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International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Reports submitted by Luxembourg pursuant to article 29 (1) of the Convention, due in 2024*, **

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* The present document is being issued without formal editing.
** The annexes to the present document may be accessed on the web page of the Committee.

Contents

I. Introduction

1. The International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the United Nations General Assembly on 20 December 2006 and opened for signature in Paris on 6 February 2007, enshrines the right of everyone not to be subjected to enforced disappearance. It requires States parties to adopt both preventive and repressive measures to ensure compliance.

2. Luxembourg signed the Convention on 6 February 2007 and ratified it on 1 April 2022. The Convention entered into force on 1 May 2022.

3. An Act of 17 December 2021: 1. approving the International Convention for the Protection of All Persons from Enforced Disappearance, done in New York on 20 December 2006; 2. amending the Civil Code; 3. amending the new Code of Civil Procedure; 4. amending the Criminal Code; and 5. amending the new Code of Criminal Procedure;[1] came into force on 22 December 2021.

4. This report provides information on the current state of the law in Luxembourg, which is largely in line with the Convention. The report is submitted to the Committee on Enforced Disappearances, established pursuant to article 26 of the Convention, in accordance with article 29 (1), providing that States parties must submit a report on the measures taken to give effect to their obligations under the Convention within two years of the entry into force of the Convention for the State party concerned.

5. The form and content of the report comply with the guidelines adopted by the Committee at its second session, held from 26 to 30 March 2012.

6. Finally, it is noted that the Committee, having considered the report, will be able to make comments and observations to the State party in accordance with the provisions of article 29 (3) of the Convention, and to request additional information from the State party in accordance with the provisions of article 29 (4).

II. General legal framework under which enforced disappearances are prohibited

A. Constitutional, criminal and administrative provisions prohibiting enforced disappearance

7. The law in Luxembourg was little affected by the ratification and entry into force of the Convention, as most of its provisions were already reflected in domestic legislation. To ensure the effective implementation of the Convention, some national legislative provisions needed to be brought into line with it, through:

- The establishment of legal procedures to review or annul any adoption or placement of children that originated in an enforced disappearance (Convention, art. 25)
- The creation of an offence of enforced disappearance as an autonomous criminal offence (Convention, arts. 2, 4 and 6)
- The setting of the amount of the penalties for that crime (Convention, art. 7 (1))
- The establishment of a statute of limitations in line with the provisions of article 8 (1) of the Convention

8. By virtue of the publication, on 22 December 2021 in the Official Gazette of the Grand Duchy of Luxembourg, of the Act of 17 December 2021 approving the Convention, the text of the Convention has been fully integrated into the domestic legal system, enabling Luxembourg to comply with its obligations under the Convention.

[1] https://legilux.public.lu/eli/etat/leg/loi/2021/12/17/a920/jo.

B. Other international instruments dealing with enforced disappearance to which the State is a party

9. Luxembourg is party to several international instruments that contribute directly to the prevention of enforced disappearances; they include:

- The European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950
- The International Covenant on Civil and Political Rights of 16 December 1966
- The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 26 November 1987, which established the European Committee for the Prevention of Torture, with competence to visit any place of deprivation of liberty and which last visited Luxembourg in 2023[2]
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984
- The Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977 and 8 December 2005
- The Rome Statute of 17 July 1998 establishing the International Criminal Court

C. Status of the Convention in the domestic legal order, direct enforceability by the courts or administrative authorities

10. Luxembourg affirms the principle of the primacy of international norms. Once approved, international norms resulting from international commitments take precedence over rules of domestic law, including those of constitutional value. Approval of the Convention is the prerequisite for its effectiveness and hence its binding force in the domestic legal order. Consequently, if an international or European commitment conflicts with a domestic norm, the latter must be amended before the commitment is approved by the competent authorities. Failing this, the courts and tribunals must set aside domestic norms that do not comply with directly applicable rules of international law.[3]

D. How domestic laws ensure the non-derogability of the prohibition of enforced disappearance

11. Please refer to the comments related to article 1 of the Convention.

E. Competent authorities with jurisdiction over matters dealt with in the Convention

12. The competent authorities for each element covered by the Convention will be indicated throughout the report in the specific comments related to each article of the Convention.

[2] Since its establishment, the European Committee for the Prevention of Torture has carried out six visits to places of deprivation of liberty in Luxembourg.

[3] Constitution, art. 102: “The courts apply laws and regulations only insofar as they comply with higher legal standards.”

Appeals Court, judgment No. 396/01 V of 13 November 2001 (*Annales du droit luxembourgeois*, 2002, ed. Bruylant, p. 456): impossibility of invoking provisions of domestic law to justify non-compliance with a treaty.

F. Examples of case law or administrative measures where the provisions of the Convention were enforced or in which violations of the Convention were identified, and administrative measures which violated the Convention

13. As mentioned, the Act approving the Convention was passed in December 2021. It is therefore relatively recent, and no case law concerning an enforced disappearance has yet been reported. No administrative measures of the kind mentioned have been reported. The legislative and regulatory provisions implementing the Convention will be specifically indicated in the information provided under each article of the Convention.

G. Statistical data

14. The State has no statistical data on cases of enforced disappearance.

III. Information in relation to each substantive article of the Convention

Article 1
Non-derogability of the prohibition of enforced disappearance

15. There are no provisions in the law or regulations of Luxembourg that would permit a derogation from the offence of enforced disappearance. This impossibility stems in particular from article 17 of the Constitution,[4] which guarantees individual freedom and restricts deprivation of liberty to cases specifically provided for by law. Under article 70 of the Criminal Code, there can be no exception to the ban on enforced disappearance: "(1) There is no offence if an act was ordered by law and commanded by a legitimate authority. (2) The preceding paragraph does not apply in the event of an offence provided for in articles 136 bis, 136 ter and 442-1 bis."

