



ALTERNATIVES TO CUSTODY FOR YOUNG OFFENDERS

NATIONAL REPORT ON JUVENILE JUSTICE TRENDS

Luxembourg



Ulla Peters

Luxembourg

Ulla Peters, University of Luxembourg



A. Juvenile Justice

A.1. Please describe the legal framework and the main characteristics of the juvenile justice system of your country.

A.1.1. Is there a special law or code regarding juvenile justice?

Luxembourg has not - in the above addressed sense – a specific juvenile justice legislation (i.e. a juvenile criminal or penal law). Juvenile justice is integrated in the law on Youth Protection from 10th of August 1992 (Loi Protection de la Jeunesse: PdJ1992);¹ it is a unitarian law for offenders and victims. In Luxembourg, juvenile offending and antisocial behaviour up to the age of 18 falls within the scope of the legislation on child and youth protection PdJ 1992: Art.2).² The law on youth protection comprises neither sanctions nor punishments (Goniva 2010: 985). In cases which are defined by the penal code for adults as crimes (assaults and homicide) young offenders from the age of 16 onwards can be sentenced due to the general penal law (code penal) for adults³ or be placed in secure residential care until the age of 21 or 25 (Art. 3,4, PdJ 1992). This is also foreseen for young people with mental or physical deficiencies and antisocial behaviour (Art. 5. PdJ).

There have been ongoing political, professional and scientific discussions on the question

1 Luxembourg Parliament (Chambre des Députés), 1992. Loi Protection de la Jeunesse. Available at: <http://www.legilux.public.lu/leg/a/archives/1992/0070/a070.pdf>; <http://www.legilux.public.lu/rgl/1992/A/2196/1.pdf> - the process of the amendment of the law of 1992 is documented under: www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=5351

2 A comprehensive overview is given by Goniva, M. (2010).

3 This is nearly never done according to professional records; see also Peters, U. (2013) and a recent report of the Ombudsman (2012) on the state-run socio-educational centres (Les centres socio-éducatives de l'Etat), available at: www.celpl.lu/doc/doc_accueil_119.pdf

whether Luxembourg is in need of a specific juvenile act.⁴ This has been also the central topic of an interdepartmental working group (2000-2002)⁵ (Goniva 2010: 986), dealing especially with the situation in secure residential care and the state-run secure residential care homes (they are referred to as boarding schools: “centres socio-éducatifs”, which is slightly misleading) and the question whether a juvenile justice act is needed.^{6 7}

The recent law on child and youth protection originates from 1939 (first discussions date from the 1920th and refer especially to the Belgian law on youth protection, which also inspired amendments in Luxembourg in the 1970s. The original act has been reformed and amended twice (1971,⁸ 1992).⁹ At the moment (since 2004, when a draft bill was introduced: bill n 5351)¹⁰ it is in a long lasting process of reform and larger amendments are pending, especially in regard to adapting the law to international norms and the redefinition of parental rights.¹¹

The main arguments for dealing with juvenile justice in the context of youth protection are since the act from 1939 on, that juvenile offenders need also to be protected, that they should be educated rather than punished¹² and that a unitary law allows flexibility and prevents labelling of juvenile offenders (Goniva 2010: ibd.). Goniva argues further that a differentiation would mean a major investment and structural growth of courts and administration which, in relation to the benefits for young people, is not efficient for a country as small as Luxembourg (550.000 inhabitants) (ibd.).

4 Höyneckh, Th.; Soisson, R.; Trede, W. (Eds.) (2002); Peters, U. (2013).

5 Avis du groupe de travail interministériel, «Protection e la Jeunesse», June 2002, available at: http://www.chd.lu/wps/PA_Archive/MergeServlet?lot=J-2010-O-3101

6 «Dans la déclaration gouvernementale présentée le 12 août 1999 à la Chambre des Députés, Monsieur le Premier Ministre, Ministre d’Etat a annoncé que „la loi sur la protection de la jeunesse sera réformée dans le cadre d’une analyse approfondie des problèmes de la jeunesse en détresse“ (point 13-11, Mémorial B No 50 du 21 octobre 1999). Par arrêté du 18 décembre 2000, Monsieur le Ministre de la Justice a constitué les soussignés en groupe de travail avec la mission de „réfléchir aux réformes à apporter en matière de protection de la jeunesse“. (avis 2002: 1), Avis du groupe de travail interministériel, «Protection de la Jeunesse»“ of June 2002, available at: http://www.chd.lu/wps/PA_RoleEtendu/MergeServlet?lot=C-2003-O-011-0001

