



# Report of Various Size – Fieldwork research (FRANET)

## Criminal Detention in the EU – Conditions and Monitoring

### Country Report Luxembourg

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## Introduction

Luxembourg has three different institutions for detention:

- the Luxembourg Penitentiary Centre (*Centre pénitentiaire de Luxembourg*) with two facilities located in Schrassig (CPL) and Givenich (CPG)
- the State Socio-Educational Centre (*Centre Socio-Educatif de l'Etat*, CSEE) dedicated to minors, with two facilities located in Schrassig and Dreibern
- the Holding Centre for Foreigners (*Centre de Rétenion*) for detained irregular migrants, located in Findel.

The standards within these facilities differ somewhat, as they are established by different Acts and have different internal regulations.

Persons can also be held in Police custody in security cells at Luxembourg Police Stations, which have different standards from the the rules of the abovementioned detention facilities<sup>1</sup>.

The main relevant legal instruments with regard to the criminal detention, youth detention and migrant holding (*rétenion*) in Luxembourg are:

- Grand-Ducal Regulation of 24 March 1989 regarding the administration and internal organisation of penitentiary establishments, (*Règlement grand-ducal du 24 mars 1989 concernant l'administration et le régime interne des établissements pénitentiaires*)
- Act of 10 August 1992 regarding youth protection, (*Loi du 10 août 1992 relative à la protection de la jeunesse*)
- Act of 27 July 1997 regarding the reorganisation of the penitentiary administration (*Loi du 27 juillet 1997 portant réorganisation de l'administration pénitentiaire*)
- Act of 16 June 2004 regarding the reorganisation of the State Socio-Educational Centre, (*Loi du 16 juin 2004 portant réorganisation du centre socio-éducatif de l'Etat - CSEE*)
- Act of 28 May 2009 regarding the creation and organisation of the Holding Centre, (*Loi du 28 mai 2009 portant création et organisation du Centre de rétenion et modifiant 1. le Code de la sécurité sociale;2. la loi modifiée du 22 juin 1963 fixant le régime des traitements des fonctionnaires de l'Etat;3. la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration*)
- Act of 11 April 2010 regarding (1) the ratification the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and (2) the Ombudsman's nomination as the national preventive mechanism, (*Loi du 11 avril 2010 (1) portant approbation du protocole facultatif se rapportant à la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, adopté par l'Assemblée Générale de l'Organisation des Nations Unies à New York, le 18 décembre 2002 et (2) portant désignation du médiateur en tant que mécanisme national de prévention et fixant ses attributions*)
- Act of 29 August 2017 amending the Act of 16 June 2004 regarding the reorganisation of the State Socio-Educational Centre, (*Loi du 29 août 2017 portant modification 1. de la loi modifiée du 16 juin 2004 portant réorganisation du centre socio-éducatif de l'État ; 2. de la loi modifiée du 29 juin 2005 fixant les cadres du personnel des établissements d'enseignement secondaire et secondaire technique ; 3. de la loi modifiée du 23 juillet 1952 concernant l'organisation militaire ; 4. de l'article 32 du Livre 1er du code de la sécurité sociale*)
- Bill 7042 (*projet de loi 7042*) regarding the reform of the prison administration. This Bill was published by Parliament on May 16 2018, but no new elements on the cell space, acces to healthcare, sanitary facilities and violence between detainees are included in the text. With regard to the time out of cell and the voluntary insertion plan, the Bill states that the duration of the outdoor walk is determined by the Director of the establishment and cannot be effectuated before 6h00 and after 22h00<sup>2</sup>.

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<sup>1</sup> For more information, see the Ombudsman's report regarding the deprivation of liberty by the Grand-Ducal police, 2015, (*Les privations de liberté par la Police grand-ducale, Rapport de suivi 2015*), <http://www.ombudsman.lu/FR/CELPL-002-02.php>

<sup>2</sup> See article 21 of the Bill 7042 available at:

With regard to sports activities, the Bill states that sports and other activities are foreseen in order to facilitate the insertion of the detainee<sup>3</sup>. Moreover, the Bill introduces a novelty by distinguishing between detainees (*détenus*) which is a general term referring to any person detained for whatever reason ; convicts (*condamnés*) which refers to persons who have already been convicted for an offence, and remand prisoners (*prévenus*), which refers to preventive detention<sup>4</sup>. More specifically, article 2(3) of the Bill 7042 is the first provision in within the legal framework of Luxembourg with a reference to the European Arrest Warrant (“EAW”).

Lastly, article 4 of the reform Bill defines the administrative structure which comprises the Direction, the penitentiary centre of Uerschterhaff, the penitentiary centre of Luxembourg (Schrassig) (CPL), the penitentiary centre of Givenich (CPG) and the Institute of penitentiary education<sup>5</sup>.

In the case *S.J. v. Luxembourg* (n° 47229/12)<sup>6</sup> before the European Court of Human Rights (ECtHR), the applicant, who was serving a prison sentence, claimed to have been forced to undress himself in front of several guards in his open cell, claiming that an inspection pursued under such conditions constituted an inhuman and degrading treatment under article 3 of the ECHR. Given the fact that the specific type of cell in which the applicant was detained was an open cell, it was considered natural that the applicant could be exposed to the views of third persons. Thus, the Court rejected his argument by insisting on the absence of an intent to humiliate on the part of the guardians.

Nevertheless, this potentially raises questions as to the compatibility of open cell standards with the international standards for detention conditions in general, and in particular with regard to privacy.

According to the United States Department of State Country Reports on Human Rights Practices from 2016<sup>7</sup> and 2017<sup>8</sup>, prison and detention center conditions in Luxembourg do not raise any human rights concerns apart from the ones mentioned above<sup>9</sup>.

According to the Report from the 2015 visit to Luxembourg by the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)<sup>10</sup>, the use of verbal abuse and excessively tight handcuffing continues in Luxembourg detention facilities.

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[https://www.chd.lu/wps/PA\\_RoleDesAffaires/FTSByteServletImpl?path=52960013B58ADF2699A49B37EB8F60FA3F266DD275A65A3A8422A941E5960817704ACFD72D1FD42A98E1EA2A9278491A\\$1B8DECF6825F2D19834EE79904E9B4E0](https://www.chd.lu/wps/PA_RoleDesAffaires/FTSByteServletImpl?path=52960013B58ADF2699A49B37EB8F60FA3F266DD275A65A3A8422A941E5960817704ACFD72D1FD42A98E1EA2A9278491A$1B8DECF6825F2D19834EE79904E9B4E0)

<sup>3</sup> See article 28 of the Bill 7042 available at :

[https://www.chd.lu/wps/PA\\_RoleDesAffaires/FTSByteServletImpl?path=52960013B58ADF2699A49B37EB8F60FA3F266DD275A65A3A8422A941E5960817704ACFD72D1FD42A98E1EA2A9278491A\\$1B8DECF6825F2D19834EE79904E9B4E0](https://www.chd.lu/wps/PA_RoleDesAffaires/FTSByteServletImpl?path=52960013B58ADF2699A49B37EB8F60FA3F266DD275A65A3A8422A941E5960817704ACFD72D1FD42A98E1EA2A9278491A$1B8DECF6825F2D19834EE79904E9B4E0)

<sup>4</sup> See article 2 of the Bill 7042 available at:

[https://www.chd.lu/wps/PA\\_RoleDesAffaires/FTSByteServletImpl?path=52960013B58ADF2699A49B37EB8F60FA3F266DD275A65A3A8422A941E5960817704ACFD72D1FD42A98E1EA2A9278491A\\$1B8DECF6825F2D19834EE79904E9B4E0](https://www.chd.lu/wps/PA_RoleDesAffaires/FTSByteServletImpl?path=52960013B58ADF2699A49B37EB8F60FA3F266DD275A65A3A8422A941E5960817704ACFD72D1FD42A98E1EA2A9278491A$1B8DECF6825F2D19834EE79904E9B4E0)

<sup>5</sup> See article 4 of the Bill 7042 available at:

[https://www.chd.lu/wps/PA\\_RoleDesAffaires/FTSByteServletImpl?path=52960013B58ADF2699A49B37EB8F60FA3F266DD275A65A3A8422A941E5960817704ACFD72D1FD42A98E1EA2A9278491A\\$1B8DECF6825F2D19834EE79904E9B4E0](https://www.chd.lu/wps/PA_RoleDesAffaires/FTSByteServletImpl?path=52960013B58ADF2699A49B37EB8F60FA3F266DD275A65A3A8422A941E5960817704ACFD72D1FD42A98E1EA2A9278491A$1B8DECF6825F2D19834EE79904E9B4E0)

Please note that the penitentiary centre located in Uerschterhaff is not yet functional and it planned to open in 2022. For more information, see: <https://ap.gouvernement.lu/fr/centres-penitentiaires/centre-penitentiaire-uerschterhaff.html>

<sup>6</sup> European Court of Human Rights, Case S.J. (n° 2) v. Luxembourg (n° 47229/12) of 31 October 2013, available at: [https://www.echr.coe.int/Documents/FS\\_Detention\\_conditions\\_FRA.pdf](https://www.echr.coe.int/Documents/FS_Detention_conditions_FRA.pdf)

<sup>7</sup> United States Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices*, “Luxembourg 2016 Human Rights Report”, 2016, available at: <https://www.state.gov/documents/organization/265656.pdf>

<sup>8</sup> United States Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices*, “Luxembourg 2017 Human Rights Report”, 2017, available at: <https://www.state.gov/documents/organization/277433.pdf>

<sup>9</sup> The reports pick up on exactly the same concerns as those included in the previously quoted CPT reports.

<sup>10</sup> Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment-CPT Report of 28/1/2015 to 2/2/2015, (*Rapport au Gouvernement du Grand-Duché de Luxembourg relatif à la visite effectuée au*

The same reports also likens security cells in police stations with “cages”. Measuring less than 2m<sup>2</sup>, they should, in the view of the CPT, no longer be used as facilities for questioning suspects or for prolonged detention.

Furthermore, the report shows that inter-prisoner violence is still a reality and that minors continue to be detained in the CPL.