16. In addition, the provisions of article 9 (4) of the Act of 16 April 1979 laying down the general status of civil servants, as amended, relieve all civil servants of the duty to carry out the instructions of their hierarchical superiors if such instructions are criminally punishable,[5] and article 31 (3) of the Act of 31 December 1982 concerning the revision of the Code of Military Procedure provides that "All military personnel are forbidden to obey orders if the execution of those orders constitutes a crime or an offence; the execution of such an order engages the responsibility of the person executing it if the latter should realize that, by obeying the order, he or she is participating in a criminally punishable act".

[4] Constitution, art. 17: "(1) Individual freedom is guaranteed.

(2) No one may be prosecuted, arrested or deprived of his or her liberty except in the cases provided for in and in the form determined by law.

(3) Except in cases of flagrante delicto, no one may be arrested except by virtue of a reasoned judicial decision, of which he or she must be notified at the time of arrest or within twenty-four hours at the latest.

(4) Every person charged with an offence is presumed innocent until proved guilty according to law.

All persons must be informed without delay of the reasons for their arrest or deprivation of liberty, of the charges against them and of the legal remedies available to help them regain their liberty."

[5] Act of 16 April 1979, as amended, art. 9 (4): "If a civil servant considers that an order received is tainted by irregularity, or that its execution may cause serious inconvenience, he or she must, in writing and through the chain of command, make his or her opinion known to the superior from whom the order came. If the superior confirms the order in writing, the civil servant must comply with it, unless execution of the order is punishable by law. If the circumstances so require, the objection and maintenance of order can be expressed verbally. Each party must confirm its position in writing without delay."

17. In the same spirit, article 3 (2) of the Act of 18 July 2018 relating to the disciplinary status of members of the Grand Ducal Police stipulates that "it is forbidden to obey an order the execution of which is likely to be qualified as a crime or misdemeanour in the event that it is executed with the conscious intention of infringing criminal law".

18. In addition to these prohibitions, any person entrusted with a public service mission is required to report to the State prosecutor any fact likely to constitute a crime or misdemeanour of which he or she becomes aware in the course of his or her duties.[6]

19. Thus, not only does every civil or military official have the right and the obligation not to obey an order to commit or participate, in any way whatsoever, in the crime of enforced disappearance, but he or she also has the obligation to report knowledge of such a crime.

20. Moreover, under the Constitution of Luxembourg, there is no exceptional situation in which it is permitted to derogate from the prohibition on enforced disappearance.

21. When a state of emergency is declared, measures to derogate from existing laws may be taken. However, these measures "must be necessary, appropriate and proportionate to the aim pursued and comply with the Constitution and international treaties".[7] A state of emergency can be declared in three cases: in the event of an ongoing international crisis, in the event of a threat to the interests of the public or part of the public, or in the event of an acute risk of a breach of public security. A state of emergency confers exceptional policing powers on the authorities, particularly with regard to regulating the movement and residence of persons and the closure of places open to the public, without undermining the rule of law, since parliamentary control is fully guaranteed. The Chamber of Deputies can, at any time, suspend or revoke the state of emergency, which may not, in any case, exceed a maximum duration of three months.

22. Finally, it should be pointed out that international humanitarian law, which prohibits enforced disappearance, applies in the event of armed conflict.

23. In terms of the fight against terrorism, the Criminal Code contains provisions to punish perpetrators of the crime of terrorism.[8] Thus, perpetrators of the crime of terrorism are prosecuted and tried according to the rules of ordinary law and therefore enjoy the same procedural guarantees as any other defendant. Accordingly, no investigative measure is likely to permit an act of enforced disappearance.

[6] Code of Criminal Procedure, art. 23 (2): "Any constituted authority, any public officer or civil servant, as well as any employee or officer entrusted with a public service mission, whether hired or mandated by virtue of provisions of public or private law, who, in the performance of his or her duties, acquires knowledge of facts likely to constitute a crime or an offence, is required to notify the State prosecutor without delay and to transmit to that officer of the law all information, reports and acts relating thereto, notwithstanding any applicable rules of confidentiality or professional secrecy."

[7] Constitution, art. 48: "In the event of an international crisis, a real threat to the vital interests of all or part of the population, or an imminent danger resulting from serious breaches of public security, the Grand Duke, having noted the urgency resulting from the impossibility for the Chamber of Deputies to legislate within the appropriate timeframe, may take regulatory measures in all matters.

Such measures may derogate from existing laws. However, the measures must be necessary, appropriate and proportionate to the aim pursued and comply with the Constitution and international treaties.

A state of emergency may be extended beyond 10 days only pursuant to one or more laws establishing its duration, which may not exceed a maximum of three months. Such laws are adopted by a qualified majority of two-thirds of the votes cast by the deputies, proxy votes not being permitted."

[8] Article 3. Criminal Code, art. 135-1–135-17.

Article 2
Definition of enforced disappearance

24. Pursuant to the Act of 17 December 2021 approving the Convention, a new Chapter IV-1 bis, entitled "Offences against the person constituted by enforced disappearance", was added to Book II, Title VIII of the Criminal Code.

25. Enforced disappearance is described in article 442-1 bis of the Criminal Code as follows: "Enforced disappearance is considered to be the arrest, detention, abduction or any other form of deprivation of liberty of a person by one or more agents of the State or by a person or group of persons acting with the authorization, support or acquiescence of State authorities, when such actions are followed by the disappearance of the person and a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the person, in conditions that place that person outside the protection of the law. Enforced disappearance is punishable by 20 to 30 years' imprisonment."

