

FREMP – Charter Report 2023

Luxembourg

Questionnaire:

1. Which judicial and non-judicial remedies are available in your Member State:

a. In criminal, civil and administrative cases;

➤ Judicial remedies :

In criminal cases, there are two stages, the investigation and the trial. Either the Police or the Investigating Judge proceed with the investigation. Once the investigation is completed, the case is brought before a judge where a decision on whether the case will be sentenced or dismissed is taken. If the case will be heard by a judge, a hearing will take place in order to examine the evidence gathered and to decide if the accused is guilty or not. If the accused is found guilty, the court will speak a sentence.

There are two possible recourses to such decisions, either an appeal or an objection. An objection can only be filed against a default judgment, which is passed when the defendant failed to appear at the hearing due to the fact, that the notification of the proceedings was not served to the defendant in person. In case of an objection, the case is referred back to the same court for a new decision.¹ An appeal is possible against a default judgment and against a contradictory judgment.

In civil cases, only the parties initiate the proceedings, except where the law provides otherwise. They are also free to terminate the proceedings before they are extinguished by the effect of the judgment or by virtue of the law.² The parties also conduct the proceedings under their own responsibility and it is up to them to carry out the procedural steps in the required form and time.³ The subject of the dispute is determined by the respective claims of the parties, which are set out in the document initiating the proceedings and in the defense. The subject matter may, however, be modified by incidental claims if they are sufficiently related to the original claims.⁴ For claims below the value of EUR 15.000, in which case proceedings are held at the “Justice de Paix”, the parties can represent themselves. Claims above the value of EUR 15.000 euros, which are held at the “Tribunal d’Arrondissement”, representation is obligatory.

Here again, are two possible recourses, either an appeal or an objection. An appeal involves bringing a case before a higher court where other judges will judge the case anew. Appeals can be filed if the value of the dispute exceeds EUR 2.000.

An objection can only be filed against a default judgment, which is passed when the defendant failed to appear at the hearing due to the fact, that the notification of the proceedings was not served to

¹<https://justice.public.lu/fr/affaires-penales/convocation-tribunal/tribunal-police/recours.html>

²NCPC, article 50

³NCPC, article 51

⁴NCPC, article 53

the defendant in person. In case of an objection, the case is referred back to the same court for a new decision.⁵

In administrative law, cases may be referred to the Administrative Tribunal by the addressee of an act complained of, as well as by any third party who has an interest in the case, i.e. who is personally affected by an administrative act.

To appeal a decision rendered by the Administrative Tribunal, the Administrative Court must be seized.⁶

The last resort after an appeal is the Court of Cassation. This court is competent for criminal, civil, administrative, commercial and social matters. This court only verifies the correct application of the law and compliance with procedural rules by trial judges.

➤ Non-judicial remedies:

In criminal cases, a non-judicial remedy can be initiated with the Restorative Justice Service (SEJURE), which is operational since July 1st, 2021. This concept was established through the law of 8th March 2017, which enables the parties involved in a criminal offence to work together to deal with the consequences. This is carried out by establishing a direct or indirect dialogue between the victim and the perpetrator, where all the material and emotional repercussions associated with the commission of the offence can be addressed and even restored.⁷

In civil matters, a person can have recourse to mediation by contacting the Luxembourg “Centre de Médiation” (CMCC). The CMCC then informs the parties about its engagement and provides them with the rules. The parties then have 15 days to answer. If the parties fail to respond or explicitly refuse the proposal, the case is immediately closed. If the parties accept, the CMCC appoints a mediator in accordance with the dispute and the wishes of the involved parties.⁸

In administrative matters, a person can lodge a non-contentious appeal or ‘internal appeal’ with the administration to modify the initial position with regard to the applicant.

The parties can also have recourse to the Luxembourg Ombudsman by submitting a complaint. If he deems the complaint admissible, he will send his recommendations to the authorities in question, in order to reexamine the disputed decision and to reach an amicable agreement about the dispute.⁹

b. in cases of discrimination;

➤ Judicial remedies :

The Luxembourg criminal code prohibits discrimination. Therefore, anyone who is a victim of discrimination can file a complaint with the Luxembourg Police.

In areas of labour law, the victim can lodge proceedings in front of the “Justice de Paix” for unfair employment contract determination.

