CHILDREN'S RIGHTS BEHIND BARS

Human Rights of Children deprived of liberty: Improving the Monitoring Mechanisms

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Content

1. Introduction

The following comments should provide a brief outline of Luxembourg's child protection system in order to understand the inexistent or prudent formalisation and the use of complaint mechanisms as well as a certain reluctance in terms of monitoring.

1.1. Predominant debates

a) For years, NGOs, the Ombuds- and other institutions (UN-CRC[1] (2013), UNICEF (2012), RADELUX (2012; shadow report, etc.) have been criticising an excessive share of judicial placements of minors. The Child- and Family Assistance Act of 2008[2] has been designed and adopted in order to reduce this share. However, placement figures have not yet decreased (cf. table 2). Precedence of judicial decisions and authorities has been reiterated by this recent act (art. 5 of Act of 2008). "In regard to the 'de-judicialisation', a barrier has been that judges were concerned that the law would encroach on their authority, restricting their mission and their ability to provide rulings" (UNICEF, 2012: 8). Missing elements for a child-friendly justice system were pointed out by several human rights bodies. Furthermore, the rights of adults seem to be more comprehensive than those of minors[3].

Concerning child protection, two main paths exist since 2011:

- First: With the entrance into vigour of the childhood-family support act (2008) in 2011[4], an "Office National de l'Enfance" (National Childhood Office: ONE) became operational. "The superior interest of the child must be a vital preoccupation" ("*l'intérêt supérieur de l'enfant doit être une considération primordial":* art.3). ONE provides numerous educational and therapeutical measures for minors and their family; a voluntary approach is necessary in order to benefit of service provisions. Participation of the minor and his/her parents is a central element, when it comes to the planification of 'repairing' educational measures.
- Second: The judicial path framed by the Youth Protection Act of 1992 presents verbatim socio-educational measures with a correspondent ambition and pretention. This act refers only to the interest, but not the superior interest of the child and in certain articles only (9, 11, etc.), but not as an overall objective; the wording is limited to "interest" and not to "*superior* interest". The judge of the Youth Tribunal is the only decision-maker. No consent or search of consent and no participatory element for parents and minors is foreseen. The judge's decision is binding and a new decision by the judge is needed to return the minor to liberty.

b) De iure, no cooperation between the judicial system and ONE is foreseen, not in the Youth Protection Act of 1992, nor in the Childhood and Family Support Act of 2008. De facto, some cooperation has been developed based on an initiative by ONE: regular meetings between judicial authorities and ONE take place. When minors are placed in one of the disciplinary institutions by the judge, no educational measure is foreseen by ONE during the placement, neither for the minor nor for parents. During their stay in the institution, ONE remains in a 'stand-by' position; educational measures are will be offered and run by the three institutions[5]. Thus regarding judicial measures, in most cases parents are left out of the 'educational' measures and the possible return home of the minor, seems to be insufficiently prepared. In exceptional cases, the tribunal can ask for therapy for parents during the stay of the minor in a home in order to ease a possible future family-reintegration.

c) Luxembourg has the Youth Protection Act for all minors up to the age of 18, which considers minors as victims and foresees educational measures like placement and others but does not have a "Jugendstrafrecht" like Germany, which allows social services to intervene before addressing cases to judicial authorities (cf. section 3.). Luxembourg does not have a **family judge system**. Issues concerning minors are dealt with by the Youth Tribunal and those concerning parents by the respective ordinary Tribunal.

[1] A glossary is available at the end of the report.
[2] Luxembourg, Parliament, 2008, Childhood-family support act of December 16th 2008 (*aide à l'enfance)*, available at: http://www.legilux.public.lu/leg/a/archives/2008/0192/2008A2584A.html
[3] CELPL, 2014 (to be published soon), Le Centre socio-éducatif de l'Etat, rapport de suivi ; cf. p. 16 : « Le médiateur est d'avis qu'il n'est pas concevable qu'un mineur placé sous l'empire de la loi sur la protection de la jeunesse dispose de moins de droits qu'un adulte incarcéré pour des faits pénaux. » The Ombudsman does not agree with the fact that a minor who is placed according to the Youth protection act has fewer rights than an adult, who is imprisoned according to the penal code.
[4] The act of 2008 and with it the Office National de l'Enfance (ONE) became operational in September 2011 with the adoption of the Grand-ducal decrees (GDDs) of 17 August 2011 on childhood-family support: http://www.legilux.public.lu/leg/a/archives/2011/0187/a187.pdf#page=2
[5] Information provided by the dirctor of ONE: E-Mail of 1 December 2014.

d) The supremacy of the Judicial system has been reiterated by the Childhood and Family Support Act of 2008 as well as other more or less recent acts (those on Ombuds-bodies). The Childhood and Family Support Regime has been established – reshaping the whole sector – in order to reduce judicial placements. A recent document issued by the Tribunal concerns 'reporting /identification'[6] and informs professionals of their *duty to report immediately to judicial authorities* highlighting penalties, which might be applied in case of the non-fulfilment of this duty. This again reinforces and reiterates the supremacy of and by the judicial system.

(e) The existing Ombuds-bodies collaborate rigorously. De iure, no provision of cooperation exists. However, for several years the four bodies[7], ask to be housed in one building in order to strengthen their collaboration.

f) Concerning child's rights' policy, the UN-CRC (2013) criticised the still inefficient and uncoordinated policy regarding child's rights issues even if an inter-ministerial group and the future inter-ministerial committee is/will be in charge of the elaboration of a National Action Plan (NAP) on the Child's Rights[8] ; up to now, no pre-draft exists.

g) The first monitoring of Luxembourg's prison has been done by the European Committee on the Prevention of Torture (CPT) in 1993. At this time CPT criticised the fact that minors were placed in prison. Since then, CPT reiterated this point until 2009. Only in 2004, a draft bill has been lodged concerning the construction of a new juvenile prison, the so called "unite de sécurité" (security unit: UNISEC) attached to the disciplinary boarding school, the State's socio-educational Centre (Centre socio-éducatif de l'Etat: CSEE). This project remained a main issue of debate in the concerned professional sector. Several opinions highlight non-conformity with international standards concerning the child's rights, be it concerning body searches or the duration of solitary confinement. Meanwhile, the building is ready for use, but the Grand-Ducal Decree (GDD) has not yet been adopted, in order to allow UNISEC to become operational.

1.2. Consensualism and complaint mecanisms

Luxembourg is well known for its 'dialogue social' (Clément, 2012). Within a preparatory period for future draft bills, employers' organisations, unions, as well as NGOs and other bodies (e.g. Human rights bodies) are thoroughly consulted by authorities. Within the next step, the official parliamentary procedure – after the lodging of draft bills - a second broad negotiation round is organised: Social partners (unions and employers' organisations) *have to be consulted* by the government; they receive the draft and are asked to provide an opinion. According to the purpose of the bill, these rounds include also NGOs and Human rights bodies. However, *the latter have to take the initiative themselves* and introduce their opinion on the bill to the Parliament. After months, sometimes years[9] of negotiations, the consensualised draft bill is finally adopted by Parliament. Normally, a fundamental consensus has been reached before the launch of the Parliamentary procedure.

The conception of numerous policies, e.g. NAPs is done within tri- or quadripartite committees, bringing together unions, employers' organisations, authorities and in certain cases service providers or Civil Society Organisations (CSOs). Thus, also inter-ministerial working groups are – depending on the purpose - attended by CSOs. The bodies step-by-step elaborate national programmes, e.g. the NAP on child's rights or the NAP on 'the promotion of emotional and sexual health'[10].

[6] Luxembourg, Prosecutor, 2013, Reporting (*le signalement) :* http://www.mj.public.lu/Courrier_public/QP-1414_226-Reponse.pdf
[7] The Ombudsman, ORK, CCDH and CET
[8] Luxembourg, Government, December 2013, the Government's Programme, (*programme gouvernemental),* available at: http://www.gouvernement.lu/3322796/Programme-gouvernemental.pdf
[9] the case of the revision of the Youth protection act of 1992: a draft bill has been lodged in 2004, withdrawn in 2011 and currently authorities are elaborating a new draft.
[10] Ministry of health, July 2013, NAP "emotional and sexual health" 2013 – 2016 (*Plan d'action national "santé affective et sexuelle")*, available at : http://www.sante.public.lu/fr/actualites/2013/07/sante-affective-sexuelle/plan-action-national-sante-affective-sexuelle-2013-2016.pdf

Looking for a consensus is a central feature for decision-making-processes and is of central importance in small states[11]. Furthermore, these tripartite committees working on new policies and mainly the central body, the Tripartite coordination Committee ("Comité de coordination tripartite"), finds a consensus *behind closed doors*; the underlying idea is that controversial conceptions can be discussed in the most efficient and explicit way behind closed doors: the final consensus is then published and does no longer mention any of the controversies; even if there had initially been highly opposed positions of the social partners.

On parallel, we observe[12] a modest use of ordinary judicial and appeal procedures, and instead a search of less visible complaint mechanisms; thus, mediation is a means, which is more and more used; complaining to the Ombudsman or the Ombuds-Committee on the Rights of the Child (Ombuds-Comité fir d'Rechter vum Kand: ORK) is a recent (since 2004 / 2003) widely used tool, which relies on mediating negotiations and little or no public presentation thereof. Both Human rights bodies, which are entitled to receive complaints, observe a steady increase of demands over the last 10 years of their existence[13]. Furthermore, authorities try to resolve conflicts with 'internal' invisible means, avoiding press communication – in order not to heat up an antagonistic atmosphere[14].

Thus, there is little tradition to tackle a conflict in an explicit way, for example by using the judicial path.

Last, the number of regulatory internal texts for institutions (e.g. on complaint mechanisms) are scarce. A twofold explanation can be given: first HR capacities of public administration are limited within a small or micro-state; whereas *several* civil servants are in charge of *one policy area* in a big country, *one* Luxembourgish civil servant takes over the *same policy area and has to cover others too*. Second, such written charts provide a higher degree of precise definitions for the functioning than unwritten principles, and thus limit the use of tailor-made decisions. Small states tend to incline to use the latter, given the 'intimate' networks as well as a phenomenon of clientelism.

1.3. Methodology

We define children deprived of liberty in the following way:

"2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority." (OPCAT, art. 4 (2)). Cf. also section 1.4. below and box 4.

Concerning the implementation of our project, the following steps were undertaken:

a) All concerned ministries have been informed about this project.
b) A kick-off meeting with stakeholders in Luxembourg took place on July 11th 2014 with representatives of the ORK, Ombudsman, Ministry of Education (with its departments on children's rights and youth protection), the respective institutions children are placed-in by the judge, i.e., the prison ("Centre pénitentiaire de Luxembourg": CPL), the State's socio-educative centre ("Centre socio-éducatif de l'Etat": CSEE), a disciplinary home and school as well as three psychiatric departments for minors.
c) We decided to concentrate on three aforementioned institutions, leaving out other homes for minors and foster families, because the Ombudsman in his/her function as national prevention mechanism (CELPL: cf. below), did not obtain access by the Youth Tribunal to monitor these other institutions regarding the respect of human rights and the ICRC. Consequently our team would have had no chances to obtain access. The Ombudsman was authorised by the Tribunal to interview minors in the three aforementioned institutions, but not in others. Given a negative

[11] Katzenstein, Peter J., *Corporatism and Change*, New York: Cornell University Press, 1984

[12] Reports to European observatories (e.g. that on Fundamental Rights to the Fundamental rights agency in Vienna) present only rarely case laws).
[13] E.g.: Ombudsman: annual reports available on: www.ombudsman.lu
[14] E.g. the Islamic scarf has been discussed: over years, an agreement has been found between teachers and the ministry without any publication of an official text. In 2014 only the ministry published a press communiqué on this item.

answer by the Youth Tribunal in July 2014, we were unable to meet minors in the CSEE and in CPL.

d) We interviewed directors of CPL, of the long term psychiatry (CHNP), of CSEE, the president of CSEE's "Commission de coordination et de surveillance". We were not given an interview opportunity with the directors of the two Youth and infant psychiatries (CHK and CHL). We interviewed the staff of CSEE, CPL, the CHNP psychiatry. Again, we did not obtain access to the two other psychiatric departments for acute provisions. The only group of minors we were able to interview was the one of long term psychiatry (Centre hospitalier neuro-psychiatrique: CHNP).
e) Furthermore, we interviewed several key actors: the Ombudsman/CELPL, ORK, officials from the Ministries of Education and Justice plus an information meeting with the Minister of Justice.

We mainly adapted the questionnaire for minors in order to provide minors with a possibility to narrate, i.e. to tell their own experiences in a way which is not pre-defined by the interviewers' wording of the questionnaire; such a qualitative approach produces elements, which would not appear in a pre-structured interview based on a closed questionnaire; the last one lists elements the interviewers have in mind and might prevent them from becoming aware of the most valuable 'other' elements (Nohl, 2009). After that open part of the interview we included items proposed in the common questionnaire.

1.4. Limitations

The main limitation concerned non-access to minors behind bars with exception of one of the psychiatric departments, the long term psychiatry.