26. Aside from a few drafting nuances, this definition is identical to that given in article 2 of the Convention.

Article 3
Investigation

27. The acts referred to in article 2 of the Convention, if committed by persons or a group of persons acting without the authorization, support or acquiescence of the State, may, depending on the case, constitute an attack on personal liberty punishable under articles 434–438-1 of the Criminal Code, hostage-taking punishable under article 442-1 of the Criminal Code, illegal and arbitrary arrest punishable under articles 147, 155–157, 159 and 434–438 of the Criminal Code, or child abduction/kidnapping punishable under articles 364 and 365 of the Criminal Code.

28. The acts referred to in the articles mentioned in the previous paragraph constitute criminal offences and are subject to the investigative measures provided for in the Code of Criminal Procedure.

Article 4
Criminalization

29. Pursuant to the Act of 17 December 2021, a new chapter was added to the Criminal Code, entitled "Offences against the person constituted by enforced disappearance", comprising articles 442-1 bis–442-1 quater. These provisions make enforced disappearance an autonomous criminal offence punishable by rigorous imprisonment.

30. As noted in the comments related to article 2, the definition is, apart from a few drafting nuances, identical to that given in article 2 of the Convention.

Article 5
Crimes against humanity

31. The Act of 27 February 2012 adapting domestic law to the provisions of the Rome Statute of the International Criminal Court[9] introduced a Title I bis into the Criminal Code, including provisions to adapt domestic legislation to the offences set out in articles 6–8 of the Rome Statute and thus ensure the seamless prosecution of crimes against humanity in Luxembourg. By introducing Title I bis and, more specifically, article 136 ter into the Criminal Code, Luxembourg has classified enforced disappearance as a crime against

[9] Act of 27 February 2012 adapting domestic law to the provisions of the Rome Statute of the International Criminal Court, approved pursuant to the Act of 14 August 2000 approving the Rome Statute of the International Criminal Court, done at Rome, 17 July 1998: https://legilux.public.lu/eli/etat/leg/loi/2012/02/27/n1/jo.

humanity when committed on a widespread or systematic basis and when the attack is known; it has thus maintained a parallel with article 7 of the Rome Statute.

32. Thus, under article 136 of the Criminal Code, "A 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: … 9. Enforced disappearance of persons".

33. Finally, the classification of enforced disappearance as a crime against humanity means that the perpetrators are punished by life imprisonment, in accordance with article 136 ter (2) of the Criminal Code, and that, in accordance with articles 637 (1) (3) and 635 (2) of the Code of Criminal Procedure, no statutory limitation may apply to the public prosecution or the sentences handed down.

Article 6
Criminal responsibility

34. With regard to criminal liability, articles 66–69, as well as articles 51 and 52, of the Criminal Code set out the various modes of liability applicable to offences under the Criminal Code, including the offence of enforced disappearance. In accordance with article 6 (1) of the Convention, these provisions apply in particular to persons who commit or attempt to commit, order or induce the commission of an offence, or are accomplices to or participate in the offence.

35. The responsibility of the hierarchical superior, as defined in the Convention, can be engaged in two ways. The hierarchical superior may be held criminally liable either for his or her active involvement in the commission of the offence,[10] in application of the above-mentioned articles, or for culpable failure to act. In this case, article 442-1 ter of the Criminal Code will be applied: "Without prejudice to the application of article 67, a superior who knew that, or deliberately disregarded information that clearly indicated that, subordinates under his or her effective authority and control were committing or were about to commit a crime of enforced disappearance, and failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution, when the crime was related to activities under his or her effective responsibility and control, shall be punished as an accomplice to the crime of enforced disappearance mentioned in article 442-1 bis."

36. A specific provision, article 442-1 ter, was required to criminalize culpable failure to act by any superior in accordance with the obligation laid down in this respect in article 6 of the Convention, as recourse to article 67 of the Criminal Code alone was insufficient insofar as the complicity provided for therein presupposes an act and not a failure to act.

37. With regard to the fact that no order can be invoked to justify the crime of enforced disappearance, reference is made to the provisions invoked and to the comments made in respect of article 1 of the Convention.

Article 7
Applicable penalties

38. For the penalty applicable to enforced disappearances as a crime against humanity, please refer to the comments related to article 5 of the Convention.

39. With regard to the offence of enforced disappearance as an autonomous offence, perpetrators (natural persons) guilty of this crime incur the penalties set out in articles 7–13 of the Criminal Code. In particular:

[10] Article 67 of the Criminal Code incriminates complicity, which presupposes an act on the part of the person concerned.

- Article 7. The criminal penalties incurred by natural persons are:
  (1) A fine of at least €251, in accordance with article 9 of the Criminal Code;
  (2) Special confiscation, which is mandatory for felonies and is applied in accordance with the procedures set out in articles 31 and 32 of the Criminal Code;
  (3) Revocation of titles, grades, functions, jobs and public offices which, according to article 10 of the Criminal Code, is mandatory in the case of a sentence of imprisonment;
  (4) A lifetime ban on certain civil and political rights, in accordance with article 11 of the Criminal Code;
  (5) Closure of businesses and establishments;
  (6) The publication or posting, at the convicted person's expense, of the decision or an extract from the sentencing decision;
  (7) A ban on certain professional or social activities.
- Article 9. The fine in criminal cases is at least €251.
- Article 10. The revocation of titles, grades, functions, jobs and public offices is mandatory in the case of a sentence of imprisonment.
- Article 11. A sentence of imprisonment for more than 10 years disqualifies the convicted person from the following rights for life:
  (1) To hold public function, employment or office;
  (2) To vote, to elect and to stand for election;
  (3) To wear any decorations;
  (4) To act as an expert, witness or certifier for official transactions or acts; to give evidence in court other than to provide information;
  (5) To be a member of any family council, or to perform any function in a system for the protection of minors or adults without legal capacity, except with regard to their own children and with the assent of the family affairs judge, if there is one;
  (6) To carry or possess weapons;
  (7) To run a school or to teach or to be employed in an educational establishment …"

40. State officials/employees who commit the offence of enforced disappearance may be subject to the disciplinary sanctions listed in articles 47–50 of the Act of 16 April 1979, as amended, i.e. warning, reprimand, fine, removal, suspension of the biennial salary increase,[11] delay in promotion or advancement in salary, demotion, temporary exclusion from duties, compulsory retirement or dismissal. A civil servant is automatically suspended from duties if he or she is the subject of legal or administrative proceedings. Penalties are imposed in accordance with articles 51–73 of the Act of 16 April 1979, as amended.[12]

41. In the case of a legal entity, article 442-1 quater of the Criminal Code stipulates that "If a legal entity has been found criminally liable for an offence under article 442-1 bis of the Criminal Code, the penalty of dissolution provided for in article 38 of the Code is mandatory".

