

# **ACCESS TO JUSTICE FOR CHILDREN: LUXEMBOURG**

*This report was produced by White & Case LLP in December 2014 but may have been subsequently edited by Child Rights International Network (CRIN). CRIN takes full responsibility for any errors or inaccuracies in the report.*

## **I. What is the legal status of the Convention on the Rights of the Child (CRC)?**

### **A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?**

Luxembourg ratified the CRC in March 1994.<sup>1</sup> It has also ratified the Optional Protocols to the CRC on children in armed conflict,<sup>2</sup> on the sale of children<sup>3</sup>, and on a communications procedure.<sup>4</sup>

The Luxembourg Constitution provides that “treaties shall have no effect until they have been ratified by statute and published in the manner prescribed for the publication of statutes”.<sup>5</sup> A treaty’s entry into force as part of internal law is subject to three conditions: (1) the Grand Duchy must ratify the treaty; (2) the treaty must be in force at international level; and (3) the text of the treaty must have been published in the ‘Mémorial’ (the country’s legislative journal) in the same manner as a statute.<sup>6</sup>

Luxembourg is a country with a monist tradition, meaning that international instruments such as the CRC, which has been incorporated into national law, will generally be applied in the same way as an internal statute.

### **B. Does the CRC take precedence over national law?**

The CRC does, at least in theory, take precedence over national law. Under domestic law, the sources of law fall within a hierarchical structure. The Constitution is the highest source of law, followed by statutes and regulations. Since there are no constitutional provisions on the subject, the relationship between international law and domestic law in Luxembourg is governed wholly by case law.

According to the relevant decision of the Council of State in 1951, “an international

<sup>1</sup> UN Treaty Collection, ‘Convention on the Rights of the Child’, available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&clang=en).

<sup>2</sup> UN Treaty Collection, ‘Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict’, available at: [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-b&chapter=4&clang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&clang=en).

<sup>3</sup> UN Treaty Collection, ‘Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography’, available at: [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-c&chapter=4&clang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&clang=en).

<sup>4</sup> UN Treaty Collection, ‘Optional Protocol to the Convention on the Rights of the Child on a communications procedure’, available at: [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-d&chapter=4&clang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&clang=en).

<sup>5</sup> See Constitution of Luxembourg, Article 37, available at: [http://www.legilux.public.lu/leg/textescoordonnes/recueils/Constitution/constitution\\_gdl.pdf](http://www.legilux.public.lu/leg/textescoordonnes/recueils/Constitution/constitution_gdl.pdf).

<sup>6</sup> See Constitution of Luxembourg.

treaty incorporated into internal legislation by a ratification statute is a superior law in essence, as its origin is higher than the decision of an internal organ. It follows that if there is a conflict between the provisions of an international treaty and those of a national statute enacted subsequently, international law must prevail over the national statute”.<sup>7</sup>

It should be noted, however, that the Luxembourg courts have never ruled that international provisions take precedence over the Constitution.

C. Has the CRC been incorporated into national law?

The CRC was incorporated into national law by legislation passed on 20 December 1993,<sup>8</sup> subject to five reservations in order to protect pre-existing family laws.<sup>9</sup>

D. Can the CRC be directly enforced in the courts?

Luxembourg has a monist legal system in relation to international treaties, therefore the CRC is directly enforceable in the courts of Luxembourg.

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

The CRC is regularly referred to in court decisions in Luxembourg, especially by the Constitutional Court. For instance, in decision 47/08,<sup>10</sup> the Constitutional Court referred to Article 18 of the CRC on the common responsibility of a child’s parents for the upbringing and development of the child. In decision 40/11,<sup>11</sup> the court cited Articles 9 and 10 of the CRC on the child’s right not to be separated from his/her parents.

## II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

Children through their representatives may bring civil or administrative cases challenging violations of their rights (see part III.A below).

Additionally, under the Civil Code, children who are capable of being discerned have a right to be heard and may request a hearing, which the judge may not refuse. A child can be heard alone, with his/her lawyer or a person of his/her choice.<sup>12</sup> If this choice does not appear to be in the interests of the child, the court will appoint another person.

---

<sup>7</sup> Council of State, 28 July 1951, Pas. lux. t. XV, p. 263.

<sup>8</sup> Available at: <http://eli.legilux.public.lu/eli/etat/leg/loi/1993/12/20/n2>.

<sup>9</sup> Ibid., Article 2.

<sup>10</sup> Available at: <http://www.legilux.public.lu/leg/a/archives/2008/0197/a197.pdf>.