Art. 4 (2) of the act concerning CELPL of 11 April 2010 as well as art. 20 (d) of OPCAT grants CELPL access to all institutions hosting persons deprived of liberty. According to art. 38 of the Youth Protection Act, it is prohibited to publish judicial decisions on minors, in order to protect them for their future. The main point of debate relating to interviews with minors in CSEE done by the Ombudsman (CELPL) concerns the definition of 'deprivation of liberty': *the Tribunal considers only the closed section of CSEE ("section fermée") as an institution depriving of liberty*, but not the 'open' part of CSEE: minors can leave the institution for school and other purposes, always based on an authorisation. *The Ombudsman, ORK, CCDH on the other hand consider all minors being placed by the Tribunal as being deprived of liberty* given the fact that the minor can leave this institution only following a revised decision of the Tribunal[15]. A national or an international institution (Court or Parliament) has to decide concerning these contradicting definitions. The interpretations of the Ombudsman and of ORK are in line with international law, i.e. the Havanna rules.

2. The international framework

2.1. Ratified conventions:

The following table provides an overview:

Table 1: signature and ratification of international conventions

	Signature/Date	Ratification/Date	Adhesion/Date	Reserve(s)
CRC	21 March 1990	07 March1994		art. 3, 6, 7, 15
CRC-P3	28 February 2012	not yet		
CAT	22 February 1985	22 September 1987		art. 1 (1)
OPCAT	13 January 2005	19 May 2010		not yet

[15] CELPL wanted to monitor other homes for children, however, judicial authorities were against, arguing that these homes do not deprive of liberty.

CPT	26/11/1987	06 September 1988		
European Social Charter (Art. 17)	11 February 1998	not yet		

The ICRC has been signed in 1990 and ratified in 1994[16], however with 4 reserves (concerning articles 2, 6, 7 and 15). The reserve concerning art. 15 (Segura, 2012) is the only one, which concerns the purpose of this report. Art. 15 says:

"1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and, which are necessary in a democratic society in the interest of national security or public safety, public order (ordre public), the protection of health or morals or the protection of the rights and freedom of others."

According to national law (act of 5 May 1928 on voluntary organisations[17]), minors are not entitled to found and to represent a voluntary organisation. During the parliamentary ratification process, two opinions were debated: on the one hand, the opinion of State's Council (Conseil d'Etat) and the one by the Parliamentary Commission of foreign affairs ("Commission parlementaire des affaires étrangères") supported the reserve due to the aforementioned national law. On the other hand, the Parliamentary family commission ("Commission parlementaire 'Famille") considered the reserve as obsolete and would have fully accepted article 15.

Neither the ECHR nor the CJEU issued a decision concerning minors behind bars in Luxembourg.

2.2. Conventions waiting to be ratified:

The 3rd protocol CRC is not yet ratified. No pre-draft or draft bill is yet available, even if the government announced it for soon. [18] Thus we are unable to provide any other information.

2.3. Recommendations and treaty bodies

In 2013, the UN-CRC in its concluding observations reiterates its "concern that the possibility of a child to be kept in solitary confinement for up to 10 days as a means of punishment for children deprived of liberty continues to exist (CRC/C/15/Add.250, par. 33) even though it has almost never been used since the consideration of the last periodic report of the State party."[19]

The UN-CRC also urges the State party "to bring its juvenile justice system fully into line with the Convention, in particular articles 37, 39 and 40, and with other relevant international standards". Referring to the Committee's general comment No. 10 (2007)[20], the Committee urges Luxembourg to:

"(a) consider restorative justice practices and develop diversion mechanisms and alternatives to detention and punishment to prevent recidivism;
(b) stop placing juveniles in the State Penitentiary and to rapidly open the new detention unit for juveniles;
(c) provide sufficient resources for the new detention unit to be fully operational;

[16] The 20 years of ratification have been celebrated in 2014.
[17] Cf. act of 21 April 1928 on voluntary organisation (sur les associations et les fondations sans but lucratif).
[18] Réponse à la question N° 0464 (Question écrite) de Madame Sylvie Andrich-Duval, Députée, Madame Octavie Modert, Députée concernant Droits de l'enfant, par Monsieur Jean Asselborn, Ministre des Affaires étrangères et européennes, Monsieur Claude Meisch, Ministre de l'Education nationale, de l'Enfance et de la Jeunesse, Monsieur Félix Braz, Ministre de la Justice
[19] Concluding observations on the combined third and fourth periodic reports of Luxembourg, adopted by the Committee at its sixty-fourth session (16 September – 4 October 2013), document CRC/C/LUX/CO/3-4, paragraphe 50
[20] CRC general comment No. 10 (2007): Children's rights in juvenile justice

(d) provide the CSEEs with the necessary human, technical and financial resources to adequately carry out their work with children with a wide array of needs;
(e) take immediate measures to ban solitary confinement of children."[21]

With the ratification of the OPCAT via the adoption of the act of April 11th 2010[22] the Ombudsman's institution has been enlarged by the creation of CELPL, ("Service du contrôle externe de lieux privatifs de liberté") the national prevention mechanism, which took over the monitoring of institutions hosting persons deprived of liberty. Regarding minors, the following have been monitored by the CELPL:

- the CSEE in 2012 (CELPL, 2012);
- an up-date of the report 2012 has been undertaken in 2014 (CSEE, 2014). This evaluation is not yet available on internet, but is in the consultation process and we refer to it at relevant points;
- the closed psychiatry in 2011; three departments[23] host minors who are placed via a judicial decision. These units also treat minors who are there on a voluntary basis;
- CPL has been monitored several times with different focuses. The unit for minors has never been monitored in a separate way, but has been visited in each of the general monitoring exercises;
- the Ombudsman also wanted to monitor Urgent Crisis Reception Homes *(accueil d'urgence en situation de crise ;* AUCS); however, judicial authorities contested by saying that AUCS do not qualify as institutions depriving minors of liberty. No monitoring procedure has been launched;
- CELPL's mission is the *monitoring* according to principles of the OPCAT and its act of April 11th 2010. As an effect of the new mission and the fact that those who carry out the visits are staff members of the Ombudsman[24], these persons, de facto, also act in terms of *mediation.* This is not ideal in terms of keeping monitoring and complaining separated as well for the institution as well as for the Ombudsman/CELPL. However, the mixed approach provided minors with the information of their rights to complain to the Ombudsman.

The judge also places minors in foster families and in children's homes; both host also children on a voluntary basis, e.g. those who seek a solution via ONE.

The CPT has monitored the CPL as well as the CSEE regarding the department of minors in CPL. Its last report has been published in 2009[25].

3. The national framework

Luxembourg does not have a Penal Code for Youth, considering minors not being criminals but victims; minors in need. The wording of numerous articles of the main framing text, the Youth Protection Act of 1992[26] might, however, give a contradictory punitive impression, even if measures, the judge can take concerning minors, are conceived as educational measures. Mainly the placement, but also other possible measures are considered by minors and parents as penalties.

For Luxembourg, two types of legal texts can be distinguished:

a) The recent ones (mainly: Child- and Family Assistance Act of 16 December 2008[27] and the act on the Ombuds-Committee for the rights of the Child (ORK) of 25 July 2002[28]) highlight the *rights of the*

[21] Concluding observations on the combined third and fourth periodic reports of Luxembourg, adopted by the Committee at its sixty-fourth session (September 16th –October 4th 2013), document CRC/C/LUX/CO/3-4, paragraph 51
[22] Luxembourg, Parliament, 2010, act of April 11th 2010 on the OPCAT: optional protocol to the convention against torture and other cruel, inhuman or degrading treatment or punishment, available at: http://www.legilux.public.lu/leg/a/archives/2010/0056/2010A1000A.html
[23] There are two acute psychiatric departments, one for children up to age 12 (Centre hospitalier de Luxembourg: CHL) and another one for youngsters aged 12 to 18 (Centre Hospitalier du Kirchberg: CHK). Furthermore, a long term stay department exists within a long term psychiatric hospital (Centre Hospitalier Neuro-psychiatrique: CHNP).
[24] With the new function as CELPL, the Ombudsman's team was not enlarged.
[25] Council of Europe, October 2010, Report to the Government of the Grand Duchy of Luxembourg on the visit to Luxembourg by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT) 22 to 27 April 2009. CPT/Inf (2010): http://www.state.gov/documents/organization/186586.pdf
[26] Luxembourg, act of 10 August 1992 on youth protection (*protection de la jeunesse*) available at : http://www.legilux.public.lu/rgl/1992/A/2196/1.pdf
[27] Luxembourg, Parliament, 2008, Childhood-family support act of December 16th 2008 (*aide à l'enfance)*, available at: http://www.legilux.public.lu/leg/a/archives/2008/0192/2008A2584A.html

child, *its superior interests, its well-being* and express the authorities' intention to adapt to international standards. Texts refer to international - mainly UN - documents such as the ICRC[29]. They define rights and obligations of youngsters as well as of authorities and the implementation of these rights by recognised services; they highlight the respect of children's rights. Explanatory memorandums ("exposés des motifs") of draft bills, policy programmes, and judicial decisions refer to international principles.

b) The older texts lack such references. Thus, the Youth Protection Act of 1992[30] and the civil code do not stipulate principles like 'superior interest' and 'well-being of the child'. Luxembourg's civil law is guided by principles of the 19th century; e.g., the section on guardianship for minors defines the protection of patrimonial / property rights in a detailed way without any reference to the child's well-being or its superior interest. However, certain parts e.g. of the Criminal Instruction Code ("Code d'instruction criminelle") have been revised and are consequently put into conformity with international standards regarding child-friendly-justice[31].

The texts do not always conform to international law.

- Appeal procedures against judicial decisions are limited, more limited for minors, parents, guardians than for adults who are in detention (cf. section 3.). The ORK highlights the fact that minors have less rights to defend themselves than adults – however within the Youth protection act they are considered as *victims* and not as *perpetrators*, benefitting of educational measures without having access to their ordinary reference persons (family members, friends)! [32]

- Minors are not entitled to go to court on their own initiative. They need to be assisted by a person holding parental authority or an ad hoc administrator, a legal representative.

3.1. Placement/detention of minors

No specific penal code exists for minors (as this is the case with e.g the "Jugendstrafrecht" in Germany). The Youth protection act (1992) frames decisions taken by the judge of Youth, the investigating judge or the prosecutor. De iure, the minor is never considered as a criminal. The judge or the prosecutor can place the minor in one of the institutions enumerated in art. 1 (3. and 4.) of the Youth protection Act, namely CSEE, CPL and psychiatry, the three institutions we focus on. The minor is not considered a criminal person, but a minor in need. De facto, the minor might be a

- person having committed something, which would be qualified as crime if s/he was an adult, and is then 'sentenced' with an educational measure ("mesure de garde, de préservation ou d'éducation") according to art. 1 of the Youth protection act), in an institution depriving him/her of liberty, e.g. the CSEE;
- victim of domestic or sexual violence and has hence to be protected against his ordinary environment; s/he can be placed in the same disciplinary CSEE, the only institution which has to accept children beyond their legal capacity. All the other institutions (Urgent crisis reception homes: "*accueil d'urgence en situation de crise":* AUCS, etc. cf. below.) can refuse a minor, because they are fully occupied. In such cases, victims are placed, together with minors who are 'perpetrators'. The placement of the victim in CSEE is only chosen if no place is available in other homes (AUCS e.g.). In such cases, authorities try to place the victim in the quickest possible

[28] Act of July 25th 2002 establishing the Ombuds-Committee for the Rights of the Child (*portant institution d'un comité luxembourgeois des droits de l'enfant, appelé "Ombuds-Comité fir d'Rechter vum Kand"),* available at: http://www.legilux.public.lu/leg/a/archives/2002/0085/2002A17501.html
[29] UN, 1989, International Convention on the rights of the Child: ICRC, available at : http://www.ohchr.org/en/professionalinterest/pages/crc.aspx
[30] Luxembourg, Parliament (*Chambre des Deputés*), 1992, act of August 10th 1992 on youth protection (*la protection de la jeunesse*) available at : http://www.legilux.public.lu/rgl/1992/A/2196/1.pdf
[31] In order to provide more child friendly justice conditions, audition procedures (within judicial proceeding) have been amended in 2009 (cf. art. 388-1 of the penal code). The same act also sets out the right to legal assistance for all minors independently of the parents' income (the State can ask for reimbursement by parents who have the means, once the affair is finished) : act of 5 June 2009 on the profession of lawyers, available at: http://www.legilux.public.lu/leg/a/archives/2009/0134/a134.pdf#page=3
[32] Meeting with ORK on February 28th 2014.

manner in another more appropriate home; according to professionals, this takes normally a maximum of 2 weeks.

Within the CSEE, within an AUCS or other children's homes, the minor 'victim' just as the minor 'perpetrator' are resident in the same institution, are deprived of liberty and are sentenced the same way, if e.g. they run away (2 days in the closed section ("section fermée").

