



Access to justice for children

Country fact sheet: Luxembourg¹



Overview

Country size: 2586 km²

General Population: 626 108

Number of Children: 119 539

Date of ratification of the Convention on the Rights of the Child:

20 December 1993

Date of abolition of the death penalty: 17 May 1979

Minimum ages

Minimum age of criminal responsibility ("MACR"): 18 years, but may be 16 years for certain serious crimes.

Age of imprisonment: 16 years

Age until juvenile justice legislation is applied: 18 years

Type of legal system

The Luxembourg legal system is based on a civil law system.

Specialisation of the system

Luxembourg provides for specialised institutions including:

- Child police units
- Child court - Juvenile and Guardianship Court

Luxembourg also provides for specialised professionals including:

- Child police
- Child judges

Child-specific legislation

- [The Law of 10 August 1992 on Youth Protection](#) – contains provisions addressing criminal proceedings involving children in contact with the law.
- [The Law of 16 December 2008 on Youth and Families](#) – addresses social assistance for children in distress.
- [The Law of 25 July 2002 creating Support for the Ombudsman for Children's Rights](#) – established a Luxembourg committee to safeguard and promote the rights and interests of children.
- [The Civil Code](#) – provides for safeguards for children in contact in the law.
- Other relevant legislation includes the [Code of Criminal Procedure](#) and the [Law of 28 November 2006 on Equal Treatment](#).

The [Convention on the Rights of the Child](#) is directly applicable in Luxembourg's justice system.

¹ The information used to compile this fact sheet is based on the responses to the questionnaire received in November 2019.

Child suspects or accused in criminal proceedings

Implementation of EU Directive 2016/800

At this date, the **EU Directive 2016/800** on procedural safeguards in criminal proceedings for children who are suspects or accused persons in criminal proceedings is not fully transposed in Luxembourg law. However, several existing pieces of legislation contain provisions in line with the provisions of **EU Directive 2016/800**.

Cross-cutting safeguards

- Children who turn 18 years old during proceedings can still be dealt with in the Juvenile and Guardianship Court or *Tribunal de la Jeunesse et des Tutelles* (Court) and individuals above 18 years old are charged as adults by general courts. However, nothing is mentioned in national law regarding children whose age cannot be proven.
- The law requires a lawyer to be appointed as soon as a child under 18 is suspected of committing an act defined as an offence in criminal law. Therefore, a child must be interviewed in the presence of a lawyer.
- A child in contact with the law is entitled to free legal assistance.
- Hearings by the Court cannot be published or reproduced publicly. 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. Furthermore, decisions of the Court or judge are kept in a special register and not entered in public records. See the *Law of 10 August 1992, Articles 15 and 28*.

Specific procedural measures

- The protection of the best interests of the child is firmly established in Luxembourg legislation. In this regard, the Court must consider the best interests of the child when determining which measures to take. When the representatives of a child appear to act contrary to the best interests of the child in the context of judicial proceedings, the judge can designate an ad-hoc representative. See the *Law of 10 August 1992, Article 37* and *Civil Code, Article 388-2*.

- In deciding which measures to take, the Court or children's judge assesses the personality of the child through several routes including social inquiry, medical, psychological and psychiatric examinations, behavioural observation, and a vocational guidance examination. The Court or children's judge may also seek the advice of any person who can provide useful information. See the *Law of 10 August 1992, Article 23*.
- To promote children's reintegration after detention, the Juvenile and Guardianship Court may award holidays to children. The holiday may be short holidays or holidays over weekends and can be awarded by the persons who have the custody of children or by the directors of the establishments where the children are placed.

Diversion and alternatives to detention

- While Luxembourg legislation provides that the detention should be used as a measure of last resort, it does not specifically state that detention should be for the shortest appropriate period of time. See the *Law of 10 August 1992, Article 6*.
- Children in detention are to be held separately from adults. See the *Law of 10 August 1992, Article 26*.

Child victims and witnesses in criminal proceedings

Implementation of EU Directive 2012/29

As of 11 May 2020, Luxembourg has not transposed **EU Directive 2012/29** establishing minimum standards on the rights, support and protection of victims of crime, and the European Commission had ongoing infringement proceedings against Luxembourg for its failure to transpose **EU Directive 2012/29**.

Cross-cutting safeguards

- There are legislative measures to protect child victims and witnesses from secondary victimisation, including the ability

to record the child's testimony. The child or his or her legal representative must consent to the recording. See *Code of Criminal Procedure, Article 48-1*.

- Other important safeguards or rights for child victims and witnesses include the right to legal assistance in all phases of criminal proceedings, right to have one's parents/legal guardians present during the proceedings, right to avoid contact with the offender, right to psycho-emotional and other assistance, right to present witnesses or evidence and/or to challenge evidence presented by the authorities, and right to appeal.

Focus on status offences

Luxembourg does not address behaviour which are typically deemed as status offences through the criminal justice sector. These include offences such as truancy, running away from home, curfew violations, and possession of alcohol or tobacco. As such, the behaviour of the child is not criminalized, but adults may be held responsible for certain actions (for example, an adult who provides alcohol or tobacco to a child may be charged under the law).

However, the Court may take measures against children who exhibit certain behaviour including habitually evading compulsory schooling, engaging in debauchery, begging, vagrancy or crime. See *the Law of 10 August 1992, Article 7*.

Other relevant information

While there is no child specific rule on the prohibition of discrimination in Luxembourg legislation, the *Law of 28 November 2006 on Equal Treatment* applies to everyone. The *law of 28 November 2006* prohibits discrimination by public and private persons and bodies, based on religion or beliefs, disability, age, sexual orientation, race, or ethnic group.