[11] Salary increase awarded every two years.

[12] These provisions also apply to members of the police force, in accordance with article 12 of the Act of 18 July 2018 relating to the disciplinary status of police officers of the Grand Ducal Police.

In addition to dissolution, other penalties provided for in articles 34-37 of the Criminal Code, namely fines or special confiscation, may be added.[13]

42. The maximum fine applicable to legal entities under article 36 (2) of the Criminal Code, of €750,000, is quintupled if a legal entity is held criminally liable for the offence of enforced disappearance. In accordance with article 37 of the Criminal Code, the maximum fine for enforced disappearance is thus raised to €3,750,000 in the event of the conviction of a legal entity.

43. In respect of the offence of enforced disappearance, the Criminal Code provides for general mitigating circumstances in relation to its articles 73-76, the application of which is left to the discretion of the courts and tribunals in accordance with article 79 of the Code. In any case, the application of mitigating circumstances does not allow decriminalization of the offence of enforced disappearance.

44. Aggravating circumstances are provided for in articles 62-65 of the Criminal Code, which, by applying the rules of coincidence of offences, allows for a heavier sentence to be handed down if the enforced disappearance coincides with another crime, or if the act prosecuted also constitutes another crime punishable by a heavier sentence. Article 80 of the Criminal Code[14] thus provides for aggravating circumstances for crimes based on a discriminatory motive.

Article 8
Statute of limitations

45. In cases where enforced disappearance constitutes a crime against humanity, the prosecution and punishment are not subject to any statute of limitations, in accordance with articles 637 (1) (3) and 635 (2) of the Code of Criminal Procedure.

46. The statute of limitations applicable to the offence of enforced disappearance as defined in article 442-1 bis of the Criminal Code is 10 years.

47. In accordance with article 637 of the Code of Criminal Procedure and current case law, the 10-year limitation period begins to run only from the day when the offence appeared and could be discovered under conditions allowing for the prosecution of those responsible, as enforced disappearance is considered a “hidden offence” or even a “continuing offence”. Thus, the majority of courts and tribunals consider the date on which the facts were discovered to be the date on which the persons entitled to initiate public proceedings, i.e. public prosecutors and civil parties,[15] were informed of the facts. In the present case, for the public prosecution service, the date used is the date on which the information was received and, for civil parties, the date on which they were able to take action.[16]

48. Article 637 (1) of the Code of Criminal Procedure recognizes that, in certain circumstances, the statute of limitations can be suspended or interrupted, in order to guarantee the effectiveness of prosecutions and to safeguard the victims’ right to an effective remedy.

[13] The Criminal Code also provides for exclusion from participation in public procurement and concession contract award procedures. However, if a legal entity is convicted of the offence of enforced disappearance, dissolution is pronounced, making this type of penalty inapplicable.

[14] This article was introduced into the Criminal Code pursuant to the Act of 28 March 2023 supplementing the Criminal Code with the introduction of a general aggravating circumstance for felonies, misdemeanours and summary offences committed with a motive based on one or more of the elements referred to in article 454 of the Criminal Code.

[15] In accordance with article 1 of the Code of Criminal Procedure: “(1) Prosecution is initiated and conducted by judges or officials empowered to do so by law.

(2) Proceedings may also be brought by the injured party, under the conditions determined in the present Code or special laws.”

[16] https://anon.public.lu/D%C3%A9cisions%20anonymis%C3%A9es/CSJ/10_Chambre%20correctionnelle/2007/20070516_253a-accessible.pdf (annex).

49. Thus, when the crime of enforced disappearance has been committed against a minor, article 637 (2) of the Code of Criminal Procedure does not trigger the prescription period for public prosecution until the minor comes of age, or until his or her death if earlier.

50. Civil proceedings resulting from an offence are governed by the provisions of the Civil Code [17] and cannot, therefore, be subject to limitation before that of the public prosecution, as stated in article 2 (4) of the Code of Criminal Procedure.

51. Furthermore, in accordance with article 635 (1) of the Code of Criminal Procedure, "penalties imposed pursuant to rulings or judgments handed down in criminal cases", "shall become time-barred after 20 years have elapsed from the date of the rulings or judgments". Under article 642 of the same Code, civil convictions in criminal cases are time-barred in accordance with the rules set out in the Civil Code, i.e. after 30 years.

52. Finally, with regard to the right of victims of enforced disappearance to an effective remedy throughout the period of the statute of limitations, the law of Luxembourg provides for the possibility of lodging a complaint with the State prosecutor, as well as suing for damages in criminal proceedings, the effect of which is to bring the case before an investigating judge, in accordance with the procedures set out in articles 56-62 of the Code of Criminal Procedure.

53. In accordance with article 4-1 (3) of the Code of Criminal Procedure, when a complaint has been lodged, the victim is "informed automatically of any discontinuance of proceedings and the grounds for this and, on request, of the initiation of investigations and of as well as any declaratory judgement in the trial courts. The victim also receives on request: information on the status of the criminal proceedings, unless such notification would be detrimental to the smooth running of the case; information on any final decision on public prosecution."