The following types of judicial procedures and decisions exist:

a) the **ordinary procedure** aiming at 'perpetrators' is implemented by the Youth Tribunal according to art. 1 and 8 of the Youth Protection Act. An assessment of the minor's situation can be requested by the Tribunal from the Youth Department of the Central Service for Social Assistance *(Service central d'assistance sociale:* SCAS). Such an ordinary procedure cannot be taken in an urgent situation given an average preparation of 4 weeks with exception of urgent assessments (1 working day). Point c) below presents procedures for urgent measures.
b) In rare situations, the judge can take a *first* **decision without the assistance of the prosecutor** (art. 1 and 9) ***on the request of the minor*** (in a situation of violence). This first decision has to be confirmed by an ordinary procedure, the *second* one within 15 days including an assessment of the minor (parents, guardian have to be contacted, at least to be called, at best to be heard). Parents are informed about the second decision of the Tribunal in order to meet the appeal time line. Professionals of the three host institutions we visited do not remember any placement of this type.
c) The investigating judge, the judge or the prosecutor (available 24/7) can pronounce a **provisional** (thus urgent) **placement** (e.g. during nights and weekends) according to art. 25 ("*mesure de garde provisoire"*). Normally, the investigating judge does not take such decisions. The prosecutor however is often asked to do so, namely during evenings, nights and weekends. He acts *when* the judge of the Youth Tribunal is not available. The judge is then immediately informed by the prosecutor about his/her urgent and provisional decision and will then act according to his/her mission. Often, there is no ordinary procedure later on, and minors remain over months and years in the institution based on that provisional decision[33]. Normally, the minor is protected by the Police, transported to the Police office. A report is sent by fax or is presented by telephone to the prosecutor and within some hours, the decision is taken by the prosecutor; then the child is transported by the Police to the respective home (CSEE, AUCS, other homes).
d) In specific ***provisional*** cases (investigation in process), the minor can be placed in prison for a maximum duration of 30 days as long as s/he is separated from adults in prison and as long as a special regime is applied to him/her (art. 26).
e) In extremely rare cases (2 cases in last 25 years[34]), a minor aged ***more than 16*** can be judged according to ***ordinary law*** when the prosecutor considers the existing educational, preserving and protecting measures (cf. art. 1) as inadequate and asks the Judge of Youth to hand the affair over to the ordinary Tribunal. Then, the minor is judged according to the ***Penal Code*** (art. 32).
f) During the ***investigation/assessment period*** preparing the placement decision, a placement can be ordered by the tribunal (art. 24).
g) The judge can take a decision in favour of one of the measures of art. 1 (including placement) if physical or mental health is endangered. A medical doctor can take any decision s/he considers being necessary for the life and health of the minor against the opinion of those who hold parental authority, i.e. place the minor in a hospital/psychiatry; the prosecutor has to be informed at the latest 3 days after the decision of the medical doctor (art. 7).

According to ORK, CELPL, other Human rights bodies (CCDH) and NGOs[35], the rate of judicial placements is high in Luxembourg: Overall, children placed by the judge represent 0.91 per cent of all children aged 0 to 19 in 2013 and 0.92 per cent in 2014[36]; separation of children from their ordinary family context (art. 9 of the ICRC) is too often decided by judicial authorities.

[33] Luxembourg, UNICEF, 2012, Supplementary report on the 3rd and 4th periodic report of Luxembourg report, not available on the internet.
[34] CELPL, 2014, Le CSEE, rapport de suivi, p. 17.
[35] ORK, 2011, 2012, 2013, annual reports, CCDH,
[36] Calculated with demographic data from STATEC and figures of table 2: http://www.statistiques.public.lu/fr/population-emploi/index.html

The following table provides details concerning minors in different types of institutions, either being 'deprived of liberty' or being there on a 'voluntary' basis:

Table 2: Minors in prison, CSEE, AUCS, homes, foster families[37]

	All minors		**Minors placed by the judge**	
	April 2013	**April 2014**	**April 2013**	**April 2014**
CPL (prison)	3 Admissions*:16	3 Admissions*:9	3 100%	3 100%
CSEE (disciplinary home and school)	103	96	103 100%	96 100%
Sub-total	106	99		
AUCS	51	42	47 94%	33 78.6%
Other children's homes	527	536	379 72.0%	390 72.8%
Placement abroad	124	123	73 58.9%	76 61.8%
Foster families	424	459	357 84.2%	386 84.1%
Sub-total with exception of psychiatry	1126	1160	866 76.9%	885 78.1%
Total	1232	1259		

Source: data of **ONE**: http://www.men.public.lu/fr/publications/enfance-jeunesse/statistiques-analyses/enfance/index.html. Data provided by **CPL**; * annual admission for 2013 and for January to June 2014. In bold: institutions we visited.

Provisional placements often turn into long-term placements, and this for months and years. A leave from the institution is often reiterated by the tribunal instead of a clear decision, which ends the placement, with a decision in favour of "maintien en milieu familial" (art. 1 of the Youth protection act). "The ORK believes that a return to the family, even notoriously imperfect, is almost always preferable to a long-term care in institutions." (ORK, 2011: p.11).

With the placement, parental authority is immediately transferred from parents to the institution. A mixed regime would improve the participation of parents and the preparation of the return of the child to its home (ORK, 2013, UN-CRC, 2013, CCDH, UNICEF, 2012)[38]. The current framework 'dis-powers' parents with the loss of their authority – participation is not an objective – and fully empowers the institution.

Within the following sections, we distinguish formal and informal complaint mechanisms inside the institution (internal procedures) from mediation with ombuds-bodies (Ombudsman, ORK and the national information and mediation service for health purposes: "*service national d'information et de médiation dans le domaine de la santé":* SNIMS) and from judicial complaints (appeal and release proceedings).

[37] data provided by ONE, which presents the situation twice / year, in April and in October; concerning comparability, we present data of April 2013 and 2014; in any case, there is little variation between the two rapports).
[38] UNICEF, 2012, Supplementary report on the 3rd and 4th periodic report of Luxembourg report, not available on internet.
UN-CRC, 2013, concluding observations on the combined third and fourth periodic reports of Luxembourg , adopted by the Committee at its sixty-fourth session (September 16th –October 4th 2013), CRC/C/LUX/CO/3-4, document: Available at: http://www.ances.lu/attachments/article/163/CRC_C_LUX_CO_3-4%20CRC%20concluding%20observations%20Luxembourg.pdf ORK, 2013, annual report, available at: www.ork.lu

3.2. Judicial complaint mechanisms

Once, the judge of the Youth Tribunal has taken a placement decision for a minor, depriving him of liberty according to one of the measures in art. 1, only a judicial decision can reverse this measure. Such procedures can be launched either by the Youth Tribunal/Prosecutor or by parents/guardian/minor with his legal representative.

Up to the age of 18, the minor is treated within the specific Youth Protection Act of 1992, not 'sentenced', but 'provided' with "mesure de garde, de préservation ou d'éducation", i.e. educational measures; this might be a placement in CSEE, other homes, foster family, psychiatry or, in extremis, CPL. Only in exceptional criminal cases, concerning youth aged 16 to 18 (art. 32 of the Youth protection act), when the aforementioned educational measures are considered being insufficient, the Penal Code is used as reference[39].

The minor is entitled to legal assistance at any moment according to

1. art. 1 of the act on the profession of the lawyer of 5 June 2009[40]; The entitlement is valid for all minors independently of the income situation of the parents; However, once the affair is finished, the State *can* require reimbursement of parents whose means would have excluded them from an entitlement to legal assistance; according to authorities and lawyers, up to now, *reimbursement has never been required*;

2. art. 18 of the act of 18 August 1995 modifying art 18 of the Youth protection act[41] says that the judge *has to provide* the minor/parents/guardian with legal representation, when the minor or his parents/guardian ask for it and when s/he is accused of having committed something which would be sentenced according to the penal code (in the case of having reached majority) and which leads to a placement in CSEE or CPL. The minor is entitled to legal assistance in any case (art 1 of the act of June 2009) and *has to have* legal representation within a criminal affair (cf. also art. 81 (4) of the Criminal Instruction Code)[42].

Thus, either (paragraph 1. above), there is an *entitlement to legal assistance* – in any case – but no obligation to provide the minor with legal representation, or (paragraph 2. above) in a criminal affair when the minor is placed in CPL, there is an *obligation* for the judge *to provide* the minor with legal representation.

We present the judicial complaint options in relation to the aforementioned types of placement (cf. always section 3.1., paragraphs a) to g):

a) Placement type a), i.e. art. 1 and 8 or type b), i.e. art 1 and 9: after an ordinary procedure as soon as the definitive decision has been taken by the judge (Tribunal) and has been notified to the parents or the guardian, they can lodge an appeal to the Youth's Appeal Chamber ("Chambre d'appel de la jeunesse") (art. 30) within 40 days after notification of the decision. Last level is Court of Cassation ("Cour de cassation") which decides according to the form ("quant à la forme") and not according to the substance ("quant au fond"). If the decision is positive for the plaintiff, the Court of Cassation refers the affair back to the Tribunal. This leads to a revision of the affair starting at the Tribunal; in this case, the affair might again be returned to the "Cour d'appel, Chambre de la jeunesse".

b) A systematic revision of a placement has to be undertaken at the latest 3 years after the initial decision (art. 37). In this case, the same appeal procedures can be lodged.

[39] With minor exceptions: one of the measures taken by the judge (art 1) before the age of 18 can be extended up to the 21st year (cf. art. 3) and in certain circumstances up to 25th year (art.4 and 5) of the minor victim under the provision of the youth protection act.
[40] Act of June 5th 2009 on the profession of a lawyer (loi *sur la profession d'avocat,* Luxembourg: Memorial Official Journal of the Grand Duchy of Luxembourg A-N°134, available at: www.legilux.public.lu/leg/a/archives/2009/0134/2009A1889B.html?highlight=
[41] Act of August 18th 1995 on legal assistance (assistance judiciaire): http://www.legilux.public.lu/leg/a/archives/1995/0081/a081.pdf#page=1
[42] Criminal instruction code (« Code d'instruction criminelle ») : https://www.imolin.org/doc/amlid/Luxembourg_code_instruction_criminelle.pdf

c) Once an appeal has been definitively rejected, the minor/parents/guardian have to wait 12 months before they are entitled to launch a next appeal procedure (art. 37). The underlying idea is to provide the minor with a stable situation.

The CELPL (2012), the ORK (2011 :49) and the State's Council ("Conseil d'Etat") criticise these waiting periods as too long. The draft bill n. 5351 revising the Youth Protection Act deposited in 2004 reduced the waiting period to 6 months. This draft bill has been withdrawn in 2011 and new draft will be introduced by authorities in due time - no pre-draft is yet available. The State's Council[43] proposed in 2010 to reduce the period to 6 months or as soon as new elements come up; a compulsory revision should be done after 1 (and not 3) years. CELPL (2012 : 14) proposes either - idealiter - to allow an appeal as soon as new elements come up or after 3 months.
As opposed to provisions for minors and parents, the Tribunal or the judge can revise the placement decision *at any moment* on his/her own initiative or when s/he is asked to do so by the prosecutor, by the minor, the parents/guardian, by the probation officer (SCAS) (art. 37 of the Youth protection act).

d) Only provisional placements can be questioned by "main levée", i.e. release proceedings, thus placements of type b), i.e. art. 1 and 9, placements of type c), i.e. art. 25 (the most frequently used), of type d), i.e. art. 26 and of type f), i.e. art. 24 (art. 27). If the judge of the tribunal has taken the provisional decision, s/he will also give an answer - 'yes' or 'no' - to such a request. Mostly, it is 'no' if no new elements have been introduced. The answer to such a release procedure has to be presented within 3 days.

e) Another mean to interrupt the placement is to ask for leave ("congé": art. 12). A leave for the weekend can be asked to the director of CSEE. A leave for holidays has to be attributed by the judge. Often these leave decisions are reiterated instead of a new decision re-establishing the "maintien en milieu familial" (maintaining the child in his/her family environment), which is either an unconditioned or a conditioned definitive leave of the institution (art. 1 of the youth protection act).

f) In the case of a procedure according to art. 32 (16 to 18 years old) within an ordinary jurisdiction, the prosecutor, parents, the minor, the guardian and other persons who hold parental authority can lodge an appeal within **10 days** after the decision has been notified to them (art. 34).

Procedures, the minor, the parents/guardian wish to launch with the Tribunal are *written* procedures only; hence, the minor has to write a letter to the judge (cf. section 3.3). Within a judicial affair concerning the minor, the minor can ask to be heard by the judge and is entitled to an audition by the judge (art. 388 – 2 of Civil Code[44]).
The minor cannot go to court on his own initiative without a legal representative. The minor can write to the judge; the judge *can* hear the child.

Judicial authorities do not hold and do not publish statistical data, with exception of administrative Justice. Appeal procedures launched by parents / a person who holds parental authority are extremely rare according to managing personnel of the visited institutions, according to authorities and lawyers. According to authorities release proceedings are often lodged.

The Ombudsman in his function as national prevention mechanism (CELPL; 2011: 8) highlights an insufficient transposition of the right to obtain information concerning appeal procedures: art 18 of the Youth protection act needs to be more precisely defined.

According to lawyers[45], the following obstacles have been highlighted:

In one of the two judicial districts, provisional placements (urgent decisions according to art. 25) are often taken and maintained over months and years. This means that only release proceedings can be launched which are normally answered with 'no'. The fact that the provisional decision had been taken by the same judge as the answer to "main levee" explains the modest chances to obtain a revised decision in the case of missing new elements. In former times, "main levee" proceedings were in the hands of another judge than the one who took the provisional decision.