7 Document available at: www.legilux.public.lu/leg/a/archives/1971/0079/a079.pdf#page=7

8 Documents and political process available at: http://www.chd.lu/wps/PA_Archive/MergeServlet?lot=C-1970-O-043

9 Luxembourg Parliament, (Chambre des Députés), 1992. Loi Protection de la Jeunesse. Available at: <http://www.legilux.public.lu/leg/a/archives/1992/0070/a070.pdf>

10 Luxembourg, Parliament (Chambre des Députés), 2014; available at: <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=5351> – here one can also find a summary on all comments which have been made up to date by organizations, NGO’s and the state commission to the bill.

11 In October 2013 Luxembourg had early elections, which brought a new government. A major change took place concerning responsibilities for juvenile justice and foster care. A new ministry was created, named Ministry of national education, of childhood and youth (Ministère de l’Education nationale, de l’Enfance et de la Jeunesse, since December 2013. <http://www.men.public.lu/fr/acteurs/ministere/index.html>), which is in charge of child and youth protection and of the youth care services, which had been so far in the responsibility of the Ministry for Family and Integration (Ministère de la Famille et de l’Integration)

12 See exposé des Motifs, available at: http://www.chd.lu/wps/PA_Archive/FTSShowAttachment?mime=application%2fpdf&id=759303&fn=759303.pdf

The law names the following incidences as dangerous for a child or a minor and as causes for court intervention (Art. 7, PdJ 1992: 2197): school absenteeism, prostitution (“livrent à la débauche”), gaming, vagrancy, criminal offending, as well as situations where the mental and physical health of the minors, their education, or their moral and social development is threatened.

In 2008, Luxembourg voted in a child and family welfare law (Loi Aide à la l’enfant et à la famille: AEF),¹³ which introduced a national youth office (office national de l’enfance: ONE).¹⁴ The ONE is in charge of all children and young people up to the age of 27 and operational since September 2011).¹⁵ It has adapted the definition of “child” of the UN-Convention of Children’s Rights.

The law on child and family welfare is created around the idea of welfare and voluntary help (prevention) for children and families in need. This is also the case for the institutions like the ONE and new services of case management (Coordinateur de projet d’Intervention: CPI).¹⁶

One main aspect in creating a national youth office was to reduce judicial referrals of young people. Luxembourg has in relation to other European countries a constantly very high level (up to 85%) of judicial placements with very restricted possibilities and rights of children to be heard. As defined in art 5 of the child and family welfare law (2008)¹⁷ all decisions of the Youth Tribunal precede actions and decisions taken by the ONE.¹⁸ This might be one of the reasons that up to Mai 2014 there was no remarkable change in the number of the judicial placements.¹⁹

Till December 2008 (resp. September 2011, becoming operational) Luxembourg had only the above described unitary law (PdJ 1992) for protection, children in need, juvenile offending and antisocial behaviour.

13 Documents available at: www.legilux.public.lu/leg/a/archives/2008/0192/2008A2584A.html

14 <http://www.men.public.lu/fr/enfance-jeunesse/one/index.html>

15 Luxembourg Parliament (Chambre des Députés), 2011, GDD of 17 August 2011 on childhood and family welfare, available at: <http://www.legilux.public.lu/leg/a/archives/2011/0187/a187.pdf>

16 <http://www.men.public.lu/fr/enfance-jeunesse/one/05-services-cpi/index.html>

17 Luxembourg Parliament (Chambre des Députés) 2008, Childhood and Family welfare law of 16 December 2008 (aide à l’enfant et à la famille), available at: <http://www.legilux.public.lu/leg/a/archives/2008/0192/2008A2584A.html>

18 For problems and a critic see Peters & Wagner (2009)

19 Luxembourg, Ministère de la Famille et de l’Intégration, 2013, rapport d’activité, p. 141, available at: www.mfi.public.lu/publications/rapports-activite/rapp_act_2012.pdf

A.1.2. Which courts and other special authorities are responsible for the reactions of juvenile offending (criminal courts, specialised juvenile criminal courts, family courts, special prosecutors, police etc.)?

