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Children in Prison

Repression under the Guise of Protection in the Luxembourgish Youth Protection System

As the country with the highest minimum age of criminal responsibility in Europe, Luxembourg considers delinquent minors primarily as children in distress who need and deserve support. As a result, their infractions to penal law are adjudicated under the *loi du 10 août 1992 relative à la protection de la jeunesse*. Despite this primarily protective philosophy, the Luxembourgish approach to juvenile delinquency can in fact be very repressive, which is best illustrated by the controversial topic of juvenile incarceration.

The idea of punishment within the *loi du 10 août 1992* is particularly evident in the doctrine that more severe infractions require harsher consequences. In fact, the law provides for longer periods of intervention either in the form of so-called *mesures* or as placements, including in prison, depending on whether the child has committed an infraction that would have been considered an offence (*délit*) or a crime (*crime*) had it been committed by an adult. The former risk losing their liberty up until the age of 21, whereas the latter may find themselves incarcerated until they turn 25 (articles 3-4). If all interventions by the court were indeed “protective” only, as the title of the law implies, the possible intensity of “educational” measures would not be reliant on the type of infraction committed by a juvenile.

The practice of incarcerating minors

The harshness of the current legal framework is best illustrated by the use of imprisonment, the most repressive criminal justice tool. Article 26 of the *loi du 10 août 1992*

states that a minor can, under exceptional circumstances, be placed in adult prison for periods of up to a month, at the end of which the placement can be renewed for another month at a time, until the young person turns 18. Unlike other jurisdictions with similar legislation, the Luxembourgish law does not mention a distinct set of conditions under which such an incarceration is possible, but instead leaves it up to the youth judge to decide what constitutes a “case of absolute necessity”.

Juveniles at the Centre pénitentiaire de Luxembourg (CPL) Schrassig are kept in a special wing, separate from adult detainees. A complete separation, however, is not possible, as minors can still communicate with adult prisoners through windows and from the court, and risk running into them, when walking to specialised facilities within the prison, such as the infirmary. Such an incomplete separation is against international law, a fact that has been recognised by Minister of Justice Sam Tanzon,¹ as well as her predecessor Felix Braz.²

Up until recently, incarcerating children in the CPL Schrassig was a relatively common occurrence. Unlike the vast majority of other European juvenile justice laws, the *loi du 10 août 1992* does not provide a minimum age for a young person to be sent to the (adult) prison, provided the youth judge sufficiently justifies their decision. Until just a decade ago, a lot of minors, some of whom were very young, were incarcerated in adult prison. In the 2000s, there were multiple years in which children as young as 12 or 13 were incarcerated in adult prison. In no

year in that decade, the youngest prisoner in the CPL was older than 15.³ According to former Ombudsman, Marie Anne Rodesch-Hengesbach, many of these children were also addicted to drugs and were self-harming, making prison an even more inappropriate environment for them. Even the new Unité de sécurité pour mineurs (Unisec) juvenile detention facility has no lower age limit and can in theory house children between the age of 0 and 18.

The incarceration of very young children in adult prison was made even more problematic due to its racist undertones. As the Ombuds-Committee reported in a number of annual reports many of the very young inmates were part of the Romani people, who had often been criminally exploited by members of their family to assist in burglaries, rather than having committed crimes on their own initiative.

The negative effect of short stays

Unfortunately, it is impossible to tell from the data how long each child was in adult prison for, as only the duration of the shortest and longest stay in a particular year are published. In all years the shortest stay was only one or two days, but some children stayed for several months, including one child in the year 2000 who was incarcerated for 23 months. It has long been known that short prison sentences

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in particular are often counterproductive and increase the likelihood of re-offending among adult convicts.⁴ Especially low-risk offenders, who are disproportionately common among juvenile delinquents,⁵ are negatively affected by short periods of imprisonment.⁶ Particularly very short stays of only a few days at an adult prison are reminiscent of so-called “Scared Straight” programmes that expose at-risk or delinquent teenagers to the realities of adult prison to deter them from further crime. Since the inception of those programmes, it has become abundantly clear that exposing young people to adult prison, even for short periods of time actually significantly increases the risk of recidivism.⁷

The terrible fates that young people who have experienced adult prison endure after their release were also recorded by the Ombuds-Committee.⁸ Marie-Anne Rodesch-Hengesbach had been following the cases of the young people she had met on her first visit to the CPL in 2003. By 2007, at least three of them had died of overdose, while every single other child she had met, apart from the Romani children, who had likely left the country since, had reoffended, with many being incarcerated again.