[43] Opinion by State's Council 5351[03] lodged in 2010:
[44] Code civil: www.legilux.public.lu/leg/textescoordonnes/codes/code_civil/L1_T10_minorite_tutelle_emancipation
[45] Meeting with a group of lawyers on August 10th 2014.

The choice of the lawyer is done *by the judge* (art. 1 of the act on the profession of the lawyer; art. 18 of the Youth protection act). There is no possibility for the minor / the parents of the minor to choose the lawyer ("conseil") - as opposed to *free choice* of the lawyer for victims of trafficking and for applicants of international protection[46].

A change of the lawyer is difficult and hinders in certain cases.

Lodging release proceedings or an appeal is only useful if new elements can be presented. Otherwise, chances are extremely high to obtain the same answer as for the initial decision. Both judicial procedures block negotiation means and potential leaves (weekend, holidays) for the minor during the procedure. Negotiation with the Tribunal including a precise new proposal constitutes the most promising opportunity - according to Luxembourg's strong corporatist tradition of negotiation (cf. section 1.2.). Lodging a demand for a leave - with reiteration - is the most promising requirement parents/minor can introduce.

A leaflet or oral information on complaint mechanisms or more generally speaking information on rights of the child is not systematically, but rarely presented by the institution. Minors and parents do not know about it either. Better-off parents use judicial means, while other parents do rarely question the judicial placement (cf. ATD-Quart Monde, 2014 and box n. 2).

The 'loss of liberty' is considered as an 'educational measure' within the youth protection act. The underlying idea was to protect minors, to get them out of their ordinary context into educational institutions. It is important that minors receive a brochure/leaflet at their arrival in the institution which informs them about their rights. Minors should be able to have the same guarantees as adults: in CPL, adults receive such a brochure; this is not the case for minors – however it will be done very soon[47]. The text of the brochure should be written in a clear and understandable language and should contain: addresses and telephone number of Ombudsman, of ORK, their functions as well as 'how to jointhem'; idem for the Youth Judge, entitlements in terms of legal assistance and how to get hold of a lawyer. Furthermore, it would be helpful to have posters well positioned inside CSEE and CPL and psychiatry (as well as the other institutions).

There was a concern regarding the confidentiality of complaints sent by the minor to the judge: when the minor is sentenced with a stay in the closed section ("section fermée"), the CSEE distributes a form, which can be used by the minor to contest the solitary confinement; such a document is then sent *by fax* to the judge – thus without any anonymity and confidentiality.

If for any other purpose, the minor sends a sealed letter to the judge with a precise complaint (independently of his transfer to the closed section ("section fermée"), the judge transfers this letter to the institution asking them to react upon it. Thus, the author can easily be 'detected' and confidentiality of complaints cannot be guaranteed (cf. UN-CRC, 2013: 4, para 21 (b)).

Box 1: good future practice

Lawyers proposed to organise the following complaint procedure: complaints regarding loss of liberty or other purposes like living conditions in these institutions should be sent to CELPL or ORK. If a minor sends a letter to the judge, the judge should then transfer the complaint to one of those two bodies. CELPL and ORK should – at a certain stage – launch a monitoring exercise (might be of modest dimension) in order to clarify the questions in a neutral way and to protect the anonymity of the plaintiff. Such complaint mechanisms should be presented in a brochure/leaflet which should be handed to each newcomer.

[46] Coordinated text of June 25th 2013 "libre circulation – immigration – protection internationale": free movement – immigration – international protection; cf. art. 7: http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf ; act of 8 May 2009 on trafficking, art. 2: http://www.legilux.public.lu/leg/a/archives/2009/0129/a129.pdf#page=2

[47] As an effect of the meeting we had with CPL for this study such a brochure will be elaborated – ORK does currently implement it.

The 6 lawyers we met experienced during their whole career all together 4 minors who addressed themselves directly to them.

Access of lawyers to visit minors in CSEE is – according to lawyers – not easy; they are often considered as trouble-makers.

3.3. Non-judicial formal and informal complaint mechanisms with Ombuds-institutions

This section contains firstly a description of the functioning of external ombuds-bodies, their mission and their limitations and secondly an appreciation of their use by the Ombudsbodies, by the institutions (head and staff) and by those minors we were entitled to interview.

3.3.1. Ombuds-bodies

Within the last 12 years, mediation has been developed in Luxembourg. Three legal texts and three bodies need to be established for this purpose: The Ombudsman, the ORK and the SNIMS.

a) The ORK has been created by the act of 25 July 2002[48] and became operational in 2003. Its main objective is the promotion and protection of the child's rights according to the ICRC (art. 1) and more specifically to analyse regimes regarding the respect of these rights and to present recommendations to authorities, to provide opinions to relevant draft bills, to promote free expression and participation of minors concerning decisions which concern them, to analyse situation where the child's rights are not respected, to present recommendations and to advise in case of individual problems (art. 3 a), b), e), f), g) and h)).
The ORK was responsible to the ministry of Family up to December 2014, since then to the Ministry of Education, of Childhood and of Youth.
The ORK cannot intervene in an on-going judicial procedure, thus cannot be heard before a court (art. 4). The ORK is entitled to access to all buildings of public or private organisations hosting children day and night or during daytime only. (art. 4).

The ORK receives complaints in any form without any formal conditions: via cell phone, via letter or fax, via mail or via bilateral meeting. ORK and the Ombudsman cooperate thoroughly with regular meetings and with referral of cases.

In 2014, ORK, tackled 124 new cases, in 2013, it was 158 new cases[49].
ORK receives not more than 4 to 5 minors /year who address themselves directly without the intermission of an adult[50].
ORK's staff is composed by 1 president of ORK, 1 lawyer and 1 secretary.

b) The Ombudsman: The service is an independent authority. It has been created by the act of 22 August 2003 and is attached to Luxembourg's Parliament. The objectives of the Ombudsman's service are:

- to avoid legal proceedings,
- to mediate between ***individual citizens*** and ***administrations***, and
- to provide services free of charge (processing complaints, providing information etc.).

His/her mandate is to receive individual complaints of physical or moral persons, whatever their nationality and their age (at least no restrictive condition exists in the text) regarding a dysfunction of any authority. The Ombudsman cannot be charged with complaints of a public authority against another or with disputes between two public authorities. Public authorities cannot consult him. His function is solely the processing of citizens' complaints about public authorities.

An individual case can be introduced by a physical person, any institution under private law, e.g. a voluntary organisation, a company under private law. Complaints to the Ombudsman must imperatively be preceded by the appropriate administrative steps, aimed at obtaining satisfaction with

[48] Act of July 25th 2002 on the establishment of ORK (institution d'un comité luxembourgeois des droits de l'enfant, appelé «Ombuds-Comité fir d'Rechter vum Kand»; ORK) : http://www.legilux.public.lu/rgl/2002/A/1750/1.pdf
[49] ORK, 2013, annual report , p.78: http://ork.lu/files/Rapport_ORK_2013_WEB.pdf
[50] Meeting with ORK on August 8th 2014.

the bodies concerned. The complaint sent to the Ombudsman does not preclude a parallel appeal before a competent court. The Ombudsman cannot intervene in an on-going judicial procedure; s/he cannot be heard before a court, nor question the merits of a court decision. In the event of failure to comply by a final legal decision, however, the Ombudsman may order the bodies concerned to comply with that decision within a given period of time to be established. S/he does not function as a judge. His legal task is to provide mediation. However he also offers guidance and information.

The plaintiff can contact the Ombudsman either directly, by telephone, or verbally, can send in documents and can contact a Member of Parliament, who will then contact the Ombudsman on his behalf.
If the Ombudsman judges the complaint to be justified, s/he will consult both the plaintiff and the concerned administration. Thereafter, s/he can suggest recommendations to the administration **as well as** to the plaintiff, which according to his/her assessment should allow for a joint resolution. These recommendations can involve propositions aiming to improve the functioning of the administration in general or to modify legislation.

The Ombudsman's staff, including CELPL, is composed by 8 persons: out of them 4 lawyers, 2 persons with academic education and 2 persons for technical purposes.

c) The Information and mediation service for health (*service national d'information et de médiation dans le domaine de la santé :* **SNIMS) has been launched with the recent adoption of the act of** 24 July *2014*[51] *concerning rights and obligations of patients.* This law introduces a general, harmonised and compulsory complaint mechanism for all health institutions (hospitals, special care homes and residential care home for the elderly) and a "national health mediator/ombudsman". SNIMS is accountable to the Ministry of Health in the way that it produces an annual report at the attention of the ministry of health.[52] This new service is significant for us in the following respects:

- all institutions will have a compulsory complaint procedure and an overarching national complaint mechanism.
- a minor becomes increasingly entitled to participate in decisions concerning his health with his/her increasing capacity of discernment[53].
- There will be an obligation to inform every patient (including minors) on his rights and responsibilities and also on his possibilities to formulate and declare a complaint.
- The SNIMS can receive complaints in written or oral way, either by the patient him/herself, by his/her legal representative or by a "person of trust" or even a NGO which can complain on behalf of the patient.
- The act of 24 July 2014 does not present any restrictions concerning the right of the SNIMS to investigate in cases where a judicial procedure is ongoing[54]. Concerning minors in psychiatry, interferences with the Youth Tribunal or with the Youth protection act of 1992 might appear as a conflict. The SNIMS act introduces non-judicial complaint mechanisms, which aim at a "total or partial agreement" [55]

d) The Centre for equal treatment (CET), the Equality Body foreseen in the anti-discrimination directives (2000/43 and 2000/78) is entitled to receive complaints regarding discrimination on the six grounds enumerated in the directives according to its national legal text of 2006. The CET is

[51] Act of July 24th 2014 on rights and obligations of patients, creating a national mediation service (relative aux droits et obligations du patient, portant création d'un service national d'information et de médiation dans le domaine de la santé et modifiant: - la loi modifiée du 28 août 1998 sur les établissements hospitaliers; - la loi modifiée du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel): http://www.legilux.public.lu/leg/a/archives/2014/0140/a140.pdf
[52] Art. 20 of the above mentioned law.
[53] In judicial procedures de facto, the "age de discernement" is taken to be around 12 years.
[54] However, this is the case for members of the ORK : « Les membres de l'ORK exercent leurs fonctions sans intervenir dans des procédures judiciaires en cours. » (art. 5 of the act of 25 July 2002.
[55] Based on article 22 of the above mentioned act of July 24th 2014. « (...)(5) Lorsque les parties parviennent à un accord total ou partiel de médiation, celui-ci fait l'objet d'un écrit daté et signé par toutes les parties à la médiation. L'accord de médiation contient les engagements précis pris par chacune des parties.(…) »

responsible to the Ministry of Family and Integration. Up to now, no complaints have been introduced by children or concerning minors.[56] Thus we will not refer to the CET in the following sections.

The four Human Rights bodies (Ombudsman, ORK, CCDH[57] and the CET) ask for a common House of Human Rights in order to improve their collaboration. Already by now, their cooperation is good. Furthermore, the three of them - not so the Ombudsman – plead in favour of a changed responsibility to Parliament and not to a national administration in order to strengthen their independence. Regarding independence, the position of the Ombuds-bodies to judicial authorities is another critical aspect (cf. box n. 3).

3.3.2. De facto appreciation

(a) According to the ORK, confirmed by authorities[58], no legal provision exists *requiring the establishment of written complaint procedures within alternative care institutions against non-respect of fundamental rights by the institution*.

The ORK complains about the missing information on complaint rights and mechanisms (annual reports). Texts informing on internal complaint mechanisms might have various forms, such as an internal decree, an officially recognized leaflet, which is handed over to the minor and the parents.

ORK also highlights the less comprehensive appeal conditions of minors compared to those of adults despite the 'protection' minors should benefit as vulnerable group according to the Youth Protection Act (confirmed by CELPL, 2014: 16). Per year not more than 4 to 5 minors address themselves directly - without an adult person – to the ORK[59].

(b) Parents and minors in all types of homes (private or public) can lodge complaints to the ***Ombudsman***; any path is possible: by phone, by letter, in a meeting. During several visits of the ***CELPL*** (cf. sections 3.4.a) and 4.1.a)) for the three reports (CSEE, 2011, 2012 and 2014), minors of the institutions were interviewed and consequently informed about their right to address a complaint to the Ombudsman. After these visits, several phone calls and letters have been sent in by minors; this ceased again after the monitoring – an indication for the missing systematic information on the right to complain?[60] Correspondence with the Ombudsman should not be controlled by the institution before being sent, or before reaching the minor. This recommendation has been provided since 2011 in order to adapt CSEE's practice to international legal standards with full respect of confidentiality of complaints and anonymity of the plaintiff (UN-CRC, 2013: 4, para 21 (b)). The Ombudsman (2014: 6) approves that the principle of postal secret conditions have meanwhile been integrated into the "Règles de conduite internes du CSEE" (internal Code of conduct of CSEE).[61] However, CELPL requires an integration of these stipulations into CSEE's Grand-ducal decree.

(c) UN-CRC (2013: 4, para 21 b) urges authorities: "The government should undertake efforts to inform children of the availability of complaint mechanisms and their confidentiality."

