranger ou si le lieu de naissance est inconnu, la transcription est faite sur les registres de l'état civil de la Ville de Luxembourg).

La mention du jugement est faite en marge de l'acte de naissance de l'enfant adopté.

### **8.1.2 Les adoptions internationales selon la convention de la Haye du 29 mai 1993<sup>3</sup>**

Après avoir terminé le cycle de préparation à l'adoption les candidats à l'adoption s'informent auprès des différents services d'adoption au sujet des conditions des pays d'origine et s'inscrivent sur la liste d'attente d'un ou de plusieurs pays. Parallèlement, ils s'inscrivent aux séances de sensibilisation proposées par la «Maison de l'Adoption».

L'évaluation des candidats à l'adoption est réalisée par un service d'adoption agréé. L'équipe pluridisciplinaire du service émettra un avis.

En cas d'avis négatif, les candidats en seront informés et le refus sera motivé par les intervenants de l'*Organisme agréé pour l'adoption (OAA)*.

En cas d'avis positif, un rapport social sera remis au couple adoptant en vue de le transmettre à un avocat celui-ci déposera ensuite une requête au tribunal d'arrondissement de résidence du couple candidat pour obtenir une ordonnance sur la qualification et l'aptitude à adopter.

Cette ordonnance est rendue en audience publique.

A ce stade, une autorisation de séjour non-nominative est établie par le Ministère des Affaires Etrangères.

Après l'obtention de l'ordonnance de capacité d'adopter et la constitution du dossier par les adoptants, ledit dossier est transmis au pays d'origine. Il est analysé par les instances compétentes et inscrit sur la liste d'attente.

Le principal rôle des organismes agréés nationaux est l'encadrement des candidats adoptants, leur préparation, leur évaluation en rapport avec leur projet d'adoption, leur soutien au long de la procédure d'adoption au moment de l'apparement et de la préparation du séjour au pays d'origine, le suivi post-adoptif, ainsi que l'échange régulier avec les autorités et organismes partenaires de l'Etat d'origine et la conservation des dossiers et informations sur les adoptions finalisées.

Le jugement d'adoption sera prononcé au pays d'origine, il sera reconnu au Luxembourg et transcrit au registre de l'Etat Civil de la Ville de Luxembourg.

### **8.1.3 Les adoptions internationales de pays n'ayant pas ratifié la Convention de La Haye.**

Au cas où des futurs parents adoptifs désirent adopter dans un Etat non contractant et non partenaire d'un des organismes agréés luxembourgeois, il faut évaluer la faisabilité du projet en faisant du travail de recherche et d'échange avec les autorités locales de l'Etat en question et de préférence avec d'autres autorités centrales d'Etats d'accueil qui ont eu une expérience de travail avec cet Etat pour pouvoir rassembler toutes les garanties nécessaires.

## **8.2 Différents types d'adoption<sup>4</sup>**

Au Luxembourg, il y a deux formes d'adoptions : l'adoption simple et l'adoption plénière.

### **8.2.1 L'adoption simple**

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<sup>3</sup> Convention de La Haye sur la protection des enfants et la coopération en matière d'adoption internationale du 29 mai 1993 Country Profile-Luxembourg

<https://www.hcch.net/fr/publications-and-studies/details4/?pid=6221&dtid=42>

<sup>4</sup> Guichet.lu /Guide administratif de l'Etat luxembourgeois

<http://www.guichet.public.lu/citoyens/fr/famille/parents/adoption/adoption-simple/index.html>

On peut seulement procéder à l'adoption simple, s'il y a de justes motifs et si elle présente des avantages pour l'adopté. (*Article 343 et suivants du Code civil*)

L'adoption simple se caractérise par le fait que le lien de filiation entre l'adopté et ses parents biologiques n'est pas rompu.

**Conditions :**

On peut seulement procéder à l'adoption simple, s'il y a de justes motifs et si elle présente des avantages pour l'adopté. (*Article 343 et suivants du Code civil*)

Peut adopter un enfant/adulte :

- Toute personne âgée de plus de 25 ans à condition que la différence d'âge entre l'adoptant et l'adopté est d'au moins 15 ans. Si la personne est mariée et non séparée de corps, son conjoint doit consentir à l'adoption.
- Deux conjoints dont l'un a au moins 25 ans et l'autre au moins 21 ans. Une différence d'âge d'au moins 15 ans entre l'adoptant et l'adopté est exigée.
- Un des conjoints adoptant l'enfant légitime, naturel ou adoptif de son conjoint. Son âge n'importe pas et la différence d'âge exigée entre l'adoptant et l'adopté est de 10 ans.

Peut être adopté :

- Tout enfant âgé d'au moins 3 mois si le consentement a été recueilli soit :
  - des parents
  - du conseil de famille
  - de l'administrateur public
- Tout enfant âgé de 15 ans qui a personnellement consenti à l'adoption.
- Toute personne mariée et non séparée de corps, si le conjoint a consenti à l'adoption.

**Les effets de l'adoption simple :**

L'adopté conserve tous les droits et obligations (notamment héréditaires) émanant du lien juridique avec sa famille d'origine.

En outre, l'adopté et ses descendants acquièrent dans la famille d'adoption les mêmes droits successoraux qu'un enfant légitime.

**La révocation de l'adoption simple :**

L'adoption simple ne peut être révoquée que pour des motifs très graves et quand l'intérêt de l'enfant l'exige.

La révocation peut être demandée par l'adoptant, l'adopté ou le ministère public.

Si l'adoption est révoquée, la décision de révocation fait cesser tous les effets de l'adoption à compter de la demande en justice.