⁵<https://guichet.public.lu/en/citoyens/citoyennete/voies-recours-reglement-litiges/recours-jugement/jugement-civil.html>

⁶<https://justice.public.lu/fr/organisation-justice/juridictions-administratives/procedure-recours.html>

⁷<https://mj.gouvernement.lu/fr/professions-droit/facilitateur-justice-restaurative.html#:~:text=La%20loi%20du%208%20mars,du%20Code%20de%20proc%C3%A9dure%20p%C3%A9nale.>

⁸<https://guichet.public.lu/en/entreprises/gestion-juridique-comptabilite/contentieux/litiges/mediation.html>

⁹<https://guichet.public.lu/en/citoyens/citoyennete/voies-recours-reglement-litiges/contestation-decision-administrative/recours-decision-administrative.html>

➤ Non-judicial remedies:

In case of discrimination, the ‘Centre d’égalité de traitement’ will provide advice and guidance services designed to inform victims about their individual rights, legislation, case law and how to assert their rights.

There are also certain approved associations which the victim can contact, namely ASTI asbl, Info-Handicap asbl, Chiens guides d’aveugles asbl and ALOS-LDH asbl.

ASTI asbl supports immigrant workers and refugees as well as children and young people, Info-Handicap asbl provides information and support to disabled people, Chiens guides d’aveugles asbl engages with and provides help and information to people suffering blindness, and ALOS-LDH asbl is the human rights league who engages against racism and discrimination.¹⁰

c. in the field of consumer legislation;

➤ Judicial remedies :

If the litigation is under 15.000 euros, the consumer concerned can lodge a complaint at the “Justice de paix”. If the value of the damage is higher than 15.000 euros, the “Tribunal d’arrondissement” is competent.

In regards to an appeal, if the damage is under 15.000 euros, the appeal must be lodged at the “Tribunal d’arrondissement”. If the damage is higher, the Court of Appeal is competent.

There is a draft bill n°7650¹¹, which will introduce a collective recourse mechanism, which aims to make consumer rights easier to protect. It allows joint recourse for a large number of consumers who have been harmed in the same or similar way.

➤ Non-judicial remedies:

As an alternative dispute resolution, the Luxembourg Consumer Protection Association asbl (ULC) is providing services such as legal assistance and litigation, consultations with lawyers and consultations with experts. The ULC is also defending consumers through the intermediary of its presence with the Insurance mediator in collaboration with the ‘Association des Compagnies d’Assurances’ and the ‘Commission Luxembourgeoise des Litiges de Voyages’.¹²

Another non-judicial remedy is offered by the ‘Médiateur de la Consommation’, who helps to resolve the dispute amicably. The Mediator serves as an impartial intermediary in order to facilitate the dialogue between the parties and support them in joint search for an amicable solution.¹³

d. in the field of employment legislation;

➤ Judicial remedies :

¹⁰<https://www.ldh.lu/page17.html>

¹¹<https://www.chd.lu/fr/dossier/7650>

¹²<https://www.ulc.lu/fr/presentation/?id=3>

¹³<https://www.mediateurconsommation.lu/>

If an employee wants to lodge a complaint, the “Justice de Paix” is competent for all damages, no matter the value. In case of an appeal, it is the Court of Appeal, which is competent.

➤ Non-judicial remedies:

For non-judicial remedies, an employee can contact the labour and trade unions: Luxembourg Confederation of Christian Trade Unions (LCGB), Independent Trade Union Confederation Luxembourg (OGBL) and the Chamber of employees Luxembourg (CSL).

Among other services, these Unions provide legal assistance and advice. The OGBL additionally provides representation in labour courts. The rights of the employees are also laid out on their websites.

e. in other fields, including as regards non-judicial remedies.

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2. Does your Member State provide information on the available remedies, and the steps to be taken during a judicial process / when accessing non-judicial remedies:

The « Service d'accueil et d'information juridique », the Legal Reception and Information Service, provides individuals free of charge with legal information and guidance towards the competent services in the areas of criminal law, civil law, labour law, divorce and leasing.

More precisely, this service informs individuals about the judicial procedures and processes, to offer and distribute model forms of applications and explain the legal procedures and actions for which a lawyer is needed.

The service does not, however, provide information to people who are already assisted by a lawyer.¹⁴

This information can also be found on the website from the Luxembourg Government “Guichet.lu”, which is accessible to all.

In criminal proceedings, the magistrate informs the victim whose complaint is attached to the file and who has not yet lodged a civil action, of the opening of the proceedings, of his/her right to lodge a civil action and of the procedures for exercising this right. If the victim is a minor, the notice is given to his/her legal representatives, or to the ad hoc administrator if one has been appointed for the minor.¹⁵

c. To parties of administrative proceedings;

For administrative proceedings, the important information can be found on the website from the Government “Guichet.lu”.¹⁶

d. Persons accessing non-judicial remedies.

¹⁴https://guichet.public.lu/en/organismes/organismes_citoyens/service-accueil-information-juridique.html

¹⁵Luxembourg code of criminal procedure, article 50.-1.

¹⁶<https://guichet.public.lu/en/citoyens/citoyennete/voies-recours-reglement-litiges/contestation-decision-administrative/recours-decision-administrative.html>

For persons accessing non-judicial remedies, relevant information can be found on the website from the Government “Guichet.lu”.¹⁷

Please provide more information, including examples of good practice you consider effective.