Steady decline in prison placements

Over the last years, however, a general change of opinion and practice among

youth justice professionals in terms of juvenile incarceration has taken place. Since the opening of the Unisec, a closed juvenile detention facility on the site of the Centre socio-éducatif de l'état in Dreifborn, in November 2017, the number of young people who have been incarcerated in Schrassig has declined rapidly.⁹ The Unisec was intended as an alternative to imprisoning minors that had become too difficult to handle in Luxembourg's other institutions, thus diverting young people away from the CPL. Statistics show that since the opening of the Unisec, the number of young people sent to Schrassig has dropped drastically. While in any given year since 1992 an average of 20 to 40 minors had been sent to the CPL, with a grim record of 72 in 1997, only six juveniles were in 2018, none in 2019, and one in the first half of 2020.¹⁰

More importantly, however, the decline in prison placements is the result of a clear political will to abolish this practice expressed by the government and many of those who work within fields dealing with juvenile delinquents. While the 2018/2019 failed juvenile justice reform project still included the option of sending juveniles to Schrassig, a fact that was heavily criticised by the Conseil d'Etat,¹¹ there has been a clear turning point in the political debate surrounding this topic. As a result of the intervention by the Committee on the Rights of the Child (CRC),¹² as well as a cycle of conferences on youth justice, organised by the University of Luxembourg and the Association nationale des communautés éducatives et sociales du Luxembourg (ANCES),¹³ in spring 2019, the Luxembourgish government has since pledged to introduce a minimum age for incarceration and has decided to draft a new juvenile justice and protection law based on children's rights principles.¹⁴

It is essential that the Luxembourgish government live up to their promises and reform the current legislation as soon as possible. As the current law allowed for the extensive incarceration of juveniles in adult prison just two decades ago, there is nothing preventing a renewed rise of such placements, should societal attitudes change, especially if a particularly gruesome crime, like a school shooting or

murder, were to be committed by a very young child in the future. While it has certainly contributed to keeping children out of adult prison, the Unisec does not provide a guarantee either that no more minors will end up in Schrassig, as the recent case of a 17-year-old boy who was sent there in January illustrates. In fact, without a legislative change, opening the Unisec all while keeping the option of sending children to Schrassig, has the potential of leading to harsher interference in the lives of juvenile delinquents and an increasingly repressive approach to youth crime, which can be acted upon as soon as the political landscape changes.

Unisec: still carceral in character

While certainly preferable to adult prison, the Unisec still retains a distinctly carceral character. The guards who work there have been trained in Schrassig Prison, and the building is built according to European prison norms. Young people are only allowed to move between different rooms together with a guard or other member of staff and are completely cut off from the outside. They cannot leave for weekend visits at home or to go to school and only meet their families in specific visiting rooms. Retaining both the Unisec and Schrassig as possible placements for juvenile delinquents means that there are now, in theory, even more available spots to deprive minors of their freedom.

The existence of incarceration of minors, including in adult prison, in Luxembourg, is particularly problematic as the youth protection system does not rigorously distinguish between disobedient and offending children. In Luxembourg, statute offences, such as skipping school, running away from home or a care home, or even “misbehaviour or lack of discipline [causing] serious discontent among one’s parents” (*loi du 10 août 1992*, articles 7-8), may result in them being sent to the Centre socio-éducatif de l’Etat (CSEE) Dreibern or Schrassig, where disobedient juveniles live together with those who have committed acts that would have qualified as crimes or serious offences, up to and including murder and other violent crimes.