Toutefois, certains effets subsistent comme les prohibitions au mariage dans la famille adoptive et certains droits successoraux

**8.2.2 L'adoption plénière**

L'adoption plénière se caractérise par le fait qu'un lien de filiation est établi entre l'adoptant et l'adopté qui se substitue à la filiation d'origine de l'adopté.

Il y a une rupture des liens de filiation entre l'enfant et ses parents biologiques.

Exception est faite si l'adoption vise l'enfant du conjoint, dans ce cas, le lien de filiation d'origine subsiste.

**Conditions :**

Les conditions requises pour procéder à une adoption plénière sont régies par la loi nationale du ou des adoptants.

On peut seulement procéder à l'adoption plénière, s'il y a de justes motifs et si elle présente des avantages pour l'adopté. (*Article 343 du Code civil*)

Peut adopter un enfant :

La loi nationale des parents s'applique à la procédure de l'adoption plénière.

Si les futurs parents adoptifs ont la nationalité luxembourgeoise alors la loi nationale du Luxembourg est d'application.

Dans ce cas l'adoption est ouverte aux couples mariés du sexe opposé et du même sexe.

#### **Conditions :**

- Deux conjoints non séparés de corps dont l'un a au moins 25 ans et l'autre au moins 21 ans. Une différence d'âge d'au moins 15 ans entre l'adoptant et l'adopté est exigée. Si l'adoptant est marié et non séparé de corps, son conjoint doit consentir à l'adoption.
- Un des conjoints adoptant l'enfant légitime, naturel ou adoptif de son conjoint. Son âge n'importe pas et la différence d'âge exigée entre l'adoptant et l'adopté est de 10 ans.

Peut être adopté :

- Tout enfant âgé entre 3 mois et 16 ans si le consentement a été recueilli soit :
  - des parents
  - du conseil de famille
  - de l'administrateur public
- Tout enfant âgé de 15 ans qui a personnellement consenti à l'adoption.

#### **Les effets de l'adoption plénière:**

Le jugement prononcé, les parents biologiques de l'enfant n'ont plus, sur le plan juridique, ni droits, ni devoirs, ni responsabilités envers l'enfant.

Ils n'ont plus droit de regard sur son éducation et sur ses soins. Ils n'ont aucune possibilité de reprendre l'enfant.

Tous les droits, devoirs et responsabilités sont transférés entièrement et définitivement aux parents adoptants.

Par ailleurs, l'adoption plénière confère à l'adopté et à ses descendants les mêmes droits et obligations que ceux conférés aux enfants légitimes des adoptants.

#### **La révocation de l'adoption plénière :**

L'adoption plénière est irrévocable.

#### **8.3 Mesures en place pour s'assurer de l'intérêt supérieur de l'enfant**

Pour le cas où un Etat est un contractant de la Convention de la Haye de 1993 ses procédures d'adoption sont a priori conformes aux principes de ladite convention.

Au cas où des futurs parents adoptifs désirent adopter dans un Etat non contractant et non partenaire d'un des organismes agréés luxembourgeois, il faut évaluer la faisabilité du projet en faisant du travail de recherche et d'échange avec les autorités locales de l'Etat en question et de préférence avec d'autres autorités centrales d'Etats d'accueil qui ont eu une expérience de travail avec cet Etat pour pouvoir rassembler toutes les garanties nécessaires.

En cas de signalisation de pratiques illicites, les autorités judiciaires et de police sont activées pour faire les enquêtes nécessaires. Selon la gravité de l'infraction, l'article 367-2 du Code pénal prévoit des sanctions (peines d'emprisonnement, amendes).

#### **8.4 Mesures en place pour respecter le droit de l'enfant à être entendu**

Le sens du terme « intérêt supérieur » n'a pas été défini par la législation applicable. En outre, il n'y a pas de listes de contrôle ou de protocoles spécifiques qui déterminent l'intérêt supérieur de l'enfant. L'évaluation de l'intérêt supérieur de l'enfant relève de l'appréciation souveraine des juges. Les juges, quand ils statuent sur

l'intérêt supérieur de l'enfant, peuvent prendre compte certains critères comme le bien-être de l'enfant, sa situation sociale, etc.

Au Luxembourg, ce n'est pas une obligation légale d'associer l'enfant au processus visant à déterminer son intérêt supérieur. Cependant, le tribunal peut prendre en compte l'opinion de l'enfant quand il statue sur l'intérêt supérieur de celui-ci. L'enfant peut exprimer son opinion lors de l'audience.

### **8.5 Autorités compétentes**

Les autorités compétentes en matière d'adoption nationale et internationale sont :

- le Ministère de l'Education nationale, de l'Enfance et de la Jeunesse, autorité centrale en matière d'adoption internationale
- le Tribunal d'arrondissement de Luxembourg
- le Tribunal d'arrondissement de Diekirch

### **8.6 Relevé de la législation sur l'adoption :**

- Loi du 14 avril 2002  
Portant approbation de la Convention de La Haye du 29 mai 1993 sur la protection des enfants et la coopération en matière d'adoption internationale
- Loi du 31 janvier 1998  
Portant agrément des services d'adoption et définition des obligations leur incombant
- Loi du 13 juin 1989  
Portant réforme de l'adoption
- Loi du 30 avril 1981  
Complétant la législation sur l'adoption
- Loi du 22 février 1974  
Portant modification du régime de l'adoption
- Loi du 9 décembre 1963  
Portant modification de la loi du 13 juillet 1959 modifiant le régime de l'adoption
- Loi du 13 juillet 1959  
Modifiant le régime de l'adoption
- Code civil articles 343 s., 367 s., 357 s., 368 s., 366, 370.

Lien vers la législation applicable à l'adoption : [www.legilux.lu](http://www.legilux.lu)