

FAD – Fathers Against Discrimination a.s.b.l.
“Both Parents for All Children”

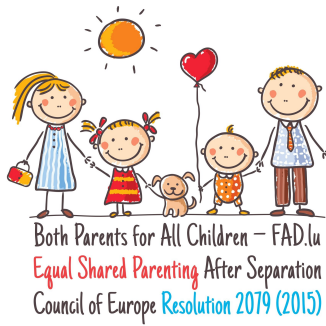
FAD™ Postulates:

No.1 – No.7



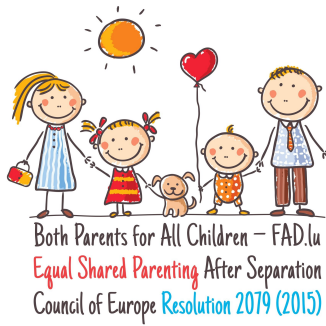
10 May 2023

(Revised and updated in November 2023)



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EN version



LET'S MAKE IT HAPPEN --- this is the Luxembourg signature. We can see it all over the country.

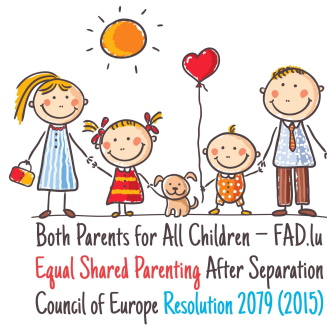
As a nation we would like to reinforce positive perceptions, to overcome stereotypes and prejudice. We aim to highlight what Luxembourg, beyond its own interests, can bring to Europe and the rest of the world. This is what the "LET'S MAKE IT HAPPEN" website says presenting along other things our country's Objectives, Vision, and Values.

We want to be a modern, dynamic, open-minded, and reliable society where creativity, diversity, and sustainability find its home. We seek to establish our country as a competitive financial center, innovative and environment friendly economy with number of government initiatives and a general objective to make the world a better place. Some of these ideas and goals include establishing Luxembourg Space Agency, legalization of cannabis, same sex marriages, adoption of children by same sex couples, extensive real estate projects, building new infrastructure such as new airport, new tram lines, new football stadium, etc.

As a country proud of its heritage and having its roots in the heart of Europe looking into the future, we would like to set example as an inclusive and egalitarian society. Yet, we fail to assure parental equality in Luxembourg courts and institutions.

Divorce is a dramatic life change; at the time it happens and then for the rest of the lives of those involved. It leaves a trace and has long-term effects on children when they are eventually adults themselves. The increase in divorce rate indicates a galloping social shift presenting serious problems to the society and Luxembourg future in general. Thousands of Luxembourg children currently under 12 years of age are being raised in more broken family homes than ever before. As a society we must offer legal and administrative frame as well as political support to assure these kids are to be brought up with appropriate care and love, family values and equal or as equal as possible access to both parents.

Please consider below FAD™ Postulates as our requests with the objective to remove elements of unjust treatment preventing equality from being present across all social spheres in Luxembourg. State regulations and laws in need of revision and change.



1

FAD™ Postulate No.1

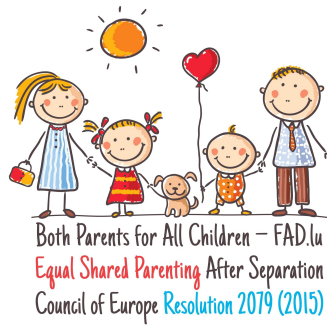
Equal Shared Parenting - Résidence Alternée Égalitaire

Article 378-1 of the Luxembourg Civil Code and the adjustments of the law from 1 November 2018 allows introduction of Résidence Alternée Égalitaire in the best interest of children even if one of the parents does not agree. Yet, the model remains only an option, not the default law and not even a starting point for children custody proceedings. As a result, Résidence Alternée Égalitaire is rarely introduced in Luxembourg. Unlike in many other EU countries including Belgium, Denmark, Sweden, etc., Luxembourg judges, in most cases, remain immune to the evidence provided by over 40 years of empirical studies, scientific conclusions and consensus among internationally recognized psychologists confirming that Equal Shared Parenting (Résidence Alternée Égalitaire) is the most effective model bringing emotional stability to children during separation or after divorce. This also goes for cases where there is conflict between parents. Unfortunately, often an unavoidable element of separations.