<sup>11</sup> Available at:

[http://www.justice.public.lu/fr/jurisprudence/cour-cassation/jeunesse/2011/06/2862/JEUN110616\\_2862a-40.pdf](http://www.justice.public.lu/fr/jurisprudence/cour-cassation/jeunesse/2011/06/2862/JEUN110616_2862a-40.pdf).

<sup>12</sup> *Third and fourth periodic reports of Luxembourg to the UN Committee on the Rights of the Child*, CRC/C/LUX/3-4, 12 November 2012, paras 86, 145. Available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fLUX%2f3-4&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fLUX%2f3-4&Lang=en).

The hearing of the child is held in private, and does not confer party status in the proceedings.<sup>13</sup>

Under the Act of 5 June 2009 on court hearings involving children and the defence of their interests, children involved in legal proceedings have an effective right to be heard in any proceedings involving them. Furthermore, the Act ensures that an ad hoc administrator is designated for children where there is a conflict of interests between them and their legal representatives.<sup>14</sup>

- B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

Children (defined as persons under 18 years of age)<sup>15</sup> are not allowed to bring cases in their own right as they are not considered “legally competent” and must be assisted by a legal representative. This may be the child’s parents or an ad hoc administrator appointed by the judge supervising a guardianship (*juge des tutelles*) if the child’s interests conflict with those of his/her parents.<sup>16</sup>

- C. In the case of infants and young children, how would cases typically be brought?

As above, young infants and children will have their cases brought by their legal representatives (i.e. their parents or another representative, if the court so chooses).

- D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

Under the Act of 5 June 2009 on court hearings involving children and the defence of their interests, children involved in legal proceedings have an independent right to free legal assistance,<sup>17</sup> regardless of the financial situation of their parents or other members of the household.

A child, his/her parents or guardian, or any other persons with custody of the child may choose a legal counsel or ask the juvenile court to appoint one. A juvenile court will appoint a legal counsel in all cases involving children where dictated by the best interests of the child.<sup>18</sup> This includes children as either victims or witnesses in judicial proceedings.<sup>19</sup>

---

<sup>13</sup> Civil Code, Article 388–1, available at:

[http://www.legilux.public.lu/leg/textescoordonnes/codes/code\\_civil/CodeCivil\\_PageAccueil.pdf](http://www.legilux.public.lu/leg/textescoordonnes/codes/code_civil/CodeCivil_PageAccueil.pdf).

<sup>14</sup> *Third and fourth periodic reports of Luxembourg to the UN Committee on the Rights of the Child*, paras 84–85.

<sup>15</sup> Civil Code, Article 388.

<sup>16</sup> *Ibid.*, Title 9.

<sup>17</sup> *Third and fourth periodic reports of Luxembourg to the UN Committee on the Rights of the Child*, CRC/C/LUX/3–4, 12 November 2012, paras 84–85.

<sup>18</sup> Law of 10 August 1992 on youth protection (*Loi du 10 août 1992 relative à la protection de la jeunesse*), Article 18, available at:

<http://www.legilux.public.lu/leg/a/archives/1992/0070/a070.pdf#page=2>.

<sup>19</sup> See European Commission, ‘Study on children’s involvement in judicial proceedings’, June 2013, available at: <http://www.childreninjudicialproceedings.eu/docs/ContextualOverview/Luxembourg.pdf>.

When the child is a victim of deliberate acts, the public prosecutor or the investigating judge will appoint an ad hoc legal representative if the child's interests are not fully guaranteed by his/her own legal representative. The ad hoc representative ensures the protection of the child's interests and can file a compensation claim on behalf of the child, if relevant.<sup>20</sup>

Where the child is charged with a criminal offence, a juvenile court will automatically appoint a legal counsel for a child even in the absence of a request.<sup>21</sup> Children cannot waive their right to legal counsel before the juvenile and guardianship court.<sup>22</sup>

E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

Paramount importance is given to the rights and protection of the child's interests. There are no restrictions, for example, necessitating parents' prior approval for a case being brought forward. In fact, if there is a disagreement between the child's father and mother in relation to the case, or if the court considers the interests of the child conflict with or are not capable of being properly represented by the child's parents, then the court retains the discretion to appoint an ad hoc administrator to bring the child's case.

### III. How can children's rights violations be challenged before national courts?

A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

Children through their representatives can bring civil claims to a justice of the peace or district court, depending on the amount of the claim (see part IV.A below for more details).