While the material conditions in the CPL and the Schrassig Centre appeared to be good, the Dreibern Centre needs to improve its living conditions. In addition, the health care provided for inmates suffering from serious psychiatric disorders within the CPL appears unsatisfactory.

In March 2018, a large number of detainees on the CPL decided to strike to object to the length of prison sentences, the high fines and high costs of legal expenses. Additional claims of the detainees were related to the delay of entry into force of the legislative Bill regarding the execution of sentences. The strike resulted in a series of disciplinary sanctions for the detainees, including the transfer of several detainees to another penitentiary structure and the temporary suspension of visits.

The Act of 16 June 2004 regarding the reorganisation of the State Socio-Educational Centre (*Loi du 16 juin 2004 portant réorganisation du centre socio-éducatif de l'Etat - CSEE*) established the conditions and functioning of a new unite, called the “security unit”. This unit can receive up to 12 children for periods of three months (extendable). While this unit functions as a closed regime, and is, de facto, a detention of children, the Director of the CSEE does not wish to speak about “detention”, because no formal system of juvenile justice exists in Luxembourg<sup>11</sup>. Hence, children who are in the security unit are “placed” there by the juvenile judge (*tribunal de la jeunesse*), and not “detained”<sup>12</sup>.

#### Cell space

What is the national standard for cell space available to prisoners in m<sup>2</sup>? Is it regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?

*Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).*

*Please, provide a link to the National Preventive Mechanism’s reports **from the reference period** (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>*

#### **Please cite any relevant sources**

The Grand-Ducal Regulation of 24 March 1989 regarding the administration and internal organisation of penitentiary establishments (*Règlement grand-ducal du 24 mars 1989 concernant l'administration et le régime interne des établissements pénitentiaires*) enumerates the function and organisation of the penitentiary establishments in Luxembourg. However, specific details on cell space cannot be found in this Regulation. Such details are often defined within the internal rules of each penitentiary centre.

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*Luxembourg par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 28 janvier au 2 février 2015*), published in Strasbourg on 17 September 2015, available at: <https://rm.coe.int/16806973da>

<sup>11</sup> Email correspondence with the Director of the CSEE, 18 June 2018.

<sup>12</sup> Ibid.

Regarding cell space within Luxembourg prisons, articles 4, 5 and 6 of the Grand-Ducal Regulation make a reference to the repartition of cells without any reference to the relevant cell space in square meters<sup>13</sup>. The Grand-Ducal Regulation establishes a separation of the detainees based on reasons for detention, the detainees' personality, the age of the detainees etc. Nevertheless, according to the Ombudsman's report from 2010, these elements are not always taken into account in practice for the allocation of new detainees<sup>14</sup>. The same report also highlights that, among detained male minors, no real separation existed between convicted et remand detainees.

### CPL

According to a 2010 report of the Ombudsman regarding the entry and health of a detainee within prison<sup>15</sup>, the cell equipment is not always the same in terms of furniture. The Ombudsman has noticed several well equipped cells but also several cells that were rather old, although still acceptable. According to the 2015 CPT report<sup>16</sup>, the material conditions of detention within the CPL are satisfactory, and cells are clean and correctly furnished. There is also a common space with kitchen and telephone.

Although the exact cell space is not described within the Grand-Ducal Regulation, it can be found within the CPT report on Luxembourg of 2003<sup>17</sup>, which notes that the cell's surface of 12 m<sup>2</sup> with a W.C., table, chairs and closet is considered suitable for maximum two detainees. The access to natural light, artificial lighting, ventilation and heating was also considered adequate. The CPL cells are 12m<sup>2</sup> for two persons according to the 2003 CPT report, and the cell space is thus compatible with the CPT standards of 6m<sup>2</sup> for a single occupancy cell.

### CSEE

The size of the cells ("rooms" or "*groupes de vie*" as they are called by the CSEE) is 12,02 m<sup>2</sup>, and 3 children share one cell (4 cells for 12 children). There is also an isolation cell (which the CSEE refers to as the "protection room" (*chambre protectrice*)), which has the size of 12,10 m<sup>2</sup><sup>18</sup>.

### Holding Centre (*Centre de rétention*)<sup>19</sup>

The Holding Centre in Findel, opened in 2011, has a capacity of 88 persons, divided in 4 units in order to separate men from women and to receive families separately<sup>20</sup>. Every unit is equipped with a secure courtyard and according to the Ombudsman's report its premises are recent, clean and in a good condition (eclairation, aeration, windows, showers accessible at any time, washing machines). All detainees are eligible to an individual

<sup>13</sup> See articles 4, 5 and 6 of the Grand-Ducal Regulation of 24 March 1989 regarding the administration and internal organisation of penitentiary establishments, (*Règlement grand-ducal du 24 mars 1989 concernant l'administration et le régime interne des établissements pénitentiaires*). Available at: <http://legilux.public.lu/eli/etat/leg/rgd/1989/03/24/n2/jo>

<sup>14</sup> Luxembourg, Ombudsman's Report of 17 November 2010 regarding the entry and health of the detainee within prison, (*Rapport relatif à l'entrée du détenu en milieu carcéral et à la santé en milieu carcéral, Service du contrôle externe des lieux privés de liberté, Le Médiateur du Grand-Duché de Luxembourg*), available at: <http://www.ombudsman.lu/FR/CELPL-002-02.php>

<sup>15</sup> Luxembourg, Ombudsman's Report of 17 November 2010 regarding the entry and health of the detainee within prison, (*Rapport relatif à l'entrée du détenu en milieu carcéral et à la santé en milieu carcéral, Service du contrôle externe des lieux privés de liberté, Le Médiateur du Grand-Duché de Luxembourg*), available at: <http://www.ombudsman.lu/FR/CELPL-002-02.php>

<sup>16</sup> Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment-CPT Report of 28/1/2015 to 2/2/2015, (*Rapport au Gouvernement du Grand-Duché de Luxembourg relatif à la visite effectuée au Luxembourg par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 28 janvier au 2 février 2015*), published in Strasbourg on 17 September 2015, available at: <https://rm.coe.int/16806973da>

<sup>17</sup> CPT Report of 2/2/2003 to 7/2/2003, (*Rapport au Gouvernement du Grand-Duché de Luxembourg relatif à la visite effectuée au Luxembourg par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 2 au 7 février 2003*), available at: <https://rm.coe.int/16806973d6>

<sup>18</sup> Email correspondence with the Director of the CSEE, 18 June 2018.

<sup>19</sup> Information from this section comes from a phone interview with the Director of the Holding Centre, as well as a 2014 report from the Ombudsman.

<sup>20</sup> Luxembourg, Ombudsman's Report on the Holding Centre, (*Le centre de Rétention, Service du contrôle externe des lieux privés de liberté, La Médiateure du Grand-Duché de Luxembourg*), available at: <http://www.ombudsman.lu/FR/CELPL-002-02.php>

room apart from the families who can benefit from bigger rooms. The cell space is 7,6 m<sup>2</sup> or 9,2 m<sup>2</sup>. The bigger cells were initially intended for two persons, but in practice every detainee has his/her own room and does not have to share with another person. An alarm system is established within the rooms in case of emergency. Despite the limited space of the individual rooms, they are all equipped with a table, a chair, a toilet and an integrated sink, television and radio.

With regard to hygiene, the persons are not allowed to eat within their rooms but use the common room equipped with a kitchen, a sofa, tables and benches, a football table and a game of darts (flechettes).

During daytime, the detainees are authorised to move freely within their unit, the common room and their rooms with a permanent access to the courtyard. They are confined in their rooms between 21h30 and 7h00. This goes against the Ombudsman's advice, which highlights, in particular, that "*the duration of the confinement is significant, mostly because of the very small size of the rooms*", and suggests to the authorities of the Holding Centre to set the daily time of confinement to the rooms to 23h00, if it is considered necessary<sup>21</sup>.

In addition, each unit disposes of three mobile phones, permanently accessible to detainees (credit of 10 euros per week offered by the Holding Centre) and a range of international journals from different countries is available for the detainees every day. Regarding the detainees' right to visits, no specific limit has been set as long as the timetable is followed –every day from 8h00 to 13h00 and 13h00 to 18h00. In addition, more visits can be scheduled upon demand and there is no restriction of surveillance of every visit (no cameras within the visit rooms).

### Sanitary Facilities

What is the national standard with regard to access to toilets? Are these located in cells? If not, do prisoners have access to these facilities without undue delay, even during the night? Do these facilities offer privacy to prisoners who use them?

What is the national standard with regard to access to regularly cleaned shower/bathing facilities? How often is this access provided? Do these facilities offer privacy to prisoners who use them?

Is the provision of cleanly sanitary facilities regulated by any legal instrument such as a legislative act, internal prison regulations, manuals, policy papers etc.?

*Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).*

*Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>*

### **Please cite any relevant sources**

#### CPL and CPG

With regard to the sanitary facilities, the Grand-Ducal Regulation of 24 March 1989 stipulates in article 39 that the internal organisation of the hygiene service is determined by the Director<sup>22</sup>. Articles 270 and 272 of the same Regulation highlight the importance of personal hygiene, by distributing all showering and washing products and the obligation to shower at least once a week<sup>23</sup>.

<sup>21</sup> Luxembourg, Ombudsman's Report on the Holding Centre, para. 32, p. 30, (*Le centre de Rétention, Service du contrôle externe des lieux privés de liberté, La Médiatrice du Grand-Duché de Luxembourg*), available at: <http://www.ombudsman.lu/FR/CELPL-002-02.php>

<sup>22</sup> Luxembourg, Grand-Ducal Regulation of 24 March 1989 regarding the administration and internal organisation of penitentiary establishments, (*Règlement grand-ducal du 24 mars 1989 concernant l'administration et le régime interne des établissements pénitentiaires*), article 39. Available at: <http://legilux.public.lu/eli/etat/leg/rgd/1989/03/24/n2/jo>

<sup>23</sup> Articles 270 and 272 of the Grand-Ducal Regulation of 24 March 1989 regarding the administration and internal organisation of penitentiary establishments, (*Règlement grand-ducal du 24 mars 1989 concernant l'administration et le régime interne des établissements pénitentiaires*), article 39. Available at: <http://legilux.public.lu/eli/etat/leg/rgd/1989/03/24/n2/jo>

The Ombudsman's report of 17 November 2010 regarding the entry and health of a detainee within prison<sup>24</sup> showed that the condition of the cells, showers and kitchens in the CPL were poor. Even the courtyard surrounding the cells' windows were dirty because of detainees throwing their garbage outside their windows. In opposition to the hygiene conditions of the CPL, the CPG hygiene conditions were observed to be adequate, even excellent.