It has already been ruled by the Luxembourg Court of Appeal that conflict between parents cannot be considered as a reason to deny children equal or as equal as possible access to both parents after their separation. Yet, this outdated argument of “conflict” is still being used by some Luxembourg lawyers as court strategy, with the very same attorneys often instructing their clients to purposely not communicate with the former partner to uphold the conflict. A highly inappropriate behavior and unethical professional practice victimizing children, often leaving the other less favorable parent without any hope for recovering the rights to raise own children and have the privilege of being an active parent.

Decisions of the Luxembourg Family Courts using outdated template approach ignoring Résidence Alternée Égalitaire model, assigning children to only one of the parents deny children their natural right to equal access to both parents. Such rulings stand in violation of numerous conventions and international legal instruments including:

1. Article 3(3) of the Treaty on European Union established in 1992 to “combat social exclusion and discrimination, to promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child”.
2. Article 24 of the Charter of Fundamental Rights of the European Union introduced as part of the Treaty of Lisbon in 2009 “to guarantee the protection of the rights of the child by the EU institutions and by EU countries when implementing EU law”.
3. The United Nations Convention on the Rights of the Child from 1989. The first universal instrument of a legally binding nature to address the rights of the child.
4. Article 8 of the European Convention on Human Rights ratified by Luxembourg in 1953 providing a right to respect for one’s “private and family life, his home and his correspondence”.



Careless judgments of some of the Luxembourg judges is the main problem. We cannot remove prejudice and change backward set of mind overnight, but through political support we can provide guidance and build a binding legal frame to eliminate discriminatory practices or at least to reduce them significantly.

Legal proceedings after separation of parents with children, should not focus on comforting one of the parents but to protect the children. Children have the right to have both parents in their lives and it is not their fault that parents did not find a way to keep their relationship. *Résidence Alternée Égalitaire* should be THE DEFAULT LAW and a starting point for all children custody proceedings. All in the best interest of Luxembourg children and their future. LET'S MAKE IT HAPPEN.

In addition to the above there are other laws and regulations enforcing parental inequality in Luxembourg. There are barriers and difficulties Luxembourg parents must face when in contact with Luxembourg administration after separation.

2

FAD™ Postulate No.2

**Double legal residency (domiciliation) for children of separation and divorce
(Zukunftskeess, Tax, Housing, CNS Cards, State Financial Aid, Education, Administration)**

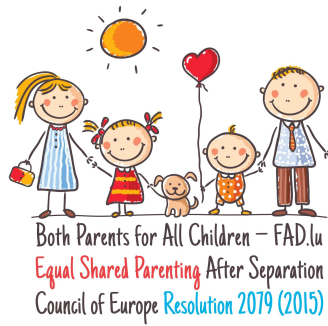
a. Zukunftskeess

According to Article 273 of the Luxembourg “Code de la Sécurité Sociale”, family allowances for children (les allocation familiales) after separation and divorce can be only paid to the “residential” parent where children’s residency is officially registered. Although, the article mentions that the allowances could be divided but this can only happen if both parents agree. The rule applies also not only when children live equal amount of time with both parents, but also when the “non-residential” parent earns less than the “residential” parent.

In addition, the decision from the Luxembourg Court of Appeal – CSJ, 1er ch., 23 janvier 2020 (Numéro CAL-2020-00288 due rôle), established that Luxembourg Family Courts cannot decide how family allocation should be distributed between parents. Any request presented to Zukunftskeess providing court decisions confirming *Résidence Alternée Égalitaire* asking for children allowances to be equally divided is denied. The Article 273 of the Luxembourg “Code de la Sécurité Sociale” is the regulation standing in a way of equal treatment of parents who jointly raise their children after separation.

Judge Alexandra HUBERTY, vice-President of the Luxembourg Family Court in an interview published in *Luxemburger Wort* on 3 August 2021 voiced her opinion about the need for adjustments of the Article 273 with a view to assure parental equality.

Changes in the Luxembourg Code Civil from 1 November 2018 was a step towards the right direction but after nearly 5 years appropriate revision is needed. **The recent amendment to Article 273 (22 December 2022) introducing a phrase**



“family allocation can be split if both parents agree” is simply insufficient. It is so, because it further solidifies discriminatory treatment making equality a subject of one of the parents’ approval, seeking consent from the same parent who benefits financially by receiving the entire sum looking after kids half the time.

