

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

19 September 2024, Luxembourg

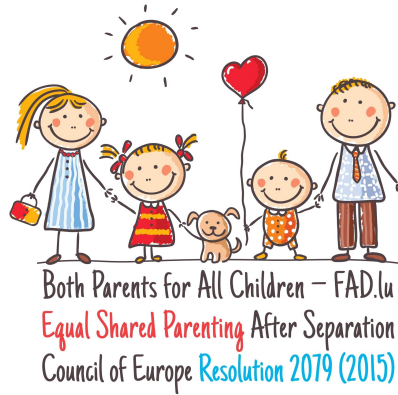
Ministère de la Justice
L'honorable Minister Elisabeth MARGUE
13, rue Erasme
L-2934 Luxembourg
Luxembourg

Dear Minister MARGUE,

We would like to follow up on the [7 FAD™ Postulates](#), sent to the Ministry last year, submitted with the Luxembourg Parliament on 10 May 2023, and re-introduced electronically on an individual basis to all newly elected Members of the Luxembourg Parliament on 29 November 2023. The requests asking for support advocating necessary changes in laws and regulations removing unnecessary administrative barriers and discriminatory practices created by the Luxembourg institutions.

While a need of resolving concerns raised in the above-mentioned document should be a matter of utmost urgency for a country Luxembourg claims to be, we would like to point out yet to another issue that has been reported to our association recently.

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On 31 August 2024 an inquiry was submitted to National Register of Natural Persons. We requested explanation why following separation, a parent with parental authority who provides maintenance for a child, which sometimes may even live equal amount of time with both parents, is denied by guichet.lu access to full important data concerning the dependent daughter or son.

A copy of a response dated 10 September 2024 received from Mr. Pierre TRAUSCH, Service juridique et registre national des personnes physiques, Centre des technologies de l'information de l'État can be found attached to this letter as an Appendix A.

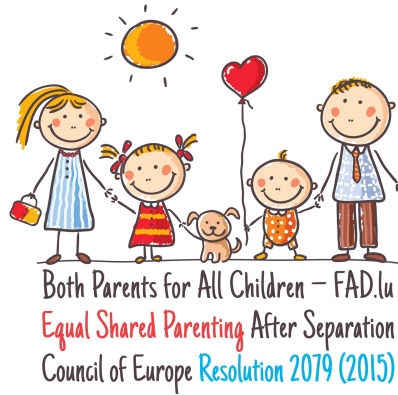
Mr. TRAUSCH in his letter refers to, what can be only described, as legal inaccuracy created by outdated regulation associated with the provisions of Art. 36 of the amended law of June 19, 2013, relating to the identification of natural persons (loi modifiée du 19 juin 2013 relative à identification des personnes physiques).

In his correspondence Mr. TRAUSCH states that it is not possible for a parent with parental authority but with a different registered address than the one of a child, to have administrative access via guichet.lu to all data concerning the dependent kid. He also confirms that the same parent to obtain information about own child must go through a humiliating procedure of providing proof that such parental authority has not been withdrawn.

Considering the explanation provided, it is evident that the Luxembourg administration, despite 6 years of passing, has failed to fully incorporate the changes of the family reform of November 2018.

Prior to the mentioned date only the parent that shared the same address with a child had legal parental authority. Following a decision of the Luxembourg Constitutional Court, the reform was implemented providing the principle of joint parental authority for both parents regardless of being divorced or never been married.

According to Art. 372 Code Civil, the parental authority belongs to the parents and the parental separation has no impact on the parental authority. Only in specific circumstances provided under article 387-9 and following of the Code Civil the parental authority can be withdrawn totally or partially by decision of the district court.



Thus, although morally questioned, the Art. 36, prior to the 2018 reform had a legal standing. After 2018, the Art. 36 contradicts the Art. 372 with direct discriminatory consequences of targeting one of the parents, even though both parents remain on the same legal footing with regards to the common child. Outdated and backward approach using residence of a child as an instrument of discrimination to deny the natural and a legal parental right of access to information about dependent child.

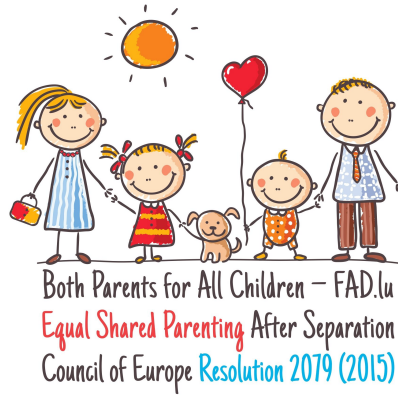
The so called “residential parent”, that shares registered address with a daughter, or a son can easily access their important data and does not have to provide evidence that has the parental authority each time connects to guichet.lu. The other parent also with parental authority is denied full access to the information.

Article 376 creates a presumption that any person who is a parent of a child has parental authority. Providing that, the non-resident parent must prove at each moment that has parental authority is unjust and nearly impossible. For example, in case of a divorce, this may be mentioned in the divorce judgment, but no court or administration can provide an updated parental authority certificate. Asking a person to prove the absence of something is also against the basic principles of law.

