Rights of minors in court proceedings

Luksemburg

1. The child's legal capacity

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. An exception exists for emancipated children, who can file a complaint on their own behalf.

In Luxembourg, a specialised judicial system deals with offences committed by children below the minimum age of criminal responsibility (MACR), which in Luxembourg is 18 years of age. This means a child below the age of 18 does not commit 'crimes' under Luxembourg law; rather they commit 'acts qualified as crime', for which a specialised jurisdiction, the Juvenile Court (*Tribunal de la jeunesse*), is responsible for applying custody, protection and/or education measures.

2. Access to adapted proceedings

Except for certain family and child protection matters, civil law cases are heard before civil courts. There are no special family and youth courts in the administrative justice field. Only asylum and migration decisions are reviewed by administrative courts.

The Juvenile Court is the specialist jurisdiction that deals with child suspects and offenders, as well as ordering protection measures for children in need of assistance and protection. The Juvenile Court adopts education and protection measures. Child suspects/offenders are not considered as offenders but as children in need of protection and help. Consequently, criminal law does not apply as such to children.

The Youth Protection section of the public prosecutor's office is generally responsible for everything that affects children and families. When child victims are involved in judicial proceedings, prosecutors work closely with the Youth Protection section of the judicial police.

In Luxembourg, the Juvenile Court is the specialist jurisdiction that deals with child protection cases. Juvenile Courts operate with specialised judges who are responsible for enforcing the laws on youth protection. Family judges have jurisdiction over matters relating to parental authority. They also control the work of legal representatives or guardians. In this capacity, family judges may seek clarification from a child's legal representatives and guardians, as well as from the child directly.

3. Legal and policy measures in place to expedite the handling of cases involving children

There are no specific provisions to ensure that civil judicial proceedings involving children are duly expedited. In terms of procedural deadlines, the general rules (applicable to adults) apply. These rules differ depending on the court that hears the case.

4. Specific support mechanisms and procedures for children and best interests of the child

Anyone, adults and children alike, can request free legal information from the Legal Reception and Information Service (*Service d'accueil et d'information juridique*)

This service can provide support to the child in accessing legal remedies. The child can also be assisted by a lawyer.

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 when 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 when determining their best interests. The child can express their views when being heard in civil matters, for example with regard to parental authority.

All 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. Monitoring the enforcement of decisions in proceedings involving children

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

When a decision has been issued against a child defendant, enforcement of the decision must take place against the child's separate estate. Child defendants who do not fulfil their obligations arising from the court decision cannot be subject to the coercive measure of detention.

In child protection cases, a child represented by a lawyer can seek enforcement of a court's judgement in their own right.

6. Access to remedies

A child who wishes to bring a complaint, legal appeal or judicial review before an ordinary court must be represented by their legal representative. An exception is made for emancipated children, who can file a complaint themselves.

As the child's legal representative represents the child and acts on their behalf, they can make submissions or appeals without the child's consent. The court can appoint an ad hoc administrator if there is a conflict of interest between the parents and the child.

Decisions taken by the Juvenile Court can also be appealed by the child with the support of a lawyer.

7. Agencies in charge of child support:

Office national de l'enfance (ONE)

Welfare service (SCAS) – *Service de la protection de la jeunesse* (SPJ):

Ombudsman fir Kanner a Jugendlecher (OKaju)

8. Adoption

In Luxembourg, adoption is open to all Luxembourg residents, whether or not they are nationals, as well as to non-residents who wish to adopt an individual residing in Luxembourg.

Requirements for adoption are governed by the national law of the adopter(s).

In the case of adoption by two spouses who do not share the same nationality or who are stateless, the law of their common habitual residence at the time of the request applies.

For adoptees, the legislation of their country of origin is applied, unless the planned adoption confers the adopter's nationality on them. If there are conflicting rules of jurisdiction, the law of the country where the adoption is validly concluded applies.

Anyone wishing to adopt a child must first contact the Ministry of National Education, Childhood and Youth (*Ministère de l'éducation nationale, de l'enfance et de la jeunesse* – MENJE) in order to file an adoption application. The 'adoption preparatory course' comes before an assessment of applicants' suitability to adopt.

The Adoption Centre (*Maison de l'adoption*) is an advisory service for people affected by adoption (prospective adopters, adoptees, adoptive families, professionals involved in adoptions).

It provides support both during and after the adoption procedure via personalised consultations.

The adoption procedure in Luxembourg involves various stages.

Link to legislation

Child-friendly justice in Luxembourg (in English and French) PDF (989 Kb) en

Last update: 10/12/2021

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