



MY LAWYER MY RIGHTS COUNTRY REPORT: LUXEMBOURG



Défense des Enfants
DEI-BELGIQUE



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LIST OF ABBREVIATIONS

ADCO	Act deemed to constitute an offence
AGAJ	<i>Administration générale de l'aide à la jeunesse de la Fédération Wallonie-Bruxelles</i> (Youth support general administration of the Wallonia-Brussels Federation)
AJ	<i>Agentschap jongerewelzijn</i> (Agency for youth social welfare of the Flemish community)
AMO	<i>Services d'aide en milieu ouvert</i> (Open environment support services)
AVOCATS.BE	<i>Ordre des barreaux francophones et germanophone de Belgique</i> (Order of the French and German speaking bar associations)
BAJ	<i>Bureau d'aide juridique</i> (Legal aid office of the French speaking part of Belgium)
BJB	<i>Bureau juridische bijstand</i> (Legal aid office of the Flemish speaking part of Belgium)
CAJ	<i>Commission d'aide juridique</i> (Commission for legal aid)
CCP	Code of criminal procedure
CoE	Council of Europe
CPAS	Centres publics d'action sociale (Public centres for social action)
CRC	United nations committee on the rights of the child
DGDE	<i>Délégué générale aux droits de l'enfant de la Fédération Wallonie-Bruxelles</i> (General Delegate of the Youth Support of the Wallonia-Brussels Federation)
ECHR	European convention on human rights
ECtHR	European court of human rights
ECJ	European court of justice
FJD	Federal justice department
GI	<i>Gemeenschapinstelling</i> (Community institutions of child protection in Flanders)
HRC	United Nations human rights committee
ICCPR	International covenant on civil and political rights
INCC	<i>Institut national de criminalistique et de criminologie</i> (National institute of criminalistics and criminology)



IPPJ	<i>Institut public de protection de la jeunesse</i> (Public institutions for child protection of the Wallonia-Brussels Federation)
OVb	<i>Orde van Vlaamse balies</i> (Order of the Flemish bar association)
KRC	<i>Kinderrechtencommissaris</i> (Commissioner for Children's Rights of the Flemish Community)
KRW	<i>Kinderrechtswinkels</i> (Children's rights service in the Flemish speaking part of Belgium)
PR	Police report
SAJ	<i>Service d'aide à la jeunesse</i> (Youth support services)
SAMIO	<i>Sections d'accompagnement, de mobilisation Intensifs et d'observation de Fédération Wallonie-Bruxelles</i> (Intensive support, mobilisation and observation sections in the French speaking part of Belgium)
SDJ	<i>Service droits des jeunes</i> (Juvenile's rights service)
SPJ	<i>Service de protection à la jeunesse</i> (Youth protection service)
TFEU	Treaty of the functioning of the European Union
UFM	Unaccompanied foreign minors
UNCRC	United Nations convention of the rights of the child



LEXICON

Minor in conflict with the law	We use the term « minor in conflict with the law » to talk about minors who have committed or are suspected of having committed a « act deemed to constitute an offence », meaning a fact that would be considered as a crime if the interrogated person was an adult (an offence, a misdemeanour or a felony).
Youth Lawyer	Lawyer assisting children in Belgian welfare and/or criminal proceedings.
Interrogation <i>model III</i>	Police interrogation of a suspect who is not deprived of his ¹ liberty and asked about facts punishable with a prison sentence.
Interrogation <i>model IV</i>	Police interrogation of a suspect who is deprived of his liberty and asked about facts punishable with a prison sentence.

¹ In this report, the masculin gender is used in order to avoid complicating the text.

KEY DEFINITIONS

Child	An individual under the age of 18.
Best interests of the child	The concept of the child's best interest is complex and its content must be determined on a case-by-case basis. To read more on this concept, please refer to General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1).
Criminal proceedings	Proceedings in court in relation to the prosecution of a person charged or to be charged with the commission of an offence or crime, contemplating the conviction and punishment of the person charged or to be charged. In the framework of this project, we would like you to interpret the term “criminal proceedings” in a broader way that also includes other types of proceedings e.g. proceedings which are specially designed for children and which could lead to protective, corrective or educative measures in cases where the child’s alleged actions would be seen as committing an offence or a crime in the adult criminal system.
Lawyer of the child	Lawyer appointed to represent a child during criminal proceedings.
Socio-Legal Defence Centres (SLDC)	A centre which offers children direct access to justice and social-legal support including information provision, referrals to other service providers and legal advice and representation.
Reservation	When a state makes a reservation in relation to a section of a legal instrument, it is saying that it won't give effect to this section.
Declaration	A state makes a declaration as to how they will interpret provisions of a treaty.