54. If the victim encounters a dysfunction in the processing of the complaint, he or she can turn to the National Council of Justice.[18] The Council oversees the proper functioning of the justice system, while respecting its independence. Hence, it is competent to receive and deal with grievances relating to the operation of the justice system and disciplinary complaints against officials of the prosecution service. The Council will dismiss the case if the grievance or disciplinary complaint is inadmissible. If that is not the case, it may conduct an investigation, make recommendations, initiate disciplinary proceedings against an official or refer the case to the relevant head of administration for appropriate action.

55. Finally, if domestic remedies have been exhausted due to a breach of one of the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the victim may lodge an appeal with the European Court of Human Rights.

Article 9
Jurisdiction

56. The law of Luxembourg grants national courts jurisdiction over the crime of enforced disappearance in the cases listed in article 9 (1) of the Convention, namely:

- When the offence is committed on the territory of the Grand Duchy or on board an aircraft or ship registered in Luxembourg, in accordance with the provisions of article 3 of the Criminal Code and article 7-2 of the Code of Criminal Procedure: "Any offence for which an act characterizing one of its constituent elements has been committed in the Grand Duchy of Luxembourg is deemed to have been committed on the territory of the Grand Duchy of Luxembourg"; article 68 (1) of the Navy Disciplinary and Criminal Code provides that "Offences committed on board a ship of Luxembourg are deemed to have been committed in the territory of the Grand

[17] Civil Code, art. 2262: "All actions, whether *in rem* or *in personam*, are time-barred after 30 years, without the person claiming prescription being obliged to show proof, or any exception for bad faith being allowed."

[18] The National Council of Justice ensures the smooth running of the justice system in accordance with the provisions of the Act of 23 January 2023.

Duchy"; and articles 9 and 37 of the Act of 31 January 1948 on the Regulation of Air Navigation stipulate that "Offences committed on board an aircraft of Luxembourg while in flight are deemed to have been committed in the Grand Duchy and may be prosecuted there, even if the accused is not found in the territory of the Grand Duchy. The State prosecutor or official of the Public Prosecutor's Office at the district court of the place where the offence was committed, the court of the accused's place of residence, the court of the place where the accused may be found or, failing that, the court of Luxembourg, are competent to prosecute such offences and offences provided for under the present Act and its implementing decrees";

- Under article 5 (1) of the Code of Criminal Procedure, if the perpetrator is a national of Luxembourg: "Any national of Luxembourg or any person who has his or her habitual residence in the territory of the Grand Duchy of Luxembourg and who has committed, outside the territory of the Grand Duchy, a crime punishable under the law of Luxembourg may be prosecuted and tried in the Grand Duchy";
- Where the victim is a national of Luxembourg, article 5-2 (1) of the Code of Criminal Procedure stipulates that: "Any foreign national who has committed, outside the territory of the Grand Duchy of Luxembourg, an act classified as a crime punishable under the law of Luxembourg may be prosecuted and tried in the Grand Duchy of Luxembourg if the victim is a national of Luxembourg or has his or her habitual residence in the Grand Duchy of Luxembourg at the time of the offence".

57. The law of Luxembourg also covers the universal jurisdiction provided for in article 9 (2) of the Convention through the application of article 14-1 of the Extradition Act of 20 June 2001, as amended,[19] which expressly provides for the obligation of Luxembourg to prosecute offences for which it has refused to extradite the person concerned.

58. Article 5 (7) of the Code of Criminal Procedure provides for the possibility of prosecuting a foreign national who is a co-perpetrator of or accomplice to a crime committed outside the territory of the Grand Duchy by a citizen of Luxembourg.

59. Finally, article 7 (4) of the Code confers jurisdiction on the authorities of Luxembourg to prosecute perpetrators of and accomplices to the offence of an attack on individual freedom committed in time of war outside the territory of the Grand Duchy.

60. With regard to the offence of enforced disappearance as a crime against humanity, article 7-4 of the Code of Criminal Procedure allows the authorities of Luxembourg to prosecute any person responsible for such a crime who has not been extradited.

61. With regard to mutual legal assistance, please refer to the comments related to article 14 of the Convention.

62. Finally, the central authority has not had to deal with any cases of enforced disappearance. There are therefore no examples of extradition being granted or refused.

Article 10
Pretrial detention

63. In Luxembourg, the investigating judge may, in accordance with the provisions of the Code of Criminal Procedure,[20] order provisional measures against legal entities or various warrants against natural persons in order to guarantee their presence in the course of an investigation or in cases of execution of mutual legal assistance or extradition measures.

64. The Act of 27 June 2018 adapting criminal procedure to needs relating to the terrorist threat and amending: (1) the Code of Criminal Procedure, (2) the Act of 30 May 2005, as amended, on the Protection of Privacy in the Electronic Communications Sector and (3) the

[19] Pursuant to the Act of 27 October 2010, a new article 14-1 was added to the Extradition Act of 20 June 2001, introducing the principle of "*aut dedere aut judicare*".

[20] Code of Criminal Procedure, arts. 89–105.

Act of 27 February 2011 on Electronic Communications Networks and Services,[21] also permits the arrest and detention of persons against whom there is serious and consistent evidence of guilt in the context of an investigation into a serious crime or a crime caught in flagrante delicto.

65. In the same vein, an investigating judge who finds serious evidence of a person's guilt, can, if the facts entail a criminal penalty, issue a commitment order.[22]

66. The same applies to surrender or extradition proceedings[23] where the judicial authority is responsible for validating the decision to remand the detainee in custody. In such cases, except in urgent cases where there is a risk of evidence being lost, the competent authority does not carry out any investigative duties.

