

FAD - Fathers Against Discrimination a.s.b.l.
"Both Parents for All Children™"
29, Boulevard Prince Henri
L-1724 Luxembourg
Luxembourg

17 April 2020, Luxembourg

L'honorable Xavier BETTEL
Premier ministre, ministre d'État
4, rue de la Congrégation
L-1352 Luxembourg
Luxembourg

Dear Mr. Prime Minister,

We understand that on 15 April 2020, the Government Council set up an ad hoc group to accompany the measures decided as part of the fight against the virus and to assess on a regular basis the side effects of these measures and the confinement. The group will be composed of the following people:

- Nora Back – President of the Chamber of Employees
- Alexa Ballmann - President of the JHL (Jonk Handwierk)
- Luc Frieden - President of the Chamber of Commerce
- Erny Gillen - Expert in ethics
- Claudia Monti - Ombudsman of the Grand Duchy of Luxembourg
- Gilbert Pregno - Psychologist and President of the Human Rights Consultative Commission
- René Schlechter - President of the Ombuds Committee for the Rights of the Child (ORK)
- Prof. Claus Vögele - Professor of health psychology at the University of Luxembourg

The Government Council also fixed specific guidelines for a deconfinement strategy balanced between public health imperatives and the psycho-social and economic aspects of the current confinement.



Considering the above we would like to follow up on our latest correspondence sent to you. The letter referring to one of the most recent events that have taken place in Luxembourg. Unfortunately, we must address it again as the problem continues.

A Decree (Règlement grand-ducal) adopted on 18 March 2020 established restrictive measures as part of the action against the coronavirus pandemic (Mémorial A165). On 20 March 2020 a new Règlement grand-ducal was adopted amending the Règlement grand-ducal of 18 March. The new Règlement grand-ducal explicitly allows circulation in order to fulfil legal obligations relating to children custody, visitation rights and alternate residence (résidences alternées) as those rights have been established by virtue of agreement between the parties (parents) or by Court judgment

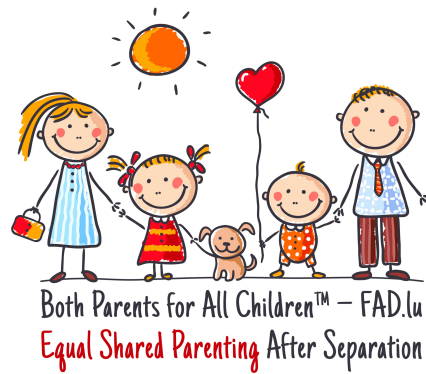
Despite the above starting the weekend of March 20-22, 2020, FAD - Fathers Against Discrimination a.s.b.l. has begun receiving reports of separated parents in Luxembourg according to which the other parent denied them the exercise of their rights using COVID-19 as pretext.

As explained previously a copy of a letter from a Luxembourg judge sent to members of the Luxembourg Bar has been used by some parents and their lawyers to violate Luxembourg court decisions.

Keeping in mind the challenges Luxembourg is currently facing as a country and the difficult times we all have already gone through, individually and as families, an attempt of any judge like the one quoted below sent as a collective message to family lawyers in Luxembourg is to be considered as a highly inappropriate overstepping. Suggestions and personal interpretations included in the correspondence seem to justify illegal acts of withholding children custody in a way that runs counter Court judgments using the state of emergency as pretext. We know that such acts have already taken place and we are continuously contacted by fathers who in some cases have not seen their children for over a month.

The letter not only ignores the provisions of the Règlement grand-ducal of 20 March, according to which circulation is explicitly allowed for the purposes of fulfilling legal obligations relating to children custody as these obligations arise from agreements or Court judgments. The letter also suggests to deny children their rights for family life in these difficult times and access to the other parent until the things "return to normality". This in practical terms on March 20th, 2020 when the letter was sent could mean for indefinite time as we simply did not know how long the lockdown could have last.

A reckless approach on behalf of the judge that has already caused illegal acts failing to adhere to Luxembourg court decisions, lead to additional stress, conflict and traumatic experience inflicted on children in the already confusing period our society faces. Unfortunately, this procedure still continues to take place in Luxembourg.



Someone can argue that the letter is just an opinion but it is not just an opinion. The role of a judge is well-defined. Judges are to speak via the tools given to them to exercise their competences. An “opinion” presented by a judge to lawyers in a form of an official letter is to be considered as guidance. Guidance that reflects a severe violation of judicial impartiality and professional oath taken by the judge. Guidance that many lawyers with whom we have been in contact with have considered confusing especially since it contradicted Règlement grand-ducal, the most important form of legal instrument issued by the Head of State and The Grand Duke of Luxembourg specifically for the reason of clarification that Luxembourg despite current challenges remains the state of Law.

