



**Convention on the  
Rights of the Child**

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COMMITTEE ON THE RIGHTS OF THE CHILD

Thirty-eighth session

SUMMARY RECORD OF THE 1006th MEETING

Held at the Palais Wilson, Geneva,  
on Thursday, 13 January 2005, at 3 p.m.

Chairperson: Mr. DOEK

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The meeting was called to order at 3.25 p.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (continued)

Second periodic report of Luxembourg (continued) (CRC/104/Add.5; CRC/C/Q/LUX/2; CRC/C/RESP/79; HRI/CORE/1/Add.1/Rev.1)

1. At the invitation of the Chairperson, Mr. Majerus, Ms. Pesch, Ms. Petry, Ms. Schaack and Mr. Welter took places at the Committee table.
2. Mr. MAJERUS (Luxembourg), replying to questions concerning the participation of minors in municipal affairs, said that minors had the right to state their views in committees for children and young persons. Since the establishment of a body specifically for minors had been considered useful, the “young persons’ parliament” was currently being tested in several communes. He agreed that children’s views on local traffic problems and recreation facilities were important and that ways must be found of taking them into account.
3. Luxembourg’s asylum and repatriation procedures were in keeping with the international agreements to which it was party, although such procedures could be rather lengthy. Sometimes, families whose applications for asylum had been pending for four or five years found themselves in the traumatic situation of having to go to another country. Such families were often advised to make every possible effort to remain in Luxembourg although, from a legal standpoint, their application for asylum would ultimately be rejected. There was currently much debate on how to prevent such situations. Several non-governmental organizations (NGOs) were spending considerable time and money to ensure the successful reintegration of such families in their country of destination.
4. The question of unaccompanied minors was a matter of great concern, and a number of working groups had recently been set up to study the problem. While there were very few unaccompanied minors in Luxembourg, many young people claiming to be 16 or 17 years old did not have identity documents. When their age could not be determined, a medical examination was carried out. When it was established that such persons were minors, they were placed in reception centres for refugees, preferably in centres where there were families with children of their age. They attended school until completion of compulsory education; sometimes other courses were arranged for older children.
5. A worrying trend in Luxembourg and neighbouring countries was that young people who were clearly members of criminal networks often tried to give the impression that they were minors who had been forced by adults to commit an offence; moreover, in an effort to make the offence seem less serious, they denied involvement in previous offences.
6. Ms. SMITH said that the very difficult problem of establishing the age of unaccompanied minors had been dealt with in a rather summary fashion. In her opinion, the benefit of the doubt should always be given to the child. She requested additional information on the medical examination for establishing the age of unaccompanied minors.

7. Mr. MAJERUS (Luxembourg) said that the medical examination could be performed only on the instructions of a judge, and only when there was serious doubt as to the age of the person concerned. When it was clear that the person claiming to be 16 or 17 was in his or her 20s, and reports had been received from foreign police authorities concerning that person's criminal activities or conviction, the person in question would not be given the benefit of the doubt.
8. The State socio-educational centres were neither prisons nor detention centres. They were institutions for minors intended to provide care, appropriate therapy and education. If children could not attend school outside the institutions, their education was provided in the institutions, under the supervision of the Ministry of Education. The State socio-educational centres differed from other institutions in that they were legally authorized to take disciplinary measures against the children. The centres were governed by a tripartite commission composed of representatives of the Ministry of the Family, Social Solidarity and Youth, the Ministry of National Education, Vocational Training and Sport, and the Ministry of Justice. The representative of the Ministry of Justice was usually a judge, who also worked in Luxembourg's national prison.
9. The problem with the centres was that the only means of taking disciplinary measures against inmates and preventing their escape - and escapes were attempted frequently - was to place them in solitary confinement. There was general agreement that placing them in Luxembourg's only high-security prison was not a viable alternative. However, new legislation provided for the construction of a security unit comprising 12 cells surrounded by a walled recreation area. Only the directors of the centres could decide to take disciplinary measures, and the tripartite commission, the youth court judge and parents or guardians must be notified of that decision immediately. The inmate concerned must be informed of the reasons for the decision, the duration of confinement, and possibilities of appealing against it.
10. Mr. LIWSKI asked whether any alternative to solitary confinement had been tested, and whether any studies had been done on the long-term effects of solitary confinement.
11. Mr. MAJERUS (Luxembourg) said that psychologists had carried out a study on solitary confinement, attempts to escape and violence in the centres. The study had not provided very convincing arguments in favour of solitary confinement, and every effort was being made to avoid applying that measure. With particularly problematic children, alternative measures had been tried, including special activities at the weekend, such as beauty treatment for girls or outdoor adventure courses for boys. It was important to find ways of channelling such children's energy into more positive activities.
12. Mr. FILALI asked whether a young person could be represented by a lawyer when he or she appealed against a disciplinary measure. The centres seemed to have taken an ambivalent approach to difficult children: on the one hand, they subjected them to such harsh disciplinary measures as solitary confinement while, on the other, treated them to special activities. Perhaps it would be better to abandon the practice of solitary confinement in favour of more useful activities, such as community service.