INTRODUCTION

I. REPORT PURPOSE AND STRUCTURE

This report describes the results of the Luxembourgian national research that was conducted in the framework of the « My Lawyer, My Rights » project. Its goal is to present an overview of the applicable legislation, the role, the mandate and the training of lawyers when they defend minors in conflict with the law in Luxembourg, as well as to describe the modalities that allow these minors to exercise their rights. It also aims at pointing out inspiring practices or, on the contrary, highlighting the obstacles to the actual execution of these rights.

The first part of this report describes the international and regional relevant legal instruments that are binding for Luxembourg (part A). It draws a distinction between binding instruments and instruments considered as soft law and studies Luxembourg's position in relation to these two categories.

The second part itemises the national legal framework in the context of Luxembourg's juvenile justice system, with a particular emphasis on the procedural rights of minors in conflict with the law (part B).

Part C studies the role and the mission of the youth lawyer in national procedures, the legal aid system, as well as the different socio-legal services (public and private) which are beneficial for the minors to guarantee an optimal respect for their rights in these procedures.

Finally, the last part contains the conclusion and the recommendations addressed to the different professionals involved in the juvenile justice system.

The recommendations originate from the professionals themselves or are based on observations made during the research (part D). They all share the same purpose: to enhance the respect for the procedural rights of minors confronted with Luxembourg's justice system and to facilitate the mission of lawyers defending minors in conflict with the law.

2. TEAM IN CHARGE OF RESEARCH

The team in charge of the national research is made up of Bahya Bouharati and Aleksandra Rychel

3. METHODOLOGY

The national research serves a double purpose:

- To investigate the role, mandate and training of lawyers defending minors in conflict with the law so that improvements can be made in regard to their situation; and
- To research the transposition and application of several European directives ensuring the procedural rights that an individual has when he is suspected or accused in a criminal proceeding: the right to receive the relevant information concerning his rights and the procedure, the right to interpretation and translation, the right of access to a lawyer, the right to be assisted by a lawyer and the right to legal aid).

The national report was conducted primarily through online research and study of the relevant case law.



A. INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK (APPENDIX 2)

I. THE INTERNATIONAL AND EU FRAMEWORK

I.1 Ratified Law

Luxembourg has acceded to and ratified a number of treaties relating to the right to a lawyer for a minor in conflict with the law. These are listed below, with commentary on any reservations or declarations made in relation to the treaties.

a) The International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (“ICCPR”) was ratified by Luxembourg on 18 August 1983. The Government of Luxembourg made a number of reservations and declarations in relation to the application of the ICCPR as detailed below:

- (a) *The Government of Luxembourg considers that article 10, paragraph 3, which provides that juvenile offenders shall be segregated from adults and accorded treatment appropriate to their age and legal status, refers solely to the legal measures incorporated in the system for the protection of minors, which is the subject of the Luxembourg youth welfare act. With regard to other juvenile offenders falling within the sphere of ordinary law, the Government of Luxembourg wishes to retain the option of adopting measures that might be more flexible and be designed to serve the interests of the persons concerned.”*
- (b) *The Government of Luxembourg declares that it is implementing article 14, paragraph 5, since that paragraph does not conflict with the relevant Luxembourg legal statutes, which provide that, following an acquittal or a conviction by a court of first instance, a higher tribunal may deliver a sentence, confirm the sentence passed or impose a harsher penalty for the same crime. However, the tribunal’s decision does not give the person declared guilty on appeal the right to appeal that conviction to a higher appellate jurisdiction.*

The Government of Luxembourg further declares that article 14, paragraph 5, shall not apply to persons who, under Luxembourg law, are remanded directly to a higher court or brought before the Assize Court.