According to the act on youth protection (PdJ 1992)²⁰ the court dealing with juvenile justice is the same court dealing with children in need: it is the Youth Tribunal (Tribunal de la Jeunesse: TdJ). Since 1992 there exist two regional Youth Tribunals (north and central) and five judges (situated in Luxembourg and Diekirch). Reports to the Tribunal are made by the Youth Prosecutor (Parquet de l'Etat: PE) and a service of social workers (service central d'assistance sociale: SCAS)²¹ which is linked to the Youth Prosecutor and the police.

A.1.3. What is the scope (only criminal or also antisocial behaviour) of juvenile justice? How is the age of criminal responsibility regulated (please refer to the different age groups and include the legal definitions on “child”, “youth” and “young person”)?

There does not exist an age of criminal responsibility and there are no differentiations concerning reactions in regard to specific age groups. As mentioned above all young people up to the age of 18 are dealt with in the context of the Youth Protection Law (PdJ 1992).²² The legal definition is minors (“mineur” PdJ1992, Art. 1) under the age of eighteen, and adults (“majeurs”) for those older than eighteen years.

A.1.4. Are there specific procedural rules for young persons and how do they differ from those for adults? Are due process guarantees respected?

There are specific rules for young people in regard to the law on youth protection.²³ If they are “sentenced” in that context the measures are decided by the Youth Tribunal. (Art. 2, PdJ 1992). There do not exist any special regulations concerning young people. If young people in need ask themselves for support and protection the Youth Tribunal has to take a decision in 15 days and inform parents or those who are in charge of the guardianship (Art. 9, PdJ1992) by a letter. They have the possibility to object the decision for 10 days.

20 Luxembourg Parliament (Chambre des Députés), 1992. Loi Protection de la Jeunesse. Available at: <http://www.legilux.public.lu/leg/a/archives/1992/0070/a070.pdf>

21 Luxembourg, Central service for social assistance (Service central d'assistance sociale): <http://www.justice.public.lu/fr/aides-informations/assistance-sociale/index.html>

22 Luxembourg Parliament (Chambre des Députés), 1992. Loi Protection de la Jeunesse. Available at: <http://www.legilux.public.lu/leg/a/archives/1992/0070/a070.pdf>

23 Ibid.

A.2. Please describe the sanctioning system regarding juvenile justice in your country.

A.2.1. Please give an overview on the sanctions/reactions on youth offending at the different levels of criminal proceedings.

As described above, in Luxembourg there are no special criminal proceedings. All proceedings concerning antisocial behaviour and delinquent young people are referred to the Youth Tribunal (tribunal de la jeunesse).²⁴ Attached to the General Prosecutor (Parquet de l'Etat- PE) is a service of social workers (service central d'assistance social: SCAS) who, when requested by the judge or prosecutor prepares a report ("enquête social", Art. 23 PdJ1992) for the Youth Tribunal – in this report a proposition is made about which sanctions and measures should be taken – the report is to inform the judge about the situation and to give the Tribunal a picture of the risk and the needs of the young person.

Sanctions and reactions can be taken according to Art. 1 (PdJ 1992) of the Youth Protection Law (always keeping in mind that "sentence" can be meant and used in a sense of protection).

The provided reactions are directed towards safeguarding, education and protection ("mesures de garde, d'éducation et de préservation", Art.1, PdJ1992). They can be the following: 1. reprimanding and/or putting them under the control of an adult, 2. putting them under the control of a social worker ("assistance éducative"), 3. placing them with a responsible person ("toute personne digne de confiance") or in any appropriate place or institution ("tout établissement approprié") either in Luxembourg or in another country ("même à l'étranger") with the aim of living, treatment, education and/or apprenticeship ("hébergement, traitement, éducation, formation professionnelle").