The argument presented by Mr. TRAUSCH, that giving access to a parent who has a different registered address than his or her child would lead to a risk of third parties gaining access to information, bizarre to say the least. Following the same logic, this can be also assumed about the other parent.

Access to guichet.lu is based on an individual, electronically encrypted and secured method. The access to myguichet.lu account can be only transferred to a third party either by hacking or that parent providing their access details voluntarily to a third person. Parents with parental authority have the legal right to unlimited access to all information concerning dependent child and the matter should be treated as such.

Considering separation or divorce it could be accepted that a parent with a different registered address is asked to request access. Yet, once confirmed and approved, this access should be granted permanently and changed only in case of any adjustment of the parental legal standing. In view of the Article 376, denying access to data of a dependent child on the basis of the Art. 36 of the amended law of June 19, 2013, is unlawful and unacceptable.



Art.36 is of a law of 2013 and in its current form also stands in opposition to equal treatment, a political slogan so often used by Luxembourg politicians and authorities, resulting in violation of 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 with both parents having parental authority, access to information concerning a child must be available without any form of restriction discriminating one parent and favoring the other.

We are looking forward for the Ministry of Justice to take a stand regarding the discriminatory practices created by the Luxembourg institutions exposed in the 7 FAD™ Postulates. We also would like to know what can be considered as quick resolution to removing the unjust and unreasonable obstacles linked to denying both parents equal access to the data of common children after separation.

We remain available for any questions there might be.

Mir werbleiwe mat greisstem Respekt,

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

APPENDIX A:

----- Forwarded message -----

From: **Pierre Trausch** <Pierre.Trausch@ctie.etat.lu>

Date: Tue, Sep 10, 2024 at 1:59 PM

Subject: RE: Information about children on myguichet.lu

To: Patryk P. RYBINSKI <Patryk.Rybinski@gmail.com>

Cc: GUICHET Support <support@guichet.etat.lu>, walid.megharbi@infomann.lu <walid.megharbi@infomann.lu>, Claude Schroeder <ahl.luxembourg@gmail.com>, contact@fad.lu <contact@fad.lu>, CTIE Registre National <Registre.National@ctie.etat.lu>

Dear Mister Rybiński,

I refer to your email below and confirm that the display on *MyGuichet* for minor children corresponds to the provisions of art. 36 of the amended law of June 19, 2013 relating to the identification of natural persons (loi modifiée du 19 juin 2013 relative à identification des personnes physiques).

The reason why parents do not see on *MyGuichet* all the information regarding their minor children who do not reside at the same address is as follows:

The provisions of article 36 of the above-mentioned law provide that a dated and signed request must be submitted to consult the data in the RNPP (National Register of Natural Persons).

In the case of such a request for a minor child, a document can always be requested by the Administration (for example an up-to-date document certifying that the requesting parent currently has parental authority).

With access via *MyGuichet*, the situation is different because the data can be consulted directly from anywhere and at any time without the Administration being able to request an up-to-date document on parental authority.

This is why access to data via *MyGuichet* is limited to the parent where the child lives (i.e., the parent with exactly the same address in the RNPP).

However, it's possible for you to obtain all the administrative data of your children collected in the RNPP by issuing a request as provided in art. 36 with a copy of your identity card and an updated document proving that you have parental authority for the concerned child.

Please find below the relevant extract from the aforementioned law of June 19, 2013:

Loi modifiée du 19 juin 2013 relative à l'identification des personnes physiques :

« Art. 36. (1) Toute demande de communication de données doit être adressée soit directement au guichet de la commune sur base d'un formulaire, soit par lettre simple ou par voie électronique au ministre pour les données inscrites sur le registre national ou au bourgmestre pour les données inscrites sur le registre communal. Elle doit être datée et signée. Une demande introduite par voie électronique doit comporter une signature électronique avancée sur base d'un certificat qualifié.

La demande de communication est présentée par la personne concernée, son tuteur, son curateur, son administrateur légal, son administrateur ad hoc ou son mandataire spécial. Si la personne concernée est mineure d'âge non émancipée, la demande doit être faite par un des parents qui exerce l'autorité parentale ou par le tuteur. La demande doit être accompagnée d'une photocopie de la pièce d'identité de l'auteur de la demande et, le cas échéant, du titre en vertu duquel il agit.

Les données sont soit communiquées, selon le souhait de l'auteur de la demande, par lettre ou par courrier électronique, soit imprimées au guichet et ce à chaque fois sous forme d'un extrait du registre national reproduisant de manière exacte l'ensemble des données relatives à la personne concernée. Cet extrait est établi en langues française, allemande et luxembourgeoise.

(2) La demande est refusée si elle est introduite par une personne qui ne remplit pas les conditions et les formalités requises par la présente loi. Tout refus de communication des données est motivé et le demandeur en est informé par la voie appropriée, selon les modalités prescrites au paragraphe 1er.

(3) Il est mentionné sur l'extrait remis au demandeur que les informations qu'il contient reproduisent de manière exacte l'ensemble des données de cette personne inscrites sur le registre visé et que cet extrait ne vaut pas extrait d'état civil. »

Kind greetings,”

Pierre Trausch

Service juridique et registre national des personnes physiques

Tél. : (+352) 247-81483

E-mail : pierre.trausch@ctie.etat.lu



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