It is important to note that family allocation is received on behalf of children and the allowances are meant to be spent on children. If parents agree that the allowances should be divided, they do not need laws or regulations to allow them to do that or to be told by state authorities how to do it. **What is needed and expected from the Luxembourg government is to introduce laws and regulations that assure equal treatment without promoting any form of discrimination.** Article 273 in its current form is doing exactly the opposite of the equal treatment violating numerous international instruments and conventions, including the principle of non-discrimination.

The principle of non-discrimination prohibits treating in an identical manner situations which are different or treating in a different manner situations which are identical. When children are being raised by both parents, family allocation should be, either proportionally or equally (*Résidence Alternée Égalitaire*) distributed between two households.

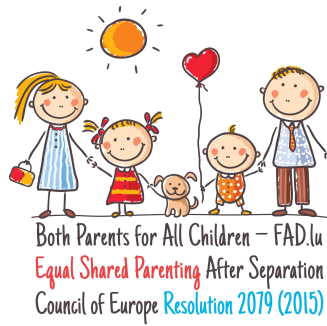
b. CNS Cards

CNS cards, just like IDs or passports of the children are the basic but very important documents allowing a parent to fully exercise parental rights when dealing with Luxembourg institutions or traveling with the kids abroad. Currently CNS cards can be ordered online in about two minutes. For convenience it is also possible to ask for a second set of cards so both parents can have them in their wallets. The problem starts when parents are no longer together and not living under the same address anymore.

As there is no double residency for children of separation and divorce in Luxembourg, after separation the “non-residential” parent cannot obtain replacement or a second set of CNS cards for the children and have the cards delivered to his or her place of residence. This is not possible because currently the cards can be only sent to the address where children’s residency is officially registered. Unlike in other EU countries, picking up CNS cards personally is also not possible because the cards are only sent by post.

This may not seem like a serious issue because it is assumed that parents should always act in the best interest of children. The reality unfortunately is often very different. Our organization receives many reports and complaints of parents acting obstructively by not handing over the cards to the other parent. This complicates everyday life especially when a “non-residential” parent is organizing doctor’s appointments for the children or when in contact with state administration. In more serious cases not having the cards can jeopardize planned summer or winter holiday trips with children.

Not being able to order CNS cards of own children and have them delivered to own address violates the principal element of parental authority and the right for equal treatment guaranteed by the Luxembourg Constitution and Luxembourg Code Civil. Adjustment of the regulation is necessary to assure equality between parents.



c. State Financial Assistance & Taxes

After separation or divorce only the "residential" parent where children are officially domiciled can "claim" common children. Even with the *Résidence Alternée Égalitaire* model, where children live on a week-to week basis with each parent, the "non-residential" parent is not recognized by Luxembourg institutions as a parent who is raising the kids.

Regardless of personal income and number of children, all financial benefits, tax preferential treatment, housing, state financial aid and allowances for children are allocated only to the "residential" parent.

When applying for financial assistance of any kind available to Luxembourg citizens and residents, the "non-residential" parent cannot even consider children as part of the household and include them on the application. This is yet another form of parental discrimination. Not being able to claim own children skews the reality and drastically decreases the amount of financial help available and offered by the Luxembourg state.

Similar inequality of treatment can be observed with regards to taxation and preferential treatment of separated parents. Even if both parents are equally involved in the lives of their children the "residential" parent is in an "1A" tax category with preferential treatment and all available deductions linked to children. The "non-residential" parent has "1" tax status and is treated as a single person.

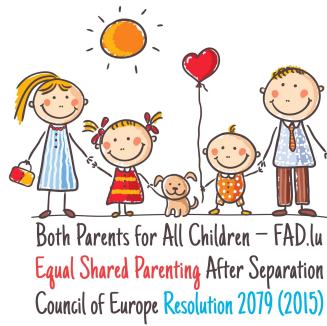
Furthermore, on 12 October 2022, the 2023 draft Budget Law (the Budget) was released by the Luxembourg government. The Budget introduced number of measures aimed to maintain the country's international attractiveness, which affect individual fiscal aspects.

