



Study on children's involvement in judicial proceedings – contextual overview for the criminal justice phase – Luxembourg

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Executive summary

Overview of the general elements of child-friendly justice in criminal proceedings

In Luxembourg, child suspects/offenders are not considered as offenders but as children in need of protection and help. Consequently, formal criminal law does not apply as such to children and the age of criminal responsibility starts at 18 years of age. Nevertheless, the Youth judge may decide that protection or education measures are not appropriate and transfer the child before formal criminal jurisdictions. However, this exception can only apply to children between 16 and 18 years of age. Victim support associations assist victims, including children and their legal representatives. One of the victim support associations is specialised in the assistance of child victims.

Children also enjoy measures protecting them from secondary victimisation, such as the ability to record the child's testimony (as a victim or witness). In addition, the best interests of children are firmly established in Luxembourg's legal system.

Overview of children's involvement before, during and after judicial proceedings

Overall, children involved in judicial proceedings receive protection and their rights are guaranteed, including the right to be heard, which is firmly established in Luxembourg's legal framework. Children receive information on the procedure and their rights at all stages.

Child victims also enjoy protection of their rights and interests. After the criminal proceedings, 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. Also, the victim can ask the judge to order the offender not to meet or get in touch with the victim, if he/she is temporarily or conditionally released or his/her sentence is reduced or modified.

Promotion and monitoring of a child-friendly approach to criminal justice, with an overview of strengths and potential gaps

One of the strengths of Luxembourg's system is that child suspects/offenders are first and foremost considered as children in need of help and protection. This strength is also a gap as children do not enjoy the same guarantees as criminal offenders.

Another strength of Luxembourg's framework is the possibility for children who consider that their rights have been infringed to contact the [Ombudsman for children's rights](#) at any stage of the criminal proceedings (before, during and after). The Ombudsman (ORK) can receive information and complaints on the violation of children's rights. After having heard the child and gathered information, the ORK formulates recommendations or advice in order to ensure a better protection of children's rights and interests.

One of the weaknesses of the Luxembourg system is that no practical measures have been taken to ensure a friendly environment for children, such as the existence of a special room in the Juvenile and Guardianship Court where children can wait before being heard, or measures to keep children away from meeting the accused, for example in corridors. Also, no leaflet or brochure is at the disposal of children or professionals (be it policy officers or judges) in contact with children during criminal procedures.

The lack of training is another gap of the Luxembourg framework. Within the judicial police services a [specific unit](#) is in charge of dealing with children. The police officers of this unit receive specific training to hear children and provide them with a child-friendly environment. Police officers who are not part of this special unit do not receive any specific training. This can be problematic for children dealt with by police officers who are not members of the youth unit.

Child victims or witnesses involved in the judicial proceedings have access to support and assistance. However, the assistance is not automatic unlike for child offenders. The parents or legal representatives must make a request for such assistance. In practice, not all parents or legal representatives of child victims or witnesses automatically ask for a legal counsel. As a result, some parents do not ask for a legal counsel. This has an impact on children's enjoyment of their rights since the legal counsel plays an important role in ensuring the protection of the child's rights.



Lastly, while child victims and witness' testimony may be recorded, judges may still request the child to appear again before the Courts in practice.

Abbreviations

CA	Competent Authority
CoE	Council of Europe
EC	European Commission
EU	European Union
ORK	Ombudsman for the Rights of the Child (<i>Ombudsfra fir d'Rechter vum Kand</i>)

1 Overview of Member State's approach to children in criminal proceedings and specialised services dealing with such children

Luxembourg has established a specialised system of protection of children under 18 years old involved in judicial proceedings. A specialised Court, the Juvenile and Guardianship Court, is competent to deal with child suspects and offenders, as well as ordering protection measures for children in need of assistance and protection.

For a more in-depth description of the criminal system in Luxembourg please see the [European Commission's E-justice portal](#).

Youth justice system – Child suspects, defendants and offenders

The age of criminal responsibility is 18 years old. As a result, children do not commit crimes, but rather acts qualified as crimes. Luxembourg has a specialised judicial system dealing with child offenders, the Juvenile and Guardianship Court. The Juvenile and Guardianship Court is also competent to prevent offending in the first place. The Juvenile and Guardianship Court adopts custody, 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. As a result of this status, child offenders enjoy the benefits of the juvenile system, however they do not necessarily benefit from all the guarantees provided in criminal law.

Within the judicial police services a [specific unit](#) is in charge of children. The youth justice system of Luxembourg is governed by the [Law of 10 August 1992 on youth protection, the Law of 16 December 2008 on the support of youth and families](#), and the [Code of Criminal Investigation](#).

Child victims and witnesses broadly enjoy the same rights. A main difference is that unlike child victims, child witnesses do not receive any information on their rights or on the next steps of the procedure.

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 proceedings¹. The Ombudsman delivers yearly [reports](#) and children file a complaint before the Ombudsman.

Young victims and child protection systems

The Juvenile and Guardianship Court is competent to take measures to protect any children whose physical or mental health, education or social or moral development is compromised².

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.

¹ The Ombudsman has been created in 2002. [Law of 25 July 2002](#) creating the Ombudsman for children's rights.

² [Law of 10 August 1992 on youth protection](#), Articles 5 and 7.

The Youth Protection section of the prosecution office treats in general everything that affects children and families. In addition, when child victims are involved in judicial proceedings, prosecutors work closely with the Youth Protection section of the judicial police³.

No vetting procedures are in place to ensure the suitability of professionals working with children⁴.

Training requirements

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

In cases of violence committed against children, and more specifically in the case of sexual abuse of children, the officers from the 'Youth Protection' department take charge. Their role is to make sure that the child is received in a child-friendly environment. For this purpose, a special furnished playroom has been set up⁵.

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

One of the phases is a three -week training at a Police Academy in Freiburg (Germany) on the following topics⁶:

- different kinds of crimes committed by child offenders;
- prevention (general crime, drug problems) and more specifically the prevention of sexual abuse;
- aspects and problems during a police investigation into sexual abuse where a child is a victim;
- the psychology and pedagogy of the child;
- techniques for the hearing of a child victim;
- relations between police and private organisations/ administrations dealing with problems of children;
- child pornography;
- the protection of children regarding media, computers with Internet and CD-ROMs, etc.;
- therapy with children;
- therapies with offenders;
- educational houses;
- relations between the police and schools;
- forensics and forensic science;
- assault of children in society, school etc.;
- sects and children.

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

³ [Youth Protection section of the prosecution office website.](#)

⁴ Information collected through a stakeholder interview.

⁵ Information collected in writing by the Luxembourg Police.