- (c) *The Government of Luxembourg accepts the provision in article 19, paragraph 2, provided that it does not preclude it from requiring broadcasting, television and film companies to be licensed.*
- (d) *The Government of Luxembourg declares that it does not consider itself obligated to adopt legislation in the field covered by article 20, paragraph 1, and that article 20 as a whole will be implemented taking into account the rights to freedom of thought, religion, opinion, assembly and association laid down in articles 18, 19 and 20 of the Universal Declaration of Human Rights and reaffirmed in articles 18, 19, 21 and 22 of the Covenant.*

The Government of Luxembourg declares that it is implementing article 14, paragraph 5, since that paragraph does not conflict with the relevant Luxembourg legal statutes, which provide that, following an acquittal or a conviction by a court of first instance, a higher tribunal may deliver a sentence, confirm the sentence passed or impose a harsher penalty for the same crime. However, the tribunal’s decision does not give the person declared guilty on appeal the right to appeal that conviction to a higher appellate jurisdiction.

The Government of Luxembourg further declares that article 14, paragraph 5, shall not apply to persons who, under Luxembourg law, are remanded directly to a higher court.

As to the final covenant, it is important to note that within a period of 12 months from the date of circulation of the depositary notification (i.e. 1 December 2003), none of the Contracting States notified the Secretary-General of an objection. Consequently the modified reservation is deemed to have been accepted for deposit upon the expiration of the 12-month period, i.e., on 1 December 2004.



b) The Convention on the Rights of the Child

The Convention on the Rights of the Child (“**CRC**”) was ratified by Luxembourg on 7 March 1994. The Government of Luxembourg also stated reservations to the implementation of this piece of legislation.

Firstly, the Government of Luxembourg believes that it is in the interest of families and children to maintain the provision of article 334-6 of the Civil Code, which reads as follows:

If at the time of conception, the father or mother was bound in marriage to another person, the natural child may be raised in the conjugal home only with the consent of the spouse of his parent.

The Government of Luxembourg also declares that the present Convention does not require modification of the legal status of children born to parents between whom marriage is absolutely prohibited, such status being warranted by the interest of the child, as provided under article 3 of the Convention.

Thirdly, the Government declares that article 6 of the present Convention presents no obstacle to implementation of the provisions of Luxembourg legislation concerning sex information, the prevention of back-street abortion and the regulation of pregnancy termination.

Fourthly, the Government of Luxembourg believes that article 7 of the Convention presents no obstacle to the legal process in respect of anonymous births, which is deemed to be in the interest of the child, as provided under article 3 of the Convention. Finally, the Government declares that article 15 of the present Convention does not impede the provisions of Luxembourg legislation concerning the capacity to exercise rights.

c) The Optional Protocol to the CRC on a Communications Procedure

No reservations were made in relation to the Optional Protocol to the CRC on a Communications Procedure which was ratified on the 12 February 2016.

d) The European Convention on Human and Fundamental Rights (ECHR)

Luxembourg ratified the European Convention on Human and Fundamental Rights (“**ECHR**”) on the 3 September 1953. A number of declarations were deposited with the Secretary General by the Minister for Foreign Affairs of Luxembourg on 28 April 1958, as follows:

In accordance with Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, the Government of Luxembourg recognises the competence of the European Commission of Human Rights to receive petitions addressed to the Secretary General of the Council of Europe from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation of the rights set forth in the said Convention and in the Protocol to the Convention signed in Paris on 20 March 1952.

The present Declaration is valid for a period of three years.

In accordance with Article 46 of the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 [see Article 34 of the Convention since the entry into force of Protocol No. 11], the Government of Luxembourg recognises as compulsory ipso facto and without special agreement, for all other Contracting Parties accepting the same obligation, the jurisdiction of the European Court of Human Rights in all matters concerning the interpretation and application of that Convention and in the Protocol to the Convention signed in Paris on 20 March 1952.

The present Declaration is valid for a period of three years.



- e) The European Social Charter and the European Union Charter of Fundamental Rights

The European Social Charter was ratified on the 10 October 1991, and Luxembourg acceded to the European Union Charter of Fundamental Rights (“**the Charter**”) on 1 December 2009.