67. In addition to detention/remand in custody, the criminal law of Luxembourg provides for the possibility of placement under judicial supervision[24] or on bail,[25] which are measures to guarantee the presence of the accused person at the proceedings and for the execution of the judgment.

68. Where a foreign national who has perpetrated the offence of enforced disappearance is deprived of his or her liberty, the law of Luxembourg and, more specifically, the Act of 8 March 2017 reinforcing procedural guarantees in criminal matters[26] guarantee the person in question the right to notify and communicate with the consular authorities of the State of which he or she is a national. This right can only be refused if precluded by the needs of the preparatory investigation and under certain conditions. This may be the case when there is a risk of serious harm to a person's life, liberty or physical integrity, or a risk that the criminal proceedings may be seriously compromised.

Article 11
Obligation to extradite or prosecute

69. As regards the legal framework enabling national courts to exercise universal jurisdiction over the offence of enforced disappearance, article 4 of the Criminal Code

[21] https://legilux.public.lu/eli/etat/leg/loi/2018/06/27/a559/jo: amendment to the Code of Criminal Procedure, art. 39.

[22] Code of Criminal Procedure, art. 94.

[23] Act of 8 August 2000, as amended, on international cooperation in criminal matters.

Extradition Act of 20 June 2001, as amended.

[24] Code of Criminal Procedure, arts. 106–112.

[25] Code of Criminal Procedure, arts. 120–125.

[26] The Act of 8 March 2017 strengthening procedural guarantees in criminal matters concerning: the transposition of Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings; the transposition of Directive 2012/13/EU of the European Parliament and of the Council on the right to information in criminal proceedings; the transposition of Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty; the transposition of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime; change to the title of the Code of Criminal Procedure, from "*Code d'instruction criminelle*" to "*Code de procédure pénale*"; amendments to: the Code of Criminal Procedure, the Criminal Code, the Act of 7 July 1971 on the Establishment of Sworn Experts, Translators and Interpreters in Criminal and Administrative Matters; the Act of 10 August 1991 on the Legal Profession, as amended; the Extradition Act of 20 June 2001, as amended; the Act of 17 March 2004 on the European Arrest Warrant and Surrender Procedures between European Union Member States, as amended.

The purpose of the Act was to transpose several European directives reinforcing the rights of victims of criminal offences while improving their access to their case files, to speed up certain criminal proceedings, while respecting the rights of the defence, and to modernize the Code of Criminal Procedure. Pursuant to the Act, a new article 52-1 (4), concerning the rights of persons deprived of their liberty during criminal investigations, was introduced into the Code of Criminal Procedure.

provides that “Offences committed outside the territory of the Grand Duchy, by nationals of Luxembourg or foreign nationals, are punishable in the Grand Duchy only in the cases determined by law.”

70. Thus, in application of the principle of *aut dedere, aut judicare*, Luxembourg is expressly required, under article 14-1 of the Extradition Act of 20 June 2001, as amended, to prosecute perpetrators of offences whom it has refused to extradite.

71. As indicated in article 9 of the Convention, the above-mentioned provisions are supplemented by the possibility of prosecuting a foreign national who is a co-perpetrator of or accomplice to a crime committed by a national of Luxembourg outside the territory of the Grand Duchy,[27] and the jurisdiction of the authorities of Luxembourg to prosecute perpetrators of and accomplices to the offence of an attack on personal liberty committed in time of war outside the territory of the Grand Duchy.[28]

72. Finally, article 7-4 of the Code of Criminal Procedure allows the authorities of Luxembourg to prosecute a perpetrator who has not been extradited of the offence of enforced disappearance as a crime against humanity.

73. The Ministry of Justice is the authority competent to rule on extradition requests on the basis of the criteria defined under article 16 of the Convention, and the public prosecution service is competent to prosecute.

74. The right to a fair trial is guaranteed by the direct application of standards of international law, such as article 6 of the European Convention on Human Rights and articles 47–50 of the Charter of Fundamental Rights of the European Union. In addition, once the jurisdiction of the authorities of Luxembourg has been established, the law of Luxembourg guarantees the accused person the right to a fair trial[29] and excludes any possibility of different treatment in the proceedings, including with regard to evidence.[30] These provisions thus enshrine the principle of the equality of all before the law,[31] the right of access to an independent and impartial tribunal, the public nature of hearings, the presumption of innocence, respect for the rights of the defence, the principle of the legality of offences and penalties, the obligation to give reasons for judgments and the principle of *non bis in idem*.[32] It is up to national courts and the European Court of Human Rights to ensure that this right is respected in the light of article 6 (1) of the European Convention on Human Rights.

75. Accordingly, pursuant to article 11 of the Extradition Act of 20 June 2001, as amended, the authorities of Luxembourg may refuse to extradite a person whose rights of defence under article 6 (3) (c) of the European Convention on Human Rights have not been respected.

76. As for the authorities competent to investigate and prosecute alleged cases of enforced disappearance, the law of Luxembourg provides for two distinct investigation mechanisms: the preliminary investigation and the pre-trial proceedings/information.

77. In accordance with articles 46–48-1 of the Code of Criminal Procedure, the purpose of the preliminary investigation is to establish whether an offence has been committed and to gather evidence and seek the perpetrators. It can be undertaken either ex officio by criminal investigation officers who receive the reports and complaints, or on the instructions of the State prosecutor.

[27] Code of Criminal Procedure, art. 5 (7).

[28] Code of Criminal Procedure, art. 7 (4).

[29] Constitution, art. 18.

Constitution, art. 17 (4).

[30] Code of Criminal Procedure, arts. 154–156.

The Code of Criminal Procedure defines the rules of procedure applicable to any person subject to prosecution in Luxembourg.

[31] Constitution, arts. 15 (a) and (b) and 16.