Currently single parents with dependent children ("residential" parents) are entitled to a yearly tax credit ranging from €750 to €1,500 depending on their level of income. To support these individuals, the maximum amount of the single parent tax credit is now to be increased to €2,505. The earnings ceiling for the maximum tax credit is also be increased from €35,000 to €60,000.

As there is no double residency for children of separation and divorce in Luxembourg, the above preferential treatment is only available to "residential" parents. The "non-residential" parents are again excluded and not eligible for the benefit because they cannot "claim" their children.

d. Education & Administration

FAD keeps receiving reports and complaints from Luxembourg parents describing difficulties they encounter when in contact with teachers, Maison Relais employees or Luxembourg school administration while seeking information regarding their children after separation.



Apparently, some teachers and other members of staff are not aware of the Luxembourg law in relation to Parental Authority. Unfortunately, this may lead to violations of the law and parental rights by denying access to information with school correspondence usually sent only to one address where children are legally registered.

We have been made aware of numerous cases where teachers and staff assume that it is only up to the parent, where children have legal residency, to make important decisions related to children (e.g., approval of a choice of lycée). However, such is not the case if both parents have parental authority. Shared parental authority means important decisions must be taken by both parents with both parents having access to all information regarding their child(ren).

Double legal residency can resolve this problem. With the introduction of dual residency there will be no room for misinterpretation of the existing law assuring that both parents are treated equal with both parents receiving by default all correspondence concerning children either from the school or local administration.

To summarize, the law needs revision and necessary adjustments to respect equality between parents. Introduction of double legal residency for children of separated parents is the easiest solution allowing removal of all unjust practices and institutional inequalities linked to single legal residency. Dual residency already exists in other modern, progressive, and egalitarian EU countries such as Denmark or Sweden where the argument of “Equality” is truly valued and not only used for political purposes. LET'S MAKE IT HAPPEN.

3

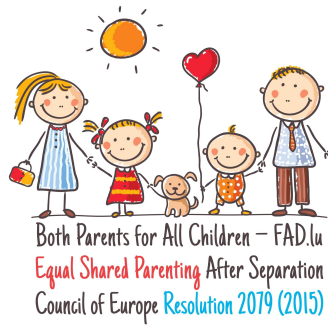
FAD™ Postulate No.3

Creation of the 1st Luxembourg based Structure with Services and Shelter dedicated to Fathers with Children, Victims of Domestic Physical Violence and Emotional Abuse

As a result of social stigmas and bias rhetoric of radical organizations as well as government insufficient support, Luxembourg fathers, victims of domestic physical violence and emotional abuse face reality of being overlooked or simply ignored.

For years much attention has been focused on domestic violence against women although the statistics clearly show that female violence towards men presents serious social problem. Studies, research, and official reports confirm that when partner abuse is defined broadly to include moral violence, emotional abuse, hitting, and who hits first, partner abuse is represented almost evenly across both genders. Luxembourg is not exception to that rule.

According to the Reports presented annually by the Ministry of Equal Rights between Men and Women, every year approx. 60% of victims of reported domestic violence are female (60.69% in 2021) but almost 40% of victims are male (39.31% in 2021).



In 2021 there have already been 10 shelters available to women and mothers with children. Yet, according to the Luxembourg Red Cross (Croix-Rouge luxembourgeoise) there are no structures or shelters in Luxembourg providing similar services and available to fathers with children. There is of course infoMann, but this office financed by the Ministry of Equal Rights between Women and Men is short staffed with insufficient facilities and a long waiting list for those in need. We know that because FAD, a privately established non-profit organization in Luxembourg, is often contacted by fathers, recommended to us by infoMann. These fathers in difficult situations turn to us for assistance because infoMann could not help due to lack of appropriate resources.

When Luxembourg officials discuss publicly the support offered to men and fathers a global number of “spots” available in Luxembourg to “men in distress” is mentioned. Presumably to prove that there is enough of such facilities in the country. **It is important to understand what that global number 32 sometimes referred to as 28 stand for.**

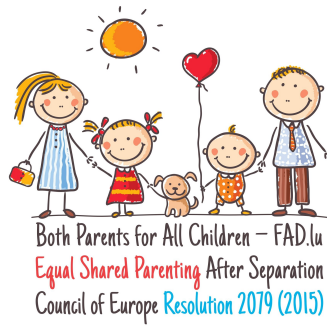
According to infoMann out of the 28-32 places available for “men” 16 are for victims of human trade. Locations of these 16 facilities are usually strictly confidential with accommodations not appropriate for fathers with children and dangerous, usually with some sort of criminal organizations in the background and the necessity of providing maximum security for the victims of Human Trade. Additional 5 places out of the 28-32 are for perpetrators of domestic violence.