13. Mr. MAJERUS (Luxembourg) said that inmates of the centres did not have access to lawyers. In most cases, the maximum duration of solitary confinement was 48 hours. While no decision had been taken to abandon the practice of solitary confinement, the imposition of that measure was becoming less frequent. The reasons for the measure must be explained to the inmate in question; without an explanation, the disciplinary measure would be pointless. Solitary confinement was often scheduled over a weekend so as not to disrupt schoolwork; when it lasted longer, two hours of lessons were given each day, and therapy with psychologists continued. The centres were making efforts to encourage openness and a welcoming atmosphere. Alternative measures were being tried out.

14. The CHAIRPERSON asked whether children who escaped from socio-educational centres and were apprehended by the police were placed in solitary confinement or in the security unit at Dreiborn. He wished to know what sort of children were sent to socio-educational centres.

15. Mr. MAJERUS (Luxembourg) said that, as a rule, children could be referred to the socio-educational centres only by a youth court judge. Inmates who wished to remain in the centres after reaching the age of majority could do so, upon submission of a formal request. Sometimes relatives of inmates with particular problems were admitted for short periods. The number of places at the centres was limited, and children were sometimes placed in the Dreiborn unit. Most of the minors in the Dreiborn and Schrassig centres remained there until a youth court judge came up with an alternative solution.

16. While it was regrettable that boys and girls continued to be housed in separate centres, the two centres were operated by the same management team. All young people placed in the centres were aged 14 or above. Many of them had been in conflict with the law; others had been turned away by their families. The centres had sometimes been used as short-term housing until suitable alternative accommodation could be found. In all cases, the objective was to make an accurate assessment of the young person's needs so that the youth court judge could decide on the most appropriate course of action.

17. While legislation stipulated that the youth court judge should review the cases of young people placed in institutions at least every three years, in practice, constant contact was maintained. On average, young people spent less than one year in State socio-educational centres; most children returned to their families. Staff at the centres worked with families to find ways of reintegrating children into the family and society.

18. Apart from State institutions, there were many NGO-sponsored homes for children and young people. Families who could not control their children sometimes chose to send them to a boarding school. The most extreme penalty imposed by the youth court judge was to send a minor to the State penitentiary. The Government had made a formal commitment to building a secure unit for minors within the framework of the State socio-educational centres.

19. The CHAIRPERSON asked whether all parental authority was lost when a child was placed in a State socio-educational centre, and whether it was restored once the child returned home.