Under criminal law, civil proceedings can be brought by anybody who has suffered a loss as a result of a criminal offence. The victim has a choice of either joining a civil claim for damages to the criminal proceedings or awaiting the outcome of the criminal proceedings, and then bringing an action for compensation in the civil courts.<sup>23</sup>

Under administrative law, proceedings for the annulment of individual administrative decisions or administrative measures of a regulatory nature can be brought before the administrative court (*tribunal administratif*).<sup>24</sup>

---

<sup>20</sup> Law of 10 August 1992 on youth protection, Article 41-1.

<sup>21</sup> Law of 18 August 1995 on legal assistance (*Loi du 18 août 1995 concernant l'assistance judiciaire*), Article 18, available at: <http://www.legilux.public.lu/leg/a/archives/1995/0081/1995A19131.html?highlight=assistance%22judiciaire>.

<sup>22</sup> See European Commission.

<sup>23</sup> Criminal Procedure Code (*Code d'Instruction Criminelle*), Article 3, available at: [http://www.legilux.public.lu/leg/textescoordonnes/codes/code\\_instruction\\_criminelle/](http://www.legilux.public.lu/leg/textescoordonnes/codes/code_instruction_criminelle/).

<sup>24</sup> See Law of 21 June 1999 on the procedure before the administrative courts (*Loi du 21 juin 1999 portant règlement de procédure devant les juridictions administratives*), available at: <http://www.legilux.public.lu/leg/a/archives/1999/0098/1999A18921.html>.

Children may submit complaints directly to the Ombuds-Committee for Children's Rights (ORK). The ORK aims to promote and protect the rights of children, and can receive and examine complaints about violations of children's rights, and make recommendations to the competent authorities to remedy such violations.<sup>25</sup> Children can contact the president of the ORK directly to voice their complaints, grievances and to get information.<sup>26</sup> Additionally, if an act or a procedure of public administration is prejudicial to the interests of a child, the Ombudsman of Luxembourg may serve as a mediator between the alleged victim and the public administrator in an attempt to resolve the conflict.<sup>27</sup>

Individuals cannot challenge the constitutionality of laws in the Constitutional Court (*Cour constitutionnelle*) directly, but may raise a question as to the conformity of a law with the Constitution before an ordinary or administrative court. The court will then refer the question to the Constitutional Court, unless: (i) the court does not require a decision on the question raised to deliver its judgment; (ii) the question raised is without any foundation; or (iii) the Constitutional Court already has ruled on a question to the same effect.<sup>28</sup>

### *Regional mechanisms*

The European Court of Human Rights decides cases concerning alleged violations of any of the rights contained in the European Convention on Human Rights.<sup>29</sup> Any individual, group of individuals or an NGO who is a victim of a violation of one of these rights may submit a complaint to the Court,<sup>30</sup> but the complaint will be admissible only if all domestic remedies have been exhausted.<sup>31</sup> Anonymous complaints are not permitted.<sup>32</sup> The procedural rules for the Court do not make any child-specific provisions. Persons may initially present an application themselves or through a representative, however, all applicants must be represented at hearings thereafter.<sup>33</sup> After examining the case, the Court renders a judgment which is binding on the State<sup>34</sup> and also has powers to award monetary compensation to the victims of human rights abuses.<sup>35</sup> It is also worth noting that the Court has an established practice of referring to

---

<sup>25</sup> *Third and fourth periodic reports of Luxembourg to the UN Committee on the Rights of the Child*, CRC/C/LUX/3-4, 12 November 2012, paras 43-44.

<sup>26</sup> European Union, 'Luxembourg', February 2014, available at:

[http://europa.eu/epic/countries/luxembourg/index\\_en.htm](http://europa.eu/epic/countries/luxembourg/index_en.htm).

<sup>27</sup> See Law of 22 August 2003 establishing a Mediator (*Loi du 22 août 2003 instituant un Médiateur*), available at: <http://eli.legilux.public.lu/eli/etat/leg/loi/2003/08/22/n2>.

<sup>28</sup> Law of 27 July 1997 on the organisation of the Constitutional Court (*Loi du 27 juillet 1997 portant organisation de la Cour Constitutionnelle*), Article 6, available at:

<http://www.legilux.public.lu/leg/a/archives/1997/0058/a058.pdf>.

<sup>29</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention on Human Rights"), 1950, Articles 19 and 32, available at:

<https://www.crin.org/en/library/legal-database/european-convention-protection-human-rights-and-fundamental-freedoms>.

<sup>30</sup> *Ibid.*, Article 34.