⁶ Information collected in writing by the Luxembourg Police.

Other courses include multidisciplinary training organised by different Ministries: between the Ministry of Family, Ministry of Justice and the Home Ministry. This ensures cooperation between different services. Informal meetings between the various stakeholders in the field also constitute a form of useful training for staff.⁷

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.

In addition, the possibility of special training for police officers of territorial units is now under consideration. The child victim of violence and victims in general often have first contact with police officers working in uniform. It is viewed as important that the police who receive the victim have special training to take-in victims in a suitable way. As a result, the idea of having officers in every police station trained to receive victims is being considered; there would be one or two in each station specifically knowledgeable in accepting child and other victims, to ensure the best possible environment for them⁸.

Multidisciplinary approaches

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 office⁹. 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 two¹⁰. The SPJ also collaborates and has established professional relationships with the persons in charge of children's aid and in direct contact with families¹¹. 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 child¹².

General approach towards children

Best interests of the child The protection of the best interests of the child is firmly established in Luxembourg. In any decision that concerns the child, his/her best interests must be of utmost importance¹³. Similarly, the Juvenile and Guardianship Court (*Tribunal de la Jeunesse*) must take into account the best interests of the child¹⁴. When the representatives of a child do not guarantee the best interests of the child in the context of judicial proceedings, the judge can designate an ad-hoc representative.¹⁵

⁷ [Protection of Youth - Luxembourgish Police website.](#)

⁸ [Protection of Youth - Luxembourgish Police website](#)

⁹ [Social assistance service – Luxembourg Justice Website.](#)

¹⁰ [Maryse Hansen and Nathalie Koedinger, L'intérêt supérieur de l'enfant: le Service de la protection de la jeunesse du Service central d'assistance social du Parquet Général, March 2009.](#)

¹¹ [Maryse Hansen and Nathalie Koedinger, L'intérêt supérieur de l'enfant: le Service de la protection de la jeunesse du Service central d'assistance social du Parquet Général, March 2009.](#)

¹² [Maryse Hansen and Nathalie Koedinger, L'intérêt supérieur de l'enfant: le Service de la protection de la jeunesse du Service central d'assistance social du Parquet Général, March 2009.](#)

¹³ [Law of 16 December 2008 on the support of youth and families](#), Article 2.

¹⁴ [Law of 10 August 1992 on youth protection, Article 37.](#)

¹⁵ [Civil Code, Article 388-2.](#)

Definition of child A person who is not yet eighteen years old is a child¹⁶.

Participation The child's participation in the socio-educative projects that concern her/him is well guaranteed in Luxembourg¹⁷. The child's participation in the proceedings that concern her/him is ensured¹⁸. All children having discernment can be heard by the judge. The child can request to be heard. In this case, the child's request must be received favourably.

Discrimination Children enjoy the same rights as adults and should not be discriminated on the grounds of their sex, race, physical, psychological or mental resources, their national origin, their language, family situation, social background, philosophical or religious beliefs, or material (wealth) situation¹⁹.

¹⁶ [Law of 16 December 2008 on the support of youth and families](#), Article 2; [Civil Code](#), Article 388.

¹⁷ [Law of 16 December 2008 on the support of youth and families](#), Article 6. See also [Law of 10 August 1992 on youth protection](#), Articles 7 and 9.

¹⁸ [Civil Code](#), Article 388-1.

¹⁹ [Law of 16 December 2008 on the support of youth and families](#), Article 2.

2 Child-friendly justice before and during criminal judicial proceedings

2.1 The child as a victim

2.1.1 Reporting a crime

There is no specific procedure for children to report a crime. The rules applying are common to adults and children. Children may report a crime on their own right. But a crime may also be reported by someone else such as their parents or the person entitled custody. Agents in the sector of education, health or social assistance and the police are also entitled to report a crime committed against children. This can be reported to the police or directly to the public prosecutor.

In terms of procedure, general rules apply. A police officer should record in writing the child's reporting in an official report.

The report should include his/her:

- name
- date of birth
- profession
- address
- the description of the facts
- the description of the harm suffered.

The report should be submitted in one of Luxembourg's official languages: Luxembourgish, French or German. The support of a translator is offered free of charge to the child or lawyer if he/she speaks another language²⁰.

A copy of the report is given free of charge immediately or within one month after it was submitted. The victim or the lawyer of the victim may inquire what happened to the report by phone or by letter.

2.1.2 Provision of information

There are no specific rules requiring the police to inform children of their rights when they report crimes. Legal provisions are the same for children and for adults. Nevertheless, when the victim is a child, the child's parents or legal administrator receive information on the opening of a procedure, the possibility to lodge a civil complaint and how to lodge a civil complaint. The Investigating Judge provides this information²¹. In accordance with general rules, the police also have the obligation to inform the victim in a language that he/she understands. The police needs to make the victim aware of his/her rights²²:

- The right to file a complaint
- The right to receive a copy of the complaint free of charge
- The right to obtain reparation for the harm suffered
- The right to be assisted by victim assistance services
- The right to receive legal aid under the conditions, provided for by the law

²⁰ [Code of Criminal Investigation](#), Article 4-1.

²¹ [Code of Criminal Investigation](#), Article 50-1.

²² [Code of Criminal Investigation](#), Article 9-2.

There is no brochure or leaflet that informs the child in a friendly manner about his/her rights. A flyer guiding victims of crime in general has been released by the Luxembourgish police. This is only available in English and French and is not specifically aimed at children. A small reference to child victims is made but it is not provided in a child-friendly manner²³.

Some measures have been taken by Luxembourgish authorities to raise awareness amongst children of violence of which they could be victims and to explain to them how to report a crime. For instance, the Youth National Service (*Service National de la Jeunesse*) has launched the project '*Letzrespect*' to help children recognise forbidden behaviours and how to report them. During the session children were given a plastic card with all the national and international emergency numbers to call if they are a victim of violence²⁴.

Persons - adults and children - who are not assisted by a legal counsel can receive free of charge legal information at the legal welcome and information service²⁵.

2.1.3 Protection from harm and protection of private and family life

Protection from harm.

In case of emergency, the Juvenile and Guardianship Court (*Tribunal de la Jeunesse et des Tutelles*) can have the child temporarily put into care or custody. The judge can temporarily entrust the child to a parent, a private person, a society, a charity, a teaching institution, a re-education institution, a disciplinary institution, or any appropriate institution²⁶. This measure is used when it is judged in the best interests of the child to be taken away from his/her usual environment. This is for example the case when children live with the perpetrator of the crime who is a member of the family or a primary caregiver. In that situation, the measure of temporary custody applies to protect the child from potential harm as long as the crime has not been proved.