[32] Constitution, arts. 17–19.

Code of Criminal Procedure, art. 7-5.

78. The pre-trial proceedings are a mandatory part of the legal proceedings in criminal cases.[33] The purpose is to seek out the perpetrators of offences and obtain evidence, and they are conducted by the investigating judge on the basis of an indictment issued by the State prosecutor. As part of the judicial investigation, the investigating judge may order coercive measures,[34] such as preventive detention, which may restrict the exercise of individual freedoms.

79. The Act of 18 July 2018 on the Inspectorate General of Police assigns investigative powers to the Inspectorate General of Police when the acts have been committed by members of the police force.[35]

Article 12
Reporting and investigation

80. Under Luxembourg law, individuals who allege that a person has been subjected to enforced disappeared have the right to report the offence, to lodge a complaint with the police, the State prosecutor or the investigating judge and to sue for damages in criminal proceedings.[36] In some cases, reporting an offence is an obligation.[37] When a report or complaint is filed (with or without criminal indemnification proceedings), an investigation is immediately launched and enforcement measures may be taken. To be clear, no specific procedure exists for cases of enforced disappearance and, in such cases, the Grand Ducal Police carry out the measures provided for in article 43-1 of the Code of Criminal Procedure, which are applicable to disappearances in the broad sense.

81. When exercising their rights, complainants must be able to turn to independent, impartial authorities. The judicial authorities and police services are thus bound, in the performance of their duties, to respect the principle of equality and non-discrimination established in the European Convention on Human Rights and article 15 of the Constitution, according to which: “(1) Nationals of Luxembourg are equal before the law. The law may provide for a difference in treatment that arises from an objective disparity and is rationally justified, appropriate and proportionate to its aim. (2) No one may be discriminated against on the ground of personal status or circumstances.” Respect for these fundamental values is monitored by the national authorities, but also by international courts such as the European Court of Human Rights. The same applies to the principles of independence, integrity and impartiality, which are essential to ensuring a fair trial and which are enshrined in the

[33] Code of Criminal Procedure, arts. 49–55.
[34] Code of Criminal Procedure, art. 51-1 (2).
[35] Act, art. 8. The role of the Inspectorate General is to monitor police operations. To that end, it has a general and permanent right of inspection within the police force.
[36] Code of Criminal Procedure, arts. 4-1 (2), 23 (1), 56 and 3-1.
[37] Code of Criminal Procedure, art. 23 (2).

Constitution,[38] the Code of Ethics for Luxembourg judges[39] and the codes of ethics of the Police and the Inspectorate General of the Police.[40]

82. In the event of an infringement of one of these fundamental values or a shortcoming in the handling of a complaint, the person alleging the infringement may turn to the National Council of Justice, the body competent to receive disciplinary complaints against judges and claims relating to the administration of justice, or to the Inspectorate General of the Police, the external supervisory body of the Grand Ducal Police.

83. In addition to the possibility of submitting a complaint relating to the infringement of the aforementioned fundamental values, there are specific remedies available in the event that the competent authorities refuse to open an investigation into a case of enforced disappearance.

84. The Public Prosecutor's Office decides what action to take on the complaints and reports it receives. It may decide to open an investigation or to close the case without taking any further action if the complaint or report does not point to the commission of a criminal offence. In any event, the victim is informed of the outcome of the case or the reason for its dismissal, where applicable. In the latter case, the Public Prosecutor's Office informs the victim of the conditions under which he or she "may initiate private prosecution or sue for damages in criminal proceedings. When the penalties incurred by law for the acts are criminal or correctional penalties, the opinion must also state that the victim may apply to the Attorney General, who has right to enjoin the State prosecutor to initiate a prosecution".[41]

85. If the court in chambers decides not to submit the criminal case to a court that would rule on the guilt of the alleged perpetrator, the victim may submit an appeal to the court in chambers of the Court of Appeal. The victim then has the right to submit requests and claims to that court. If, however, the court in chambers decides not to pursue the case for reasons of fact rather than reasons of law, the victim may sue for damages before a civil court.

86. These provisions of the Code of Criminal Procedure are supplemented by practical measures and instructions designed to ensure that victims receive the care and protection their situation requires. In particular, the police have a duty to inform victims of their rights and to act as intermediaries with victim support associations through the systematic and mandatory distribution of an "information and support for victims" leaflet.[42] Protection for victims is organized in accordance with the provisions of the Act of 8 March 2017 on the Strengthening of Procedural Guarantees in Criminal Cases, which transposes, inter alia, the European

[38] Constitution, art. 104: "(1) Judges are independent in the exercise of their judicial functions. (2) The Public Prosecutor's Office is responsible for public prosecution and law enforcement. It acts independently in the conduct of individual investigations and prosecutions, without prejudice to the Government's right to issue criminal policy directives."

Constitution, art. 110: "The law guarantees the impartiality of judges, the fairness of proceedings, reasonable deadlines and respect for the adversarial process and the rights of the defence."

[39] Code of Ethics for Luxembourg Judges, approved by the joint general assembly of the Supreme Court of Justice and the Administrative Court on 16 May 2013: "Independence, that is to say, freedom from all external pressure, manipulation or influence, is both a protection and a prohibition. … Impartiality means the absence of any prejudice or preconceived ideas in the process prior to the judgment and in the judgment itself. The judge must demonstrate complete neutrality, treating all parties before him or her equally and without favouritism. The action of the judge is always measured against article 6 (1) of the European Convention on Human Rights. … A judge shall not hear or handle cases to which he or she or a close relative is a party or in which he or she has an interest in the outcome of the trial and shall avoid any risk of collusion or conflict of interest between his or her judicial duties and his or her social life. Impartiality also means respecting the integrity of contentious proceedings. It goes without saying that the judge shall show no bias. The role of public prosecutors is to ensure that the law is applied, not to obtain a conviction at any cost. Integrity encompasses a duty of probity and a duty of dignity and honour. It proscribes any complacency, favouritism or interference on the part of the judge."