The Youth Tribunal can also decide that the minor can stay at home as long as the following conditions are met (Art. 1, PdJ 1992): 1. Attending school on a regular basis, 2. Doing a philanthropic or an educational piece of work in reference to age and resources, 3. Being submitted under the control of a centre for educational orientation or for mental health.

Additionally to these reactions the Youth Tribunal can decide at any time, to implement an additional educational support ("assistance éducative"). All reactions can last until the age of 18 (and can be extended till 21) (Art. 1, PdJ1992).

²⁴ <http://www.luxembourg.public.lu/fr/societe/enfance-jeunesse/droits/index.html>; <http://www.justice.public.lu/fr/famille/protection-jeunesse/index.html>;

A.2.2. Which possibilities exist to divert a juvenile from a trial? (diversion structures/schemes, alternative authorities like special community councils which can impose certain measures)?

There are no possibilities provided in the law to divert from trial, because the reactions mentioned under A2.1. are decided by the Youth Tribunal. A practice of mediation has been established in the last 10 years since the creation of a centre for mediation.²⁵ The mediation can be proposed by a judge and is seen as a way of restorative justice (“mediation réparatrice”). It is proposed mainly in cases where delinquency has happened for the first time (“primo delinquency”). According to the figures of the centre for mediation in 2012, a rate 4.7% of all their cases were cases transferred by the Youth Tribunal.²⁶

A.2.3. What types of interventions can the competent court impose?

In addition to the description of sanctions in A.2.1. there are no other interventions. At any time the judge has the possibility to interrupt the placement of a minor for a certain time (congé, Art. 12 PdJ1992), also the head of a residential home can decide an interruption for going home on weekends. If a minor is placed by the Youth Tribunal, parents (or persons who are in charge of the guardianship) lose their parental rights (autorité parental) and the rights are transferred to the institution (namely the director) in charge of the young person (Art. 11, PdJ1992).²⁷

A.2.4. Which forms of liberty depriving sanctions are provided? What is the minimum and what is the maximum length for liberty depriving measures?

According to Art.1 (PdJ 1992) the length of either sanction’s protective measures lasts from the day of the sentence until the minor reaches 18 years of age (“à la fin de la majorité”), which has triggered a lot of criticism. It can be extended to the age of 21 (Art. 3: PdJ1992) or 25 (Art. 4: PdJ 1992). This is especially the case when the minor has committed a crime which would be sentenced (by the penal code for adults) with imprisonment (see also 2.1.). The measures can be interrupted at each moment by the judge, when it seems appropriate.

25 http://www.mediation.lu/mediation_tribunal.htm

26 http://www.mediation.lu/CM_activites_2012.pdf «la médiation « réparatrice » pour mineurs : elle représente 4,79 % du nombre de dossiers ouverts en 2012 au Centre de Médiation. Le Centre de Médiation continue en effet sa collaboration avec le Parquet du tribunal de la jeunesse de Luxembourg entreprise en 1998. Le Centre de Médiation reçoit certains dossiers de primo délinquance et a pour mission d’offrir la médiation au mineur mis en cause ainsi qu’à la victime dans un but de responsabilisation du mineur et de réparation de la victime» (rapport CdM 2012: 12)

27 See for a discussion Kurschat 2011

A.2.5. What types of residential and custodial institutions exist for juvenile criminal offenders?

Young offenders are usually - depending on places available – placed in two (one for boys and one for girls) secured state-run institutions (Centres socio éducatives de l'état: Schrassig, Dreibern, CSEE).²⁸ They are run under the slightly misleading name of boarding schools (against this background the residents are - in the legal texts - mainly called boarders (pensionnaires),²⁹ where they are 100% judicially placed young people either due to offending or antisocial behaviour or as victims of maltreatment and negligence: so there is a cohabitation of minors who need protection with those who are offenders.³⁰

The CSSEs have a proper legal framing³¹ for example regulating punishment and secure detention in special units. There is also a separated section for young people in the prison for adults (Schrassig), which is in use. The practices of imprisonment and secure detention have been widely and constantly criticized by human and children rights bodies such as the Ombudsman (La médiateur du Grand Duché du Luxembourg),³² the Human Rights Consultative Body (Commission consultative des droits de l'homme: CCDH)³³ and the Committee on the Rights of the child (Ombuds-Comité fir d'Rechter vum Kand: ORK).³⁴ A shadow report by the national association of educational, and social communities in Luxembourg (Association nationale des communautés éducatives et sociales du Luxembourg: ANCES)³⁵ points, as does the report on the conclusions of the UN-CRC,³⁶ to critical elements of the in use practices of placement, treatment and sentencing, which impede children's rights and international standards for children deprived of liberty. The quest for a child friendly justice is one central aspect which is treated in all reports.