The rest, the 11 - 14 spots are for male victims of domestic violence with only 1 (one) place exclusively dedicated to fathers with young children and the second place potentially available for fathers but not appropriate for young children. In an optimistic scenario, there are only 2 (two) places for fathers with kids, victims of domestic violence for the entire country of Luxembourg! In a highly international society often without any family members present in Luxembourg a father with children in urgent need of help has no place to go. Yet we are told this is enough and sufficient. Hypocrisy and discrimination in a pure form.

In 2021 with 249 evictions there were 229 (91.96%) male evictions that included 167 (67.69%) evictions of alleged male perpetrators and 60 evictions (24.47%) of male victims. The Annual Reports of Domestic Violence in Luxembourg never emphasize the inadequate number of male evictions. Presumably because any form of discussion would expose uncomfortable truth that it is not just alleged male perpetrators that are evicted from their houses. In Luxembourg evictions also include male victims of domestic violence who are ordered to leave their homes and often forced to be separated from their children. All in the name of ideology that men are disposable, and fathers are secondary parents whose love and care for their children is not so important or at least does not have the same value as the love of the other parent.

When FAD pointed this out in one of our correspondences, the annual reports as of 2018 stopped mentioning number of male evictions in a coherent way.

The continuous efforts of suppressing any public debate about the problem add to profound misrepresentation of facts insinuating that men are the only cause of domestic violence and women are the only victims of it. All indirectly questioning the importance of a nuclear family, the very foundation of Luxembourg society undermining the role of fathers in children's lives.



The absence of appropriate assistance available to fathers creates a serious problem to Luxembourg society. A challenge that seems to be ignored. Inadequate support offered, leads to bias practices that result in discrimination of fathers in Luxembourg Family Courts and other government institutions. Approach that further expands to violate the rights of Luxembourg children for their natural right to equal or as equal as possible access to both parents. The right guaranteed by numerous conventions and international legal instruments including United Nations Convention on the Rights of the Child.

We are not requesting anything special. We are asking for equal treatment and for the Luxembourg government to recognize that domestic violence as well as moral and emotional abuse is a much greater problem than it is being portrayed and continuously presented to the public.

All facts and evidence leave no question that there is an urgent need for creating the 1st proper structure in Luxembourg dedicated to fathers. Services and an asylum where a father with children can find shelter, receive help as well as legal and financial assistance. The same kind of services like the already existing for years in large numbers and available only to mothers with children. Our association is ready to support and participate in the creation of the 1st facility dedicated to fathers with children. LET'S MAKE IT HAPPEN.

More information, details and a summary of the statistical data related to the topic can be found in the APPENDIX 1 presented along with this document.

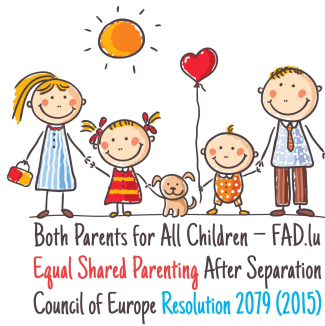
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FAD™ Postulate No.4

Statistical data related to divorce, children custody proceedings and Résidence Alternée

It has been nearly 5 years since the changes of “divorce law” was introduced (1 November 2018). As an organization we often come across an opinion that Résidence Alternée is widely introduced in Luxembourg and that there should be no concerns. Based on the information we have there are more than enough reasons for concern. It would be interesting to learn more but there is no statistical data available to confirm the optimism shared by the leading members of the legal system in Luxembourg. If things are going so well, why there is no data available so the public can make its own opinion about the work of the Luxembourg Family Courts?