2. THE EUROPEAN DIRECTIVES OF THE EUROPEAN UNION

The following EU directives regarding procedural rights in criminal procedures have been, or are in the process of being, transposed into the national law of Luxembourg:

- **Directive 2010/64/EU** on the right to interpretation and translation in criminal proceedings, **Directive 2012/13/EU** on the right to information in criminal proceedings and **Directive 2013/48/EU** on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty

These three directives are all being given effect to by national law titled “*Projet de loi renforçant les garanties procédurales en matière pénale*”. The transposition of these Directives is on-going.

- **Directive 2016/800/EU** of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings

The transposition of Directive 2016/800/EU into the national law of Luxembourg is also on-going.

3. THE ECTHR AND CJEU CASE-LAW

The ECHR case of **A.T. v. LUXEMBOURG**² concerned Article 6 § 1 and Article 6 § 3 (c) of the Convention. The facts of the case are as follows:

In October 2009 the Luxembourg public prosecutor’s office called for the opening of a judicial investigation against the applicant on charges of rape and indecent assault of a minor under 16. In December 2009 the applicant was arrested in the United Kingdom under a European Arrest Warrant and was surrendered to the Luxembourg authorities. On his arrival in Luxembourg he was questioned by the police without legal assistance. The next day he was examined by an investigating judge in the presence of a lawyer who had been assigned to assist him that very morning. Before the judge, the applicant gave detailed statements and maintained those that he had given to the police. He was convicted by the domestic courts and is currently serving his sentence.

In its judgment, the trial court referred to the various statements given by the applicant, and, taking them into account in its reasoning, found that the applicant had kept changing his account of events. The result of the case was to demonstrate that a lack of access to a case file prior to the first hearing before the investigating judge was not a violation of Article 6 § 1. However, it was a violation that the applicant had been unable to communicate with a lawyer prior to the first hearing before the investigating judge.

² Application no. 30460/13



B. LEGAL CONTEXT AT THE NATIONAL LEVEL

Part B will describe how Luxembourg's juvenile justice system functions and the way that the procedural rights of minors are protected.

After considering some important definitions (section 1), we will briefly explain the Luxembourgian legal aid system and the mechanisms used in its monitoring (section 2) and we will analyse the juvenile justice system as a whole in section 3.

I. THE JUVENILE JUSTICE SYSTEM IN LUXEMBOURG

The juvenile justice system in Luxembourg is governed by the Law of 10 August 1992 on youth protection, and the Code of Criminal Investigation ("the Code").

I.1 Minors

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 and Guardianship Court, is responsible for applying measures of protection, care and/or 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 and Guardianship Court. As children are not considered as suspects or offenders but rather as children who need protection, the Juvenile and Guardianship Court does not take sanctioning measures, but measures of guardianship, education and preservation.

I.2 The right to assistance

Directive 2013/48/EU enshrines the right of access to a lawyer. In Luxembourg, this right is enshrined in national law by the law of 10 August 1995 on legal assistance.

2. THE LEGAL AID SYSTEM

The law of 10 August 1995 on legal assistance also establishes and governs the country's legal aid system, which is organised at a national level. The system is financed by the State, and lawyer fees are calculated based on the number of hours worked on the basis of official hourly rates.

2.1 Monitoring of the legal aid system

Applicants for legal aid may appeal against the chairman of the bar's decision to reject or withdraw legal aid to the Disciplinary and Administrative Council, whose decision is final. Appeals must be lodged with the Chairman of the Disciplinary and Administrative Council by registered mail within ten days of receiving notice of rejection or withdrawal. The Council may invite applicants to attend a hearing to explain the reasons for their appeal.



C. JUVENILE JUSTICE SPECIALISATION OR SPECIAL STATUS AT THE NATIONAL LEVEL

I. LAWYERS SPECIALISED TO REPRESENT CHILDREN

I.1 Specialist lawyers

The lawyers who specifically represent children in criminal proceedings in Luxembourg do not have a “special status”. The website of the bar is a useful resource for the public to identify which lawyers specialise in representing children, particularly in law which pertains to the protection of children’s rights. It is important to note that the role of a lawyer who is specialised to represent children in criminal proceedings does not differ according to the age or capacity of the child.

a) Evidence of the role and mission of youth lawyers

There are few resources available at a national level which concern the role and mission of lawyers who represent children in criminal proceedings. One such resource is the European Commission’s study on children’s involvement in judicial proceedings, which provides a contextual overview for the criminal justice phase in Luxembourg.