Due to ongoing criticism concerning the placement of young offenders in a special section of the prison for adults, the government - in 2004 - took the decision to build a secure detention unit for 12 young people (9 boys and 3 girls) on the grounds of the secure

28 Luxembourg Parliament (Chambre des Députés) 2004, law 16th of June 2004 - reorganising the socio-educational centre of the State (portant reorganisation du centre socio-éducatif de l'Etat: CSEE), available at: www.legilux.public.lu/rgl/2004/A/1882/1.pdf

29 ibd.

30 Peters, U. (2013)

31 ibd.

32 Luxembourg, Ombudsman (2012). Available at: http://www.celpl.lu/rapports_visites2.html

33 Luxembourg, CCDH, annual reports. Available at: www.ccdh.lu

34 Luxembourg, ORK, annual reports. Available at: www.ork.lu

35 Luxembourg, ANCES, available at: http://www.ances.lu/index.php?option=com_content&view=category&layout=blog&id=48; report responding to the authorities' 3rd, and 4th periodic report to the UN-Committee on the rights of the child (UN-CRC)

36 UN-CRC, 2013, 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), CRC/C/LUX/CO/3-4, available at: http://www.ances.lu/attachments/article/163/CRC_C_LUX_CO_3-4%20CRC%20concluding%20observations%20Luxembourg.pdf

detention home in Dreibern.³⁷

One central argument and criticism is that the reactions and sanctions - though they are in the context of protection -, are rarely driven by pedagogical considerations, but mainly by a paternalistic approach of protection. General ideas and notions of protecting society on the one hand and protecting children and young people on the other hand are sometimes not very clearly differentiated and intermingled.³⁸

Many of the arguments in regard to this aspect can also be found in a critical comment of the above cited association ANCES on the bill n°6593³⁹ concerning the organisation of the newly constructed detention unit (unite de sécurité: UNISEC) and the amendments concerning the CSEE.⁴⁰

There have also been critical reflections after a visit of the site of Dreibern 2012 by a delegation of Children's Rights activists.

At the moment (Mai 2014) the building of the UNISEC is ready for use, but the bill n°6593⁴¹ regulating access and functioning has not yet been voted on. This has resulted in a situation where staff have been engaged and the building has been completed, but a legal framework is pending.

A report and analysis of the Ombudsman⁴² on the CSSE – issued in 2012 - also highlights main critical aspects in regard to the legal situation and to the rights of children and young people. The report strongly recommends the revision of the Youth Protection law from 1992 (bill n 5351)⁴³ and the voting of the pending bill on the living conditions for the internal detention cells, for isolating measures and body search (bill n 6593).⁴⁴ The ombudsman depicts that the existing law is not in line with international standards, i.e. of participation of children in decision-making, for defending one's rights, appeal

37 See reference 25; Kurschat 2012

38 See the proposal of the party "Déi Greng" (2002) following the discussion of the report of the commission "Protection de la Jeunesse 2002" (ref. 6)

39 Luxembourg Parliament (Chambre des Députés) 2013, bill n. 6593 on the security unit of the socio-educational centre of the State (centres socio-éducatives de l'Etat: CSEE), available at: http://www.gouvernement.lu/salle_presse/conseils_de_gouvernement/2013/06-juin/14-conseil/

40 <http://www.ances.lu/attachments/article/170/Avis%20ANCES%206593%20version%20200514.pdf>

41 Luxembourg Parliament (Chambre des Députés) 2013, bill n. 6593 on the security unit of the socio-educational centre of the State (centres socio-éducatives de l'Etat: CSEE), available at: http://www.gouvernement.lu/salle_presse/conseils_de_gouvernement/2013/06-juin/14-conseil/