The maintenance of mattresses and sleeping conditions are considered to comply with the standards set, except for the change of bed sheets within the CPL, which is considered insufficient in cells in which the detainees can consume their meals (every two weeks).

While access to showers is permanent (in the day time), the Ombudsman's report found that the showers of one of the blocks (F) did not function properly, the guards had to adjust the temperature for all showers, the detainees not being able to adjust it themselves<sup>25</sup>.

The same report criticises the sanitary facilities within the cells, as the toilet is separated from the rest of the cell only from one side. For double or triple cells, the non-separation of the sanitary facilities from the rest of the cell causes an issue of hygiene, intimacy and discomfort for the detainees. As for the security cells, they are still equipped with the old model of toilets where you cannot sit on (squatting toilets)<sup>26</sup>.

The sanitary facilities within the sports room seem inadequate, with insufficient ventilation, according to the Ombudsman's report. The showers are too small to receive all detainees participating in the sports sessions and who wish to shower, leading to poor hygiene conditions<sup>27</sup>.

In addition to the Ombudsman's report, the Report from the 2015 visit to Luxembourg by the CPT<sup>28</sup> also noted that the sanitary facilities within the cell were not adequately separated from the rest of the cell, and only a curtain was used. The CPT standards demand that toilets in double occupancy should be fully partitioned with ready access to proper facilities and good standards of hygiene. Luxembourg complies with the CPT standards, except for the partition system that includes only a curtain.

The legal framework has not changed since the last CPT visit, which remains the Grand-Ducal Regulation of 24 March 1989. Even if the authorities have for a long time foreseen to revise this legislation, there have so far only been two legislative bills on the execution of sanctions (*n° 6381 portant réforme de l'exécution des peines*) and on the penitentiary administration (*n° 6382 portant réforme de l'administration pénitentiaire*), which have both been withdrawn. In 2016, a new legislative Bill regarding the penitentiary administration (Bill 7042) was introduced in Parliament and is currently being negotiated<sup>29</sup>.

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<sup>24</sup> Luxembourg, Ombudsman's Report of 17 November 2010 regarding the entry and health of the detainee within prison, (*Rapport relatif à l'entrée du détenu en milieu carcéral et à la santé en milieu carcéral, Service du contrôle externe des lieux privés de liberté, Le Médiateur du Grand-Duché de Luxembourg*), available at : <http://www.ombudsman.lu/FR/CELPL-002-02.php>

<sup>25</sup> Luxembourg, Ombudsman's Report of 17 November 2010 regarding the entry and health of the detainee within prison, para. 62, p. 106, (*Rapport relatif à l'entrée du détenu en milieu carcéral et à la santé en milieu carcéral, Service du contrôle externe des lieux privés de liberté, Le Médiateur du Grand-Duché de Luxembourg*), available at : <http://www.ombudsman.lu/FR/CELPL-002-02.php>

<sup>26</sup> Luxembourg, Ombudsman's Report of 17 November 2010 regarding the entry and health of the detainee within prison, para. 10, p. 70, (*Rapport relatif à l'entrée du détenu en milieu carcéral et à la santé en milieu carcéral, Service du contrôle externe des lieux privés de liberté, Le Médiateur du Grand-Duché de Luxembourg*), available at : <http://www.ombudsman.lu/FR/CELPL-002-02.php>

<sup>27</sup> Luxembourg, Ombudsman's Report of 17 November 2010 regarding the entry and health of the detainee within prison, (*Rapport relatif à l'entrée du détenu en milieu carcéral et à la santé en milieu carcéral, Service du contrôle externe des lieux privés de liberté, Le Médiateur du Grand-Duché de Luxembourg*), available at: <http://www.ombudsman.lu/FR/CELPL-002-02.php>

<sup>28</sup> CPT Report of 28/1/2015 to 2/2/2015, (*Rapport au Gouvernement du Grand-Duché de Luxembourg relatif à la visite effectuée au Luxembourg par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 28 janvier au 2 février 2015*), published in Strasbourg on 17 September 2015, available at: <https://rm.coe.int/16806973da>

<sup>29</sup> See the Bill 7042 available at:

## CSEE

Each cell (“*groupe de vie*”, which is shared by 3 children) has a bathroom<sup>30</sup>.

### Holding Centre (*Centre de rétention*)<sup>31</sup>

In the Holding Centre, there is a toilet and sink in each cell, and during daytime there is free access to the bathrooms and showers. In the night time, access can be requested in case of case of need, by ringing the emergency alarm bell (for instance in case of illness).

### **Time out of cell**

What is the national standard set for time per day/week spent by prisoners outside of their cells:

Outdoors (within the boundary of the prison)?

Indoors in the common area?

Are sports or other recreational and educational facilities available to prisoners? If so what types?

Is time spent in cells regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?

*Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).*

*Please, provide a link to the National Preventive Mechanism’s reports **from the reference period** (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>*

### ***Please cite any relevant sources***

#### CPL and CPG

Two different prison regimes exist within the Luxembourg penitentiary centres: Regime A and B (*régime A et B*). Regime A is the stricter one, with confinement to the cell for up to 22,5 hours per day<sup>32</sup>. Regime B is a form of semi-open regime, in which the detainees can spend the daytime circulating freely in their units<sup>33</sup>.

The rule applied to convicted detainees and to some remand prisoners seems satisfactory according to the CPT 2015 report. The detainees are allowed to circulate freely within their unit during the day and a grand majority can participate in activities or work.

While the *prevenus régime A* do not have access to calls and visits even for an extended periods (as ruled by the examining judge), the prisoners under *régime B* benefit from a minimum of five hours visits per month and free access to telephone cabins.

[https://www.chd.lu/wps/PA\\_RoleDesAffaires/FTSByteServletImpl?path=52960013B58ADF2699A49B37EB8F60FA3F266DD275A65A3A8422A941E5960817704ACFD72D1FD42A98E1EA2A9278491A\\$1B8DEC6825F2D19834EE79904E9B4E0](https://www.chd.lu/wps/PA_RoleDesAffaires/FTSByteServletImpl?path=52960013B58ADF2699A49B37EB8F60FA3F266DD275A65A3A8422A941E5960817704ACFD72D1FD42A98E1EA2A9278491A$1B8DEC6825F2D19834EE79904E9B4E0)

<sup>30</sup> Email correspondence with the Director of the CSEE, 18 June 2018.

<sup>31</sup> Information from this section comes from a phone interview with the Director of the Holding Centre, as well as a 2014 report from the Ombudsman.

<sup>32</sup> Please note that we are checking the exact conditions of this detention regime in order to include more precise information in the next version of the report.

<sup>33</sup> See the CPT Report from 2009, (*Rapport au Gouvernement du Grand-Duché de Luxembourg relatif à la visite effectuée au Luxembourg par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 22 mars au 27 avril 2009*), available at: [http://www.mj.public.lu/actualites/2010/10/Rapport\\_CPT/091211\\_Rapport\\_CPT\\_2009\\_Luxembourg.pdf](http://www.mj.public.lu/actualites/2010/10/Rapport_CPT/091211_Rapport_CPT_2009_Luxembourg.pdf)

The Grand-Ducal Regulation of 24 March 1989 mentions in articles 98 and 99 the possibility of sports activities supervised by sports monitors according to the CPL's director's instructions<sup>34</sup>. The sports activities are common to the convicted and remand detainees. Furthermore, in articles 111 and 113, the Grand-Ducal Regulation stipulates the opening and closing hours of the CPL (7h00-22h00) with mandatory supervision of detainees, and the opening and closing hours of the CPG, which are fixed by the Director<sup>35</sup>.

The CPT standards mention a minimum of one hour per day out of cell for outdoor physical exercise and a minimum of eight hours or more outside the cells for recreational and cultural activities. Luxembourg is considered to comply with these standards.

According to the 2010 Ombudsman's report<sup>36</sup>, sports activities are very important in the life of detainees because they release tensions. The Ombudsman confirms the efforts made by the CPL to create an adequate and functional sports ground for the development of sports activities by two staff members. Given the complexity of the coordination of the sports activities due to the large number of detainees, since 2010, the sports sessions have a duration of 1h30 two times per week.

The Ombudsman's report<sup>37</sup> notes that sports activities within the female section operate without any surveillance, whereas sports activities within the male section request a permanent surveillance by sports monitors.

The Ombudsman accentuates the importance of access to open air for the detainees. Within CPL, the right to open air is respected, at the exception of several cases within one of the blocks (E). Within the CPG, male detainees can move freely among the CPG central buildings which is a green space, whereas female detainees can move freely only within the restricted courtyard.

According to the Ombudsman's report<sup>38</sup>, the detainees newly arrived in block E did not have the right to a daily walk.

Bill 7042 regarding the reform of the prison administration<sup>39</sup> includes several provisions relevant to visits, sports activities and a reinsertion plan for the detainees. Article 23 of the Bill refers to the organisation and the conditions of visits within CPL and CPG. More specifically, article 23 does not allow the interdiction of visits and leaves by a Director's decision; the only case allowing such an interdiction or restriction of visits and leaves is a reason of security of the CPL or the risk that the insertion of the convicted detainee would be compromised<sup>40</sup>.

