



action des chrétiens pour l'abolition de la torture

association sans but lucratif

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Translation
Original french

Observations upon submission of Luxembourg's second periodic report to the Committee for the Rights of the Child

Action by Christians for the Abolition of Torture (ACAT), in Luxembourg, welcomes the progress made in the implementation, by the government of the Grand Duchy of Luxembourg, of the United Nations Convention on the Rights of the Child, regarding the administration of juvenile justice. Since the initial observations and recommendations to the Luxembourg authorities by the UN Committee on the Rights of the Child, in June 1998, substantial changes have been achieved.

Minors in detention benefit today from satisfactory psychosocial guidance (1). In the rehabilitation centres (State Socioeducational Centres – CSEE), disciplinary regulations, particularly with regard to isolation as a punishment (2), have been adjusted (3). The strict isolation cell seems to be resorted to more sparsely. The punished youth is provided with specific educational support(4), and material conditions of detention have recently been upgraded (5).

Following pressing and repeated recommendations from several international treaty control bodies (6), this evolution in the conditions of detention and deprivation of liberty in rehabilitation centres was enshrined in a new law dealing with the reorganisation of the State Socioeducational Centre, on 16 June 2004, on two important aspects:

Article 1 of the new law establishes the creation of an autonomous closed security unit, on the site of the Dreibern State Socioeducational Centre, to house minors who are currently detained in the only adult central prison in Luxembourg (the *Centre pénitentiaire de Luxembourg* – CPL).

And Article 9 of the same law reduces to 10 days, instead of the previous 20, the maximum duration of cell isolation as a disciplinary sanction, and grants the youth the right to appeal to the juvenile judge when he or she considers the punishment to be excessive.

ACAT nevertheless considers that the government's commitment to act "in the child's best interest" should imply additional improvements in the conditions of detention of minors and in the protection against arbitrary measures against juvenile detainees.

We are primarily concerned about the delays in the completion of the autonomous closed security unit, and about its limited housing capacity. Building works are officially due to start in 2005. They should be completed, at best, in three years time. In the meantime, minors deprived of their liberty for infringing the law will remain in detention at the CPL.

While the new unit is under construction, no alternative housing facility other than the CPL seem to have been considered as a temporary solution.

Male juvenile detainees are confined to the second floor of the so-called "minority block", between the psychiatric ward on the first floor, and the third floor, dedicated to temporary taking in of illegal immigrants. Contacts with adult detainees remain unavoidable, if only while making use of common facilities (7).

Female juvenile detainees are housed within the women's block (F block), with free access to adult detainees and retainees.

This situation, which has persisted for more than a decade(8), clearly contravenes Article 37c of the Convention on the Rights of the Child and Article 26 of the Luxembourg law on youth protection. The Committee for the Prevention of Torture, in its 2004 report to the government, *"calls on the Luxembourg authorities to take immediate steps to set up a special unit for the detention of minors, away from the adult prison system."*(9)

Moreover, ACAT strongly fears that the CPL might remain an subsidiary detention facility for minors.

The government declares in its report to the Committee on the Rights of the Child : *"As soon as the security unit will be ready, the practice of placing minors in the CPL, as is usual at the time of writing this report, will end."*(10)

However, Article 11 of the law of 16 June 2004 states that the number of inmates to be placed at any time in this closed unit will not exceed 12, whereas the male juvenile section at the CPL currently holds (11) an official capacity of 27 places(12).Therefore, the possibility cannot be ruled out that the juvenile judge, when faced with the housing limitations of the new facility for minors, will again resort to detention of youth in the CPL, given that Article 27 of the law of 10 August 1992 on youth protection, which is still in force, allows the confinement of minors in a prison.

ACAT considers that, to achieve an adequate social rehabilitation of young people in conflict with the law, it is necessary and urgent that all juvenile detainees can be placed in separate housing facilities, away from an adult detention centre. Pending the completion of the new security unit, we underline the obligation for the government, as a transitional alternative, to provide the juvenile justice system with a temporary autonomous detention facility for youth, female and male, in conflict with the law.

"Effective complaint and inspection mechanisms are the fundamental guarantees against ill-treatment in juvenile facilities", the CPT states in its 9th general report (13).