42 Ombudsman (2012). Les centres socio-éducatives de l'Etat, available at: http://www.celpl.lu/doc/doc_accueil_119.pdf; see also the yearly reports of the ORK: Luxembourg, ORK, 2013, annual report, available at: www.ork.lu

43 Luxembourg Parliament (Chambre des Députés) 2004, draft bill 5351 modifying the Youth Protection act of 1992, available at: http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexdpata/Mag/001/001/035541.pdf

44 Luxembourg Parliament (Chambre des Députés) 2014, pending bills (dossiers en cours); available at: <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6593>

procedures and length of imprisonment.⁴⁵

The following table shows the numbers of children who have been placed in the two state-run detention homes in 2012 and 2013. They have all been placed by the Youth Tribunal according to the Art. 1 PdJ 1992.

Tab.1: Children in secure retention homes (2012-2013)⁴⁶

Date	Dreiborn	Schrassig	Total
01.04.2012	60	50	110
01.10.2012	59	39	98
01.12.2012	60	36	96
01.04.2013	62	40	102
01.10.2013	51	45	96

A.2.6. What does in practice happen with most juvenile offenders? Are they regularly subject to diversion schemes or to court trials? Do you have any reliable data about the diversionary and sentencing practice?

As already described above, there are not any (besides the possibility of a pre-trial mediation) diversion schemes in Luxembourg. The “normal” procedure is placement either in a secure retention home, in psychiatry, in either individualized or group-based intensive and specialised (i.e. sexual offenders) care settings. All these settings have to find solutions for the problem of “coming home”. There exists neither research nor reliable data concerning these interventions, outcomes and consequences for young people.

The table shows the numbers of all children up to 18 in residential care and the amount of judicial placements. The state-run homes are not included in this table, therefore the amount of judicial placements is around 70% whereas it is including these in total over 80%.

45 Ombudsman (2012). Les centres socio-éducatifs de l’Etat, available at: http://www.celpl.lu/doc/doc_accueil_119.pdf;

46 CSEE internal report to the ONE 2013: these numbers do not include children and young people who are placed, but have not the obligation to be there (“congé”) («Ces chiffres comprennent tou(te)s les pensionnaires placé(e)s au CSEE par mesure judiciaire (admis(es) ou non); ils ne comprennent pas les pensionnaires bénéficiant d’une mesure de congé, d’un sursis ou d’une mainlevée»).

Tab.2. Children in residential care (judicial placements)⁴⁷

2013-04	2013-10	Service Group	Service Description - Judiciaires
67	68	ONE Accueil institutionnel	Accueil a l'etranger
251	249	ONE Accueil institutionnel	Accueil de base
26	25	ONE Accueil institutionnel	Accueil d'enfants de moins de trois ans
141	145	ONE Accueil institutionnel	Accueil orthopedagogique
12	8	ONE Accueil institutionnel	Accueil orthopedagogique de jour
9	8	ONE Accueil institutionnel	Accueil psychotherapeutique
2	3	ONE Accueil institutionnel	Accueil psychotherapeutique de jour
42	42	ONE Accueil institutionnel	Accueil urgent en situation de crise

550 548 Total judiciaires

Tab.3. Children in residential care (voluntary placements)

2013-04	2013-10	Service Group	Service Description - Volontaires
57	46	ONE Accueil institutionnel	Accueil a l'etranger
114	102	ONE Accueil institutionnel	Accueil de base
3	6	ONE Accueil institutionnel	Accueil d'enfants de moins de trois ans
28	33	ONE Accueil institutionnel	Accueil orthopedagogique
		ONE Accueil institutionnel	Accueil orthopedagogique de jour
10	9	ONE Accueil institutionnel	Accueil psychotherapeutique
10	12	ONE Accueil institutionnel	Accueil psychotherapeutique de jour
6	5	ONE Accueil institutionnel	Accueil urgent en situation de crise

228 213 Total volontaires

71% 72% Judiciaires

⁴⁷ Statistics ONE 2013-2013

B. Restorative approach within juvenile justice

B.1. Where do you see a restorative approach within the juvenile justice system (this questionnaire follows a process based definition of restorative justice)?