<sup>34</sup> See articles 98 and 99 of the Grand-Ducal Regulation of 24 March 1989 regarding the administration and internal organisation of penitentiary establishments, (*Règlement grand-ducal du 24 mars 1989 concernant l'administration et le régime interne des établissements pénitentiaires*). Available at: <http://legilux.public.lu/eli/etat/leg/rqd/1989/03/24/n2/jo>

<sup>35</sup> See articles 111 and 113 of the Grand-Ducal Regulation of 24 March 1989 regarding the administration and internal organisation of penitentiary establishments, (*Règlement grand-ducal du 24 mars 1989 concernant l'administration et le régime interne des établissements pénitentiaires*). Available at: <http://legilux.public.lu/eli/etat/leg/rqd/1989/03/24/n2/jo>

<sup>36</sup> Luxembourg, Ombudsman's Report of 17 November 2010 regarding the entry and health of the detainee within prison, para. 69-74, p. 107-108, (*Rapport relatif à l'entrée du détenu en milieu carcéral et à la santé en milieu carcéral, Service du contrôle externe des lieux privatifs de liberté, Le Médiateur du Grand-Duché de Luxembourg*), available at: <http://www.ombudsman.lu/FR/CELPL-002-02.php>

<sup>37</sup> Luxembourg, Ombudsman's Report of 17 November 2010 regarding the entry and health of the detainee within prison, para. 74, p. 108, (*Rapport relatif à l'entrée du détenu en milieu carcéral et à la santé en milieu carcéral, Service du contrôle externe des lieux privatifs de liberté, Le Médiateur du Grand-Duché de Luxembourg*), available at: <http://www.ombudsman.lu/FR/CELPL-002-02.php>

<sup>38</sup> Luxembourg, Ombudsman's Report of 17 November 2010 regarding the entry and health of the detainee within prison, (*Rapport relatif à l'entrée du détenu en milieu carcéral et à la santé en milieu carcéral, Service du contrôle externe des lieux privatifs de liberté, Le Médiateur du Grand-Duché de Luxembourg*), available at: <http://www.ombudsman.lu/FR/CELPL-002-02.php>

<sup>39</sup> Luxembourg, Parliament (*Chambre des Députés*), Bill 7042 (*Projet de loi 7042*), available at: [https://www.chd.lu/wps/PA\\_RoleDesAffaires/FTSByteServngServletImpl?path=52960013B58ADF2699A49B37EB8F60FA3F266DD275A65A3A8422A941E5960817704ACFD72D1FD42A98E1EA2A9278491A\\$1B8DECF6825F2D19834EE79904E9B4E0](https://www.chd.lu/wps/PA_RoleDesAffaires/FTSByteServngServletImpl?path=52960013B58ADF2699A49B37EB8F60FA3F266DD275A65A3A8422A941E5960817704ACFD72D1FD42A98E1EA2A9278491A$1B8DECF6825F2D19834EE79904E9B4E0)

<sup>40</sup> See article 23 of the of the Grand-Ducal Regulation of 24 March 1989 regarding the administration and internal organisation of penitentiary establishments, (*Règlement grand-ducal du 24 mars 1989 concernant l'administration et le régime interne des établissements pénitentiaires*). Available at: <http://legilux.public.lu/eli/etat/leg/rqd/1989/03/24/n2/jo>

## CSEE

The time spent inside the cell must not exceed 10 hours. Hence, the detained children spend a minimum of 14 hours outside their cells. During day time, the detainees (here referred to as “residents” (*pensionnaires*) by the CSEE) follow an educational programme with qualified teachers, which is aligned with and recognized by the Luxembourg school system. Outside of school hours, other activities are proposed, depending on the individual projects of each detainee. Thematic evenings, workshops and similar activities are organized with external experts, for instance on photography, graffiti, or other<sup>41</sup>.

Even if the Act of 16 June 2004 regarding the reorganisation of the State Socio-Educational Centre<sup>42</sup> mentions sports activities, there are no specific details to this matter.

## Holding Centre (*Centre de rétention*)<sup>43</sup>

According to article 13 of the Act of 28 May 2009 regarding the creation and organisation of the Holding Centre<sup>44</sup>, detainees can move freely within their unit during the daytime and they can also participate in sports, cultural, intellectual and artistic activities as stated in article 12(3)<sup>45</sup>.

## **Solitary confinement**

What is the national standard set regarding solitary confinement? Is it regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?

*Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).*

*Please, provide a link to the National Preventive Mechanism’s reports **from the reference period** (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the web-page of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>*

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## CPL

According to the Grand-Ducal Regulation of 24 March 1989, solitary confinement (*régime cellulaire*) can be established for remand and convicted detainees when their mental or physical state is considered not to be compatible with their placement in a common regime (*régime en commun*)<sup>46</sup>.

<sup>41</sup> Email correspondence with the Director of the CSEE, 18 June 2018.

<sup>42</sup> Luxembourg, Act of 16 June 2004 regarding the reorganisation of the State Socio-Educational Centre, (*Loi du 16 juin 2004 portant réorganisation du centre socio-éducatif de l'Etat - CSEE*), available at: <http://legilux.public.lu/eli/etat/leg/loi/2004/06/16/n1/jo>

<sup>43</sup> Information from this section comes from a phone interview with the Director of the Holding Centre, as well as a 2014 report from the Ombudsman and any relevant legal instrument.

<sup>44</sup> Luxembourg, Act of 28 May 2009 regarding the creation and organisation of the Holding Centre, (*Loi du 28 mai 2009 portant création et organisation du Centre de rétention et modifiant 1. le Code de la sécurité sociale; 2. la loi modifiée du 22 juin 1963 fixant le régime des traitements des fonctionnaires de l'Etat; 3. la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration*). Available at: <http://legilux.public.lu/eli/etat/leg/loi/2009/05/28/n1/jo>

<sup>45</sup> Luxembourg, Act of 28 May 2009 regarding the creation and organisation of the Holding Centre (*Loi du 28 mai 2009 portant création et organisation du Centre de rétention et modifiant 1. le Code de la sécurité sociale; 2. la loi modifiée du 22 juin 1963 fixant le régime des traitements des fonctionnaires de l'Etat; 3. la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration*), see article 12(3). Available at: <http://legilux.public.lu/eli/etat/leg/loi/2009/05/28/n1/jo>

<sup>46</sup> See article 3 of the Grand-Ducal Regulation of 24 March 1989 regarding the administration and internal organisation of penitentiary establishments, (*Règlement grand-ducal du 24 mars 1989 concernant l'administration et le régime interne des établissements pénitentiaires*). Available at: <http://legilux.public.lu/eli/etat/leg/rqd/1989/03/24/n2/jo>

Moreover, there is also the possibility of a strict solitary confinement (*régime cellulaire strict*) for dangerous detainees and detainees subject to a disciplinary measure.

Articles 4, 5 and 6 of the Grand-Ducal Regulation stipulate the three different regimes: common regime (*régime commun, régime B*), solitary confinement regime (*régime cellulaire, régime A*) and strict solitary confinement regime (*régime cellulaire strict*)<sup>47</sup>.

Bill 7042 regarding the reform of the prison administration foresees a range of provisions relative to solitary confinement, clarifying the legal framework in this regard. The Bill foresees that, within all penitentiary centres, all detainees should be placed in a common regime. The exception to the common regime, namely the solitary confinement, should be restricted to the minimum possible according to article 30 of the Bill, following the observations of the Ombudsman and the CPT report. The Bill will amend the existant legal framework by introducing the possibility of solitary confinement to remand prisoners only following a motivated decision of the judge, and to those detainees who are not suitable for the common regime because of their personality and behaviour<sup>48</sup>.

In addition, a new element introduced by the Bill is the reduction of the solitary confinement to a maximum of 14 days within the cell, according to article 32(4) of the Bill, a suggestion also introduced following observations by the Ombudsman and the CPT report<sup>49</sup>.

With regard to the confinement to the cell, article 32(4) of the Bill also emphasises the fact that the detainee should not be deprived from his right to visits, correspondence, reading, radio and outdoor walk, but only from his access to buy things and other advantages such as the common activities. However, article 230 of the Grand-Ducal regulation, which is still in force for the time being, excludes the right to visits of the convicted detainees subject to a solitary confinement as a result of a disciplinary measure<sup>50</sup>.

Following recommendations from the CPT to reduce the maximum time for solitary confinement, Luxembourg has reduced this measure to 14 days *in practice* (even if it is not yet established in the legal framework), and is today complying with CPT standards. Nevertheless, the relevant legal provisions of the Grand-Ducal regulation remain in force until Bill 7042 will be voted into law<sup>51</sup>. For example, article 197(10) of the Grand-Ducal Regulation of 24 March 1989 mentions punishments of solitary confinement up to 30 days<sup>52</sup>. The CPT Committee and the Ombudsman have recommended to change the relevant legislation. “*Comme le régime cellulaire strict a été définitivement aboli en matière disciplinaire tel qu’il ressort également du rapport du CPT concernant sa visite à Luxembourg de 2015, la Médiateure fait sienne la recommandation suivante formulée dans ce document : « En matière de discipline, le CPT constate que des améliorations ont été apportées dans la pratique notamment*

<sup>47</sup> See articles 4, 5 and 6 of the Grand-Ducal Regulation of 24 March 1989 regarding the administration and internal organisation of penitentiary establishments, (*Règlement grand-ducal du 24 mars 1989 concernant l'administration et le régime interne des établissements pénitentiaires*). Available at: <http://legilux.public.lu/eli/etat/leg/rgd/1989/03/24/n2/jo>

<sup>48</sup> See articles 29 of the Bill available at:

[https://www.chd.lu/wps/PA\\_RoleDesAffaires/FTSByteServletImpl?path=52960013B58ADF2699A49B37EB8F60FA3F266DD275A65A3A8422A941E5960817704ACFD72D1FD42A98E1EA2A9278491A\\$1B8DECF6825F2D19834EE79904E9B4E0](https://www.chd.lu/wps/PA_RoleDesAffaires/FTSByteServletImpl?path=52960013B58ADF2699A49B37EB8F60FA3F266DD275A65A3A8422A941E5960817704ACFD72D1FD42A98E1EA2A9278491A$1B8DECF6825F2D19834EE79904E9B4E0)

<sup>49</sup> See articles 29, 30, 31 and 32 of the Bill, available at:

[https://www.chd.lu/wps/PA\\_RoleDesAffaires/FTSByteServletImpl?path=52960013B58ADF2699A49B37EB8F60FA3F266DD275A65A3A8422A941E5960817704ACFD72D1FD42A98E1EA2A9278491A\\$1B8DECF6825F2D19834EE79904E9B4E0](https://www.chd.lu/wps/PA_RoleDesAffaires/FTSByteServletImpl?path=52960013B58ADF2699A49B37EB8F60FA3F266DD275A65A3A8422A941E5960817704ACFD72D1FD42A98E1EA2A9278491A$1B8DECF6825F2D19834EE79904E9B4E0)

<sup>50</sup> Luxembourg, Grand-Ducal Regulation of 24 March 1989 regarding the administration and internal organisation of penitentiary establishments, (*Règlement grand-ducal du 24 mars 1989 concernant l'administration et le régime interne des établissements pénitentiaires*), see article 230. Available at: <http://legilux.public.lu/eli/etat/leg/rgd/1989/03/24/n2/jo>

<sup>51</sup> Luxembourg, Grand-Ducal Regulation of 24 March 1989 regarding the administration and internal organisation of penitentiary establishments, (*Règlement grand-ducal du 24 mars 1989 concernant l'administration et le régime interne des établissements pénitentiaires*), see article 6 (relative to strict solitary confinement). Available at: <http://legilux.public.lu/eli/etat/leg/rgd/1989/03/24/n2/jo>

<sup>52</sup> Luxembourg, Grand-Ducal Regulation of 24 March 1989 regarding the administration and internal organisation of penitentiary establishments, (*Règlement grand-ducal du 24 mars 1989 concernant l'administration et le régime interne des établissements pénitentiaires*), see article 197(10). Available at: <http://legilux.public.lu/eli/etat/leg/rgd/1989/03/24/n2/jo>

en (...) en mettant un terme au recours au régime cellulaire strict pour des raisons disciplinaires ; il est recommandé de modifier la législation en vigueur en conséquence. Le Comité formule également plusieurs recommandations spécifiques afin de renforcer les droits des détenus dans le cadre des procédures disciplinaires. » et « (...) Cela étant, il (i.e. le CPT) note avec satisfaction que les autorités ont pris la décision de ne plus recourir au RCS pour des raisons disciplinaires depuis 2011. Le Comité recommande que la législation en vigueur soit modifiée afin de mettre un terme définitif à la possibilité de placer un détenu au régime cellulaire strict en tant que sanction disciplinaire. ». Tout comme le CPT, la Médiateure lance un appel aux autorités compétentes afin d'adapter la réglementation nationale et la disposition de service interne du CPL correspondante (DIS 12) en excluant le régime cellulaire strict des sanctions disciplinaires possibles.<sup>53</sup>

Moreover, the CPT reports as mentioned within the Ombudsman's report regarding the disciplinary system have consistently stressed the fact that the conditions for solitary confinement do not comply with several basic requirements. For example, the solitary confinement cells are found in the basement with a lack of lighting and ventilation. Furthermore, these cells can sometimes measure from 3 m<sup>2</sup> to 4 m<sup>2</sup> which is not compatible with the CPT standards of 6m<sup>2</sup> per person.

### CSEE

According to the Act of 16 June 2004 regarding the reorganisation of the State Socio-Educational Centre (CSEE)<sup>54</sup>, solitary confinement is defined in article 9 and includes measures such as the temporary exclusion from common activities, increased surveillance, transfer to another unit of the detention facility, temporary confinement to the room (cell), temporary isolation measure (i.e. solitary confinement).

Such measures can be imposed on a detained minor only upon a formal order by the Director of the CSEE or one of his delegates with a special security or disciplinary mandate, and the temporary isolation measure can only be imposed in case of serious motive which are duly documented. A solitary confinement measure can last for a maximum of 10 days.

A minor can oppose a disciplinary sanction imposed upon him/her before the Surveillance and Coordination Commission, and can appeal any decision made by this Commission before the Juvenile Judge. No appeal is foreseen against the verdict of the Juvenile Judge.

Corporal punishment is strictly forbidden.

Furthermore, the Act of 29 August 2017 amending the Act of 16 June 2004 regarding the reorganisation of the State Socio-Educational Centre<sup>55</sup>, amended article 9 with regard to solitary confinement. The current article 9(3) relative to solitary confinement as a disciplinary measure states that such a measure can last for a maximum of 72 hours. A report must be written, documenting the behaviour of the minor that led to the measure, as well as his/her prior disciplinary sanctions if any. The Director or his delegate decides upon the potential disciplinary measure, and must do so within one month from the time of the incident underlying the measure. The measure should be justified and proportionate, and the Director can put an end to the measure at any time. During the period of solitary confinement, the minor is entitled to a minimum of one hour of exercise in open air per day. A nurse or doctor must be informed each time a measure of solitary confinement is imposed, and must have free access to the minor during the duration of the disciplinary sanction.

<sup>53</sup> Luxembourg Ombudsman's Report (Lydie Err) regarding the disciplinary system within prison, para. 16, p. 22, (*Rapport Le système disciplinaire en milieu carcéral, Service du contrôle externe des lieux privés de liberté, Le Médiateur du Grand-Duché de Luxembourg*), available at: <http://www.ombudsman.lu/FR/CELPL-002-02.php>

<sup>54</sup> Luxembourg, Act of 16 June 2004 regarding the reorganisation of the State Socio-Educational Centre (*Loi du 16 juin 2004 portant réorganisation du centre socio-éducatif de l'Etat - CSEE*). Available at: <http://legilux.public.lu/eli/etat/leg/loi/2004/06/16/n1/jo>

<sup>55</sup> Luxembourg, Act of 29 August 2017 amending the Act of 16 June 2004 regarding the reorganisation of the State Socio-Educational Centre, (*Loi du 29 août 2017 portant modification 1. de la loi modifiée du 16 juin 2004 portant réorganisation du centre socio-éducatif de l'Etat ; 2. de la loi modifiée du 29 juin 2005 fixant les cadres du personnel des établissements d'enseignement secondaire et secondaire technique ; 3. de la loi modifiée du 23 juillet 1952 concernant l'organisation militaire ; 4. de l'article 32 du Livre 1er du code de la sécurité sociale*). Available at: <http://legilux.public.lu/eli/etat/leg/loi/2017/08/29/a816/jo>

### Holding Centre

According to article 20 of the Act of 28 May 2009<sup>56</sup>, detainees can be placed in isolation within a cell with limited furniture. Their right to participate in activities, to receive letters and visits and to purchase things is prohibited as long as the solitary confinement is ongoing. Nevertheless, the detainees preserve their access to one hour outdoor walk during their isolation measure.

### **Access to healthcare**

What is the national standard with regard to access to medical services in prisons? (E.g. do prisoners have prompt access to medical services within prisons or externally? Do prisoners have access to dentists and opticians?)

Are there any special provisions relating to the provision of specialist care? (E.g. for long-term diseases, for sick and elderly prisoners, the mentally ill, drug addicted prisoners etc.)

Is access to healthcare in prisons regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?

Please indicate whether there are different standards applicable to different detention regimes.

Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>

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The Grand-Ducal Regulation from 1989 contains a series of provisions relevant to access to healthcare. Main access to healthcare is ensured by the presence of a doctor for every penitentiary facility, in accordance with article 28 of the Grand-Ducal Regulation<sup>57</sup>. For every establishment, a doctor, a dentist, a specialised doctor in psychiatry or neuropsychiatry and nurses are provided.

According to article 9 of the Act of 27 July 1997 regarding the reorganisation of the prison administration, a special medical section operates within the CPL in order to receive detainees addicted to drugs<sup>58</sup>.

Furthermore, the penitentiary centres have a collaboration agreement with the Luxembourg Hospital Centre (*Centre Hospitalier de Luxembourg*, CHL) and the Neuropsychiatric Hospital Centre (*Centre Hospitalier Neuropsychiatrique*, CHNP)<sup>59</sup>.

<sup>56</sup> Luxembourg, Act of 28 May 2009 regarding the creation and organisation of the Holding Centre (*Loi du 28 mai 2009 portant création et organisation du Centre de rétention et modifiant 1. le Code de la sécurité sociale; 2. la loi modifiée du 22 juin 1963 fixant le régime des traitements des fonctionnaires de l'Etat; 3. la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration*), see article 20. Available at: <http://legilux.public.lu/eli/etat/leg/loi/2009/05/28/n1/jo>

<sup>57</sup> Luxembourg, Grand-Ducal Regulation of 24 March 1989 regarding the administration and internal organisation of penitentiary establishments, (*Règlement grand-ducal du 24 mars 1989 concernant l'administration et le régime interne des établissements pénitentiaires*), see article 28. Available at: <http://legilux.public.lu/eli/etat/leg/rqd/1989/03/24/n2/jo>

<sup>58</sup> Luxembourg, Act of 27 July 1997 regarding the reorganisation of the penitentiary administration (*Loi du 27 juillet 1997 portant réorganisation de l'administration pénitentiaire*), see article 9. Available at: <http://legilux.public.lu/eli/etat/leg/loi/1997/07/27/n9/jo>

<sup>59</sup> The latter: CHNP. Luxembourg, Ombudsman's Report of 17 November 2010 regarding the entry and health of the detainee within prison, para. 19, p. 74 (*Rapport relatif à l'entrée du détenu en milieu carcéral et à la santé en milieu carcéral, Service du contrôle externe des lieux privés de liberté, Le Médiateur du Grand-Duché de Luxembourg*), available at: <http://www.ombudsman.lu/FR/CELPL-002-02.php>

The CHL doctors cover a frequency of 4 h/week to 4h per trimester and the rest is covered by external doctors according to needs<sup>60</sup>. Furthermore, the pharmacy is controlled by a pharmacist full-time. All medical consultation at the CPG is carried out by an independent doctor, present at the CPG every Wednesday from 16h to 18H. For any medical incident outside these hours, the detainees can go to the doctor's office for a private consultation.