The measure of temporary custody is meant to protect the child and thus has to be taken quickly. This is why when the investigating judge or the public prosecutor takes such measure, they immediately inform the Youth Judge so he/she can then exercise his/her powers²⁷. The Juvenile and Guardianship Court or the Youth Judge can proceed if necessary to examine the personality of the child. This can be done by: enquiring into the child's social environment, reviewing the child's psychological and psychiatric state, observing behaviour and reviewing the child's life-history. The judge can also take into account any other useful information provided by an observer.

Protection of the child's private life

The hearings by the Juvenile and Guardianship Court (*Tribunal de la Jeunesse et des Tutelles*) cannot be published or reproduced publicly. No provisions indicate that hearings can be held in camera. Audiovisual recording is only mentioned concerning children's hearings²⁸. Similarly, the publication or reproduction of any element that could allow the identification of the child or that concern the child's personality is forbidden²⁹. 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 compensation³⁰. In addition, the elements that concern the child's social and family background can be consulted

²³ [Flyer of the Luxembourg Police for information and support for victims.](#)

²⁴ [Projet enfance 'C'est interdit!' - Website of the city of Forbach.](#)

²⁵ The [legal welcome and information service](#).

²⁶ [Law of 10 August 1992 on youth protection](#), Article 24.

²⁷ [Law of 10 August 1992 on youth protection](#), Article 25.

²⁸ [Code of Criminal Investigation](#), Article 79-1.

²⁹ [Law of 10 August 1992 on youth protection](#), Article 38.

³⁰ [Law of 10 August 1992 on youth protection](#), Article 38.

exclusively by the legal counsels of the parties (the child victim and the offender)³¹. In addition, the file is kept by the clerk of the court who will only give it to the lawyers³².

2.1.4 Protection from secondary victimisation and ensuring a child friendly environment

According to their website, the Luxembourgish Police pays particular attention to receiving children in child-friendly conditions. Several guidelines followed by the police can be found on their website³³. These include the following:

- The police try to welcome children in child-friendly premises;
- In cases where it is needed, a police officer can meet the child in his/her environment such as school and care centres;
- The police have to explain the procedure to the child. The police interview the child in a suitable environment with appropriate words, gestures and drawings adapted to the child;
- The police have to listen to the child both during the interview and the rest of the procedure if the child asks for it and if the rights of the defence enable it;

Most police officers who are not part of this special unit do not receive such specific training³⁴. This is why the Luxembourgish police are thinking about providing specific training to one or two police officers who would be specifically in charge of welcoming children and adult victims of crime when they first arrive at the police station ([see section 1 on the overview section for more details](#)).

The hearing of a child can be recorded (by sound or audio-visually) if the Public Prosecutor³⁵ or Investigating Judge³⁶ authorises it and if one of the following conditions is met:

- The child is capable of discernment;
- The child agrees to have the hearing recorded;
- If the child is not capable of discernment, the legal representative of the child agrees to have the hearing of the child recorded;
- When there is a risk of a conflict of interests between the legal representative of the child and the child himself/herself, the ad hoc administrator who has been appointed can give his/her consent. If no ad hoc administrator has been previously appointed, the Investigating Judge can allow the hearing of the child but has to duly justify his/her decision.

In some cases, the hearing of the child must automatically be recorded when he/she has been victim of the following³⁷:

- When a child has been abandoned or neglected;
- When the child has been abducted even if the child has voluntarily followed the abductor;
- When the child has been confined;
- When the child has been victim of indecent exposure;
- When the child has been sexually abused or raped;

³¹ [Law of 10 August 1992 on youth protection, Article 28](#).

³² Information collected through a stakeholder interview.

³³ [Luxembourgish Police website](#).

³⁵ [Code of Criminal Investigation](#), Article 48-1.

³⁶ [Code of Criminal Investigation](#), Article 79-1.

³⁷ [Code of Criminal Investigation](#), Article 48-1.

- When the child has been encouraged or forced to debauchery, corruption, prostitution or any sexual activity with another person, in private or public;
- When the child has been a victim of child trafficking;
- When the child has been the victim of an attempted murder;
- When the child has been injured bodily;
- When the child has been victim of a failure to render assistance;
- When the child has been abducted, arrested or detained.

When the child has been a witness to a murder or has been a witness of a person being injured bodily, his/her testimony will also be automatically recorded. Nevertheless, if the child, his/her legal representative or his/her ad hoc administrator does not want the hearing to be recorded, the Public Prosecutor will not record the hearing of the child³⁸.

The legal representative of the child cannot support the child during the recording: he/she cannot attend the recording. If the legal representative nevertheless attends the recording and places himself/herself³⁹ behind the child, there is the risk that the offender will contest the validity of the recording.

If the public prosecutor or Investigating Judge authorises it, the recording can be listened to or watched at a later stage. The recording is accepted as evidence⁴⁰. This aims at preventing the child from suffering successive trauma due to repeating testimony. In practice, the judge can ask to hear the child again⁴¹.

Children under 15 years old can attend the hearings only under certain conditions, to avoid suffering unnecessary harm. The child will attend the hearing if the Court considers that their presence is necessary in cases where their interest is at stake and only for as long as their presence is necessary⁴². This enables the child to be only called when it is really necessary and to attend the hearings as little as possible. Children of 15 years old and above, on the other hand, are systematically heard.

When a child is confronted with the accused (either an adult or another child), no requirement protects the child from the trauma, stress or possible manipulation of this encounter. The legal representative of the child can ask the judge to have police officers placed before the accused, so that the child does not see the accused. It is a practice which is not required by law⁴³.

The case of each child is addressed separately and in the absence of any other child, with the exception of confrontations⁴⁴.

There is no specific legal reference to restorative justice mechanisms specifically aimed at children. General rules on victim-offender mediation apply in this case. Victim-offender mediation applies at the pre-prosecution stage only. The decision to refer a case to mediation lies entirely at the prosecutor's discretion. The prosecutor may, prior to his decision on further action, decide on mediation if it seems to him/her that:

- such a measure would ensure reparation of the damage caused to the victim;
- put to an end the trouble resulting from the offence;
- contribute to the rehabilitation of the offender.

³⁸ [Code of Criminal Investigation](#), Article 48-1.

³⁹ Information collected through a stakeholder interview.

⁴⁰ [Code of Criminal Investigation](#), Article 48-1.

⁴¹ Information collected through a stakeholder interview.

⁴² [Law of 10 August 1992 on youth protection](#), Article 36.

⁴³ Information collected through a stakeholder interview.

⁴⁴ [Law of 10 August 1992 on youth protection](#), Article 29.