<sup>31</sup> *Ibid.*, Article 35.

<sup>32</sup> *Ibid.*

<sup>33</sup> Rules of Court, July 2014, Rule 36, available at:

[http://www.echr.coe.int/documents/rules\\_court\\_eng.pdf](http://www.echr.coe.int/documents/rules_court_eng.pdf).

<sup>34</sup> European Convention on Human Rights, Article 46.

<sup>35</sup> *Ibid.*, Article 41.

other international human rights instruments, including the CRC, as guides to interpretation of the European Convention.

Finally, once all domestic remedies have been exhausted, complaints against violations of children's rights may be submitted to the UN Committee on the Rights of the Child under the third Optional Protocol to the CRC,<sup>36</sup> which Luxembourg has ratified. Complaints can be made directly by both an individual child or a group of children, or indirectly, on their behalf by an adult or an organisation.<sup>37</sup> The violations must concern a right granted by either the CRC, the Optional Protocol on the sale of children or the Optional Protocol on the involvement of children in armed conflict<sup>38</sup> and must have occurred after the entry into force of the Protocol on 12 May 2016.<sup>39</sup> Anonymous complaints are inadmissible and so are complaints not made in writing.<sup>40</sup> In addition, only complaints made in one of the working languages of the UN will be accepted.<sup>41</sup> After examining the complaint, the Committee can make recommendations to the State, which are not legally binding.<sup>42</sup>

**B. What powers would courts have to review these violations, and what remedies could they offer?**

Under civil law, sanctions include the annulment of illegal acts, imposing a penalty, publishing the judicial decision or awarding compensation payments. Although there is no upper limit on the amount of compensation that can be awarded, punitive damages do not exist under Luxembourg law.<sup>43</sup>

Victims of crime who have suffered injuries are entitled to compensation if the accused person is found guilty. Where, however, the perpetrators of the crime cannot be identified or located, or are insolvent, victims of crime may be entitled to compensation from the State under the law of 12 March 1984 on compensation to certain victims having suffered injuries resulting from crime. There are certain conditions, including: the injury must be physical and not a simple material loss; and the injury must have caused the victim's death or a permanent incapacity (it can be partial)<sup>44</sup> or a total incapacity for work lasting at least one month, or the punishable act was rape.

In administrative proceedings, an administrative court may annul individual

---

<sup>36</sup> Optional Protocol to the Convention on the Rights of the Child on a communications procedure, 2013, available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=A/RES/66/138&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A/RES/66/138&Lang=en).

<sup>37</sup> Ibid., Article 5.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid., Article 7(g).

<sup>40</sup> Ibid.

<sup>41</sup> Office of the United Nations High Commissioner for Human Rights, '23 FAQ about Treaty Body complaints procedures', available at:

<http://www2.ohchr.org/english/bodies/petitions/individual.htm#contact>.

<sup>42</sup> Optional Protocol to the Convention on the Rights of the Child on a communications procedure, Article 10.

<sup>43</sup> Bonn Steichen & Partners, 'Luxembourg - Law & Practice', Legal Practice Guide, Litigation 2014-2015, available at:

<http://www.chambersandpartners.com/guide/practice-guides/location/241/6721/1411-200>.

<sup>44</sup> Ministry of Justice, 'FAQ - compensation for victims of crime', available at:

[http://www.mj.public.lu/services\\_citoyens/indemnisation/en\\_faq.html](http://www.mj.public.lu/services_citoyens/indemnisation/en_faq.html).

administrative decisions or administrative measures of a regulatory nature.

The Constitutional Court rules on the conformity of laws with the Luxembourg Constitution. Laws submitted for review by the Constitutional Court are to be declared invalid if unconstitutional. Decisions of the Constitutional Court are binding upon lower courts.

The youth tribunal has the power to ensure the correct application of legislation concerning the protection of children, as well as to resolve disagreements concerning parental authority and joint custody arrangements. The youth tribunal has the discretion to respond appropriately on a case-by-case basis. Appropriate remedies of the courts include relocating the child to a suitable third party or state rehabilitation centre, offering social assistance, or arranging for targeted educational or medical intervention.<sup>45</sup>

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

In Luxembourg, the victim only can file a complaint or trigger public prosecution. However, organisations may be granted legal standing to challenge an administrative act in some situations (see part III.D below).