With regard to the psychiatric medicine, psychiatric care is the same within CPL and CPG according to an agreement concluded with the CHNP.

The above agreements are considered to be the regulatory instruments of competences and rights of the medical service regarding penitentiary administration. However, there is no clear hierarchisation of the person in charge, or a job description. According to the Ombudsman<sup>61</sup>, this has proven highly problematic and is one of the reasons of the weak coordination and internal organisation of the medical care of the detainees. This problem was also highlighted through the Ombudsman's own experience, who had to contact the general director of the CHL in order to receive medical information regarding certain detainees (even if the medical secret cannot be invoked before the Ombudsman)<sup>62</sup>. The unwillingness of the CPL to provide the Ombudsman with the medical files was based on a pretext of non clarified responsibilities. The Ombudsman has emphasised the importance of appointing a person in charge and an organisational chart for every service.

With regard to the waiting room of the medical service, the Ombudsman's report highlights its limited space. There is room for maximum 3 detainees to be seated, the others being obliged to stand still as waiting for their medical consultation. In addition, the waiting room has no windows or adequate ventilation system in case of a large number of detainees waiting for medical consultation.

The principles of medical secret and consent of the detainee-patient seem to be respected within the CPL and the CPG according to the Ombudsman's report, but the Ombudsman has stressed the need for developing the principle of professional secrecy within the training of prison guards. Moreover, some detainees have complained about the fact that they have been given a medical treatment without any explanation to that matter and to the type of medication given.

The Ombudsman has underlined the need for a permanent healthcare within the penitentiary facilities. The current situation is that no doctor is available within the detention facility for parts of the day and well as on weekends or public holidays. Moreover, a practical issue was identified, by which detainees' requests to see a doctor are not always accomplished, because the guards often fail to inform the medical staff in charge of the request.

According to the 2015 CPT report, access to healthcare appears satisfactory with a good healthcare staff and quality of the services and facilities. However, there is no adequate framework in matters related to detainees with serious mental disorder.

Regarding detainees with mental disorders, the Ombudsman raised an issue with regard to detainees being hospitalised without their consent<sup>63</sup>. Until the publication of the Ombudsman's report, the CPL administration

<sup>60</sup> Luxembourg, Ombudsman's Report of 17 November 2010 regarding the entry and health of the detainee within prison, (*Rapport relatif à l'entrée du détenu en milieu carcéral et à la santé en milieu carcéral, Service du contrôle externe des lieux privatifs de liberté, Le Médiateur du Grand-Duché de Luxembourg*), available at: <http://www.ombudsman.lu/FR/CELPL-002-02.php>

<sup>61</sup> Luxembourg, Ombudsman's Report of 17 November 2010 regarding the entry and health of the detainee within prison, (*Rapport relatif à l'entrée du détenu en milieu carcéral et à la santé en milieu carcéral, Service du contrôle externe des lieux privatifs de liberté, Le Médiateur du Grand-Duché de Luxembourg*), available at: <http://www.ombudsman.lu/FR/CELPL-002-02.php>

<sup>62</sup> Luxembourg, Ombudsman's Report of 17 November 2010 regarding the entry and health of the detainee within prison, para. 19, p. 77-79, (*Rapport relatif à l'entrée du détenu en milieu carcéral et à la santé en milieu carcéral, Service du contrôle externe des lieux privatifs de liberté, Le Médiateur du Grand-Duché de Luxembourg*), available at: <http://www.ombudsman.lu/FR/CELPL-002-02.php>

<sup>63</sup> Luxembourg, Ombudsman's Report of 17 November 2010 regarding the entry and health of the detainee within prison, (*Rapport relatif à l'entrée du détenu en milieu carcéral et à la santé en milieu carcéral, Service du contrôle externe des lieux privatifs de liberté, Le Médiateur du Grand-Duché de Luxembourg*), available at: <http://www.ombudsman.lu/FR/CELPL-002-02.php>

considered that legislation did not allow them to treat detainees with mental disorders without their consent. However, the Ombudsman stresses the fact that no legal obstacle should impede the placement of a detainee with a mental disorder in the psychiatric section of the CPL, in accordance with the Act of 10 December 2009 regarding the hospitalisation of people with mental disorders without their consent<sup>64</sup>.

Bill 7042 consists of several provisions regarding the organisation of the psychiatric healthcare of detainees. More specifically, article 56 of the Bill refers to the creation of a neuropsychiatric hospital centre within the CPL but administratively independent from the CPL<sup>65</sup>.

### CSEE

A reference is made to the medical staff of the State Socio-Educational Centre within the Act of 29 August 2017 amending the Act of 16 June 2004 regarding the reorganisation of the State Socio-Educational Centre<sup>66</sup>, but no further details are provided.

The CSEE has one nurse and two child-psychiatrists collaborating with the medical staff, as well as a general physician. Upon request and depending on the situation, access is available to a gynecologist, a dentist and an optician<sup>67</sup>.

The general medical aspects of the detainees, such as minor wounds, routine exams, prescription drugs and psychiatric care are taken care of during their stay at the security unit. In case of more serious issues such as coming off drugs or suicide attempts, a child psychiatrist evaluates if the care can be done while the child is detained in the security unit or if the detainee must be hospitalized<sup>68</sup>.

### Holding Centre

According to the Act of 28 May 2009 regarding the creation and organisation of the Holding Centre<sup>69</sup>, article 9 states the permanent access to medical care of the detainees. However, according to the same article, dental care is limited to the necessary minima and urgent situations. In addition, the Minister of Immigration takes care of the healthcare of the detainees, in accordance with article 28<sup>70</sup>.

### **Special measures in place to protect juvenile prisoners.**

<sup>64</sup> Luxembourg, Ombudsman's Report of 17 November 2010 regarding the entry and health of the detainee within prison, para. 17, p. 80, (*Rapport relatif à l'entrée du détenu en milieu carcéral et à la santé en milieu carcéral, Service du contrôle externe des lieux privés de liberté, Le Médiateur du Grand-Duché de Luxembourg*), available at: <http://www.ombudsman.lu/FR/CELPL-002-02.php>

<sup>65</sup> See article 56 of the Bill. Available at:

[https://www.chd.lu/wps/PA\\_RoleDesAffaires/FTSByteServletImpl?path=52960013B58ADF2699A49B37EB8F60FA3F266DD275A65A3A8422A941E5960817704ACFD72D1FD42A98E1EA2A9278491A\\$1B8DEC6825F2D19834EE79904E9B4E0](https://www.chd.lu/wps/PA_RoleDesAffaires/FTSByteServletImpl?path=52960013B58ADF2699A49B37EB8F60FA3F266DD275A65A3A8422A941E5960817704ACFD72D1FD42A98E1EA2A9278491A$1B8DEC6825F2D19834EE79904E9B4E0)

<sup>66</sup> Luxembourg, Act of 29 August 2017 amending the Act of 16 June 2004 regarding the reorganisation of the State Socio-Educational Centre (*Loi du 29 août 2017 portant modification 1. de la loi modifiée du 16 juin 2004 portant réorganisation du centre socio-éducatif de l'État ; 2. de la loi modifiée du 29 juin 2005 fixant les cadres du personnel des établissements d'enseignement secondaire et secondaire technique ; 3. de la loi modifiée du 23 juillet 1952 concernant l'organisation militaire ; 4. de l'article 32 du Livre 1er du code de la sécurité sociale*). Available at: <http://legilux.public.lu/eli/etat/leg/loi/2017/08/29/a816/jo>

<sup>67</sup> Luxembourg, email correspondence with the Director of the CSEE, 18 June 2018.

<sup>68</sup> Ibid.

<sup>69</sup> Luxembourg, Act of 28 May 2009 regarding the creation and organisation of the Holding Centre (*Loi du 28 mai 2009 portant création et organisation du Centre de rétention et modifiant 1. le Code de la sécurité sociale; 2. la loi modifiée du 22 juin 1963 fixant le régime des traitements des fonctionnaires de l'Etat; 3. la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration*). Available at: <http://legilux.public.lu/eli/etat/leg/loi/2009/05/28/n1/jo>

<sup>70</sup> Luxembourg, Act of 28 May 2009 regarding the creation and organisation of the Holding Centre (*Loi du 28 mai 2009 portant création et organisation du Centre de rétention et modifiant 1. le Code de la sécurité sociale; 2. la loi modifiée du 22 juin 1963 fixant le régime des traitements des fonctionnaires de l'Etat; 3. la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration*), see articles 9 and 28. Available at: <http://legilux.public.lu/eli/etat/leg/loi/2009/05/28/n1/jo>

Are there any legal instruments, such as a legislative act, internal prison regulations, manuals, policy papers etc. regulating the separation of juvenile prisoners from adults? (e.g. a separate juvenile ward, or part of the building, canteen, common area etc.?)

What age category falls under this specific juvenile prison regime?

*Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).*

*Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of-designated-npm-by-regions-and-countries/>*

**Please cite any relevant sources**

According to the Grand-Ducal Regulation of 24 March 1989, minors who are detained in the penitentiary centre benefit from a special regime, which is different from the adult prisoners<sup>71</sup>.

The relevant provisions of the Act of 10 August 1992 regarding youth protection, and more specifically article 6, stipulates that a minor can be placed in the CSEE in case an ordinary placement measure has proven insufficient due to the bad conduct or dangerous behavior of the minor<sup>72</sup>.

Article 26 of the Act sets forth that, in case of absolute necessity, a minor can be detained temporarily in an adult prison for a period that does not exceed one month. In such cases, the young prisoner must be separated from the other detainees, and is subject to special conditions that shall be determined by the rules of the penitentiary administration.

Article 32 of the Act sets forth that in cases where a minor over 16 years old has committed an infraction, and a "normal" measure is considered inadequate, the judge can decide that the case should be treated in a regular (adult) tribunal. In such cases, the minor can be convicted to a regular prison sentence.