(d) Judicial authorities do only accept reporting when the reporting person identifies him-/herself; according to the Prosecutor would they accept anonymity, they would receive numerous complaints without any substance. The principle of confidentiality as put forward by UN-CRC (2013: 4, para 21 b) is provided within professional counselling, but not for reporting.

[56] According to the act of November 27th 2006, transposing directives 2000/43/CE and 2000/78/CE; cf. www.cet.lu
[57] For the Human rights consultative body cf. section 4.1. c). It is not presented here, as it is not entitled to receive complaints.
[58] Meeting with the ministry of Justice on August 8th 2014
[59] Meeting with ORK on August 8th 2014.
[60] Luxembourg, meeting with the Ombudsman on February 28th 2014.
[61] Cf.point B.4: meeting with CELPL in August 2014

(e) Since May 2014, initiated by **ECPAT**, an online complaint and assignment procedure concerning sexual tourism and exploitation is operational. The title is: "Don't look away – be aware & report the sexual exploitation of children in travel and tourism!"[62] The web page invites those who want to report something to provide their name. Confidentiality and anonymity are a delicate subject in a small country: even if the name is not provided in order to protect the plaintiff, 'stories' are well known among the relatively small group of professionals and the anonymity of the plaintiff is not easy to be protected.

3.4. Complaint mechanisms inside the placement institutions

Before providing information on complaint mechanisms within the three institutions (CPL, CSEE and psychiatry), we quickly define the mission of CELPL / Ombudsman and the ORK.

a) ***CELPL / Ombudsman*** rely on two different acts (act of April 11th 2010 and act of August 22nd 2003): CELPL's mission is to monitor institutions who deprive minors of liberty according to OPCAT; two persons work specifically for this unit. When these two persons interview minors in CSEE or in CPL, they also react in terms of complaints. Normally, the complaint procedure is *the core business* of the Ombudsman and not of CELPL; given however, the presence of these two persons in these institutions, they act, de facto, in the function of the Ombudsman and not as national prevention mechanism. The Ombudsman, respectively CELPL stated certain things in its report: whenever a minor asks the institution to call the Ombudsman, s/he can do this through the institution´s phone; the institution has to cover possible expenses and not the minor; the time spent on the phone is not deducted from the weekly amount of time they dispose of for communication to family members, respectively a list of persons, which the judge has approved. Normally the Ombudsman does refer minors – when they get into contact with him/her – to the ORK. However parents of minors can address their problems to the Ombudsman; CSEE and CPL are public institutions and thus the citizen (= parents) is entitled to complain about a public institution, which does not respect his/her rights as perceived by him/her. According to the Ombudsman, there were nearly no complaints lodged by parents during the last years.
While interviewing minors in CSEE, CELPL officials received complaints concerning the implementation of solitary confinement, i.e. one of the internal disciplinary penalties. CSEE can take initiative on its own and without the judge's agreement. A minor who is in solitary confinement is entitled to a minimum of outdoor time of 1 hour/day; this had not been respected. There was also a complaint concerning 'institutional violence', which proved to be difficult in terms of evidence (CELPL; 2014: 39, 43 ss, etc.).

b) ORK also has the mission to provide monitoring according to the act of 25 July 2002. Other missions are the counselling of minors, their parents or guardians, the provision of opinions on draft bills and policies, etc. Given the amount of time available for the full time president of ORK, a half time lawyer and a full time secretary, counselling mission absorbs the largest part of their time. Monitoring institutions would only become feasible with a significant enlargement of the staff. Thus, up to now, ORK did not monitor, but visits institutions. It does in general not publish any reports about individual visits.

The following observations are the result of our interviews with the direction and the staff of the institutions, with key actors as well as with minors in one of the three psychiatric departments.

a) Concerning the CSEE:

According to the **head and the staff** of CSEE: Once a minor arrives in the CSEE, the 'répondant' (person of reference) guides the child through the whole complex of buildings, hands him/her over a leaflet with his/her obligations and rights, including the complaint mechanisms; the title of this section is: "if somebody hurts you…"[63]. The different persons the minor can approach are enumerated: the

[62] Luxembourg, ECPAT. The global webpage: www.reportchildsextourism.eu ; the Luxembourgish webpage will be operational within the next months. Meetings with ECPAT (March 24th 2014) and the Police (March 4th 2014).
[63] The leaflet is not available on the internet.

"répondant", the director of the CSEE, the president of the supervisory and coordinating commission ("Commission de surveillance et de coordination" (CSC); with phone number, the Youth judge of one of the two districts (with phone numbers) and a lawyer at his/her own choice (according to art. 1 of the act on the profession of the lawyer). The leaflet does not mention the ORK and the Ombudsman; it has been edited before these two bodies became operational in 2003 and in 2004. A revision of the leaflet is in process. De facto, few complaints are lodged; much more often, minors want to negotiate a 'leave' (weekend, during the week for certain occasions); there are nearly never complaints concerning e.g. incorrect treatment by educators or sanctions, etc.; the external monitoring visits, mainly those of the Ombudsman and the ORK, did not produce an increase of complaints lodged to the visitors (cf. section on monitoring). Minors are allowed to have their cell phone with them when they leave the institution; thus, they have the opportunity to contact the ORK. Furthermore, they are entitled at any moment to phone the ORK without the presence of a staff member.

In the context of disciplinary measures, minors and/or their legal representative have the right to address a complaint to the president of the "Commission de surveillance et de coordination" (CSC). This commission has an ambiguous role of both monitoring, surveying and coordinating the socio-pedagogical work at CSEE.[64] One might consider the Commission as a sort of control body given the name: "surveillance". However, it is a sort of board, an internal body supporting the CSEE and not an independent monitoring body.[65]

This right to complain to the director, then to the president of the CSC exists also for the staff according to two legal texts, which are still in force: a) the GDD on disciplinary measures of 1992 [66] and a ministry's decree of 1993 on the internal organisation[67]. However, this right concerns only disciplinary measures and not other aspects of the placement in CSEE.

According to the president of the "Commission de surveillance et de coordination" (act of 16 June 2004[68]), parents receive an information leaflet presenting the judicial complaint mechanisms. We were unable to get a copy of this information leaflet.

Regarding future placements in the UNISEC (of the CSEE), the draft bill 6593[69] does not introduce new rights and obligations concerning complaint procedures.

Nevertheless the draft bills and draft GDDs state that the minor will be informed in written about disciplinary measures and about appeal and complaint procedures and entitlements.[70]

According ***to CELPL***[71], the CELPL/Ombudsman were contacted more often by minors during and after the monitoring exercise than in normal times. This might be an indicator for non-information of the rights of the minor to complain and to have access to CELPL/Ombudsman and the ORK (cf. also leaflet). As opposed to the aforementioned simple '*demands' (= requests*) of leave and other favours by the direction, the last report of CELPL presented different '*complaints*' of minors concerning every day functioning and attitudes of educators etc., which were lodged by minors. (CELPL, 2014: 39, 41ss, 43ss). The principle of confidentiality as put forward by UN-CRC (2013: 4, para 21 b) is probably

[64] Article 5 (missions of the commission) and article 9 of the act of 16th June 2004 organising the CSEE : « Le mineur à l'égard duquel des mesures disciplinaires sont prises peut faire un recours contre les décisions y relatives devant le président de la commission de surveillance et de coordination. Appel peut être interjeté devant le juge de la jeunesse. Aucun recours n'est admissible contre la décision du juge de la jeunesse. »

[65] Critics on this ambiguous role of the commission is formulated by NGOs. E.g. ANCES http://www.ances.lu/attachments/article/170/Avis%20ANCES%206593%20version%20200514.pdf

[66] Règlement grand-ducal du 9 septembre 1992 portant sur la sécurité et le régime de discipline dans les centres socio-éducatifs de l'Etat. *Art. 15. Chaque membre du personnel et tout pensionnaire peut présenter des requêtes ou des plaintes au chargé de direction. Un recours contre les décisions du chargé de direction est possible devant le président de la commission de surveillance et de coordination.*

[67] Règlement ministériel du 20 mai 1993 concernant l'organisation interne des centres socio-éducatifs de l'Etat : « *Art. 13. Conformément à l'article 15 du règlement grand-ducal du 9 septembre 1992 portant sur la sécurité et le régime de discipline dans les centres socio-éducatifs de l'Etat, chaque membre du personnel et tout pensionnaire peuvent présenter des requêtes ou des plaintes au chargé de direction. Un recours contre la décision du chargé de direction est possible devant le président de la commission de surveillance et de coordination. »*

[68] Act of 16 June 2004 on the re-organisation of CSEE: www.legilux.public.lu/rgl.2004/A/1882/1.pdf

[69] Draft bill number 6593 concerning the reform of the legal basis of the UNISEC at CSEE and concerning the legal basis of the future rules and regulations, namely the internal organization and disciplinary measures within the UNISEC.

[70] Avant-projet de règlement grand-ducal portant organisation de l'unité de sécurité du centre socio-éducatif de l'Etat « Art. 8. Toute mesure disciplinaire fait l'objet d'une décision écrite indiquant les voies et les délais de recours. »

[71] Meeting with the Ombudsman in March and in August 2014;

complicated to be implemented in such a small country as well as in an institution which hosts some 100 minors in two different buildings.

> **Box n. 2 : automatic information to CELP in the case of solitary confinement**
> Another good practice might be a sort of 'preventive' and 'reactive' action: CELPL (2014 : 42) confirmed a proposal by CPT (2010: 56) in requiring CSEE to provide systematically a written information on actions of non-conformity, disciplinary measures, the possibility to complain and how to proceed with complaints (paths and the timing). In the case of solitary confinement, the minor should be entitled to legal assistance. Furthermore, CELPL (2014: 46) requires to be informed o*f each* solitary confinement issued by the CSEE within 24 h; the CSEE shall provide the aforementioned information: name, reason of the disciplinary measure, the penalty, etc. In these cases, the Ombudsman can send a control team and interview the minor at any moment.

ORK received 28 (out of 154) children complaining about their judicial placement in 2012 and 6 out of 111 in 2014(ORK, 2014: 105): this is a new category since 2012; thus, no comparison with previous years is possible.

Obviously, contradictory observations exist concerning the substance of complaints or requirements by minors in CSEE.

The GDD concerning the functioning of the future UNISEC is not yet adopted. CCDH, the ORK and the CELPL (2012 as well as 2014) commented the draft. Complaint mechanisms are not part of this legal text and should be integrated.

b) Concerning the CPL:

According to the ***staff*** oral information on complaint mechanisms is provided and minors are informed about their obligations and rights. Thus they know about the following procedures:

- Oral or written complaints are transferred to 1. the educators, 2. to the responsible person for minors and 3. to the director. Twice a month, a committee dealing with 'minors' meets and discusses all types of problems.
- Written procedure, which is addressed to the judge and to all other authorities (Member of Parliament, Minister, UN, Council of Europe, etc.) is sent in sealed and confidential envelopes and vice versa, minors receive the answer in sealed envelopes. Often, minors ask the educators to help them in writing the letter.
- Furthermore, a list of allowed telephone numbers per minor has been authorised by the judge. Minors can call any authority from CPL's telephones (ministry, member of Parliament, ORK, CELPL, Ombudsman) free of charge and independently of the 1 hour/week they are allowed to phone persons on the aforementioned list.

The possibility to complain to the ORK or to CELPL/Ombudsman was unknown to the staff.

Very few complaints obviously exist concerning the respect of Human rights in the minors' department of CPL. Both educators and the director were unable to come up with an example of a complaint. Minors obviously enjoy respectful educators and prefer to stay in the CPL instead of going back to CSEE or other closed or semi-closed institutions.

According to the head of CPL, no written document presenting formal (also judicial) and informal complaint mechanisms exists[72]. The idea to produce a leaflet informing minors in an official way about their right to complain was welcomed, mainly the idea to indicate the ORK and the Ombudsman/CELPL[73]. Even more, the ORK should intervene, produce such an information leaflet and thus gain more visibility. Minors should also know that they are entitled to legal assistance. Meanwhile, such a leaflet is already in process – as an effect of our study and the interviews with the director and staff members.

[72] Such a written document exists for adults but not for minors.
[73] Confirmed in an E-Mail of August 1st 2014.

c) Concerning juvenile psychiatry: CHNP

According to the direction and the staff: Once a minor arrives in the CHNP, an educator hands him/her over two leaflets: one with his obligations and rights as well as one with complaint mechanisms to external institutions/authorities. The title of this section is: *« if you don't agree with your placement, you have the following possibilities of appeal »*. The different persons the minors can approach are listed: his parents, the Youth judge and the lawyer. The leaflet does not mention the ORK and the Ombudsman concerning any type of complaint.

According to the direction, few complaints are lodged; they use the complaint procedures mainly in the case of conflicts among peers and sometimes in the case of non-agreement with rules or sanctions. They prefer to discuss conflicts directly with educators or with the medical doctor of the unit. In fine, parents remain the most important reference persons enjoying the highest degree of confidence. Minors can use their cell phone, when they leave the building. CELPL's report (2011) confirms a confidential atmosphere in CHNP.

According to minors in CHNP they often use the box "Post an's Team" (post/messages to the team), when they wish to express feelings in the case of conflicts among peers or when they do not agree with rules and sanctions. However, they prefer to discuss such items with the staff. A valuable reference person in case of problems or conflicts is the medical doctor as well as parents who remain the most important reference to minors. When they leave the hospital they are entitled to use their cell phone. Most of them were not aware about the existence of ORK and the Ombudsman.