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3. Does your Member State use digital tools to facilitate access to justice?

a. Yes

If yes, please provide more information on the tools available and your experience on their relevance. Please provide examples of good practice you consider effective.

Luxembourg provides certain information digitally :

- Legal aid : Information on access is clearly visible and understandable on websites
- Court fees: websites with clearly visible and understandable information about court fees and eligibility for their reduction
- Procedural rights of the citizens: websites with clearly visible and understandable information
- Websites of the justice system contain contact forms or emails from which citizens can get a reply on inquiries
- Smartphone-readable websites related to access to justice

Additionally, published judgments are made accessible online in the areas of civil, commercial, administrative and criminal cases.¹⁸

Moreover, the draft bill n°8109, which will soon come into force, provides for a “paperless justice” in administrative matters. This ambitious program of the digitization of justice aims to reduce the extent of paper-based exchanges in all urgent administrative legal proceedings. Once the pilot project reserved for urgent procedures has its initial conclusions with the technical adaptations, digitalization will be extended to proceedings on the merits. i.e. all exchanges with the administrative courts. However, tax appeals will not be included in the digitalization program.¹⁹

4. Which of the following measures are available in your Member State to remove language/ cultural/ physical/ financial/ other barriers for people accessing remedies:

a. Interpretation and translation services;

Luxembourg provides certified translators who can translate official documents destined for the Luxembourg administrations, and who can interpret for the police and tribunals.

According to article 3.-3. (1) of the Luxembourg code of criminal procedure, the translation of the procedure in court is free of charge in the language the person understands. The right of translation also applies for all the documents notified or served as well as for documents the person has the right of access, which are essential to enable him to exercise his/her rights of defense and to guarantee the fairness of the proceedings.²⁰

¹⁷<https://guichet.public.lu/en/entreprises/gestion-juridique-comptabilite/contentieux/litiges.html>

¹⁸Scoreboard 2023

¹⁹Draft Bill n°8109 / <https://wdocs-pub.chd.lu/docs/exped/0136/046/272462.pdf>

²⁰Luxembourg code of criminal procedure, article 3.-3. (1)

Article 3.-4. (1) of the same code provides that the victim or plaintiff who does not speak or understand the language of the proceedings is entitled, in a language he/she understands to the free assistance of an interpreter, provided that such assistance does not unreasonably prolong the proceedings.²¹

Additionally, a number of associations provide such services, namely the Luxembourg Association for translators and interpreters, the Croix-Rouge and Asti asbl.

Moreover, according to article 3.-4. (2) of the Luxembourg code of criminal procedure, sign language interpretation is available in the course of court hearings for victims,²² the cost of which is borne by the State.²³

The list of sworn translators and interpreters is available on the website of the Ministry of Justice.

b. Measures to facilitate access by persons with disabilities, such as measures relating to accessibility of courthouses and other resources for people with disabilities;

All court buildings in Luxembourg are accessible to persons with disabilities.²⁴

Each person with disabilities can access the service of a lawyer, including through the « Service d'accueil et d'information juridique ». Moreover, several associations can address the court on behalf of persons with disabilities, for instance Handicap asbl and Chiens guides d'aveugles asbl. The association Handicap asbl also provides legal services, which can be used by any person with disabilities free of charge.²⁵

Sign language interpreters are also provided for in the course of court hearings, the cost of which is borne by the State. Persons with intellectual disabilities have the right to use an interpreter and easy-to-understand language to assist during court proceedings.²⁶

Persons with disabilities who do not possess enough revenue to engage a lawyer can have recourse to legal aid.²⁷

c. Legal aid;

Currently legal aid is accessible for people with a salary under the legal threshold. There is, however, a bill of law n° 7959, which foresees a partial legal aid for people excluded from legal aid whose resources barely exceed the legal threshold.

d. Arrangements to refer vulnerable victims, such as victims of domestic or gender-based violence, to support services;

Numerous websites are available to victims of domestic violence or gender-based violence. For domestic violence, the website of the Ministry of Equality between Women and Men provides

²¹Luxembourg code of criminal procedure, article 3.-4. (1)

²²Luxembourg code of criminal procedure, article 3.-4. (2)

²³<https://www.ohchr.org/en/press-releases/2017/08/committee-rights-persons-disabilities-reviews-report-luxembourg>

²⁴<https://www.ohchr.org/en/press-releases/2017/08/committee-rights-persons-disabilities-reviews-report-luxembourg>

²⁵ <https://mfamigr.gouvernement.lu/dam-assets/publications/rapport/crdph/Rapport-periodique-etatique-CRDPH.pdf> p.6, paragraph 26

²⁶<https://www.ohchr.org/en/press-releases/2017/08/committee-rights-persons-disabilities-reviews-report-luxembourg>

²⁷ <https://mfamigr.gouvernement.lu/dam-assets/publications/rapport/crdph/Rapport-periodique-etatique-CRDPH.pdf> p.6, paragraph 27

information and refers to other websites such as “*violence.lu*” which also provides help, information and helplines for the victims.