The UNISEC, a security unit for juvenile prisoners supposed to open in Dreibern in 2011, finally became operational in November 2017<sup>73</sup>. The heavy delay before opening this unit meant that children were, for a long time, being placed in a special unit within the adult prison CPL in Schrassig. This situation was much criticized for lack of adequate separation from adult detainees, and the Ombudsman had made strong recommendations to proceed with the opening of the security unit in Dreibern urgently. There is currently no legislative or regulatory text that defines the necessary profile for a young prisoner to be admitted to the UNISEC.

According to the 2015 CPT report and despite previous recommendations, juvenile prisoners are still placed in the CPL. The report has found that the localisation of their section is not adapted to their specific situation

<sup>71</sup> Luxembourg, Act of 10 August 1992 regarding youth protection (*Loi du 10 août 1992 relative à la protection de la jeunesse*), article 8 and 138, available at: <http://legilux.public.lu/eli/etat/leg/loi/1992/08/10/n3/jo>

<sup>72</sup> Luxembourg, Act of 10 August 1992 regarding youth protection (*Loi du 10 août 1992 relative à la protection de la jeunesse*), available at: <http://legilux.public.lu/eli/etat/leg/loi/1992/08/10/n3/jo>

<sup>73</sup> Luxembourg, Ministry of National Education, Childhood and Youth (*Ministère de l'Éducation nationale, de l'Enfance et de la Jeunesse*), « L'Unité de Sécurité du Centre Socio-Educatif de l'Etat accueille des mineurs depuis le 1<sup>er</sup> novembre », 7 November 2017, available at: <http://www.men.public.lu/fr/actualites/articles/communiqués-conference-presse/2017/11/07-unisec/index.html>

because of the proximity of the young prisoners with the adult detainees<sup>74</sup>. According to information from the Children's Ombudsman, no child is currently being held in the CPL<sup>75</sup>.

Bill 7042 foresees that children should not be placed in solitary confinement unless it is clearly in their best interest, and also that children of a young age can only be admitted into a penitentiary facility in case it is in the best interest<sup>76</sup>.

On 13 April 2018, Bill 7276 on the institution of a child protection regime<sup>77</sup> was introduced to Parliament. This Bill has the objective to reform the existing child protection system in Luxembourg completely. This is something that is considered necessary in the country, in particular given that the current framework is based on an Act from 1992. Nevertheless, the first text of the Bill is less progressive than expected and negotiations are only at the beginning. An expert group has recently been set up by a civil society group in order to develop a legal opinion on the Bill<sup>78</sup>.

### Special measures in place to protect prisoners from violence

Are any special measures in place to protect prisoners against violence, including sexual violence? (E.g. are prisoners supervised by prison staff? Are there emergency call buttons? Do guards receive training in de-escalation? Do prisoners have access to a complaints mechanism?)

Are there any special measures in place to protect LGBTI prisoners, who are particularly vulnerable to violence/sexual violence?

Are these measures regulated by any legal instrument, such as a legislative act, internal prison regulations, manuals, policy papers etc.?

Please indicate whether there are different standards applicable to different detention regimes (for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 January 2015 to 1 May 2018, if no report is available for this period, please provide a link to the most recent one) and whether there are any recommendations regarding this aspect (please provide the exact quotation in the national language and if official translation is available – in English) These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found here: <https://apt.ch/en/list-of--designated-npmby-regions-and-countries/>

<sup>74</sup> Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment-CPT Report of 28/1/2015 to 2/2/2015, p. 5, (*Rapport au Gouvernement du Grand-Duché de Luxembourg relatif à la visite effectuée au Luxembourg par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 28 janvier au 2 février 2015*), published in Strasbourg on 17 September 2015, available at: <https://rm.coe.int/16806973da>. See also Luxembourg, Ombudsman's Report of 17 November 2010 regarding the entry and health of the detainee within prison, para. 13, p. 72, (*Rapport relatif à l'entrée du détenu en milieu carcéral et à la santé en milieu carcéral, Service du contrôle externe des lieux privés de liberté, Le Médiateur du Grand-Duché de Luxembourg*), available at: <http://www.ombudsman.lu/FR/CELPL-002-02.php>

<sup>75</sup> Luxembourg, Meeting with the Children's Ombudsman on 28 May 2018.

<sup>76</sup> Article 29(3), Bill 7042: "Les mineurs ainsi que les femmes enceintes, allaitantes ou accompagnées de leur enfant en bas âge ne peuvent être placés au régime cellulaire, sauf si c'est dans leur intérêt manifeste ou dans le cas prévu au paragraphe 2, point (b). Un enfant en bas âge peut seulement être admis dans un centre pénitentiaire s'il est dans son intérêt manifeste." Available at:

[https://www.chd.lu/wps/PA\\_RoleDesAffaires/FTSByteServingServletImpl?path=52960013B58ADF2699A49B37EB8F60FA3F266DD275A65A3A8422A941E5960817704ACFD72D1FD42A98E1EA2A9278491A\\$1B8DECF6825F2D19834EE79904E9B4E0](https://www.chd.lu/wps/PA_RoleDesAffaires/FTSByteServingServletImpl?path=52960013B58ADF2699A49B37EB8F60FA3F266DD275A65A3A8422A941E5960817704ACFD72D1FD42A98E1EA2A9278491A$1B8DECF6825F2D19834EE79904E9B4E0)

<sup>77</sup> Luxembourg, Bill 7276 on the institution of a child protection regime (*Projet de Loi 7276 instituant un régime de protection de la jeunesse et portant modification de la loi modifiée du 7 mars 1980 sur l'organisation judiciaire*), available at: [https://www.chd.lu/wps/PA\\_RoleDesAffaires/FTSByteServingServletImpl?path=9443CB3AC272F4E99ADC9160867B449DC6DE3B9FF97F4AA5264478957E2C8190A11151842F043BFC5A6DD98EA7161DA0\\$21D5D8239FD7A3501783E54B78624FA3](https://www.chd.lu/wps/PA_RoleDesAffaires/FTSByteServingServletImpl?path=9443CB3AC272F4E99ADC9160867B449DC6DE3B9FF97F4AA5264478957E2C8190A11151842F043BFC5A6DD98EA7161DA0$21D5D8239FD7A3501783E54B78624FA3)

<sup>78</sup> Luxembourg, ANCES, Working Group to prepare an opinion on Bill 7276 (*Groupe de Travail préparant un avis relative au Projet de Loi 7276 instituant un régime de protection de la jeunesse*), available at: <http://www.ances.lu/attachments/article/215/GT%20PL%207276%20Appel%20%C3%A0%20participation%20reminder.pdf>

**Please cite any relevant sources**

CPL

Several provisions of the Grand-Ducal Regulation of 24 March 1989 stipulate the duty of the penitentiary staff to abstain from any act that could cause harm to the detainees and the duty to rescue or protect the detainees in case of need<sup>79</sup>.

The instruction of service DIS1 regarding the detainees as victims of violence states that the administrative staff has to report any incident where a detainee claims to have been a victim of violence. The administrative staff must also take into consideration and write a report for any incident that comes to their attention, involving any scars or traces of violence on a detainee<sup>80</sup>.

In addition, Bill 7042 dedicates chapter 8 to the security of the penitentiary establishments with several particular provisions aimed at ensuring the security and safety of the detainees<sup>81</sup>.

The 2015 CPT report did not include any information on bad treatment by staff towards detainees, apart from several complaints of the female section (some women claimed to have been insulted by their guards). In addition, the CPT detected a problem of violence between detainees under the common regime, during the time when they circulate freely within their units.

LGBTI prisoners

Regarding LGBTI prisoners, the Ombudsman stressed the fact that it is a category of detainees with a particular risk to be exposed to violence within prison. For this reason the Ombudsman asked to interview all the concerned categories of detainees in order to draft her report<sup>82</sup>. In practice, only a small number of detainees asked for an interview on this matter with the control team. It was mostly detainees who were not hiding their homosexuality. No detainee declared to be transgender within the CPL or the CPG.

In her report, the Ombudsman holds that there are different categories within the LGBTI general category that need to be distinguished: those who declare openly their sexual orientation and those who make all efforts in order to hide it. Among detainees who declare their homosexual orientation openly, there are those who affirm that they have never suffered from reprisals or other trouble (neither by the co-detainees nor by the penitentiary staff). The report states that this category of detainees has an assertive personality and are well integrated within the prison.

However, one third of detainees with a clear homosexual orientation declares having suffered from reprisals, mostly by their co-detainees. Allegations concerning an incorrect behaviour by the staff are rare and limited to verbal deviations. No detainee has complained about the guards' behaviour in this matter and for any verbal incident occurred, the concerned detainees admit to have played a certain role in it. The report states that the North-African population of detainees is the one with a problem accepting other detainees' homosexuality.

Furthermore, the Ombudsman's report stresses a particular confusion of the detainees between paedophilia and homosexuality. The Ombudsman's control team suspects that the reason of this misunderstanding is the CPL's unit (Block A1) dedicated to receive detainees serving a sentence for paedophilia and having openly

<sup>79</sup> See article 50 of the Grand-Ducal regulation. Available at:

<http://legilux.public.lu/eli/etat/leg/rgd/1989/03/24/n2/jo>

<sup>80</sup> See Instruction of service DIS21 (*Instruction de service DIS21*) as mentioned in the Ombudsman's Report of 17 November 2010 regarding the entry and health of the detainee within prison (*Rapport relatif à l'entrée du détenu en milieu carcéral et à la santé en milieu carcéral, Service du contrôle externe des lieux privatifs de liberté, Le Médiateur du Grand-Duché de Luxembourg*). Available at: <http://www.ombudsman.lu/FR/CELPL-002-02.php>

<sup>81</sup> See articles 36, 37, 38 and 42 of the Bill. Available at:

[https://www.chd.lu/wps/PA\\_RoleDesAffaires/FTSByteServingServletImpl?path=52960013B58ADF2699A49B37EB8F60FA3F266DD275A65A3A8422A941E5960817704ACFD72D1FD42A98E1EA2A9278491A\\$1B8DECF6825F2D19834EE79904E9B4E0](https://www.chd.lu/wps/PA_RoleDesAffaires/FTSByteServingServletImpl?path=52960013B58ADF2699A49B37EB8F60FA3F266DD275A65A3A8422A941E5960817704ACFD72D1FD42A98E1EA2A9278491A$1B8DECF6825F2D19834EE79904E9B4E0)

<sup>82</sup> Luxembourg, Ombudsman's Report of 15 April 2014 regarding the deprivation of liberty of particularly vulnerable detainees, para. 177, p. 72, (*Rapport La privation de liberté de détenus particulièrement vulnérables du 15 Avril 2014, Service du contrôle externe des lieux privatifs de liberté, La médiateure du Grand-Duché de Luxembourg*), para. 177, p. 72. Available at: <http://www.ombudsman.lu/FR/CELPL-002-02.php>

declared an homosexual orientation. According to the Ombudsman' report "it is clear that this conflation is absolutely unacceptable and that efforts must be made in order to clarify the fundamental difference between paedophilia and homosexuality among the detainees"<sup>83</sup>.