An initial fundamental safeguard against arbitrary sanctions in the State Socioeducational Centres has just been established, with the possibility of appealing to the juvenile judge. **Nevertheless, ACAT deplores the government's lack of response to the CPT's repeated recommendations to set up an independent control body to inspect regularly juvenile facilities** (14). Such a mechanism would indeed allow the State to ensure that "*Every child deprived of liberty [shall] be treated with humanity and respect for the inherent dignity of the human person,...*". (Article 37c of the Convention on the Rights of the Child.)

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- (1) European Committee for the Prevention of Torture and other cruel, inhuman or degrading treatment or punishment (CPT) 18 April 2004, CPT/inf (2004) § 39, 40.
- (2) which means confining the punished youth to a cell, for a serious disciplinary infringement (violence, running away, drug abuse), day and night, without contact with the outside world. The duration of the isolation penalty could range from a few hours to a maximum of 20 days (10 days renewable). The law of 16 June 2004 reduces the maximum isolation time to 10 days.
- (3) In 1997, the CPT examined the practice of youth isolation in the CSEE and asked for it to remain a very exceptional disciplinary measure. Experts from the UN Committee Against Torture, in 1999 and in 2002, asked for the severity of this punishment to be mitigated (CAT/C/XXII/Misc.9/Add 5, 6 May 1999 and CAT/C/XXXVIII/Concl. 5, 28 May 2002). See also CPT report to the Luxembourg government on 18 April 2004 (CPT/inf (2004) § 105 to 109) and the report by M. Gil-Robles, Human Rights Commissioner for the Council of Europe – 8 July 2004, Comm DH (2004) 11, § 9 to 12.
- (4) See i.a the report by M. Gil-Robles, Human Rights Commissioner for the Council of Europe – 8 July 2004, Comm DH (2004) 11 § 12.
- (5) Furnishing of disciplinary cells with tables and chairs, laying out of an open air exercise area for minors in isolation, following express requirement from the CPT. See reaction of Luxembourg government to CPT report – 29 April 2004, § 105 to 107, and Luxembourg authorities' commentaries and observations concerning the report by the Human Rights Commissioner on his visit to the Grand Duchy of Luxembourg, Comm DH (2004) 11, under recommendation 3.

(6)

About the detention of minors in an adult detention centre:

As early as 1993, the CPT asked for an autonomous facility to house juveniles deprived of liberty in an adequate educational environment. In 1997, they reiterated that request. The UN Committee for the Rights of the Child, in its June 1998 recommendations also asked the government to remedy this situation (CRC/C/15/Add. 92). Similar recommendations were issued by the UN Committee Against Torture, in 1999 and 2002 (CAT/C/XXII/Misc.9/Add 5, 6 May 1999 and CAT/C/XXXVIII/Concl. 528, May 2002); by the CPT in 2004 (CPT's report to the Luxembourg government, 18 April 2004, CPT/inf (2004), § 7 and 36) and by the Human Rights Commissioner for the Council of Europe, in 2004 (8 July 2004 report, Comm DH (2004) 11, § 15).

About youth isolation measures in the CSEE: see footnote 3.

(7) Among others, the infirmary, sports facilities, or the open air area, see report by M. Alvaro Gil-Robles – Human Rights Commissioner for the Council of Europe – on his visit to the Grand Duchy of Luxembourg, Strasbourg 8.7.2004, CommDH (2004) 11, § 14.

(8) CPT report to the Luxembourg government – 18 April 2004, CPT/inf (2004) § 7.

(9) CPT report to the Luxembourg government – 18 April 2004, CPT/inf (2004) § 36.

(10) Luxembourg's second periodic report, in accordance with Article 44 of the Convention on the Rights of the Child (254).

(11) See for example the average detention period of minors in the CPL, in the Luxembourg authorities' commentaries and observations on the Human Rights Commissioner's report on his visit to the Grand Duchy of Luxembourg, Comm DH (2004) 11, under recommendation 2.

(12) CPT report to the Luxembourg government – 18 April 2004, CPT/inf (2004) § 37.

(13) (CPT/inf (99) 12 Strasbourg, 30 August 1999 – 7, p.15.

(14) CPT report to the Luxembourg government – 18 April 2004, CPT/inf (2004) § 93 and government answer CPT/inf (2004) 13 Ad § 93.