However, recourse to mediation is excluded in the presence of infringements with regard to the people with whom the offender cohabits⁴⁵. In theory, victim-offender mediation is not restricted to a specific type of offence. However in practice, cases referred to mediation concern mainly assault and battery, injury and threat⁴⁶.

The outcome of the mediation will be reported to the Public Prosecutor who will decide whether to prosecute or to dismiss the case. The mediator is bound by a duty of professional confidence. No information concerning the content of the mediation sessions may be reported to the Public Prosecutor⁴⁷.

2.1.5 Protecting the child during interviews and when giving testimony

In general, the child can be heard accompanied by the person of his/her choice as long as it does not conflict with his/her interests⁴⁸. In that case, the judge can designate someone else. The child can also be heard alone without the child's parents or legal representative being present. 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 heard⁴⁹.

If the child requests it, an adult can accompany him/her, unless the public Prosecutor refuses it. The Public Prosecutor can refuse the request of the child only if the best interests of the child command it or in order to have the truth revealed. The public Prosecutor must justify his/her refusal⁵⁰.

The Police use cognitive interviewing techniques which ensure a good communication between the child victim and the interviewer. It has also been shown that cognitive interviewing techniques could increase quality of testimonies as it gives more freedom to the victim to explain what happened. Finally, this method has been thought useful in not traumatising victims and is particularly suitable for children⁵¹.

As mentioned previously, the hearing of any child can be recorded audio-visually. See further details in [section 2.1.4](#).

2.1.6 Right to be heard and to participate in criminal proceedings

The child who is capable of discernment has a right to be heard by the judge, in addition to where the child's intervention or consent is required by law. The Juvenile and Guardianship Court will not hear the child victim if the hearing is against his/her interest⁵².

When the child refuses to be heard, the judge must decide on the legitimacy of the refusal. On the other hand, when the child asks to be heard, the request can only be rejected on reasoned grounds.

The Juvenile and Guardianship Court can also require that the child leave the room during the hearing or to hear the child in closed session. If the Juvenile and Guardianship Court hears the child in the Court Chamber, only the lawyers of the parties can attend the hearing⁵³. 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 necessary⁵⁴. Children under 15 years old are not obliged to

⁴⁵ [Code of Criminal Investigation](#), Article 24.

⁴⁶ [Paul Schroeder, Restorative justice in Luxembourg, February 2008.](#)

⁴⁷ [Paul Schroeder, Restorative justice in Luxembourg, February 2008.](#)

⁴⁸ [Code of Criminal Investigation](#), Article 48-1.

⁴⁹ Website of the Centre for Mediation (*Centre de Médiation*) and the National Service of Youth (*Service National de la Jeunesse*) "[Rights and duties](#)".

⁵⁰ [Code of Criminal Investigation](#), Article 48-1.

⁵¹ [Combating sexual offenses against children - Luxembourg Police Website.](#)

⁵² [Law of 10 August 1992 on youth protection](#), Article 29.

⁵³ [Law of 10 August 1992 on youth protection](#), Article 29.

⁵⁴ [Law of 10 August 1992 on youth protection](#), Article 36.

testify under oath⁵⁵. The judge can thus collect the information provided by the child but will not be bound by it.

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 recording⁵⁶.

As mentioned previously, the hearing of any child can be recorded audio-visually. See further details in [section 2.1.4](#).

2.1.7 Right to legal counsel, legal assistance and representation

Specific provisions have been recently included to provide free legal assistance to children in judicial proceedings. 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 child⁵⁷.

However, the State will be able to ask for the reimbursement of the costs of the legal assistance of the child if he/she acted against a mother or father who has sufficient financial resources. Legal assistance covers the following⁵⁸:

- 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 mortgages
- costs of advertising in newspapers.

As a general rule, the child, the parents of the child or any person who is in charge of the child can choose a legal counsel or ask the Juvenile and Guardianship Court to designate a legal counsel. The judge of Juvenile and Guardianship Court can also designate such legal counsel when the child has been charged with an act defined as an offence under criminal law. Similarly, the judge will appoint a legal counsel to the child whenever the best interests of the child require it⁵⁹.

The law does not mention whether children can waive their right to a lawyer. When the child is a victim of deliberate acts, the public Prosecutor or the Investigating Judge designates an ad-hoc representative (a lawyer) if the child's interests are not fully guaranteed by the child's

⁵⁵ [Code of Criminal Investigation](#), Articles 76 and 156.

⁵⁶ Information collected through a stakeholder interview.

⁵⁷ [Law of 10 August 1995 on legal assistance](#), Article 18.

⁵⁸ [Grand-Ducal Regulation of 18 September 1995 on legal assistance](#), Article 8.

⁵⁹ [Law of 10 August 1992 on youth protection, Article 18](#).

legal representative. The ad hoc representative ensures the protection of the child's interests (and files a compensation claim if relevant)⁶⁰.

The legal welcome and information service can assist free of charge persons, adults and children, who are not assisted by a legal counsel and can support them for procedures which do not necessitate the assistance of a legal counsel⁶¹.

2.1.8 Remedies or compensation exist for violation of rights and failure to act

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 interests⁶². 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 if⁶³:

- 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.).

There is no mention in the law of a right to appeal against the decision not to prosecute.

2.2 The child as a witness

2.2.1 Reporting a crime

The same rules apply to child victims and witnesses. See further details in [section 2.1.1](#).

2.2.2 Provision of information

Children who are witnesses do not receive any information on their rights or on the next steps of the procedure. They can however benefit from the assistance of the legal welcome and information service, which can assist them free of charge by providing information on the proceedings⁶⁴.

2.2.3 Protection from harm and protection of private and family life

The same rules apply to child victims and witnesses. [See section 2.1.3 on child's protection from harm and protection of private and family life](#). The Criminal Code specifically provides sanctions against violence towards witnesses⁶⁵.

⁶⁰ [Law of 10 August 1992 on youth protection, Article 41-1, this Article has been introduced by Law of 6 October 2009 that reinforces the rights of the victims of criminal offences, Article 32.](#)

⁶¹ The [legal welcome and information service](#).

⁶² [Law of 25 July 2002 creating the Ombudsman for children's rights](#), Article 3.

⁶³ [Law of 12 March 1984](#) on the compensation of victims of corporal damages resulting from an offence or fraudulent insolvency.

⁶⁴ The [legal welcome and information service](#).

⁶⁵ Article 282 of the Criminal Code.

2.2.4 Minimising the burden of proceedings and ensuring a child friendly environment

Where children are witnesses, those who are not yet 15 years old have to attend hearings only if the Courts consider that their presence is necessary and they attend for as short a time as possible⁶⁶.