20. Ms. OUEDRAOGO wished to know the objective of the proposed secure unit for minors.
21. Mr. MAJERUS (Luxembourg) said that parents surrendered their authority when their child was placed in a State socio-educational centre. All institutions tried to maintain contact with the child's parents or with other family members; once the child returned home, authority reverted to the parents. A working group on reform of child protection legislation had proposed that the transfer of parental authority to a State socio-educational centre should be optional.
22. The objective of the proposed secure unit for minors was to avoid the stigmatization that could ensue when minors were sent to the State penitentiary. Proponents of building the secure unit on the same site as the socio-educational centres at Dreibern and Schrassig contended that the expertise of the staff at those centres would be valuable in the secure unit. The staff of the centres could give the children concerned the best chance of successfully reintegrating into society.
23. Ms. PETRY (Luxembourg) said that there was no data available on children residing in Luxembourg who attended school abroad. A study of the number of children who had dropped out of school was under way and would be followed by research on how those children were currently occupied, and why they had left school.
24. A number of measures had been taken to modernize schools by improving the partnership between school and family, increasing cooperation between teachers and other staff in primary schools, and restructuring teacher training, including in-service training. Team-teaching was being introduced to facilitate differentiated teaching for gifted and talented pupils, and the curriculum was being restructured to highlight competencies as opposed to content, which would allow for more pupil-centred teaching.
25. Several measures, such as vocational training programmes for young people up to the age of 25, had been introduced to assist young people in finding employment. Adult education was also available. Incentives were offered to businesses that employed young people, and the Government provided financial benefits to such young people in order to supplement their minimum wage. The aim of those measures was to reduce youth unemployment by at least 50 per cent.
26. The promotion of health in schools was based on the World Health Organization (WHO) Ottawa Charter for Health Promotion, and also included studies on mental health, nutrition, AIDS and drug addiction. Campaigns to raise awareness of health issues were conducted in schools at both the national and local levels, and all school staff received training in accordance with WHO guidelines. Partnerships with outside agencies and associations that could provide expert assistance to pupils were encouraged. Nutrition advice was included in the curriculum, and both the physical and psychological aspects of anorexia and bulimia were treated. While the increase in the number of HIV/AIDS infections was alarming, the only known cases of children becoming infected involved through mother-to-child transmission. AIDS-prevention campaigns had been planned, including the provision of condoms to all young people free of charge in schools and youth clubs.

27. Measures had been taken to protect children from pornography and a campaign was under way to teach parents about the proper use of the Internet and provide the relevant training for teachers.

28. A study on the integration of Muslim communities into Luxembourg society, carried out in 2004, had emphasized the importance of the inclusion of Muslim religion and culture in the school curriculum in order to foster social cohesion. Training had also been provided to school staff to raise awareness of Muslim culture.

29. Ms. SCHAACK (Luxembourg) said that, in Luxembourg, international treaties and conventions took precedence over domestic legislation. All courts had the right to dismiss domestic laws if they were found to contradict international norms, and any individual could invoke an international convention before a court. The Constitutional Court was responsible for monitoring the legality of domestic legislation; in most cases, legislation that contradicted international conventions was repealed. Over the past 10 years, awareness of human rights had increased, and more international legal instruments had been invoked both in Luxembourg courts and in the European Court of Human Rights. The Convention had been invoked directly in 1993 in connection with a dispute over the penalty that could be imposed on a minor who had committed a crime.

30. A placement measure was the only option legally open to the youth court judge. Criminal courts for adults did not try offences committed by minors, who were not regarded as criminally responsible. The sole exception concerned minors between 16 and 18 years of age. According to article 32 of the law on the protection of minors, such persons could be brought before an ordinary court only if they had committed a particularly serious offence with aggravating circumstances and had attained the age of 16 at the time of the crime, and if placement and socio-educational measures were deemed inappropriate in the given case. The minor must be sufficiently mature to appear in an adult court. In all, only about 10 minors had been referred by a youth court judge to such a criminal court. While minors brought before such a criminal court were treated as adults, the judge could invoke a number of extenuating circumstances, including the age of the offender.

31. Minors were not imprisoned with adults but held in a separate facility that had recreation halls and offered creative activities. Special regulations applied. Such children were looked after by teachers and psychologists, and attended classes and vocational training workshops. The Government made every effort to ensure that juveniles were imprisoned separately from adults.