As we are reaching the 5 years mark since the new law has been put in place, we would like to request statistical data to be presented to Luxembourg citizens and residents. The period of November 2018 and November 2022 should serve as appropriate sample. The statistics should include the following information (per year):



1. Number of divorces.
2. Number of custody proceedings.
3. Number of Résidence Alternée Égalitaire introduced by Luxembourg Family Courts as a temporary measure.
4. Number of Résidence Alternée Égalitaire introduced by Luxembourg Family Courts as final decision.
5. Number of children's legal residencies awarded to mothers.
6. Number of children's legal residencies awarded to fathers.
7. Number of custody decisions that have been appealed.
8. Number of Court of Appeal decisions changing the ruling of the lower court and introducing Résidence Alternée.

We also would like to submit our request for a report including the above-mentioned data to be presented to the public on an annual basis with a first report covering 2023. LET'S MAKE IT HAPPEN.

5

FAD™ Postulate No.5

Lists of judges (*Still not available to public) and children's attorneys (*Published in Spring 2023)

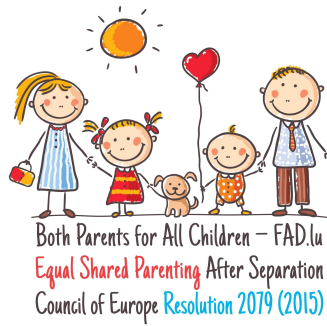
The list of lawyers admitted to practice law in Luxembourg is a public domain and all the names can be found on the website of the Luxembourg Bar. As such the list of children's attorneys should also be publicly accessible.

The fact this is not the case violates "The Law of 10 August 1992 on the Protection of Youth". More precisely Article 18 which states:

"The minor, his or her parents, guardian or other persons having custody of him or her may choose a counselor or ask the juvenile court judge to appoint one for them ex officio." — (*Loi du 10 août 1992 relative à la protection de la jeunesse – Art. 18 « Le mineur, ses parents, tuteur ou autres personnes qui en ont la garde peuvent faire choix d'un conseil ou demander au juge de la jeunesse qu'il leur en soit désigné un d'office. »*).

Children attorneys can be chosen either by minors, parents, legal guardians or appointed by judges. But how can a person choose an attorney or oppose to the appointment of one if the list is not available to the public?

Furthermore, Minister Sam TANSON on 28 September 2022 answering to Parliamentary Question No. 6361 (15 June 2022) clarified and confirmed that: "[...] Neither the Bar Association nor the Ministry of Justice can prohibit lawyers who have not completed training to become child advocates from representing children in court. It is up to the individual lawyer in which domain he wants to practice [...]"



The usual but misleading narrative within the Luxembourg legal system is that, if in search of child's attorney, the attorney must be chosen from "the list". The list that is not available.

Following clarification from the Minister of Justice we know now that a child can be represented by any practicing lawyer who will agree to do so. This does not change the fact that if the list of children's attorneys exists it should be accessible to Luxembourg citizens and residents, and for convenience available on the Luxembourg Bar website.

Also, the common understanding is that in accordance with the EU judicial system transparency, the names of presiding judges in specific courts should be publicly available allowing those interested to have free access to the information. Denying such information to individuals awaiting trial or legal proceedings violates [Article 6 of the European Convention on Human Rights and the right to fair trial](#).

The usual approach of other European countries respecting EU judicial system transparency is for the names of judges to be available on courts' websites. Surprisingly and similarly to the names of children's attorneys this is not the case in Luxembourg. Judges are public figures and GDPR cannot be used as a reason for the information not to be public.

Any request addressed to the court to receive the list is denied. LET'S MAKE IT HAPPEN and instruct appropriate institutions to introduce necessary changes to respect the legal rights of access to the information by Luxembourg citizens and residents.

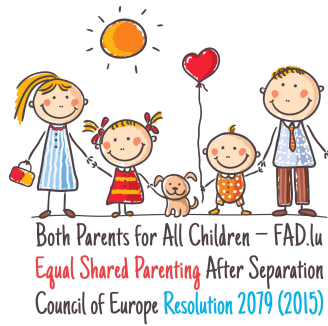
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FAD™ Postulate No.6

SCAS reports

The process of decision-making during children's custody proceedings includes different elements, one of which could be a judge's request for external reports about family situation. The judge for that purpose can appoint SCAS or other stakeholders such as Kannerschlass, Mamerhaf, Pro Familia, Telos, Elisabeth, Treffpunkt etc. These associations meet the parents, families and often the children. They make their evaluations and send their reports directly to the judge. **These reports parents are not allowed to see.**

We keep receiving complaints that the reports very often contain elements that are irrelevant or elements that are highly subjective if not to say biased. In many cases the information included in these evaluations happens to be completely incorrect or non-factual. Parents know this because on occasions they receive copies of these reports by error along with other documents sent by their lawyers. Sometimes the attorneys tell their clients if the report was good or not. Still, the details of



the evaluations should not be shared with parents. The problem is that judges tend to base their decisions largely on the content of the reports.