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

Class actions are not permitted under Luxembourg law.<sup>46</sup>

In criminal matters, plaintiffs need to allege current, personal and direct harm in order to bring civil action and be considered a *partie civile* to the case.<sup>47</sup> In general, this rule applies to legal persons as well, except in specific cases detailed below (for instance with regards to environmental matters).<sup>48</sup>

In commercial matters, some consumer defence groups have the right to ask for the cessation of a commercial activity that goes against the Consumer Code (*Code de la consommation*).<sup>49</sup>

As to administrative matters, groups can start legal actions to defend “corporate interest”, i.e. the interest of their entire membership. However this interest should not coincide with public interest, whose defence is a State prerogative.<sup>50</sup>

Article 7 of the law on the organisation of administrative jurisdictions allows “non-profit organisations of national importance with legal personality and authorised

---

<sup>45</sup> Law of 10 August 1992 on youth protection, Article 1.

<sup>46</sup> FARJAUDON, F. et PIERRAT M. ‘Tiers et procédure au Luxembourg’, report drafted for the Henri Capitant Association’s International days, May 2015, p. 14. Available at: <http://www.henricapitant.org/node/104553>.

<sup>47</sup> Vogel G., *Lexique de Procédure pénale*, 3d edition, Editions Larcier, 2009, p. 24.

<sup>48</sup> Ibid., p.27.

<sup>49</sup> FARJAUDON, F. et PIERRAT M. ‘Tiers et procédure au Luxembourg’, p.16.

<sup>50</sup> FEYEREISEN M., GUILLOT J., SALVADOR S., *Procédure administrative contentieuse*, Primento, 2013, para. 270.

by a special law to exercise the rights of the *partie civile* with regards to offences described by this special law” to “challenge regulatory administrative acts insofar as the regulatory act challenged draw its legal basis from the special law approving the organisation.”<sup>51</sup> This is for instance the case for environmental organisations (see part III.C above). Furthermore, case law has now confirmed that such organisations have an interest in challenging individual administrative decisions as well.<sup>52</sup>

Finally, in order to avoid conflicting decisions, simplify proceedings and reduce procedural costs, the court may be asked to join similar claims and therefore rule on them together.

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

See part III.D above for information on environmental protection and consumer protection organisations.

In 2003, a law on domestic violence<sup>53</sup> amended the Code of Criminal Procedure, detailing offences for which a non-profit organisation can act as a *partie civile*. The offences must have caused direct or indirect harm to the interests that the organisation seeks to defend. For some of these offences, an authorisation from the victim is required.<sup>54</sup> Approved environmental organisations can also exercise the rights of the *partie civile* for offences pertaining to the law on protection of nature and natural resources, and inflicting direct or indirect harm to the collective interests that the organisation seeks to defend.<sup>55</sup>

In addition, legal representation and intervention by trade unions for the settlement of a dispute brought by an individual may be permitted where the dispute would serve the collective interest of its members, provided that the individual has consented.

**IV. Practical considerations.** Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

In civil cases, justices of the peace have jurisdiction up to a value of €2,000, and

---

<sup>51</sup> Law of 7 November 1996 organising jurisdictions of the administrative ordre, modified as of 9 June 2011, available at: <http://www.legilux.public.lu/leg/a/archives/2011/0196/2011A3556A.html>

<sup>52</sup> *Le juge administratif et le droit de l'environnement*, Report of the Luxembourg Administrative Court at the Carthagene congress, Association internationale des hautes juridictions administratives, 2013, p. 18-19. Available at : [http://www.aihja.org/images/users/114/files/Congres\\_de\\_Carthagene\\_-\\_Rapport\\_du\\_Luxembourg\\_2013-LUXEMBOURG-FR.pdf](http://www.aihja.org/images/users/114/files/Congres_de_Carthagene_-_Rapport_du_Luxembourg_2013-LUXEMBOURG-FR.pdf).

<sup>53</sup> Law of 8 Septembre 2003 on domestic violence, available at: <http://www.legilux.public.lu/leg/a/archives/2003/0148/2003A29821.html>. See also Criminal Procedure Code, art. 3-1.

<sup>54</sup> Vogel G., *Lexique de Procédure pénale*, 3d edition, Editions Larcier, 2009, pp. 27-28.

<sup>55</sup> Law of 19 Janvier 2004 relating to nature and natural resources protection, art. 63, available at: <http://eli.legilux.public.lu/eli/etat/leg/loi/2004/01/19/n1>.



jurisdiction subject to appeal up to a value of €10,000.<sup>56</sup> If the claim (excluding interest and costs) is under €10,000, the local court will have jurisdiction.<sup>57</sup> For claims over €10,000, children through their representatives in general cases must instruct a lawyer, who will arrange for a bailiff (*huissier de justice*) to serve a summons (*assignation*) to the defendant on behalf of his/her client, except in cases in which a simple application (*requête*) may be made to the court.<sup>58</sup> The lawyer will then lodge the papers initiating proceedings with the competent district court.