The following table provides a synoptic view on complaint mechanisms according to the presentation of the direction and the staff of the following institutions we visited:

Table 3: non judicial internal more or less formal complaint mechanisms

Institution	**IN the institution *for the minor***		**At / after arrival of the minor *for parents***		**Informal: does not rely on any document.**
	Written document	Oral information	Written document	Oral information	
CSEE	Arrival: Current leaflet: complaints to 1. Reference person, 2. Director, 3. President of the CSC, 4. youth judge + legal assistance Leaflet for all minors who arrive will be re-edited; ORK and Ombudsman are still missing but will be included in the future leaflet. Since monitoring by CELPL (2012): minors' rights to complain to Ombudsman are stated in "règles de conduite") CELPL, 2014: 6)	Arrival: information round by the 'répondant' Since monitoring by CELPL: minors' rights to complain to Ombudsman are provided by the Ombudsman and are used by minors.	According to president of CSC: leaflet on judicial appeal procedures is handed over.	None	
	RGD 1992 art. 15 and R.Min. 1993 art. 9: right to address requests and complaints to the				

	director and to the president of CSC.				
		In the case of solitary confinement: Systematic distribution of a form (= letter), which is then sent to the judge by fax. For future security unit: GDD is not yet adopted.			
CPL	Arrival No written document. By now a leaflet is in process.	Arrival: Oral information by one of the 2 educators.	Arrival: ---- Cf. Police	Arrival: ---- Cf. Police	
	De facto procedure for oral or written complaint: (a) 1. to educators, 2. to responsible person for minors and 3. to director. (b) Twice /month, a committee 'minors' meets and discusses all types of problems.		--	--	
Long term Juvenile Psychiatry (CHNP)	Minors receive: 1 leaflet with rights for the minor + 1 leaflet with his/her obligations, including complaint procedures to be addressed to parents, the judge, a lawyer. Not yet mentioned are the ORK and Ombudsman.				Complaint box "Post an's Team", should provide confidentiality

Box n. 2: a survey as good practice providing anonymity

A recent publication of **ATD Quart Monde** (2014) provides an insight into parents suffering from the separation of their children, who were placed by the Tribunal. They feel helpless in front of judicial authorities, helpless in front of professionals of this sector. These parents want to have access to their children and want to be treated as human beings by professionals. They complain about an disrespectful manner of the staff. One parent told that s/he has not been informed about hospitalisation of his/her placed child. The survey was aimed at parents who had been institutionalized when they were young themselves, and whose children have been taken away by the Tribunal.

A survey seems to be a good practice providing confidentiality of complaints and lowering the hurdle for parents to launch such a procedure. Obviously, parents would never dare to question judicial authorities or professionals even when they feel being harmed.

4.1. Monitoring bodies

Based on national and international law, national and international bodies are entitled to monitor institutions hosting children according to varying principles which are defined in the respective legal text.

a) CELPL

With the ratification of the OPCAT via the adoption of the act of April 11th 2010[74] the Ombudsman took over the monitoring of institutions hosting persons *deprived of liberty*. The "service du contrôle externe de lieux privatifs de liberté" (CELPL), the national prevention mechanism has been launched by this act. CELPL is allowed to enter all institutions depriving of liberty, to interview, in a confidential way, every person who is deprived of liberty (art. 4 (2)), to control all equipments, etc.

Regarding minors, the following institutions have been monitored by CELPL:

- the CSEE in 2012 (CELPL, 2012); an up-date (CELPL, 2014) has been undertaken and will be published soon (the consultation round is ongoing). The CSEE is a disciplinary home and school hosting only minors who are placed by the judge.
- the closed psychiatry (CELPL, 2011) with three departments[75] hosts minors who are placed via judicial decision.
- The CPL has been monitored for different specific purposes such as the 'arrival of the prisoner', 'medical care' and 'vulnerable persons'[76]. There was no specific report on minors; however, for each of the exercises, the department of minors has also been visited.
- CELPL wanted to monitor also AUCS; however, judicial authorities contested by saying that AUCS (just as CSEE - with exception of the closed section: "section fermée") are open institutions and do not deprive of liberty. Thus, monitoring did not take place up to now (cf. box n. 4).

By law, CELPL has unconditioned access to institutions hosting persons 'deprived of liberty' (art 4). The understanding of that designation is different whether it is CELPL or the judicial system. Judicial placement of minors is seen as an educational measure (art. 1 of the Youth protection act) and not as a penalty by judicial authorities while CELPL considers minors placed in certain institutions – CSEE, CPL, psychiatry and AUCS – as confined to that institution, i.e. 'deprived of liberty'; only the judge can restore a minor to liberty. CELPL interviews (qualitative open approach) minors, the staff and the direction, but never parents or guardians.

b) ORK:

De iure, ORK can also monitor institutions. Due to limited HR (2.5 full time equivalents) and an important need to tackle individual cases, ORK was, up to this day unable to implement this mission. ORK visited the respective three institutions, without publishing a specific report, but suggested changes to be implemented (cf. annual reports). However, ORK recognized that access to these institutions has to be approved by the Youth Tribunal – even if the act says that ORK should analyse existing regimes, which protect the rights of the child and should recommend necessary adaptations to the competent authority (art.1) [77].

ORK was contacted by 28 minors out of 154 complaints in 2012 and by 6 out of 111 in 2014 (ORK, 2014: 105) concerning judicial placements.

[74] Act of 11 April 2010 on the OPCAT: optional protocol to the convention against torture and other cruel, inhuman or degrading treatment or punishment, available at: http://www.legilux.public.lu/leg/a/archives/2010/0056/2010A1000A.html
[75] There are two acute psychiatric departments, one for children up to age 12 (Centre hospitalier de Luxembourg) and another one for youngsters aged 12 to 18 (Hôpital Kirchberg). Furthermore, a department for long term stays exists within a long term psychiatric hospital (Centre Hospitalier Neuro-psychiatrique).
[76] Cf. http://www.celpl.lu/
[77] Art. 1 of the act of July 25th 2002 « analyser les dispositifs institués pour protéger et promouvoir les droits de l'enfant, afin de recommander, le cas échéant, aux instances compétentes des adaptations nécessaires »

The following crucial points will continue to be an issue of public debate:

- Which of the two is THE competent body for monitoring units, which host children behind bars? CSEE pleads in favour of a systematic monitoring to be done by ORK, while CELPL is responsible for adults deprived of liberty. For individual complaints by and concerning minors, ORK is THE responsible body.
- If the legal text grants free and uncontrolled access to institutions hosting either persons deprived of liberty or minors (regarding rights of the child) for both bodies (ORK and CELPL), why does the Tribunal intervene and, which legal texts foresee the condition and responsibility of the Tribunal to allow access to institutions hosting minors and the hosted minors for ORK and CELPL? The Youth Protection Act (1992) does not stipulate such a condition.
- Who is the competent authority to clarify what means 'deprivation of liberty for minors'? A national or an international authority, e.g. the European Court of Human Rights? Once, this is defined, access to the respective institutions should be clearly defined within a legal text or a judicial decision.

c) CCDH

The Human Rights Consultative Commission (Commission consultative des droits de l'homme: CCDH) is not entitled to receive complaints, but is entitled to visit institutions and to produce opinions on draft bills and studies focussing on certain subjects, e.g. CCDH's opinion on the future UNISEC of CSEE (CCDH, 04/2011)[78].

d) Members of parliament

Since 1970, members of Luxemburg's Parliament are also entitled to 'monitor' penitentiary institutions hosting persons deprived of liberty at any moment according to a GDD of December 3rd 1970[79]. Until 1991[80], the CSEE was headed by the department of penitentiary institutions (ministry of Justice, by now: Ministry of Education, Childhood and Youth (Ministère de l'Education nationale, de l'Enfance et de la Jeunesse). In the past, several members of Parliament used this right; however, information on these visits is not available – cf. section 1.2 on non-transparency of corporatist negotiation procedures behind closed doors. As the CELPL is attached to the Ombudsman, who is responsible to Parliament, the above mentioned kind of monitoring seems to have become obsolete.

e) The Committee on the prevention of torture (CPT)

The CPT has been monitoring the "***Centre pénitentiaire du Luxembourg" (CPL)*** which to this day also hosts minors, since the 1990's (1993, 1996, 2003, 2009 and a new procedure is foreseen in 2015). CPL and CSEE have been monitored by CPT in 2009. Since 1993, the CPT reiterates its criticism concerning minors being detained in prison. In 1994, authorities announced their plan to enlarge the CSEE with a security unit, which should then avoid placements in CPL. In 2004 with the act of 16 June 2004 on the reorganisation of CSEE[81] the principle of the security unit with 12 places for boys and girls has been adopted (cf. art. 3 and 11). In 2009, CPT has been informed about the development of the project and the security unit being operational in 2011. In January 2015, the respective GDD is not yet adopted while the building and the infrastructure are ready for use. CPT

[78] on draft bill 5351 modifying the Youth Protection Act [5351 - Projet de loi portant modification de la loi modifiée du 10 août 1992 relative à la protection de la jeunesse]

[79] Règlement grand-ducal du 3 décembre 1970 concernant l'administration et le régime interne des établissements pénitentiaires. (Art. 13. Les membres de la Chambre des Députés ont accès aux établissements de détention à condition de justifier au préalable de leur qualité. Toutefois pour pénétrer dans une chambre individuelle occupée ou se mettre en rapport avec des détenus déterminés, une autorisation spéciale du Ministre de la Justice est requise. Ces visiteurs sont accompagnés par le préposé de l'établissement ou par l'agent qui le remplace. » → Règlement grand-ducal du 24 mars 1989 concernant l´administration et le régime Interne des établissements pénitentiaires. Art. 11. Les membres de la Chambre des Députés ont accès aux établissements de détention à condition de justifier au préalable de leur qualité. Toutefois pour pénétrer dans une chambre individuelle occupée ou se mettre en rapport avec des détenus déterminés, une autorisation spéciale du ministre de la Justice est requise. Ces visiteurs sont accompagnés par le directeur de l´établissement ou par l´agent qui le remplace.

[80] Loi du 12 juillet 1991 portant organisation des Centres socio-éducatifs de l'Etat.

[81] Act of June 16th 2004 on the re-organisation of CSEE (portant réorganisation du centre socio-éducatif de l'Etat) : http://www.men.public.lu/fr/legislation/enfance-jeunesse/csee/index.html

recommended authorities to focus with high priority on this project, wanted to be informed about its evolution and asked for confirmation that no minors would any longer be placed in CPL[82].

The CPT (2009, observation 110, 111: 46) also monitored minors in ***psychiatry***, focussing on ***CHNP***: An internal regulation defines rules of everyday life in the closed unit; however, this regulation was not systematically distributed to newcomers. Furthermore, no information concerning complaint rights of patients (legal assistance, appeal procedures) were presented. CPT recommends to elaborate a fully referenced information document and to distribute it automatically. As a - positive – result of this monitoring exercise, such a document (on 2 pages) is now distributed to all newcomers and their family members; persons with intellectual disabilities should be granted assistance in order to understand the meaning of such a brochure.

4.2. Monitored institutions

a) CSEE: During the last years, the CSEE has been monitored by the following bodies: CPT (2009), CELPL (2012 and 2014), ORK (once /year).

According to the head of CSEE, certain complaints and claims by these bodies, namely by CELPL were very useful, e.g. the criticism concerning the bad shape of the building/ infrastructure or the ratio 'staff/minors'; CELPL carefully considers concerns of the head and the staff as well as of minors. In its report 2012, CELPL does not present any kind of socio-educational suggestions or criticism, however it presented some criticism concerning the recruitment procedures for public administration; CSEE hitherto used the approach suggested by CELPL as it provides better means to find future employees with a an educational motivation.

The monitoring visits

- are positive when experts express their opinion in a respectful way and when they are aware about the legal and political context – implicitly this favours national monitoring! Or
- have negative effects when the staff feels being evaluated. Once published, these reports may also reproduce or confirm negative connotations of CSEE's public image.

b) CPL: According to the director of CPL, the three monitoring exercises had positive results for the institution: The first visit of CELPL focused on the arrival of the prisoner. This led to enlarged services provided to prisoners, such as a permanent consultation by CELPL/Ombudsman: since then regular visits take place and prisoners can complain directly. The brochure which each newcomer receives (cf. section 3.4.) exists since 2000 and has regularly been redesigned and modified. The 2nd exercise focussed on medical provisions. Since then, services have been considerably improved. The monitoring up to now concerned adults mainly. However, certain aspects concerning minors have also been presented. The meetings for the project 'children behind bars' will have the effect of an information leaflet to be handed to newcomers including a specific information on ORK, respectively information provided by ORK.

c) Psychiatry (CHNP): During the last few years, the CHNP was visited by the following bodies: CPT, CELPL, ORK, and the "Commission permanente pour le secteur hospitalier".

Minors do not remember any kind of visit with the exception of six persons from the Ministry of Family and Integration. De facto, the ministry does not monitor CHNP; the supervising ministry is the Ministry of Health which *controls* but *does not monitor* the CHNP. We do not know anything about the mission of these six persons.