While all juveniles within the Luxembourgish juvenile protection system can be considered victims to some extent, keeping real delinquents and statute offenders together in the same facilities can result in an escalation in the severity of measures imposed on the latter group. It has been long established that bullying and hierarchical behaviour is a common problem in the carceral context,¹⁵ and particularly pronounced among young offenders.¹⁶ Unsurprisingly, children who have been placed in institutions because of statute offences are often at the receiving end of such bullying and thus more likely to run away from the CSEE, a disciplinary infraction which can result in solitary confinement of up to 72 hours or in being sent to the CPL Schrassig. Indeed, reports drawn up by the Ombuds-Committee specifically mention young people who

Luxembourg risks blurring the lines between aid and punishment.

were incarcerated at CPL Schrassig, because they had run away from the CSEE.¹⁷ Luckily, this issue has been recognised by the responsible ministries, who call for young people in closed facilities to be separated according to the severity of their offences.¹⁸

The current child protection system in Luxembourg thus has a distinct punitive side to it, which is most prominent in the use of incarceration to deal with problematic minors, a practice that risks harming the most vulnerable members of society the most. Without a distinction in law between delinquent, disobedient, and vulnerable youths, Luxembourg risks blurring the lines between aid and punishment, thus creating confusion for those who deserve to be punished and compromising the safety and life chances of those who need protection. While the political climate is generally opposed to the incarceration of teenagers at the moment, a reformed law needs to contain clear restrictions both in terms of age and in

terms of other conditions that need to be fulfilled before a child is deprived of their liberty. Most importantly, the government should urgently cease the practice of placing children in the CPL Schrassig, as it violates international law. ♦

- 1 <https://www.100komma7.lu/article/aktualiteit/mannerjareger-dierfen-net-op-schraasseg-kommen> (all the webpages referred to in this article were last consulted on 29 October 2020.)
- 2 https://gouvernement.lu/fr/actualites/toutes_actualites.gouvernement%2Bde%2Bactualites%2Btoutes_actuaites%2Binterviews%2B2019%2B04-avril%2B05-braz-wort.html
- 3 Ombuds-Comité fir d'Rechter vum Kand (ORK), *Rapport 2009 au Gouvernement et à la Chambre des Députés*, ORK, Luxembourg, 2009.
- 4 Helen Johnston/Barry Godfrey, “Counterblast: The Perennial Problem of Short Prison Sentences”, in: *The Howard Journal*, 52(4) (2013), p. 433-437.
- 5 John Graham/Ben Bowling, “Young People and Crime”, in: *Home Office Research Study* 145, London, Home Office, 1995.
- 6 Paul Gendreau/Claire Goggin/Francis T. Cullen, *The Effects of Prison Sentences on Recidivism*, Ottawa, Ontario, Solicitor General Canada, 1999.
- 7 Antony Petrosino/Carolyn Turpin-Petrosino/Meghan E. Hollis-Peel/Julia G. Lavenberg, “Scared Straight and Other Juvenile Awareness Programs for Preventing Juvenile Delinquency: A Systematic Review”, in: *Campbell Systematic Reviews* 9(1) (2013), p. 1-55.
- 8 Ombuds-Comité fir d'Rechter vum Kand (ORK), *Rapport 2007 au Gouvernement et à la Chambre des Députés*, ORK, Luxembourg, 2007.
- 9 <https://men.public.lu/fr/actualites/communiqués-conference-presse/2017/11/07-unisec.html>
- 10 Question parlementaire N° 595, 3 April 2019; Question parlementaire N° 1782, 27 January 2020.
- 11 <http://www.ances.lu/attachments/article/211/PL7276%20avis%20CE%20Protection%20jeunesse%20janvier%202019.pdf>
- 12 <https://www.rtl.lu/news/national/a/1329217.html>
- 13 <https://www.land.lu/page/article/481/335481/DEU/index.html>
- 14 <https://www.ohchr.org/EN/HRBodies/CRC/CRC30Pledges/Pages/Luxembourg.aspx>
- 15 Joseph H. Michalski, “Status Hierarchies and Hegemonic Masculinity: A General Theory of Prison Violence”, in: *The British Journal of Criminology* 57(1) (2017), p. 40-60.
- 16 Alexandra C Spain, “Bullying among young offenders: findings from a qualitative study”, in: Jane L. Ireland, *Bullying among Prisoners. Innovations in theory and research*, William Publishing, Oregon, 2005.
- 17 Ombuds-Comité fir d'Rechter vum Kand (ORK), *Rapport 2009 au Gouvernement et à la Chambre des Députés*, ORK, Luxembourg, 2009.
- 18 <http://www.ances.lu/attachments/article/211/Note-au-Conseil-du-gouvernement-du-MENEJ-et-du-MJUST.pdf>