In addition, the district court has jurisdiction in cases that cannot be given a monetary value (e.g. many family cases). If custody of a minor is disputed in divorce proceedings, the case will come before the district court, usually in urgent proceedings. Outside or after divorce proceedings, jurisdiction will lie with the juvenile and guardianship court in Luxembourg or Diekirch, as the case may be.

Criminal cases are allocated to both district courts and to justices of peace. District courts exercising criminal jurisdiction, known as criminal courts (*tribunaux correctionnels et criminels*), have jurisdiction in all offences in the intermediate category (*délits*), and in the most serious category of offences (*crimes*) where the case is referred to the district court by the pre-trial division (*Chambre du Conseil*) or by the pre-trial division of the court of appeal.<sup>59</sup> The courts of the justices of the peace in criminal proceedings, known as police courts (*tribunaux de police*), try minor offences (*contraventions* or *infractions*) punishable by fines of between €25 and €250, and intermediate offences (*délits*) where the case is referred to the police court by the pre-trial division (*Chambre du Conseil*). They also hear cases concerning minor offences which carry a penalty that exceeds the levels normally within the jurisdiction of a police court, where jurisdiction is given to them by statute.<sup>60</sup>

Administrative cases are generally filed with the administrative court of first instance (*tribunal administratif*).<sup>61</sup>

Every local tribunal (*tribunal d'arrondissement*) has its own youth tribunal which deals specifically with cases involving minors.

Cases can be heard *in camera* where the law so provides, or where the tribunal so orders.<sup>62</sup>

- B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

See part II.D above.

---

<sup>56</sup> New Civil Procedure Code, Article 2.

<sup>57</sup> There are three local courts in Luxembourg, Esch-sur-Alzette and Diekirch, each with jurisdiction for a specific territory.

<sup>58</sup> New Civil Procedure Code, Article 14.

<sup>59</sup> Criminal Procedure Code, Book II, Titles II and III.

<sup>60</sup> *Ibid.*, Articles 138, 139 and 145.

<sup>61</sup> See Law of 21 June 1999 on the procedure before the administrative courts.

<sup>62</sup> New Civil Procedure Code (*Nouveau Code De Procédure Civile*), Article 185, available at: [http://www.legilux.public.lu/leg/textescoordonnes/codes/nouveau\\_code\\_procedure\\_civile/](http://www.legilux.public.lu/leg/textescoordonnes/codes/nouveau_code_procedure_civile/).

Legal assistance covers the following costs: stamp duty and registration; court fees; fees for lawyers; fees relating to bailiffs' acts; fees relating to notaries' acts; fees and expenses of technicians; witnesses' taxes; fees for translators and interpreters; fees for certificates for custom; travelling costs; fees relating to registration formalities; and costs of advertising in newspapers.<sup>63</sup>

The State may request the reimbursement of the expenses incurred for legal aid for the child from a parent with sufficient means.

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practicing lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

Various non-for-profit organisations established in Luxembourg aim to assist and protect the rights of children (such as SOS Enfants Luxembourg and ALEM Luxembourg), and may also provide funding and support in cases where the victim is otherwise unable to obtain funding or support themselves. The legal welcome and information service can assist, free of charge, children who are not assisted by legal counsel and can support them with matters which do not require the assistance of legal counsel.<sup>64</sup>

All trainee lawyers in Luxembourg are required to accept legal aid cases and provide free legal advice in order to become qualified at the Luxembourg Bar. Most cases concern political asylum, divorce and drug-related crime.<sup>65</sup>

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

In terms of timing, the common limitation period for bringing a case is 30 years, which applies to all claims against a specific person or property.<sup>66</sup> However, this limitation period is not applicable to minors.<sup>67</sup>

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

A child who is "capable of discernment" has a right to be heard by a juvenile court, unless it is against the child's interests. The juvenile court can require that the child

---

<sup>63</sup> Law of 18 August 1995 on legal assistance, Article 8.

<sup>64</sup> La Justice, 'Accueil et information juridique', 17 December 2013, available at: <http://www.justice.public.lu/fr/aides-informations/accueil-info-juridique/index.html>.

<sup>65</sup> Latham & Watkins, 'A survey of pro bono practices and opportunities in 71 jurisdictions', August 2012, available at: <http://www.probonoinst.org/wpps/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf>.