When divorcing, parties need to be represented by lawyers but very often custody proceedings are not part of divorce. It is this way because society has changed, and nowadays many young parents do not always get married. **In a civil court, excluding divorce proceeding, citizens and residents of Luxembourg can decide to represent themselves.**

Should this be the case, how can a person defend itself when is denied access to all existing evidence? Evidence that can have a detrimental effect on the result of the legal proceedings the person is a part of. This kind of legal maltreatment again violates [Article 6 of the European Convention on Human Rights and the right to fair trial](#).

If a request is made to receive a copy of social report the request is denied with different arguments presented including protection of SCAS employees' interest and their personal data (GDPR). The fact that reports could be anonymized and available is clearly not even considered. Anonymized copies of court decisions can be already obtained. As such it should be equally easy to acquire a copy of a social report. LET'S MAKE IT HAPPEN.

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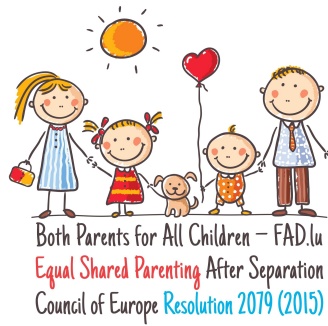
FAD™ Postulate No.7

Council of Europe Resolution 2079 (2015)

In 2015 Council of Europe voted on [Resolution 2079](#) calling all EU member states to introduce Equal Shared Parenting - Résidence Alternée Égalitaire as the default law and a rule for all children custody proceedings. So far, FAD has been unable to acquire explanation why after nearly 8 years Luxembourg Parliament has still not yet voted on the resolution calling for gender-parental equality in Luxembourg.

The reasons behind the non-vote remain unknown yet, concerning, especially since the resolution was initiated by Ms. Françoise HETTO-GAASCH, Luxembourg politician (CSV), former Minister of Equal Rights Between Women & Men and until recently also a member of the parliament.

This political delay and lack of clear guidance for the Luxembourg Family Courts causes suffering of Luxembourg children and leads to promotion of single parenthood. This expands to court decisions denying children equal access to both parents convincing them that one parent is better than the other. Such set of mind often inflicts estrangement and in extreme cases children's emotional abuse in a form of Parental Alienation (PA).



Should Luxembourg have followed the guidance of the Council of Europe in 2015, our organization most likely would not need to present FAD™ Postulates and many of the existing institutional inequalities and outdated regulations could have been removed a long time ago. We can still change this.

Children are the most precious and the most important elements of our society. They are because they are our future. Parents have eternal rights, duties, and responsibilities with regard to their children. This goes equally for both parents. They are to look after their children, but children are not a property of neither parent. As a matter of fact they are not a property of anyone. They are not half-people as some adults think. They are just like us adults, only better. They have dreams, needs and feelings.

For a parent and child, being together is an essential part of family life. Their separation has irremediable negative effects on their relationship and the up bringing of children. Equality between parents must be guaranteed and promoted from the moment a child arrives.

Members of the Luxembourg Parliament is a chosen group of individuals. Those who are to represent Luxembourg people, act, and vote in the best interest of our nation's future. Every Deputy has unique opportunity to make a difference. Please help Luxembourg children and families by voting on the Council of Europe Resolution 2079 (2015) and then by taking necessary steps introducing changes in the above-mentioned laws and regulations removing barriers and difficulties Luxembourg parents must currently endure after separation.

Luxembourg can prove that our small nation can continue being a leader of social reforms creating a truly inclusive and egalitarian society with a legal frame and political support setting example for other European countries and the rest of the world. Please find courage and when voting listen to your conscience not the agenda of your political affiliation. **Courage is the most important because upon courage other virtues rest.** LET'S MAKE IT HAPPEN.

Most respectfully,

Patryk P. RYBIŃSKI
President, FAD – Fathers Against Discrimination a.s.b.l.