32. Mr. FILALI said that, even if extenuating circumstances were taken into account, the very fact that children between 16 and 18 years of age could be referred to a court to be sentenced as adults was a cause for concern.

33. The CHAIRPERSON asked whether a petition to a juvenile court was filed by a public prosecutor or another official, and whether a request could be made to the court for a child protection measure. He wished to know whether such children were placed in a socio-educational centre, and what would happen if a minor arrested for a petty crime denied the charges.

34. Mr. MAJERUS (Luxembourg) said that, apart from a few exceptions, minors who committed a crime benefited from special protection measures. Human rights advocates in Luxembourg were in favour of maintaining the current system, which was in the best interests of the child; they were opposed to the introduction of a criminal court for juveniles, since it was better to leave open the possibility of bringing very serious cases before a criminal court for adults.

35. The prosecutor's office, the police, parents, a physician, a social worker, the child or anyone else could refer a case to the judge. The judge then instructed the police to conduct an investigation and question witnesses. A member of the youth court was present at all court hearings. The judge subpoenaed the child's parents who, like the child, had a right to be heard. The decision taken by the judge was not a legal sanction but a protection measure. Usually the first sanction against a juvenile delinquent was a warning. The second might consist in sentencing the minor to compensate for damages. Another measure might be to require the minor to explain to the victim why he or she had committed the offence. The judge might also order the family to take some form of disciplinary measure against the child. A judge was usually reluctant to order the child's placement in a facility. Non-custodial social services had been set up by a number of NGOs with State support. Any decision by the judge could be appealed.

36. Mr. WELTER (Luxembourg) said that the Criminal Code severely punished the sexual exploitation and sale of children. The commission of such an offence by a relative or a person in a position of authority was an aggravating circumstance. The law of 31 May 1999 had extended the application of the Criminal Code to cover sexual offences and misdemeanours committed in other countries by a Luxembourg national. A one-year prison term and a fine were imposed for the production or possession of photographs, films or other pornographic material depicting minors. Article 384 of the Criminal Code dealt with the placement of pornographic material on the Internet. The law greatly increased the severity of sentences for various forms of sexual exploitation of children and expanded possibilities for the extraterritorial prosecution of sex tourists. Audio-visual recordings of depositions could be used in court so that the victims did not need to be present.

37. In 2002, the Ministry of the Family, with the support of the Ministry of Tourism, the Ministry of Justice, the association of travel agencies and the trade union of travel agents, had conducted an awareness campaign to combat sex tourism involving children. A police laboratory capable of analysing the content of most personal computers had been set up. In its current state, the laboratory was still insufficient, and further budgetary resources would be required to upgrade it. A number of NGOs were working to raise parents' and children's awareness of sex tourism.

38. The CHAIRPERSON asked whether an Internet provider could be prosecuted under Luxembourg law. Since it was possible to prosecute a Luxembourg national who had committed an act involving a minor in a foreign country, when that act was legal under the foreign country's law but punishable under Luxembourg law, he did not understand why Luxembourg had not ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

39. Mr. WELTER (Luxembourg) said that Luxembourg had signed the Optional Protocol in 2000 and that the ratification process was currently under way.

40. Mr. MAJERUS (Luxembourg) said that Internet providers were liable to prosecution under Luxembourg law. It was necessary to adopt European and international regulations concerning pornography on the Internet.

41. Mr. MAJERUS (Luxembourg) said that Luxembourg had introduced parental leave that was available to both parents. Leave could be taken for a period of 6 months full-time or 12 months part-time, and could be shared by the parents.

42. The rate of breastfeeding of newborns in Luxembourg was high in comparison with neighbouring countries. A little over 50 per cent of Luxembourg mothers continued to breastfeed their babies four months after birth, which was comparable to the practice in neighbouring countries. However, fewer Luxembourg mothers breastfed their babies up to the age of six months than did mothers in neighbouring countries. The Ministry of Health had established a breastfeeding committee, which would prepare a national action plan.