<sup>66</sup> Civil Code, Article 2262.

<sup>67</sup> Ibid., Article 2252.

leave the room during a hearing or conduct a hearing in chambers in the presence of only the parties' lawyers.<sup>68</sup>

Children under 15 years of age – whether as victims, witnesses or suspects/offenders - may attend court hearings for the investigation and trial of criminal proceedings against them, when they are called to give evidence, or if the courts consider their presence necessary in cases where their interests are at stake, and only for as long as their presence is essential.<sup>69</sup> Children aged under 15 years are not obliged to testify under oath.<sup>70</sup> Children aged 15 and above, however, are systematically heard.<sup>71</sup>

The hearing of a child, which is normally done by a judge, can be carried out by other persons to protect the child. For example, professionals who are qualified and experienced to do so may conduct the interview. A lawyer can be appointed to hear the child and then provide this information to the judge, or can assist the child if he/she is heard by the judge.<sup>72</sup> A child has the right to be accompanied by an adult of his/her choice during a hearing unless a decision is taken in relation to the child by the public prosecutor in the interests of the child or to elicit the truth.<sup>73</sup> The child can be heard alone, though in practice and as far as possible, a parent, relative, legal representative or person in charge of the child is present when a child is heard.<sup>74</sup>

Alternatively, a child – whether as a victim, witness or suspect/offender – may be heard by audio or audiovisual recording for the purpose of giving testimony, when authorised by the public prosecutor or the investigating judge. The recording must be made after receiving the consent of the child if he/she has the “necessary discernment”, or otherwise the consent of the child’s legal representative. Where it is observed that there is a risk of a conflict of interests between the child and his/her legal representative, the recording may be made only with the consent of the ad hoc administrator, where one has been appointed for the child or, where no ad hoc administrator has been appointed, with the approval of the public prosecutor or the investigating judge.<sup>75</sup>

The consideration given to the testimony of children 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 evidence will be sought to support the child’s testimony. A psychologist will usually analyse the child’s credibility by either interviewing the child again or listening to the recording.<sup>76</sup>

Regarding privacy, hearings by juvenile courts cannot be published or reproduced

---

<sup>68</sup> Law of 10 August 1992 on youth protection, Article 29.

<sup>69</sup> Ibid., Article 36.

<sup>70</sup> Criminal Procedure Code, Articles 76 and 156.

<sup>71</sup> See European Commission.

<sup>72</sup> Case 9 July 2003, 32, 417; Case 7 May 2003, 32, 408.

<sup>73</sup> Law of 6 October 2009 strengthening the rights of victims of criminal offences; Criminal Code; amended Act of 12 March 1984 on compensation for certain victims of bodily injury resulting from an offence and the punishment of fraudulent insolvency; Law of 16 July 1986 on certain modes of enforcement of custodial sentences; Law of 10 August 1992 on youth protection; Criminal Procedure Code, Articles 48-1 and 79-1.

<sup>74</sup> Droits et Devoirs, ‘[Contrôles et interrogatoires](http://www.droitsetdevoirs.lu/content/le-jeune-et-la-justice/justice-pour-mineur/police-grand-ducal/contrôles-et-interrogatoires/)’, available at:

<http://www.droitsetdevoirs.lu/content/le-jeune-et-la-justice/justice-pour-mineur/police-grand-ducal/contrôles-et-interrogatoires/-0>.

<sup>75</sup> Code d’Instruction Criminelle, Articles 48-1 and 79-1.

<sup>76</sup> See European Commission.

publicly. The publication or reproduction of any information that could allow a child to be identified or concern a child's personality is forbidden.<sup>77</sup> As an exception, victims of crimes committed by children can access information to the extent that it supports their claims for compensation.<sup>78</sup> Documents concerning the child's personality and his/her social and family environment can also be accessed by counsel for the parties.<sup>79</sup>

- F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

It is difficult to assess the length of procedures with regard to children's rights violations since the procedural time limits in Luxembourg may vary depending on the subject matter and type of proceedings, as well as the number of appeals made.<sup>80</sup>

However, there exist provisions in order to accelerate the resolution of particular cases. With regard to civil matters, the new civil procedure code provides that expedited proceedings (*référé*) shall be allowed generally in any urgent matters, and specifically for child custody and visitation, and domestic violence matters.<sup>81</sup>

As far as administrative matters are concerned, the administrative procedure regulations enable parties to shorten the deadlines in urgent matters. The Administrative Tribunal or Administrative Court President hears the parties on the expedition request and issues a final decision that may not be appealed.<sup>82</sup>

- G. Appeal. What are the possibilities for appealing a decision to a higher court?