In addition, [see section 2.1.5 on the protection offered for the recording of the child's hearing and the study of the child's personality](#).

2.2.5 Protecting the child during interviews and when giving testimony

The hearing of the child, which is normally done by the judge, can be carried out by other persons to ensure better conditions for the child. For instance, professionals who are qualified and experienced for this type of tasks can conduct the interview. 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 support and help the child to express his/her feelings⁶⁷.

The interview of witnesses, as well as any child, can be carried out by audio or audiovisual recording upon the authorisation of the public prosecutor⁶⁸.

The same rules apply to child victims and witnesses. [See further details on the protection offered for the recording of the child's hearing in section 2.1.5](#).

2.2.6 Right to be heard and to participate in criminal proceedings

The law does not differentiate the testimony of a child victim from the testimony of a child witness. As a result, they both benefit from the possibility to have their testimony recorded⁶⁹. This implies that the child witness does not have to go to Court. His/her testimony which has been recorded under the conditions mentioned in [section 2.1.4](#) will be watched or heard in Court⁷⁰.

2.2.7 Right to legal counsel, legal assistance and representation

The same rules apply to child victims and witnesses. [See section 2.1.7 on legal counsel, legal assistance and representation](#).

2.2.8 Remedies or compensation for violation of rights and failure to act

The same rules apply to child victims and witnesses. See [section 2.1.8](#).

2.3 The child as a suspect/defendant

2.3.1 Age of criminal responsibility

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 and Guardianship 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 and Guardianship Court. As children are not considered as suspects or

⁶⁶ [Law of 10 August 1992 on youth protection](#), Article 36.

⁶⁷ Case 9 July 2003, 32, 417 and Case 7 May 2003, 32, 408.

⁶⁸ [Code of Criminal Investigation](#), Article 48-1.

⁶⁹ [Code of Criminal Investigation](#), Article 158-1.

⁷⁰ [Code of Criminal Investigation](#), Article 158-1.

offenders but are rather considered as children who need protection, the Juvenile and Guardianship Court does not take measures defined as sanctions but rather measures of guardianship, education and preservation⁷¹.

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 watch of a trusted adult or in an appropriate institution for treatment, education, instruction or vocational training;
- Sending the child to a rehabilitation facility.

When the child reaches 18 years of age

Measures taken by the Juvenile and Guardianship Court automatically end when the child turns 18 years of age. However in some cases, the Juvenile and Guardianship Court can choose to prolong 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 proceedings⁷².

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 Guardianship Court finds the measures at its disposal inadequate (measures of guardianship, preservation or education). In this specific case, the Juvenile and Guardianship Court may request the criminal jurisdiction to judge the child under general rules for adults. This judge will have to provide a duly reasoned request. 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 18⁷³.

The Public Prosecutor, the child, the persons exercising parental authority or, where applicable, the persons who have custody by law, can appeal this decision⁷⁴. 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 and Guardianship Court, the case will be sent to another Juvenile and Guardianship Court⁷⁵.

2.3.2 Provision of information

Children subject to both general criminal system and youth system

There are no specific rules on provision of information for children. Thus general rules apply. As a result, there is no obligation to inform the child in child-friendly language.

The child suspect has the right to be informed about the nature and reasons of the accusation (the facts of which the suspect is accused and the legal basis). The information

⁷¹ [Law of 10 August 1992 on youth protection](#), Article 1.

⁷² [Law of 10 August 1992 on youth protection](#), Article 2.

⁷³ [Law of 10 August 1992 on youth protection](#), Article 32.

⁷⁴ [Law of 10 August 1992 on youth protection](#), Article 34.

⁷⁵ [Law of 10 August 1992 on youth protection](#), Article 34.

must be comprehensible and complete and will be given to the suspect either by the police officer or by the investigating judge.

If the suspect does not speak one of the languages in use before judicial authorities (police or investigating judge), an interpreter will translate all of the questions for the suspect and all of the suspect's replies. There is no provision requiring the police to inform the child offender of his/her right to be assisted by a legal representative in general. This requirement only exists when the suspect is caught in the act. As a result, no provisions oblige the legal representative to be informed in general⁷⁶. If the suspect is held by the police for a crime or offence while or immediately after it is committed or is questioned by the investigating judge, the police officers or the investigating judge are required to advise the suspect of his/her right to be assisted by a lawyer and will enable the suspect to contact the lawyer⁷⁷.

In the case the child suspect has been caught in the act, s/he is advised of this right to be assisted before the police officers or the investigating judge start 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 one person of his/her choice⁷⁸. The suspect is given the use of a telephone. This person of choice may be a member of the suspect's family or a friend, unless this goes against the interests of the investigation⁷⁹.

As soon as the suspect is held, he/she is informed in writing, in return for an acknowledgement from the suspect in a language which he/she understands, about his/her right to be examined by a doctor without delay⁸⁰. The State Public Prosecutor may also appoint a doctor to examine the suspect (either on his/her own initiative or at the request of a member of the suspect's family).

The Police's official statement of the offence provides the date and time at which the detainee was informed of his/her rights. This can also provide, if relevant, the reasons for a refusal or delay in the implementation of right of calling the person of his/her choice, the length of the questioning and the rest time in between interviews, the date and time from which the child was detained, and the day and time from which the child was either released or brought before a judge⁸¹.

[See also section 2.1.2 on provision of information.](#) These rules apply similarly to child victims and suspects/offenders.

Children subject to the youth system

The subpoena must be addressed to the child's parents, legal representative or any other person having custody of the child. The subpoena must also be addressed to the child him/herself. When the child is under 12 years old, the subpoena can be given to his/her legal representative. Eight days must separate the day the child is informed and the day s/he must go before the Court⁸².

Children subject to the general criminal system

When the Juvenile and Guardianship Court decides to refer the child to normal criminal procedures, the child, his/her parents, guardian or any other persons acting as the child's

⁷⁶ It should be noted that literature mentions that the recognition of the right to fair trial under European law applies both during and before the proceedings (ECHR Magee v. The United Kingdom, 6 June 2000 and Averill v. The United Kingdom, 6 June 2000). Thus, Luxembourg needs to comply with this requirement.

Gaston Vogel, *Lexique de procedure pénale de droit luxembourgeois*, 3rd edition, 2009.

⁷⁷ [Code of Criminal Investigation](#), Article 39 (7).

⁷⁸ [Code of Criminal Investigation](#), Article 39 (3).

⁷⁹ Information collected through stakeholder interview.

⁸⁰ [Code of Criminal Investigation](#), Article 39 (6).

⁸¹ [Code of Criminal Investigation](#), Article 39 (8).