According to the ***direction***, these visits had positive and negative effects on the team: On one side, they can produce useful comments when they are presented in a respectful and friendly manner. On the other side, external assessments may have de-motivating effects on the team, mostly when the control is carried out by persons who are not familiar with Luxembourg's health and care system, and who do not speak one of the three languages of the country. Before publishing the report, the

[82] Cf. observation n. 28 of CPT (2009).

monitoring team should allow the institution to comment. For certain monitoring exercises, the experts did not take into account amendments, comments and corrections of the draft report.

- **Recommendation:**

CELPL (2011) recommends that a standardized document with basic information should be established. CELPL also recommends establishing a procedure for the patient's informed consent with the treatment.

UN-CRC In its last report (UN-CRC, 2013: "para35d, p. 7) urged authorities in the following way: "the government should establish a rigorous system of monitoring the services provided by care institutions", thus including other institutions hosting minors than those we visited.

ORK and CELPL as well as the lawyers pleaded in favour of a monitoring of other alternative care institutions regarding the respect of human rights and the ICRC. CELPL tried to obtain access to AUCS institutions. The Tribunal blocked this attempt arguing that these institutions do not deprive of liberty. The Tribunal and CSEE consider only the closed section of CSEE and CPL as a place depriving of liberty.

Access for lawyers to CSEE should be eased.

5. Conclusions

Some general conclusions might summarize our current level of knowledge, which is limited due to (omnipresent obstacles for all studies and) non-access to minors in two significant institutions (CSEE and prison) as well as to judges[83].

Regarding the two purposes of this report, 'monitoring' and 'complaint mechanisms', a horizontal Luxembourgish feature, the corporatist negotiations and a search of consensualism, has to be highlighted in order to understand reality (paragraph a) below).

Regarding the complaint mechanisms, we tackled three types of complaint procedures: external judicial ones (paragraph b), the external ones lodged to ombuds-bodies (paragraph c) and the internal and informal ones (paragraph d).

Results we had on monitoring are also highly influenced by this corporatist tradition of negotiation and consensualism (paragraph e).

a) Consensualism is a main feature in Luxembourg, when it comes to finding a solution for a conflict, be it at macro or at micro level. Social dialogue is used for more or less any policy and legislation change: an extensive consultation of social partners without public reporting takes place before authorities launch e.g. a draft bill. Depending on the topos of the future policy or legislation, NGOs are also widely consulted. Once a common denominator is found, the official Parliamentary procedure takes place, this time with an official and written public consultation procedure: draft bill and opinions are available on the internet. The most famous corporatist body, the Tripartite coordination Committee meets behind closed doors. The argument is that social partners can more easily defend their point of view in this way than in a transparent public procedure / meeting. Conflicts between a citizen and a public institution are often resolved on a bilateral non-public level, e.g. conflicts in school between a teacher and a student/parents are handled between the user and the respective department: no official comment and no statistical data exist. Hence, there is no strong official and explicit **complaints**' tradition. Mostly, users do not dare to go ahead, being afraid of an implicit and improvable 'sentencing' reaction by professionals.

b) Judicial procedures: Given the aforementioned tradition of consensualism, given a strong position of judicial authorities, given the fact that a majority of placed children are from families with a lower

[83] On September 29th 2014, we had a meeting with judges after having received an E-Mail in July 2014 prohibiting us to interview minors in CSEE and in CELPL, more so to interview minors placed by the Tribunal. Access to these minors has to be permitted by judges as they hold the responsibility for the placed minors. Asking, which stipulation of the Youth protection act provides with this condition, none was given. Therefore we suppose that this way to proceed and to supervise placed minors has to be interpreted more as a "judicial practice" rather than a legal prescription.

cultural and economic background, judicial procedures are rarely used and if so by those who have the economic and cultural capital.

Box n. 1: Supremacy of Justice

Within the child protection system, supremacy of Justice is rigorously anchored in national law: the youth protection act is the main and the most ancient pillar. Even recent legal texts reiterate the principle, e.g. the acts of the ombudsman, of ORK, of CELPL and the Childhood and family support act (art. 4). And also de facto, this primacy is implemented: CELPL renounced to monitor AUCS, when the Tribunal refused their petition. Numerous CSOs and Ombuds-bodies wish to revise and to reduce the high impact, the absolute supremacy and opt for another system, which would enable respect of the principles of ICRC, in this case dejudicialisation, thus the respect of non-separation of child from its family in ICRC can be de facto implemented (Pregno, 2013; Peters, 2013).

c) Mediation is more and more used. Both ombuds-bodies are well known. This does not mean that minors behind bars or their parents do know about procedures and, most importantly, dare to use them. According to CELPL, during and after monitoring exercises, minors did widely use this opportunity, thus, once the information exists. Astonishingly enough, even professionals working in prison did not know about the possibility of mediation. Our visits also produced an effect of strengthening the information on this opportunity: a leaflet for minors and parents will be produced for the department of minors in prison.

d) Informal and formal internal complaint procedures: Informal mechanisms are either disseminated orally or via a leaflet: none of them included up to now mediation. All promised to include it. Official internal complaint forms do only partly exist, and even, when they exist, implementation remains low. Internal Complaint mechanisms, acceptance of complaints and a de facto use depend – it seems - from a respectful attitude of the staff who is used to accept complaints without implicitly 'punishing' the plaintiff.

One has to distinguish complaints from requests: if a youngster wants to have a Friday evening leave, such a request cannot be compared to complaints about the short time they were allowed to be outdoor or harsh behaviour of the staff. Obviously, the staff and the head of CSEE spoke about requests only and said that there are no complaints but a lot of requests. However, according to other interviewed persons (Ombuds-bodies) minors complained about significant issues[84].

e) In terms of comparison, there is a highly prudent attitude concerning judicial complaints, and a quite strong and increasing use of Ombuds-mediation. We are unable to provide a quantitative comparison concerning the use of internal versus Ombuds versus judicial and versus informal proceedings: no data exists on internal complaints and on judicial procedures; the Ombudsman as well as the ORK provide data with changing categories; CELPL is not entitled to receive complaints, but forwards complaints coming up during the monitoring exercises. A quite important share of complaints to ORK concerned placements of minors; however, this category is a recent one. Internal complaint procedures seem to be less used. The current forms of procedures (fax to the judge: box n. 1) do not guarantee anonymity and confidentiality of the plaintiff and might be more harmful than helpful. Consensualism might explain this hesitating use of official and public procedures.

Regarding child friendly procedures, Ombuds-bodies are easier to be contacted than judicial authorities: the minor HAS to address himself to the judge BY LETTER, the only means. Ombuds-bodies can be approached by any means (mobile phones, SMS, etc.), are thus significantly more accessible than the Tribunal. Internal procedures might remain frightening, even with a tolerant staff – as explicit complaint mechanisms are not really anchored in Luxembourg (paragraph a).

We obtained coherent and non-contradictory information from CPL and CHNP, which means information provided by different internal and external stakeholders was not contradictory. Only in CHNP, we were allowed to interview minors. In CHNP, minors' opinions did not contradict those of the direction and the staff. For CPL and CSEE, we were not allowed to collect opinions of minors, had

[84] CELPL 2014 concerned e.g. the missing time outdoor for those in solitary confinement.

however indirect observations by Ombuds-bodies. Observations by CELPL and the staff/director of CPL were the same.

Concerning CSEE, observations by the staff and the direction could not be correlated with information by minors; results varied however between internal (head and staff) and external observation (CELPL): the direction and the staff observed little or no complaints, but more requests concerning a leave over the weekend and other types of 'advantages', while the Ombudsman/CELPL observed complaints concerning non-respect of principles laid down in international law or a non-respectful attitudes by educators.

f) Monitoring has an impact on institutions. The driving force for Luxembourg's national prevention mechanism, CELPL, has been international law, i.e. OPCAT. CELPL produces a high visibility and fosters – according to professionals of the three visited institutions – numerous changes, mainly within a first exercise. Follow-up exercises refocusing on previous deficits and weaknesses, are thus less consequential than the first analysis. Monitoring is appreciated by the staff in terms of improvement of infrastructure and an increase of the ratio 'users – staff'. Interviewing minors is either considered to be an empowering incentive for minors to contest and to use complaint procedures, thus fully accepted (CPL, CHNP) or not really appreciated as it produces perturbation of everyday life in the institution (CSEE).

Monitoring bodies (ORK and CELPL) highlight the fact that they cannot intervene in current judicial affairs, i.e. in court proceedings. However, they can receive and tackle complaints from minors who are hosted in one of these institutions. CELPL is limited to those which 'deprive of liberty', while ORK is, de iure, entitled to monitor institutions regarding the respect of ICRC. ORK can visit/monitor all institutions, which host children - independently of 'deprivation of liberty'. By law, neither CELPL nor ORK need an agreement by the Youth Tribunal when they want to visit/monitor one of the institutions. However, CELPL informs the Tribunal before visiting CSEE or CPL for a monitoring exercise. Due to insufficient HR, ORK never monitored one of the institutions depriving children of liberty.

Box 1: "deprivation of liberty"

There was a significantly different understanding of the concept of **'deprivation of liberty'**:

- The Justice system considers a placement as an educational measure according to the wording of art. 1 of the Youth Protection Act (August 10th 1992). Only those who, once they are in CSEE, are sent to the closed section ("section fermée") (for e.g. an attempted escape), or those, who are in CPL, are considered being deprived of liberty.
- As opposed to this, a judicial placement is considered as 'deprivation of liberty' by OPCAT, thus by CELPL, by ORK and many services which are active in terms of children's protection; the underlying concept of this study was also the definition by OPCAT. In such a perspective, a judicial placement is – mostly - taken against the wish of the minor and, mostly also against the wish of parents (cf. also ATD Quart Monde, 2014); only the judge can reverse the deprivation of liberty and allow him to return home. Here, placement means are considered as 'deprivation of liberty', be it in CSEE, CPL, psychiatry or in other homes like AUCS.

A legal or a judicial document should define the concept of deprivation of liberty for national needs. The ratification of international law is binding however, the different stipulations of the international act are mostly not included in national legislation, which would oblige all stakeholders to respect stipulations. A certain use of the ambiguity is certainly not in line with the "superior interest of the child" (ICRC).

This produces a contradictory interpretation between judicial authorities and CELPL: CELPL wanted to monitor AUCS, where children are also placed by the judge. The Tribunal refused this by saying that these – just as CSEE (with exception of the closed unit) – are open institutions which minors can leave for school and any other business. According to the Tribunal, every person wishing to interview a

minor placed by the Tribunal needs to have an agreement by the Tribunal – is it according to art. 38[85] of the Youth protection act? There is no explicit stipulation on that condition of agreement the judge has to provide. Given the interpretation of the Tribunal, CELPL – as well as ORK, if ORK wants to monitor – have to ask for an agreement. Monitoring of AUCS did not yet take place given the contradictory understanding of the concept 'deprivation of liberty' by judicial authorities and the Ombuds-bodies. The question of independence of the Ombuds-bodies is also implicitly an issue. If they were all responsible to Parliament only, would this change their access to interview minors placed by Justice?

ORK does not yet monitor institutions receiving children, but visits, i.e. inspects or controls and comments in its annual report. The largest share of its activities is the reception of complaints.

g) Suggestions: We would like to suggest the following points:

- Systematic information (leaflet) about judicial complaint procedures, internal and external complaint bodies, including ombuds-bodies, which can receive complaints should be handed over to every newcomer and his/her parents.
- The recently published ATD Quart Monde publication is an excellent means to provide clear statements by parents and their reaction to institutional violence, mainly for a small state-context like Luxembourg, providing parents and minors with the confidentiality and the necessary courage to complain.
- Thus, a revised internal/external complaint procedure (box 1) should also be implemented; guaranteeing minors their anonymity and protecting them against potential implicit, non-visible subsequent institutional violence and implicit penalties or harassment.
- The new or future health ombudsman, SNIMS, provides an interesting model with a central ombuds institution as well as with a complaint manager inside big institutions like hospitals. CPL already facilitates a presence of the Ombudsman, while other institutions like CSEE might also offer this service.
- Ombuds-bodies, which – by law – have the mission to monitor institutions should be granted unconditional access to the institutions, to files and minors.
- Monitoring should be extended to all institutions, which host children - be it day and night or during daytime only - with the effect of non-stigmatization of institutions having negative reputation and with – probably – enriching suggestions for the 'other' institutions. In this sense, a clear legal or Parliamentary text should define 'deprivation of liberty'.
- A clear distinction between monitoring institutions and those who receive complaints should be made. The practical mix of both functions for CELPL is considered by themselves as a 'nolens-volens' solution for the weeks of visits and interviews.

[85] Which prohibits the dissemination and information of case law and judicial proceedings concerning minors; furthermore, it is prohibited to present any element which allow to identify the minor who is object of one of the measures of the present act: www.legilux.public/leg/a/archives/1992/0070/a070.pdf#page=2 .