I.2 Training of youth lawyers

Legislation in Luxembourg organises and regulates the training of lawyers who represent children in criminal proceedings. This training is homogenous and organised at a national level, and, while not mandatory, must be finished by lawyers who wish to be placed on the public list of lawyers who represent children.

a) The format of training

The training is offered by the Bar Association, and takes the form of four days’ worth of day sessions running from 12:15 to 14:30. The entire length of training is 4 days, 2 hours and 15 minutes. The training course itself is multi-disciplinary and fairly theoretical, consisting of four core modules: (1) the procedure before the juvenile court, (2) children in private international law, (3) professional secrecy and (4) being a child before a court (mediation and therapies).



D. CHILD'S ACCESS TO A LAWYER AND ASSISTANCE BY A LAWYER TO A CHILD

I. INFORMATION AND FACILITATION

In Luxembourg, the State plays a role in giving information to the child regarding their right to access a lawyer through training done in schools.

If a child has been deprived of liberty (that is, they are not permitted to leave at will) in criminal proceedings, for example as a result of being held on remand at a prison or being held at the police station or in a hospital, the general rules of provision of information apply. There are no specific rules on provision of information for children, and information is given by the police office or by the investigating judge.

I.1 A child's right to an interpreter

In the event that the child cannot speak the official language of the country, they are still entitled to information. In the case where the child suspect has been caught in the act, they are advised of their right to be assisted before the police officers or the investigating judge begin questioning, in writing and in return for an acknowledgement from the suspect in a language which the suspect understands. The police must inform the suspect in writing, in return for an acknowledgement from the suspect in a language which the suspect understands, about the suspect's right to tell a person of their choice. As soon as the suspect is held, they are informed in writing, in return for an acknowledgement from the suspect in a language which they understand, about their right to be examined by a doctor without delay. If a translator needs to be provided, the State covers the costs for the translation.

2. CHOICE OF A LAWYER (OUTSIDE THE LEGAL AID SYSTEM)

The child, the parents of the child or any person who is in charge of the child can ask the Juvenile and Guardianship Court to designate legal counsel. A judge sitting in the Juvenile and Guardianship Court can also designate legal counsel whenever the best interests of

the child requires it. In addition, legal counsel will be automatically appointed as soon as the child is suspected of having committed an act defined as an offense under criminal law. This procedure exists to protect a child who may not decide by themselves to use legal assistance.

The appointment of legal counsel is compulsory where the child accused is under the age of eighteen years old. Children cannot waive their right to legal counsel before the Juvenile and Guardianship Court. Legal assistance is free of charge for children whether they are victims or suspects.

3. THE ROLE OF THE LAWYER

In Luxembourg, a lawyer is provided to a child during their first contact with the police or other relevant authority. A child has the right to meet with their lawyer before they are questioned by the police or another law enforcement or judicial authority. A lawyer must also then be present, and provide effective assistance, during the questioning stage of proceedings. If a child requires assistance and no lawyer is present, the authorities must stay proceedings until a lawyer is appointed. A child has the right to access a free interpreter if they need one when meeting with their lawyer and during questioning. A child also has the right to meet in private with their lawyer without undue delay after being deprived of their liberty, and before appearing in a court having jurisdiction in criminal matters.

The meetings between the lawyer and the child are held face-to-face in specially designed rooms for such meetings. The communication between lawyer and client is confidential.

3.1. The best interest of the child

In a criminal justice proceeding involving a child, it is the judge who is charged to look out for the best interests of the child in Luxembourg. The child's best interests are also taken into account when appointing legal counsel.



This project is co-funded by the Justice Program of the European Union

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This research report has been written in the context of the project « My Lawyer, My Rights – Enhancing children's rights in criminal proceedings in the EU», co-financed by the justice program of the European Commission.

The content of this report does not necessarily reflect the position of the European Commission and thus does not imply in any way its endorsement of the views expressed in this report.

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