⁸² [Law of 10 August 1992 on youth protection](#), Article 21.

guardian must be informed of this decision. The decision has to be notified by registered mail by the court clerk.

Aside from the referral to adult jurisdiction case, there are no rules that specifically apply to children. The rules that apply are the same as for adults.

2.3.3 Immediate actions following first contact with police or other relevant authority

Children subject to both the general criminal system and the youth system

As mentioned in [section 2.3.2](#), a telephone is made available to the child so that he/she can contact the person of his/her choice such as his/her parents or a person they trust.

There is no obligation for a child to be questioned in the presence of his/her parents, but in practice the police try as much as possible to hear the child in the presence of the parents, the guardian or the legal representative of the child⁸³.

However, a child must be questioned in the presence of a lawyer as the law requires a lawyer to be appointed as soon as the child is suspected of having committed an act defined as an offense under criminal law.

No provisions oblige the police to inform the child of his/her right to remain silent. The child represented by his/her legal representative, the judge and the clerk of the Court must sign each page of the official statement. The child's legal representative will sign the statement after it has been read to him/her. S/he can read it him/herself if s/he chooses⁸⁴. There is no mention of specific time limits in which to arrest a child.

2.3.4 Conditions for pre-trial detention/ custody

Different measures can be taken in a relation to the custody of the child during criminal proceedings.

First, the Juvenile and Guardianship Court can have the child temporarily put into care or custody of a parent, a private person, a society, a charity, a teaching institution, a re-education institution, a disciplinary institution, or any special appropriate institution⁸⁵. This measure aims at ensuring that the child is kept in conditions that are safe and appropriate to his/her needs during the length of criminal proceedings.

Under specific conditions, a child of 16 years of age or above can be kept in a local prison for up to one month. This only applies in case of absolute necessity and if the care or custody measures are impossible. In that case, the child will be kept isolated from adults and will benefit from a special treatment regulated by the local prison⁸⁶.

If the child, his/her parents or legal representative do not think the measure of temporary custody taken by the judge is appropriate, they can appeal the decision to the Juvenile and Guardianship Court. The Juvenile and Guardianship Court has three days from the day of the appeal to give its decision⁸⁷.

2.3.5 Protection of private and family life

[See section 2.1.3 on child's protection from harm and protection of private and family life.](#)

The same rules apply to child victims and suspects/defendants.

⁸³ [Police check and questioning - Luxembourg Police Website.](#)

⁸⁴ [Code of Criminal Investigation](#), Article 86-1.

⁸⁵ [Law of 10 August 1992 on youth protection](#), Articles 24 and 33.

⁸⁶ [Law of 10 August 1992 on youth protection](#), Article 26.

⁸⁷ [Law of 10 August 1992 on youth protection](#), Article 27.

2.3.6 Alternatives to judicial proceedings

When a child has committed an offence and before bringing the case before the Juvenile and Guardianship Court, the Public Prosecutor can propose that the child contact a mediation service in order to launch the criminal mediation procedure. There is no criminal mediation procedure specific to children. The rules apply to both children and adults⁸⁸.

The Public Prosecutor can propose the mediation if he/she considers that mediation could ensure the victim's compensation, to put an end to the trouble caused by the offence or to contribute to the reintegration of the offender. The criminal mediation procedure is not compulsory: the offender can refuse the mediation.

The role of the mediator is to help the persons who are in conflict (the child who committed the offence and the victim of the offence) to find a solution to the conflict. The mediator is meant to ease the communication between the offender and the victim and to support them in finding a solution that they both accept.

Concretely, the offender (the child) receives a letter from the Public Prosecutor who offers to submit the case to a mediator. The mediator must inform the Public Prosecutor on whether a date has been set for the mediation and will receive a copy of the file of the case at hands. At this point, the Public Prosecutor defers the case before the Juvenile and Guardianship Court.

The mediation occurs within three months after the Public Prosecutor referred the case to the mediator. When she/he sends a summons to the child (offender) and the victim, the mediator informs them on their right to be assisted by a legal counsel.

The mediator informs the public Prosecutor of whether or not a solution was found as soon as possible after the mediation occurred (and in any case not later than eight months after he/she has been in charge of the case).

If an agreement could be found, the Public Prosecutor can charge the mediator to monitor the respect of the agreement during six months (maximum). Once the monitoring period is over, the mediator transmits an evaluation report to the Public Prosecutor. The Public Prosecutor can then choose to either prosecute the child or have the public action lapse.

2.3.7 Minimising the burden of proceedings and ensuring a child friendly environment

There are no specific techniques identified for protecting the child offender in judicial proceedings. Child offenders are dealt with by specialised authorities (Juvenile and Guardianship Court and Youth Judge) whose officials receive training to be appointed to their position.

2.3.8 Protecting the child during interviews and when giving testimony

[See section 2.1.5 on the protection offered for the recording of the child's hearing.](#) These rules apply similarly to child victims and suspects/offenders.

2.3.9 Right to be heard and to participate in criminal proceedings

[See section 2.1.6 on the right to be heard and to participate in criminal proceedings.](#) These rules apply similarly to child victims and suspects/offenders.

2.3.10 Right to legal counsel, legal assistance and representation

Children subject to the youth 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 a legal counsel. The judge of Juvenile and

⁸⁸ The procedure is codified in the [Code of criminal investigation](#), Article 24(5); the [Law of 6 May 1999 on criminal mediation](#), and the [Regulation of 31 May 1999 that sets the criteria and procedure of criminal mediation, the functions of the mediator](#).

Guardianship Court can also designate such legal counsel whenever the best interests of the child require it⁸⁹. In addition, a 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 is made to protect the child who may not decide by himself/herself to use legal assistance⁹⁰. Children cannot waive their right to legal counsellor before the Juvenile and Guardianship Court⁹¹.

Children subject to general criminal system

The appointment of a legal counsel is compulsory where the child accused is under the age of eighteen years old⁹². This means that the child cannot waive the right to legal counsel. As mentioned in [section 2.1.4](#), legal assistance is free of charge for children whether they are victims or suspects.

2.3.11 Remedies or compensation for violation of rights and failure to act

See [section 2.1.8](#). as the same rules apply to child victims and suspects/offenders.

⁸⁹ [Law of 10 August 1992 on youth protection, Article 18.](#)

⁹⁰ [Law of 10 August 1995 on legal assistance](#), Article 18

⁹¹ Information collected through a stakeholder interview.

⁹² [Code of Criminal Investigation](#), Article 81(4).

3 Child-friendly justice after judicial proceedings

3.1 The child as a victim or offender

3.1.1 Provision of information

See section 2.1.2 on provision of information.