Main legal texts:

Act of 24 July 2014 on rights and obligations of patients, creating a national mediation service (relative aux droits et obligations du patient, portant création d'un service national d'information et de médiation dans le domaine de la santé et modifiant: - la loi modifiée du 28 août 1998 sur les établissements hospitaliers; - la loi modifiée du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel): http://www.legilux.public.lu/leg/a/archives/2014/0140/a140.pdf

Childhood and Family Support Act of 16 December 2008 (relative à l'aide à l'enfance et à la famille) : http://www.legilux.public.lu/leg/a/archives/2008/0192/index.html .

GDD of 17 August 2011 on the organisation of ONE, etc. (réglant 1. réglant l'organisation et le fonctionnement de l'Office national de l'enfance, et 2. modifiant le règlement grand-ducal modifié du 7 juin 1979 déterminant les actes, documents et fichiers autorisés à utiliser le numéro d'identité des personnes physiques et morales) : http://www.legilux.public.lu/leg/a/archives/2011/0187/index.html

Youth Protection Act of 10 August 1992 (relative à la protection de la jeunesse) : http://www.legilux.public.lu/leg/a/archives/1992/0070/1992A21961.html

Criminal instruction Code (« Code d'Instruction Criminelle ») : http://www.legilux.public.lu/leg/textescoordonnes/codes/code_instruction_criminelle/

Civil Code (Code civil) : http://www.legilux.public.lu/leg/textescoordonnes/codes/code_civil/

Act of 5 June 2009 on the lawyer's profession (sur la profession d'avocat) : http://www.legilux.public.lu/rgl/2009/A/1889/B.pdf

Act of 25 July 2002 establishing the Ombuds-Committee on the Rights of the Child (portant institution d'un comité luxembourgeois des droits de l'enfant): http://www.legilux.public.lu/leg/a/archives/2002/0085/2002A17501.html

Act of 22 August 2003 establishing a mediator (instituant un médiateur): http://www.legilux.public.lu/leg/a/archives/2003/0128/2003A26541.html?highlight=22%22ao%C3%BBt%222003

Act of 16 June 2004 reorganising the CSEE (portant réorganisation du centre socio-éducatif de l'Etat) : http://www.men.public.lu/fr/legislation/enfance-jeunesse/csee/index.html

- Minister's decree of 20 May 1993 on the internal organisation of CSEE (concernant l'organisation interne des centres socio-éducatifs de l'Etat).
- GDD of 9 September 1992 on security and the disciplinary regime of CSEE (portant sur la sécurité et le régime de discipline dans les centres socio-éducatifs de l'Etat).
- GDD of 3 September 1995 establishing a socio-educational institutute for CSEE (instituant un institut d'enseignement socio-éducatif auprès des centres socio-éducatifs de l'Etat).

Cf. for these last three decrees: http://www.men.public.lu/fr/legislation/enfance-jeunesse/csee/index.html

Act of 10 December 2009 concerning a) hospitalisation of persons with mental problems (a) relative à l'hospitalisation sans leur consentement de personnes atteintes de troubles mentaux, b) modifiant la loi modifiée du 31 mai 1999 sur la Police et l'Inspection générale de la Police et c) modifiant l'article 73 de la loi communale modifiée du 13 décembre 1988) : http://www.legilux.public.lu/leg/a/archives/2009/0263/2009A5490A.html

Act of 7 October 2014 modifying the act of 8 mai 2009 on the assistance, protection and security of victims of trafficking (sur l'assistance, la protection et la sécurité des victimes de la traite des êtres humains) : http://www.legilux.public.lu/leg/a/archives/2014/0186/2014A3718A.html

Act of 11 April 2010 ratifying OPCAT: optional protocol to the convention against torture and other cruel, inhuman or degrading treatment or punishment, available at: http://www.legilux.public.lu/leg/a/archives/2010/0056/2010A1000A.html

GDD of 24 March 1989 on the administration and the internal regime of penitentiary institutions (concernant l´administration et le régime Interne des établissements pénitentiaires): http://www.legilux.public.lu/leg/a/archives/1989/0017/1989A01951.html

Coordonated text of 25 June 2013 on free movement , immigration and international protection (Texte coordonné au 25 juin 2013 sur la libre circulation des personnes, l'immigration et la protection internationale) : http://www.legilux.public.lu/leg/a/archives/2013/0113/a113.pdf

Act of 21 April 1928 on voluntary organisations (sur les associations et les fondations sans but lucratif) : **http://www.legilux.public.lu/leg/a/archives/1928/0023/1928A0521A.html**

Main draft bills and draft legislative texts

Draft bill n. 5351 modifying the Youth Protection Act (Projet de loi portant modification de la loi modifiée du 10 août 1992 relative à la protection de la jeunesse) ; this draft has been withdrawn : http://ork.lu/index.php/fr/den-ork-get-sain-avis/163-2013-avis-sur-le-projet-de-loi-5351-suspendu-portant-modification-de-la-loi-modifiee-du-10-aout-1992-relative-a-la-protection-de-la-jeunesse

Draft bill n. 6593 modifying the CSEE, etc.
(I. concernant le projet de loi portant modification:
1. de la loi du 16 juin 2004 portant réorganisation du centre socio-éducatif de l'Etat;
2. de la loi modifiée du 22 juin 1963 fixant le régime des traitements des fonctionnaires de l'Etat;
3. de la loi modifiée du 29 juin 2005 fixant les cadres du personnel des établissements d'enseignement secondaire et secondaire technique;
4. de la loi modifiée du 23 juillet 1952 concernant l'organisation militaire.

- projet de règlement grand-ducal portant organisation de l'unité de sécurité du centre socio-éducatif de l'Etat
- projet de règlement grand-ducal déterminant les conditions d'admission, de nomination et de promotion des cadres des différentes carrières du centre socio-éducatif de l'Etat) :

http://www.chd.lu/wps/portal/public

Glossary:

AUCS: Urgent crisis reception home *(accueil d'urgence en situation de crise)*
CCDH: Human Rights Consultative Commission *(Commission consultative des droits de l'homme)*
CELPL : national prevention mechanims (« Contrôle externe des lieux privatifs de liberté »)
CET: Equality Body *(Centre pour l'égalité de traitement) according to the d*irectives 2000/43 and 2000/78
CPT: European Committee on the prevention of torture
CSEE: State's socio-educational centre, a disciplinary home and school *(centre socio-éducatif de l'Etat)*
Draft bill : Projet de loi
ECPAT: End Child Prostitution, Child Pornography and Trafficking of children for sexual purposes
FTE: Full time equivalent
GDD: The Grand-ducal decree (règlement grand-ducal)

HR: Human resources
ICRC: International Convention on the Rights of the Child
NAP: National action plan (*Plan d'action national*)
NGO: non-governmental organisation
ONE: National childhood office *(Office national de l'Enfance)*
OPCAT: optional protocol to the convention against torture and other cruel, inhuman or degrading treatment or punishment
ORK: Ombuds-Committee on the Rights of the child *(Ombuds-Comité fir d'Rechter vum Kand)*
RADELUX: National NGO, established to produce this RADELUX report *(Rapport Alternatif des ONG luxembourgeoises au 3e et 4e rapport gouvernemental sur les Droits de l'Enfant)*
SCAS: Central service for social assistance *(Service central d'assistance sociale)*
SNIMS: national information and mediation service for health (*service national d'information et de médiation dans le domaine de la santé)*
UN: United nations
UN-CRC: UN-Committee on the rights of the child
UNICEF: United Nations Children's Fund

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Reservations were produced for ICRC ratification by the Chamber of Delegates in 1993.[86] Since then, the CRC has reiterated its concerns about the Luxembourg Government's ability to maintain these reservations.[87]

The respective Article of the ICRC	Content of the reserve (as specified in the Act dated 20th December 1993)	*Parliamentary Committee report, PD 3608: comment on the Articles of the ICRC:*
Article 2 1. Governments shall observe the laws which are specified in this Convention and guarantee them to any child within their jurisdiction, without distinguishing them in any way, regardless of consideration of race, colour, sex, language, religion, political opinion or other matter relating to the child or their parents or legal representatives, their nationality, ethnic or social background, financial situation, incapacity, birth or any other situation. 2. Governments shall take every appropriate measure so that a child is actually protected from any form of discrimination or penalty motivated by their legal situation, activities, opinion declared or their parents', legal representatives' or family members' convictions.	(Art. 2) "1) The Luxembourg Government believes that it is in the interests of families and children to retain the provisions of Article 334-6 of the Civil Liberties Code, which states thus: Art. 334-6. If, at the time of conception, the mother or father is joined together in marriage to another person, the marital child can only be raised in the marital home with the consent of their guardian's spouse. 2) The Luxembourg Government hereby declares that this Convention does not require any change to the legal status of children born to parents subject to an absolute ban on marriage, this status justified in the interests of the child, as specified in Article 3 of the Convention".	*"In its supplementary report dated 22nd June 1993, the Government Council does, however, stress the discriminatory nature of this provision in the eyes of children born through adultery and also acknowledges that, in itself, distancing a child from the family home is not justified in the child's best interests. This provision is therefore incompatible with Article 2 of the Convention which devotes in general terms the principle of non-discrimination against children in any way whatsoever, and with Article 9 which does not allow consideration of issues other than a child's best interests, whilst the Committee had invoked the criterion of peace at home to motivate the retention of said Article in the Civil Code.* *The Legal Committee and the Family Committee have ruled to remove this Article from the Civil Code".* *"If between the child's natural mother and father, there is a ban on marriage as specified in Articles 161 and 162 for a relationship-related reason, and the relationship has already been established with one of them, any relationship with the other is banned". In the opinion of the Government Council, this exception is justified in the child's best interests,* ***as they could be faced with psychological and social problems if they officially proclaim too close a family tie between their parents".***
Article 6 1. Governments hereby acknowledge that all children have an inherent right to life. 2. As far as possible, Governments ensure the stability of the child's upbringing.	"3) The Luxembourg Government hereby declares that Article 6 of this Convention does not constitute an obstacle to the application of Luxembourg legal provisions on sexual	***"Some members of the Foreign Affairs Committee believe that removing this reserve brings with it the risk of jurisdictions declaring the 1978 Act on sexual information, prevention of illegal abortion and regulation of interruption of pregnancy against the Convention,*** *especially because of the ambiguity of the*

[86] Act dated 20th December 1993 on 1) approval of the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20th November 1989 2) amendment of certain provisions of the Civil Code.

[87] Paragraphs 8 and 9 of the CRC's Concluding Observations (document CRC/C/15/Add. 250 dated 31st March 2005) 9. The Committee believes that the reservations concerning Articles 2, 6 and 15 are there for no reason and that the one concerning Article 7, which seems incompatible with the subject and purpose of the Convention, could also be worthless if the Government applied the Committee's recommendation which appears in paragraph 29 of this document. Consequently, the Committee is renewing its previous recommendation to the Government (CRC/C/15/Add. 92, para. 23) to re-examine its reservations with a view to removing them.

	information, prevention of illegal abortion and regulation of interruption of pregnancy".	*definition of the child as specified in Article 2 of this Convention. In consideration of the degree of uncertainty, several members of the Committee have declared themselves in favour of retaining the reserve, whilst other members are opposed to it".*
Article 7 1. A child is registered as soon as they are born, and from that moment, they are entitled to a name, they are entitled to acquire a nationality and as far as possible, they are entitled to know their parents and be brought up by them. 2. Governments ensure that they implement these rights in accordance with their national legislation and the obligations which are imposed upon them by international laws applicable to the subject, especially in the event of their failure, when the child will find themselves stateless.	"4) The Luxembourg Government believes that Article 7 of the Convention does not constitute an obstacle to legal proceedings concerning anonymous childbirth which is considered in the child's interests, as specified in Article 3 of the Convention".	*"Concerning entitlement to know one's parents, Luxembourg legislation acknowledges the principle as it enables biological truth to be established in terms of ascendancy. Nevertheless, those behind the draft Government Act propose formulating a reserve on the subject, given that our legislation on anonymous childbirth does not enable children to determine who their biological parents are, but the practice is justified in the child's interests.* *The Government Council hereby declares that it agrees with the reserve, at the same time suggesting that the matter he referred to the National Ethics Consultation Committee for Life Sciences and Health for an opinion. Moreover, the Government Council says that cases of artificial insemination with an anonymous donor have yet to be examined in terms of their compliance with the provisions of this Convention. When examining the Article, the Foreign Affairs Committee ruled in favour of retaining the reserve (…)"*
Article 15 1. Governments acknowledge the Right of the Child to freedom of peaceable meetings. 2. Exercising of these rights is only subject to restrictions laid down by the law necessary in a democratic society, in the interests of national security, public safety or public affairs, or to protect public health or morality, or the rights and liberties of others.	"5) The Luxembourg Government hereby declares that Article 15 of this Convention does not compromise the provisions of Luxembourg legislation governing capacity to exercise rights".	*"This Article acknowledges the child, their right to associate and their right to hold peaceable meetings. The restrictions specified in the second paragraph concern the formulation of the third paragraph of the previous Article. In its report, the Government Council proposes a reserve in relation to the Article in terms of Luxembourg legislation governing capacity to exercise rights. According to the Government Council, the reserve would be imposed so that minors are not given* ***the right to represent an association in acts in civil life or justice.*** *The Foreign Affairs Committee is rallying towards this Government Council proposal (…). The Family Committee believes that the reserve proposed by the Government Council is* ***superfluous****".*