With regard to the group of detainees who hide their homosexuality, the reasons for this cover up are due to the prudence of avoiding any conflict within prison. To the exception of several rare cases, all detainees have confirmed that an explicit homosexual orientation within prison does not represent in itself many direct risks. It is mostly a matter of personal behaviour of the concerned detainee<sup>84</sup>.

In addition, the report demonstrates that the detainees of the same sex may have sexual relations between them but this cannot offer evidence of an assimilation to homosexual orientation. Furthermore, the report notices that "L'équipe de contrôle a été mise au courant que bon nombre de ces activités se passent par contrainte. En effet, certains détenus exigent des activités sexuelles de la part de codétenus en rétribution d'une protection, prétendue ou réelle, en contrepartie de services rendus, comme par exemple la rédaction de courriers ou encore en contrepartie d'achats à la cantine ou pour la mise à disposition de médicaments prohibés, voire de substances illicites. L'équipe de contrôle a pu recueillir des dépositions de plusieurs détenus qui permettent de conclure que les agressions sexuelles au moment de la prise d'une douche ne seraient pas rares. Ces détenus ont clairement insisté pour dire que ce phénomène concerne tous les détenus et qu'il n'est pas lié à l'orientation homosexuelle, ni de la part des auteurs, ni de la part des victimes. L'équipe de contrôle a aussi été informée que des activités sexuelles ont fait l'objet d'un paiement qui passe par des comptes extérieurs"<sup>85</sup>.

### CSEE

Act of 29 August 2017 amending the Act of 16 June 2004 regarding the reorganisation of the State Socio-Educational Centre<sup>86</sup> sets forth that any violence against the residents is forbidden. No force is allowed, except to prevent a resident from harming him/herself or another resident, or damaging an object. Any use of force must be restricted to the minimum necessary and be immediately reported to the Director.

In terms of security, the CSEE works with a "unique" method for Luxembourg, which is composed of a "duo" or team work between the security guards and the socio-educational staff. Inside the security unit, the guard does not circulate like a police officer to keep the detainees under surveillance, but observes and interacts with the detainees. The presence of the guards is seen as part of the care taking of the children, and is aimed at

<sup>83</sup> Luxembourg, Ombudsman' Report of 15 April 2014 regarding the deprivation of liberty of particularly vulnerable detainees, para. 178, p. 73, (*Rapport La privation de liberté de détenus particulièrement vulnérables du 15 Avril 2014, Service du contrôle externe des lieux privés de liberté, La médiatrice du Grand-Duché du Luxembourg*) para. 178, p. 73. Available at: <http://www.ombudsman.lu/FR/CELPL-002-02.php>

<sup>84</sup> Luxembourg, Ombudsman' Report of 15 April 2014 regarding the deprivation of liberty of particularly vulnerable detainees, para. 179, p. 74, (*Rapport La privation de liberté de détenus particulièrement vulnérables du 15 Avril 2014, Service du contrôle externe des lieux privés de liberté, La médiatrice du Grand-Duché du Luxembourg*), para. 179, p. 74. Available at: <http://www.ombudsman.lu/FR/CELPL-002-02.php>

<sup>85</sup> English translation: "The control team has been informed that many of the sexual relations between detainees of the same sex are a result of enforcement or constraint. Actually, several detainees demand sexual relations from their co-detainees in exchange for protection, as for example the writing of letters, buying things at the canteen or for providing prohibited medicines such as illicit substances. The control team managed to acquire several detainees' testimonies which prove that sexual assaults when showering are not rare. These detainees insisted on the fact that this phenomenon is not related to the homosexual orientation of the authors nor the sexual orientation of the victims. The control team has also been informed that sexual relations among detainees included payment from external accounts". Luxembourg, Ombudsman' Report of 15 April 2014 regarding the deprivation of liberty of particularly vulnerable detainees, para. 180, p. 75, (*Rapport La privation de liberté de détenus particulièrement vulnérables du 15 Avril 2014, Service du contrôle externe des lieux privés de liberté, La médiatrice du Grand-Duché du Luxembourg*), para. 180, p. 75. Available at: <http://www.ombudsman.lu/FR/CELPL-002-02.php>

<sup>86</sup> Luxembourg, Act of 29 August 2017 amending the Act of 16 June 2004 regarding the reorganisation of the State Socio-Educational Centre, (*Loi du 29 août 2017 portant modification 1. de la loi modifiée du 16 juin 2004 portant réorganisation du centre socio-éducatif de l'État ; 2. de la loi modifiée du 29 juin 2005 fixant les cadres du personnel des établissements d'enseignement secondaire et secondaire technique ; 3. de la loi modifiée du 23 juillet 1952 concernant l'organisation militaire ; 4. de l'article 32 du Livre 1er du code de la sécurité sociale*). Available at: <http://legilux.public.lu/eli/etat/leg/loi/2017/08/29/a816/jo>

guaranteeing a clear framework for the co-living of the detainees and that must be respected by them. The security guards and the socio-educational staff collaborate and participate in the relations with the detainees. This is part of the philosophy of the security unit, which is to favour the treatment, the relations and the resocialization of the children<sup>87</sup>.

#### Holding Centre

Act of 28 May 2009 regarding the creation and organisation of the Holding Centre<sup>88</sup> sets forth in its article 22(3) that any violence against the detainees is forbidden. No force is allowed, except to prevent a resident from harming him/herself or another resident, or damaging an object. Any use of force must be restricted to the minimum necessary and be immediately reported to the Director.

In case of a dispute between the detainees, a mediation is offered to solve the dispute. If needed, a detainee can be moved to another unit in order to separate him from the person with whom he is in conflict. Any physical or strong verbal violence is punished with a disciplinary sanction, such as confinement to the cell for a duration of up to a maximum of 5 days<sup>89</sup>.

#### **Responsible authorities**

What authority is responsible for the provision of additional information requested under Article 15 of the EAW Framework Decision? *(Please specify whether there is a central authority that deals with these requests, if yes, please provide contact details, such as the name of the institution, a website, physical and email addresses, and a telephone number. In the absence of a central authority, who deals with those requests?)*

What authority is responsible for monitoring conditions of detention and putting forward recommendations?

#### ***Please cite any relevant sources***

The legal basis is the amended Act of 17 March 2004 regarding the European arrest warrant and surrender procedures between member states of the European Union (A2004, No. 39). Article 6, para. 3 provides that: If the State prosecutor considers that the information communicated by the issuing State in the European arrest warrant is insufficient, he requests the urgent provision of the necessary additional information and may set a deadline for the receipt. Article 10 describes the principle of surrender following an agreement of the person concerned - in this case the question does not arise. Article 12 sets forth that the Council's Chamber is the authority that decides the surrender if there is no voluntary surrender. (Article 15 is not cited in this context.) The question therefore arises differently - ie. who responds to the request of a foreign authority? In this case the issuing authority (the one that issued the European Arrest Warrant) is obliged to provide the answer. Here it is necessary to refer to Article 26:

1. Where there is reason to believe that a person sought for prosecution in Luxembourg is in the territory of another Member State of the European Union, the investigating judge shall issue a European arrest warrant in the forms and under the conditions provided for in Articles 1 and 2.

2. Where there is reason to believe that a person sought for the execution of a sentence or a security measure is in the territory of another Member State of the European Union, the Public Prosecutor issues a European arrest warrant in the forms and under the conditions laid down in Articles 1 and 2.

The Act of 11 April 2010 regarding (1) the ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and (2) the Ombudsman's nomination

<sup>87</sup> Email exchange with the Director of the CSEE, 18 June 2018.

<sup>88</sup> Luxembourg, Act of 28 May 2009 regarding the creation and organisation of the Holding Centre (*Loi du 28 mai 2009 portant création et organisation du Centre de rétention et modifiant 1. le Code de la sécurité sociale; 2. la loi modifiée du 22 juin 1963 fixant le régime des traitements des fonctionnaires de l'Etat; 3. la loi du 29 août 2008 sur la libre circulation des personnes et l'immigration*). Available at: <http://legilux.public.lu/eli/etat/leg/loi/2009/05/28/n1/jo>

<sup>89</sup> Luxembourg, Telephone interview with the Director of the Holding Centre, 30 May 2018.

as the national preventive mechanism<sup>90</sup>, defines the Ombudsman's status and role. It sets forth that the Ombudsman is designated as the national prevention mechanism in accordance with article 3 of the Protocol, and that he/she has the mission to ensure the external and independent control of all facilities in which persons are deprived of their liberty. In the framework of this mandate, the Ombudsman is also entitled to evaluate the conditions in these facilities on the national territory and verify the compliance of the national authorities with the Convention.

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<sup>90</sup> Luxembourg, Act of 11 April 2010 regarding (1) the ratification the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and (2) the Ombudsman's nomination as the national preventive mechanism, (*Loi du 11 avril 2010 (1) portant approbation du protocole facultatif se rapportant à la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants, adopté par l'Assemblée Générale de l'Organisation des Nations Unies à New York, le 18 décembre 2002 et (2) portant désignation du médiateur en tant que mécanisme national de prévention et fixant ses attributions*), available at: <http://www.ombudsman.lu/uploads/Loi/20100411.pdf>