Another website is “*umedo.lu*”, which provides services on forensics for adult victims of corporal violence and/or sexual violence, which is available 24/7.

e. Fast-track proceedings available for certain vulnerable parties, such as in cases involving sexual violence or children;

The fast-track proceedings must be lodged to the “*juge des référés*”. This procedure allows for a rapid judicial decision in certain cases or in emergency cases, for instance in matters regarding child custody and visitation rights, but also for cases of domestic violence and seizure matters.²⁸

The judgment given by the “*juge des référés*” is only temporary, in the sense that it can be modified by the “*juge des référés*”, if new circumstances occur which don’t bind the judge of first instance.

f. Other measures.

Please provide more information on the measures available and your experience on their relevance. For instance, please provide examples of good practice you consider effective.

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5. Which measures has your Member State taken to ensure the justice system’s responsiveness to the needs of vulnerable and marginalized groups? Please provide examples of good practice you consider effective.

For people under tutorship/guardianship, according to the Luxembourg code of civil procedure, the competent judge called “*juge des tutelles*” has the possibility to contact the President of the Bar for the admission of the person to benefit from legal assistance. The “*juge des tutelles*” can do so if he deems that the person under tutorship/guardianship can benefit from it or if a related request was introduced.²⁹

If the hearing is likely to be prejudicial to the health of the person to be protected, the “*juge des tutelles*” can, on the advice of the attending physician and a specialist decide that there is no need to proceed. By the same decision, the “*juge des tutelles*” orders that the person to be protected be informed of the proceedings in a form appropriate to his/her condition.³⁰

The decision to open tutorship/guardianship can be challenged by family members, allies, the spouse, the curator or the Public Prosecutors Office.³¹

6. Does your Member State have in place arrangements to facilitate access to justice by children? Please provide examples of good practice you consider effective.

²⁸https://fra.europa.eu/sites/default/files/fra_uploads/1536-access-to-justice-2011-country-LU.pdf p.7, point 5

²⁹NCPC, article 1083

³⁰NCPC, article 1082

³¹NCPC, article 1089

Luxembourg made specific arrangements for child-friendly proceedings with children involved as victims, suspects or as accused persons. For instance, it is an obligation that they are assisted by a lawyer, they are provided with child-friendly information about their rights and proceedings and they are heard in child-friendly specialized settings and may effectively participate in the hearing. Also audio-visual recordings of the questioning of children are arranged, however, only when the child is in the position of the victim.³²

In the draft bill n°7991, article 4 provides that children will enjoy the right to legal assistance. This same draft bill provides also under article 7-1. (5), paragraph 4, for the assistance of an interpreter or translator if needed.

7. Does the justice system provide the possibility for stakeholders to bring cases on behalf or in support of victims? If yes, in which areas of law is this possible? Please provide examples of good practice you consider effective.

Tutors can initiate legal proceedings on behalf of the minor or adult under their tutorship in relation to their property rights. The tutor may also defend alone an action brought against the minor or adult under their tutorship, but may only acquiesce in it with the authorization of the family council.³³

Numerous certified associations can as well initiate legal proceedings in the name of the victims, namely in the area of discrimination and racism. These associations are for instance: the Association for immigrant workers (ASTI asbl), Liaison, information and support center for project associations in Luxembourg (CLAE asbl), Action Luxembourg open and supportive – Human rights leage (ALOS-LDH asbl), Info-Handicap asbl, Chiens guides d'aveugles au Luxembourg asbl, Caritas and the National Women's Council of Luxembourg (CNFL).³⁴

8. Which challenges or points of development have been identified in your Member State regarding effective legal protection?

Luxembourg has room for development in the area of availability of online information about the judicial system for the general public³⁵.

The “Paperless Justice” project, which aims the digitalization of justice, is currently ongoing.

The reform of the legal aid system, as mentioned before, will be soon completed.

9. Is there any significant, recent case law from your Member States on ensuring effective legal protection, which you would like to mention?

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10. Are there any significant, recent decisions by equality bodies or other non-judicial remedies on ensuring effective legal protection, which you would like to mention?

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³²The 2023 EU Justice Scoreboard, p.28, Figure 31

³³Civil Code, article 464 paragraph 1 – 2, article 495

³⁴<https://cet.lu/defense-des-droits-et-voies-de-recours/>

³⁵Scoreboard 2023, p.33