43. A unit for child and adolescent psychiatry had recently been set up in a Luxembourg hospital. Luxembourg's largest hospital complex had a child psychiatry ward, offering both in-house and drop-in services for children with psychiatric problems. The Ministry of Education, in cooperation with other ministries, was promoting a nationwide project for children requiring psychiatric care. A number of reception centres had set up special units for very disturbed children; unfortunately, the number of very disturbed children requiring placement in such centres was on the rise.

44. No comprehensive study on the causes of suicide among young people had been undertaken. Individual surveys had been carried out in a number of institutions, including socio-educational centres. The most vulnerable age group were 15- to 24-year olds. Early childhood trauma, particularly sexual abuse within the family, had been identified as the single most important risk factor in suicide among young people. The extent of sexual abuse of children in the family was difficult to quantify, since most cases were never reported. Other risk factors included the lack of a clear structure and clearly identifiable codes of conduct in the family environment and academic or professional failure. Consultation, counselling and mediation services had been established as a possible alternative to placement in institutions. The Government actively promoted leisure and recreational activities for children at risk.

45. The Ministry of the Family, Social Solidarity and Youth was responsible for monitoring associations that operated reception centres and provided social services for children. Independent inspectors carried out regular visits and reported directly to the Deputy Public Prosecutor.

46. The large number of agencies that provided social services to children with disabilities often led to a lack of coordination and transparency; in some cases, several institutions provided services to the same family and the same child. The Ministry of the Family had taken measures



to institute a central coordination body, and a working group had been established to ensure that a person with disabilities had only one case file. According to the new system, a coordinator would be assigned to each family to liaise between the family and the different service providers. The working group's final report would include a recommendation that regular meetings should be held with all parties concerned.

47. The term "viable child" was used in connection with determining extent to which it was appropriate to use medical technology to save the life of a premature infant.

48. Variety shows and cabarets were closely monitored in order to prevent the unlawful employment of children. Unfortunately, he could not rule out the existence of illegal prostitution in Luxembourg. The Ministry for the Promotion of Women had established centres that were open during the night and offered counselling and advice to prostitutes, including children.

49. According to police and court records, there were no abandoned children in Luxembourg.

50. Recently enacted legislation stipulated that all public buildings, as well as those belonging to State-funded institutions and associations, must be accessible for persons with disabilities.

51. The Ministry of the Family was responsible for ensuring that the provisions of the Convention were applied to children employed in the motion picture industry. Such monitoring involved inspections of film shooting locations.

52. Public-awareness campaigns were an important means of promoting children's participation in all areas of private and public life. In the past, well-known artists had been involved in the production of posters, leaflets and brochures for such campaigns. The promotion of children's participation remained a government priority.

53. Drug and alcohol abuse among young persons was a serious cause for concern. The sale of alcohol to persons of under 17 years of age was strictly prohibited. The Government was planning a significant increase in the tax on alcoholic soft drinks, which were currently easily accessible to young people. The emergence of new drugs posed a serious challenge to the authorities.

54. A number of school programmes had been developed to address the problem of the often arbitrary violence against children at school, on their way to school or in the vicinity of school premises.

55. The Government was committed to helping parents to reconcile their child-rearing responsibilities with their professional life. To that end, a number of centres had been established that received children between 6 and 7 a.m. and 7 and 8 p.m. The Government also planned to establish schools that remained open longer.

56. Mr. FILALI, Country Rapporteur, commended the State party on the progress that it made in the implementation of the Convention. In its concluding observations, the Committee would encourage the State party to ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and withdraw its reservations to the Convention. There was a need for improved coordination and data collection and for short-, medium- and long-term strategies to address the Committee's main areas of concern.

57. Mr. MAJERUS (Luxembourg) said that his Government looked forward to the Committee's concluding observations and would continue its efforts to promote children's rights in Luxembourg.

The meeting rose at 5.30 p.m.