3.1.2 Sentencing

In general, the Juvenile and Guardianship Court is competent to deal with cases where children under 18 years of age are suspects/offenders⁹³.

As mentioned in [section 2.3.1](#), the Juvenile and Guardianship Court can order guardianship, education and preservation against child offenders, consisting of⁹⁴:

- Reprimanding the child and putting him/her in the care of persons who are legally in charge of the child and warning them that the child has to be better supervised in the future;
- Submitting the child to educational assistance;
- Placing the child under the watch of a trusted adult or in any appropriate institution for their accommodation, treatment, education, instruction and vocational training;
- Sending the child to a rehabilitation facility.

As an exception, the child can be brought before an ordinary Court if he/she was at least 16 years old when accused of having committed an offence. The ordinary Court cannot refuse jurisdiction over the case on the ground that the suspect is under 18 years of age⁹⁵.

The sentencing before ordinary Courts depends on the gravity of the offence.

- A minor offence (*contravention*) appears before the police court; the appeal is heard by the criminal court. A major offence (*délit*) appears before the criminal court; the appeal is heard by the Court of Appeal. A crime (*crime*) appears before the criminal division of the district court; the appeal is heard by the criminal division of the Court of Appeal.
- The defendant has the right to appeal against a judgment within 40 days from the date of the judgment by means of a declaration to the court. This appeal may be confined to an appeal against the length of the sentence or against the civil claim.
- If the defendant appeals, the Public Prosecutor at the court where the appeal is to be heard is informed within 24 hours of the appeal. A date will be set for hearing the appeal and will be notified to the defendant.

It is possible for the defendant to submit an appeal against the decision of the Juvenile and Guardianship Court or ordinary Court within 40 days after the decision of the Juvenile and Guardianship Court⁹⁶. The Juvenile and Guardianship Court can request that the decision applies despite the appeal. In this case, the Juvenile and Guardianship Court must justify its request⁹⁷.

The child who is a victim can also submit appeals against the decision of the Juvenile and Guardianship Court or ordinary Court, but the appeal is limited to the civil aspects of the claim. In addition, the child himself/herself cannot formally initiate the proceedings: the parents or legal representative of the child must initiate the proceedings. The submission of

⁹³ [Law of 10 August 1992 on youth protection, Articles 2.](#)

⁹⁴ [Law of 10 August 1992 on youth protection](#), Article 1.

⁹⁵ [Law of 10 August 1992 on youth protection, Articles 32.](#)

⁹⁶ [Law of 10 August 1992 on youth protection, Articles 30.](#)

⁹⁷ [Law of 10 August 1992 on youth protection, Articles 30.](#)

appeal must occur within a term of ten days from the court's judgment and only regarding the court's decision on the civil claim.

When the Juvenile Court decides to transfer the case to be decided under adult criminal law (see [Section 2.3.1](#)) the child, his/her parents or any other person having custody of the child and the Public Prosecutor have ten days to appeal the decision. The ten-day period starts from the day of the decision for the Public Prosecutor and from the day of the notification of the decision for the child, his/her parents or any person having custody of the child⁹⁸.

If the appeal is rejected, the child can be sentenced to the same sanctions as adults, consisting of the following⁹⁹:

- Life imprisonment or imprisonment (from five years up to 30 years) Fines (from 251 euros)
- Special confiscation
- Conditional sentence
- Community service
- Prohibition of certain civil and political rights
- Dismissal of titles
- Publication of the decision
- Prohibition to exercise certain professional or social activities

According to general rules, a child condemned to life imprisonment, can be provisionally released only after s/he has already served 15 years of imprisonment. The provisional release is conditioned upon several requirements of good behaviour and proof of social rehabilitation. The release decision will be taken by the Public Prosecutor¹⁰⁰.

3.1.3 Deprivation of liberty

When children are in physical or moral danger, the Juvenile and Guardianship 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)¹⁰¹;
- Placement of the child under the supervision of a private person or in a home¹⁰²;
- Placement of the child in a State re-education establishment¹⁰³;
- Placement of the child in a State disciplinary establishment (within a prison)¹⁰⁴;
- 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 prison¹⁰⁵;

The Public Prosecutor can also ask for these measures if the child is suspected of an offence¹⁰⁶.

⁹⁸ [Law of 10 August 1992 on youth protection](#), Article 34.

⁹⁹ [Criminal Code](#), Article 7.

¹⁰⁰ [Criminal Code](#), Article 100.

¹⁰¹ [Law of 10 August 1992 on youth protection, Articles 1\(2\) and 13.](#)

¹⁰² [Law of 10 August 1992 on youth protection, Article 1\(3\).](#)

¹⁰³ [Law of 10 August 1992 on youth protection, Article 1\(4\).](#)

¹⁰⁴ [Law of 10 August 1992 on youth protection, Article 6.](#)

¹⁰⁵ [Law of 10 August 1992 on youth protection](#), Article 26.

¹⁰⁶ [Law of 10 August 1992 on youth protection, Articles 32.](#)

Children who are placed can benefit from holidays. Holidays are meant to ensure the child's integration. The Juvenile and Guardianship Court awards such holidays¹⁰⁷. Short holidays or holidays 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 and Guardianship Court must be informed beforehand¹⁰⁸.

The measures come to an end when the child is 18 years old¹⁰⁹. 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 it¹¹⁰;
- If the child committed a major offence (*délit*), the judge can prolong the measure until the young adult is 21 years old¹¹¹;
- If the child committed a crime, the judge can prolong the measure until the young adult is 25 years old¹¹².

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 correspond¹¹³. Also, the parents periodically receive information on their children¹¹⁴.

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.

As mentioned in [Section 3.1.2](#), the sentences applying to children judged before ordinary criminal courts are the same as those for adults. As a result, the child can be sentenced to imprisonment¹¹⁵.

3.1.4 Criminal records

Cleaning of the child's criminal record

There are no specific rules on the clearing of criminal records for children. Thus, the child's criminal record are not cleared automatically once the child reaches 18 years old. However, according to general rules, any offender can be rehabilitated¹¹⁶. This means that the sentence and the consequences of the sentence will be erased. In practice this also means that the criminal record of the child (who became an adult) will be cleared¹¹⁷.

Rehabilitation can happen automatically or be requested by the offender him/herself.

¹⁰⁷ [Law of 10 August 1992 on youth protection](#), Article 12.

¹⁰⁸ [Law of 10 August 1992 on youth protection](#), Article 12.

