



The Honourable Ms. Marie-Anne KETTER  
Premier Conseiller de Gouvernement  
Attn: The Honourable Félix BRAZ  
Minister of Justice

Ministry of Justice  
13, rue Erasme  
Centre administratif Pierre Werner  
L-2934 Luxembourg  
Luxembourg

February 5<sup>th</sup> 2019, Strassen

Dear Ms. KETTER,

We hereby confirm receipt of your letter dated 21<sup>st</sup>, January 2019 and we would like to thank you for taking the time to reply to our correspondence.

Referring to your letter, please note that FAD has considered the latest changes in Luxembourgish family law. Our legal representatives have studied the document very closely already last year. We have also reached out for external legal opinion in Luxembourg, Germany and affiliated organizations in other jurisdictions. We also spoke with number of Luxembourg lawyers involved in custody proceedings in Luxembourg courts.

We recognize that ever since November 1<sup>st</sup>, 2018 when the new law came into force judge in charge of family matters is competent for proceedings related to children custody. We are also familiar with the amendments of articles 375, 376 and 378-1 of the Luxembourgish Civil Code. We happily welcomed changes in the 375 of the Civil Code as the previous model stood in clear violation of the constitutional rights assured in the Luxembourg Constitution. Parental authority is an eternal right of each parent married or not and it came only as a surprise that Luxembourg introduced the change only in 2018.

In your letter you refer to the fact that recent changes guarantee that each parent must have a personal relation with its child and has the obligation to respect the relation between the child and the other parent. This I think we can both agree are the basic rights of every parent regardless of gender including of course parents of the same gender.

1



You have also pointed out that because of the recent changes in Luxembourg family law shared parenting as requested respectively by Resolution 2079 of the Council of Europe, initiated by Ms. Françoise HETTO-GAASCH, former Luxembourg Minister of Equal Opportunities and current member of the Luxembourg Parliament (CSV), calling all EU member states to introduce Shared Parenting as base for Family Law and a rule for children custody proceedings, has received a legal basis. A legal basis but only in theory.

Parents when they agree do not need a family judge to tell them how to raise their children or how to divide the time, they spend with them. The article 378-1 of the Civil Code offers the possibility for the judge in charge of family matters to decide that, if it is in the best interest of the child and IF BOTH PARENTS AGREE, the child can reside alternatively during the determined period in each parents' home.

In other words, if one of the parents does not agree to the Equal Shared Parenting – Alternating Residence it cannot be introduced making article 378-1 *de facto* inapplicable and non-existing. Furthermore, this condition provides one of the parents with an instrument of blackmail. Considering the fact that over 90% custodies in Luxembourg are awarded by a template approach to mothers, the Equal Shared Parenting remains almost exclusively subject to mother's approval. Ignoring completely the best interest of the child so often mentioned as the base of any court decisions during custody hearings leading to gender inequality, violation of children rights to both of its parents and discrimination of fathers.

Belgium has successfully introduced Shared Parenting - Alternating Residence in 2006. Courts in Germany prove that Resolution 2079 can be introduced in the best interest of the children even if one of the parents refuses to agree to the model. This is not the case in Luxembourg.

Considering the above we find declining to meet with us disappointing and the way the changes of the law with regards to the Shared Parenting - Alternating Residence being presented to the public quite misleading. We still entrust of being able to find time to meet and to speak openly about the on-going problem families in Luxembourg face every day.

Respectfully,  
Patryk P. RYBIŃSKI  
In charge  
FAD - Fathers Against Discrimination a.s.b.l.