As outlined in the answer to question A.2.2. there is the possibility of mediation in cases of first-time delinquency. According to the code on taking evidence on crimes (code d'instruction criminelle - CIC) for adults the possibility of a pre-trial mediation is foreseen (CIC, Art.24 (5)).⁴⁸

B.2. What are the types of restorative justice measures provided for juveniles (e.g. victim-offender mediation, family conferencing, circles)? Please also refer to their legal basis.

There is no legal basis (besides the one named under B.1.) for restorative justice.

B.3. Do these restorative measures play a role in juvenile justice (sentencing) practice?

No, they do not play a role.

B.4. What are the main actors involved in delivering restorative justice measures (public institutions, NGOs...). Who bears for the costs of restorative justice measures?

As restorative justice does not play a role in the juvenile justice system, there are no actors to name. Mediation is free and the staff are paid by the Ministry.

⁴⁸ See: possibilities in the penal law for mediation: <http://www.mediation.lu/mediapenal.htm>

C. Foster care within the juvenile justice system

C. 1. Does foster care play any role in your juvenile justice system?

In the past, foster care did not have a prominent role in the care and juvenile justice system, which was and is mainly based on residential care. Therefore the number of available places in foster care is insufficient. Four agencies provide training for foster families, organize selection processes and accompany children and parents: Inter-action,⁴⁹ SOS-Kinderdorf,⁵⁰ Croix Rouge,⁵¹ ARCUS.⁵² In general places in foster care are kept for young children and not for adolescents.

There were “informal” practices, especially between migrant families from Portugal, to support relatives or neighbourhood families when their children were in need or got in trouble by providing the possibility of neighbourhood or extended family foster care. Since 2011 these - they were not registered up to that point - forms of care are part of the care system and of service provision (therefore the number of foster families augmented between 04/2012 and 10/2013).

Due to the fact that there is no specific juvenile justice law, but rather juvenile justice is integrated into the system of youth protection, it is not clear how, whether and to which amount placements in foster care are related to delinquency and anti-social behaviour.

Tab. 4: Children in Foster Care (total, voluntary and judicial)

2012-04	2012-10	2013-04	2013-10	Service Group
170	134	104	69	ONE Accueil en famille
350	378	422	433	ONE Accueil en famille
3	2	2	2	ONE Accueil en famille
523	514	528	504	Total général

ONE statistics 2013.

2013-04	2013-10	Service Group
5	5	ONE Accueil en famille
355	362	ONE Accueil en famille
2	2	ONE Accueil en famille
362	369	Total Judiciaires

2013-04	2013-10	Service Group
99	64	ONE Accueil en famille
67	71	ONE Accueil en famille
		ONE Accueil en famille
166	135	Total Volontaires

49 Inter-action a.s.b.l. : www.inter-actions.lu

50 SOS Kinderdorf: www.kannerduerf.lu/

51 Croix Rouge: www.croix-rouge.lu/objectifs-du-service-placement-familial/

52 ARCUS: www.arcus.lu/profile/28/placement-familial

C. 2. Under which conditions can foster care be imposed within the juvenile justice system (at pre- or post-sentencing level or in case of diversion)? Can foster care be imposed as an alternative to custody or pre-trial/ police detention? If so please describe the regulations for foster care (length, rights of the children/the foster carers etc.) If there are possibilities in law, how are they used in practice?

Foster care can be imposed in the context of the law on child protection. As the figures show this is done more frequently than it is chosen as a voluntary intervention (voluntary means with the consent of the parents). Foster care seems to be for the judges a possibility more for younger children and not in the context of juvenile justice. Recently there is a growing number of young people who are placed in professional foster settings (intensive individualized care)⁵³ mainly outside of the country.

C. 3. Does your system know any other alternatives to custody like alternative care in case of pre-trial detention (e.g. in closed juvenile welfare institutions instead of prisons) or in case of juveniles sentenced to youth prison or comparable forms of custody? If there are possibilities in law, how are they used in practice?

The systems has, as an alternative to custody, the possibility that a minor remains, under specific conditions (Art.1, PdJ1992) at home or is put under the guidance of a honourable person (see top of page 6, answer to question A.2.1.).

53 Individualpädagogische Intensivmassnahmen

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