¹⁰⁹ [Law of 10 August 1992 on youth protection, Articles 1.](#)

¹¹⁰ [Law of 10 August 1992 on youth protection, Articles 1.](#)

¹¹¹ [Law of 10 August 1992 on youth protection, Articles 4.](#)

¹¹² [Law of 10 August 1992 on youth protection, Articles 5.](#)

¹¹³ [Law of 10 August 1992 on youth protection, Article 11.](#)

¹¹⁴ [Law of 10 August 1992 on youth protection, Article 14.](#)

¹¹⁵ [Criminal Code](#), Article 7.

¹¹⁶ [Code of Criminal Investigation](#), Article 644.

¹¹⁷ [Code of Criminal Investigation](#), Article 658.

When the offender requests rehabilitation, s/he cannot do so before five years when s/he has been condemned for a crime and three years when s/he has committed an offence¹¹⁸.

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 register¹¹⁹.

The special register 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. This special registry is also available to the victim of the child if the victim asks for it in order to obtain compensation¹²⁰.

¹¹⁸ [Criminal Code](#), Article 649.

¹¹⁹ [Law of 10 August 1992 on youth protection, Article 15.](#)

¹²⁰ [Law of 10 August 1992 on youth protection, Article 15.](#)

4 Strengths and potential gaps

Children enjoy a number of measures that support their interest and rights before and during criminal proceedings.

The main strength of the Luxembourg criminal system is that children enjoy the services of a legal counsel free of charge.

Nevertheless, this strength can be nuanced: the parents or legal representatives of children must ask for the support when the child is a victim or witness, whereas the legal support is automatic when the child is a suspect/offender. In practice not all parents or legal representative of children who are victims or witnesses automatically ask for a legal counsel. As a result, some children do not have a legal counsel, thus the best interests and rights of the child victims/witnesses are not guaranteed.

Another strength relates to the protective approach of the system, which considers child suspects/offenders as children in need of help and protection. Accordingly, there is no criminal law specific to children when they go before the Juvenile and Guardianship Court, as children are not addressed as delinquents. But this strength is also a gap. Indeed, when children above 16 years old are judged before ordinary criminal courts, no specific provisions exist to protect their rights. In this case, general rules for adults apply to children.

Children also involved in judicial proceedings enjoy measures protecting them from secondary victimisation. Indeed, the child's testimony (as a victim or witness) can be recorded. Consequently, children do not have to repeat their testimony. But it appears that in practice some judges nevertheless ask children to appear again before the Courts.

Two main gaps can be mentioned: first, Luxembourg has not put into place practical measures to ensure a child-friendly environment (be it a special room in the Juvenile and Guardianship Court where children wait before they are heard, measures to keep children away from meeting the accused, for example in corridors, measures to keep children away from the trauma or manipulation that can occur when confronted with the accused etc.). Also, no child-friendly leaflet or brochure is at the disposal of children or the professionals (either policy officers or judges) that are in contact with children during criminal procedures¹²¹.

The lack of training is the second main gap of the Luxembourg framework. Within the judicial police services a [specific unit](#) is in charge of children. The police officers of this unit receive a specific training to be best equipped to hear children and provide them with a child-friendly environment. Police officers who are not part of this special unit do not receive such specific training. This can be problematic for children: they are not always in contact with police officers who know how to address them.

Children also enjoy a number of measures that support their interest and rights after judicial proceedings. Similar to what happens before and during proceedings, children receive substantive information.

Sentencing is pronounced by the Juvenile and Guardianship Court as a principle, but as an exception ordinary Courts deal with some cases (depending on the age of the child offender and the circumstances of the case). Children can also make use of mediation. This alternative procedure is not compulsory. When deprived of liberty or under custody, children benefit from holidays that are granted by the judge or the director of the prison. Such measures are meant to preserve family ties.

Also, child offenders do not have criminal records. Nevertheless, the proceedings and measures decided by the Juvenile and Guardianship Court are kept on a record that remains accessible to other judicial authorities or to administrative authorities.

¹²¹ Information collected through a stakeholder interview.

Regarding child victims, their interests are also guaranteed after the criminal proceedings. Indeed, the victim's best interests are taken into account before any decision is taken to release the offender. Before the decision, the victim can submit written observations within 15 days. Also, the victim can ask 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.

Lastly, it is worth mentioning that at all stages of criminal proceedings (before, during and after), children who consider that their rights have been infringed can contact the [Ombudsman for children's rights](#). The ombudsman 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 their best interests.

Conclusions

Children involved in criminal proceedings in Luxembourg benefit from specific rules that ensure appropriate protection and treatment. Support for child victims of crimes is easily available through helplines or websites which have been put into place by authorities and NGOs. However, it has been noted that this support is rarely used by children as one of the numbers dedicated to the support of children is no longer advertised.

In addition, child victims or witnesses in criminal proceedings benefit from few measures on the ground. No practical measures have been taken to ensure a friendly environment for children, such as the existence of a special room in the Juvenile and Guardianship Court where children can wait before being heard, or measures to keep children away from meeting the accused, for example in corridors. No leaflet or brochure has been made by the national authorities that is adapted to children. As a result, a child witness in criminal proceedings does not benefit from specific legal provisions ensuring that he/she is informed of his/her rights. In general, there are few provisions on the protection of witnesses in Luxembourg and the majority of existing provisions are not adapted to children and their specific vulnerabilities.

The age of criminal liability set at 18 years old guarantees that children can benefit from the specialised youth protection system. However some exceptions exist for children above 16 years old who commit crimes. In this particular situation, children are particularly vulnerable as they can be transferred to a criminal court and be judged according to rules applicable to adults.

Even if training is available for those professionals who deal with children in judicial proceedings, children often have their first contact with police officers who do not receive such training and who do not always know how to ensure a child-friendly environment. As a result, the Luxembourgish authorities are planning to train one or two police officers in each police station to ensure that child victims and victims in general receive adequate support when they first arrive in any Luxembourgish police station.

Annex – Legislation reviewed during the writing of this report

- Law of 6 October 2009 reinforcing rights of victims of criminal offences.
- Law of 16 December 2008 on the support of youth and families.
- Law of 25 July 2002 creating the Ombudsman for children' rights (*ORK*).
- Regulation of 31 May 1999 setting the criteria and procedure of criminal mediation, the functions of the mediator, the procedure of criminal mediation and the method for remuneration of mediators.
- Grand-Ducal Regulation of 18 September 1995 on legal assistance.
- Law of 10 August 1995 on legal assistance.
- Law of 10 August 1992 on youth protection.
- Law of 12 March 1984 on the compensation of victims of corporal damages resulting from an offence or fraudulent insolvency.
- Criminal Code of 16 June 1879.
- Code of Criminal Investigation of 9 December 1808.