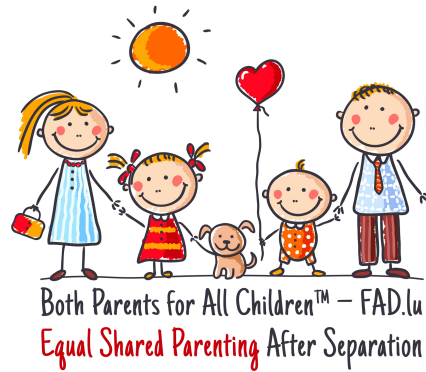
Furthermore, considering that in Luxembourg following separation of parents over 90% “primary” custodies with registered address of children are assigned to mothers, the opinion included in the letter is a clear sign of gender bias. The approach that continuously denies equal treatment of fathers during custody hearings in Luxembourg Courts but most importantly violates number of international legal instruments including the European Convention on Human Rights and United Nations Convention on the Rights of the Child (UNCRC). The convention adopted in 1989 with Luxembourg ratifying it in 1993. The Convention which 30th Anniversary was proudly celebrated by Luxembourg officials on 20 November 2019.

The quoted content of the letter (in French) sent by the judge to Luxembourg family lawyers:

« Eu égard aux nombreuses demandes de prise de position qui me sont présentées je me permets de vous adresser mon opinion personnelle relative aux enfants de parents vivant séparés.

- 1. Il me semble impérieux de limiter les déplacements, il est totalement contre-productif de maintenir le droit de visites répétitifs convenus ou judiciairement décidés.*
- 2. Les visites en lieu public ou en présence d'un tiers sont par la force de choses suspendues.*
- 3. Il est impérieux pour les parents de faire de l'auto-inspection sur la santé psychique de leur enfant et sur leurs disponibilités pour les garder personnellement : on n'est pas un mauvais parent si on admet que l'autre parent est la première de référence d'un enfant, respectivement plus à même de sécuriser l'enfant.*

Je pense il faut préconiser aux parties de trouver la solution la plus adaptée pour leur(s) enfant(s) tout en veillant à minimiser les passages de bras au courant de 4 semaines à venir : 4 semaines chez un parent avec de nombreux contacts Facetime, 2 x 2 semaines, 2 + 1 + 1 semaines me semblent le plus adaptées.



Dans ce contexte, je tiens à préciser que garder un enfant dans le contexte actuel est loin d'être chose facile !

Si les parties ne trouvent pas une solution, l'enfant doit selon moi être remis au parent auprès duquel se trouve la résidence habituelle, le second parent étant dédommagé une fois que nous aurons tous retrouvé la normalité. Par ailleurs, les contacts Facetime ou similaires sont impératifs.

Pour ce qui est de la résidence alternée, elle est à exercer par deux blocs de deux semaines.

Je sou mets toutes mes réserves pour la remise transfrontalière, le retour de l'enfant n'étant pas garanti, spécialement pour ce qui est de la frontière française. Pour l'Allemagne la question de l'exercice d'un droit de visite ne se pose pas.

Je vous prie de bien vouloir procéder à la distribution de cet avis, qui, bien-sûr, se limite à être un avis.

Bonne santé à vous tous et aux personnes qui vous sont chères. «

English translation :

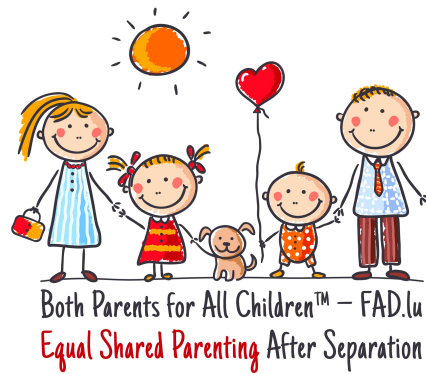
In view of the numerous requests for a position paper, I would like to give you my personal opinion on children of separated parents.

- 1. It seems to me to be imperative to limit travel; it is totally counterproductive to maintain the right of agreed or judicially decided repetitive visits.*
- 2. Visits in a public place or in the presence of a third party are necessarily suspended.*
- 3. It is imperative for parents to make self-inspection about their child's psychological health and their availability to keep them personally: one is not a bad parent if one admits that the other parent is the first of reference of a child, respectively more has to secure the child.*

I think that the parties should be advised to find the most suitable solution for their child(ren) while taking care to minimise the passage of arms during the next 4 weeks: 4 weeks with a parent with many Facetime contacts, 2 x 2 weeks, 2 + 1 + 1 weeks seem to me the most suitable.

In this context, I would like to point out that keeping a child in the current context is far from being easy!

If the parties do not find a solution, the child should, in my opinion, be handed over to the parent with whom the habitual residence is located, with the second parent being compensated once we have all returned to normality. Furthermore, Facetime or similar contact is imperative.



As for alternating residence, it is to be exercised in two blocks of two weeks.

I submit all my reservations about the cross-border remission, as the return of the child is not guaranteed, especially as regards the French border. For Germany the question of the exercise of access rights does not arise.

I would ask you to distribute this opinion, which, of course, is merely an opinion.

In the name of Luxembourg families and Luxembourg children we are asking for your intervention. We are asking that appropriate measures are taken putting a stop to these unlawful practices and violations of Luxembourg laws. We are asking for disciplinary actions that are to be taken protecting the well-functioning of the judicial system and the state of law assuring that such misconduct will not take place again.

Most respectfully,

Board Members of the Association and Members
FAD - Fathers Against Discrimination a.s.b.l.



"Mir wëlle bleiwe wat mir sinn an mir kënnen e Beispill fir den Rescht vun Europa sinn." -

- "We want to remain what we are and we can be an example for the rest of Europe."