With regard to civil and criminal cases, appeals can be lodged with the Court of Appeal (*Cour d'appel*) against decisions of the district courts of first instance. Representation by a lawyer is compulsory, except in criminal cases and applications for interim measures (*référés*). The criminal division of the Court of Appeal hears appeals against judgments by the criminal division of the district court.<sup>83</sup>

The Court of Cassation (*Cour de cassation*) is responsible for hearing cases seeking to overturn or set aside decisions of the Court of Appeal and courts of last resort. Representation by a lawyer is compulsory.

With regard to administrative cases, appeals can be lodged with the Administrative Court (*Cour Administrative*) against decisions of the administrative court of first instance (*tribunal administratif*), on applications for the annulment of individual

---

<sup>77</sup> Law of 10 August 1992 on youth protection, Article 38.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid., Article 28.

<sup>80</sup> See E-Justice, 'Luxembourg', 27 February 2015, available at:

[https://e-justice.europa.eu/content\\_how\\_to\\_proceed-34-lu-fr.do?member=1](https://e-justice.europa.eu/content_how_to_proceed-34-lu-fr.do?member=1).

<sup>81</sup> FRA, 'Luxembourg', 2011, available at:

[https://fra.europa.eu/sites/default/files/fra\\_uploads/1536-access-to-justice-2011-country-LU.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/1536-access-to-justice-2011-country-LU.pdf).

<sup>82</sup> See Milieu, 'Comparative study on access to justice in gender equality and anti-discrimination law', 2011, available at:

[http://ec.europa.eu/justice/gender-equality/files/conference\\_sept\\_2011/final\\_report\\_access\\_to\\_justice\\_fin\\_al\\_en.pdf](http://ec.europa.eu/justice/gender-equality/files/conference_sept_2011/final_report_access_to_justice_fin_al_en.pdf).

<sup>83</sup> E-Justice, 'Ordinary courts - Luxembourg', 12 February 2014, available at:

[https://e-justice.europa.eu/content\\_ordinary\\_courts-18-lu-en.do?member=1](https://e-justice.europa.eu/content_ordinary_courts-18-lu-en.do?member=1).

administrative decisions or decisions delivered in relation to administrative measures of a regulatory nature. The Administrative Court also acts on appeal and on the substance in proceedings challenging decisions of other administrative courts that have heard applications for annulment where special laws grant jurisdiction to those courts.

- H. **Impact.** What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

The impacts of a negative decision are limited as courts are not generally bound by judicial decisions given in other cases, though in practice earlier court decisions in comparable cases assist in the interpretation of the law and serve as guidance to the courts.<sup>84</sup>

As exceptions, where an administrative court hears an appeal against a regulatory act, the judgment or order will have general effect and will be published in the Mémorial. Decisions of the Constitutional Court are also binding and published in the Mémorial.<sup>85</sup>

Political backlash or repercussions of a positive decision appear unlikely. According to a 2013 report by the US State Department, “the government generally respected judicial independence”.<sup>86</sup>

- I. **Follow up.** What other concerns or challenges might be anticipated in enforcing a positive decision?

There do not appear to be any other such concerns or challenges.

- V. **Additional factors.** Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

Claimants must be represented by a lawyer in the majority of judicial proceedings (i.e. administrative, criminal and on appeal). While children are generally entitled to legal aid in court proceedings, the requirement of legal representation can constitute a barrier for organisations in terms of the costs of retaining a lawyer to bring legal action.

*This report is provided for educational and informational purposes only and should not be construed as legal advice.*

---

<sup>84</sup> Richard Clark (ed), ‘The dispute resolution review’, April 2011, available at: [http://www.ehp.lu/uploads/media/Dispute\\_Resolution\\_Review\\_Luxembourg\\_2011.pdf](http://www.ehp.lu/uploads/media/Dispute_Resolution_Review_Luxembourg_2011.pdf).

<sup>85</sup> European Judicial Network, ‘Legal order - Luxembourg’, 5 November 2009, available at: [http://ec.europa.eu/civiljustice/legal\\_order/legal\\_order\\_lux\\_en.htm](http://ec.europa.eu/civiljustice/legal_order/legal_order_lux_en.htm).

<sup>86</sup> US State Department, ‘Luxembourg 2013 human rights report’, 2013, available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220303>.