[40] Code of Ethics of the Police, adopted in December 2019, arts. 5, 6, 9 and 10.

Code of Ethics of the Inspectorate General of the Police, which came into force on 1 May 2022, arts. 4, 5 and 7.

[41] Code of Criminal Procedure, art. 23.

[42] http://www.police.public.lu/fr/aide-victimes/flyer-aide-victime-fr.pdf.

Directive establishing minimum standards on the rights, support and protection of victims of crime.[43] This law is designed to ensure that victims are recognized and treated with respect and that they receive appropriate protection from the outset of and throughout the investigation.[44] Intimidation and ill-treatment are criminal offences. Victims of such behaviour may therefore report it to the appropriate authorities (as mentioned above).

87. More specifically, the Code of Criminal Procedure provides for various victim protection measures, such as pretrial detention of the defendant,[45] procedures for the hearing of witnesses[46] and mechanisms for protecting particularly vulnerable victims, such as minors and victims of trafficking in persons.

88. Luxembourg recognizes the importance of establishing a witness protection programme and is currently studying the form that such a programme could take.

89. Various provisions of the Criminal Code prevent and punish infringements affecting ongoing criminal proceedings, such as breaches of professional secrecy,[47] the destruction of documents,[48] the falsification of public documents,[49] perjury[50] and obstruction of justice.[51]

90. Regarding statistical data on complaints of enforced disappearance as defined in article 2 of the Convention, Luxembourg is not in a position to produce such data as the Act of 17 December 2021 approving the Convention is still fairly recent.

91. Within the Public Prosecutor's Office, cases of enforced disappearance are handled either by the Organized Crime Unit, which deals with cases involving organized crime or trafficking in persons, or by the Youth Protection Unit, which generally deals with all cases involving minors and families.

92. Within the Grand Ducal Police, the Criminal Police Department is responsible for dealing with cases of enforced disappearance. Depending on the circumstances of the case, the units that could be responsible are the Interpersonal Crime Unit, the Youth Protection and Sexual Offences Unit or the Organized Crime Unit. It is not possible to indicate the financial resources allocated to each individual unit, as the budget of the Grand Ducal Police is not disaggregated to the level of the various departments and units.

93. Luxembourg criminal procedure[52] allows the public prosecutor and criminal investigation police officers to launch investigations on the basis of any evidence that a crime may have been committed. The investigative powers of the judicial authorities are thus broad, allowing them access to any place where there are reasonable grounds to believe that a victim of enforced disappearance is being held. Moreover, the Act on the Reform of the Prison Service provides that these authorities must be given access to prisons and be allowed to communicate with inmates.[53]

94. Luxembourg law provides for the prevention and punishment of any interference with the administration of justice, in accordance with article 12 (4) of the Convention. As stated above, judicial and prosecuting authorities must exercise their functions in accordance with the principles of independence and impartiality, violations of which are monitored and punished. Members of these authorities are thus barred from performing their duties if they are suspected of having committed a criminal offence. A judge may not "hear or handle cases in which he or she or a close relative is a party or in which he or she has an interest in the outcome of the trial, and he or she shall avoid any risk of collusion or conflict of interest

[43] Directive 2012/29/EU of 25 October 2012.
[44] Such protection is a fundamental right enshrined in article 11 (3) of the Constitution: "The State is responsible for ensuring that privacy is protected, with the exceptions established by law."
[45] Code of Criminal Procedure, arts. 94 and 115
[46] Code of Criminal Procedure, art. 48-1.
[47] Criminal Code, art. 458.
[48] Criminal Code, arts. 241 and 242.
[49] Criminal Code, arts. 194–197.
[50] Criminal Code, art. 215.
[51] Criminal Code, arts. 140 and 141.
[52] Code of Criminal Procedure, arts. 46–48-1.
[53] Act of 20 July 2018 on the Reform of the Prison Service, art. 24.

between his or her judicial duties and his or her social life".[54] Violation of these principles constitutes a punishable disciplinary offence.[55] Police officers, "in the performance of their duties, do not intervene in cases or files in which they may have a personal, family or marital interest".[56] Under article 15 of the Act of 16 April 1979, as amended, laying down the general status of civil servants, "the civil servant who, in the performance of his or her duties, is called upon to give an opinion on a matter in which he or she may have a personal interest likely to compromise his or her independence must inform his or her superior". Similarly, under article 20 of the Code of Ethics of the Grand Ducal Police, "any breach by a member of the Police Force of the rules defined in the Code exposes him or her to disciplinary action in application of the rules specific to his or her status, independently of any criminal consequences incurred".

95. Chapter 5 of the Act of 18 July 2018 on the Disciplinary Statute for Officers of the Grand Ducal Police provides for the application of interim measures, including temporary assignment to another department (art. 14) and suspension from duty (art. 15).[57]

96. Under Luxembourg criminal law, members of the judicial and prosecution authorities may be prosecuted for obstruction of justice under articles 140 and 141 of the Criminal Code, and, if handed a sentence of more than 10 years' imprisonment, may be disqualified from holding public office under articles 11 and 12 of the Criminal Code.

Article 13
Extradition

97. In Luxembourg, enforced disappearance is not explicitly listed as an extraditable offence in treaties currently in force, but it is covered by both the European Convention on Extradition[58] and the Extradition Act of 20 June 2001, as amended, according to which extradition must be granted for acts punishable under the law of Luxembourg and the law of the requesting State by a custodial sentence of at least 1 year or a more severe penalty.[59] The offence of enforced disappearance, punishable under article 442-1 bis of the Criminal Code by 20 to 30 years' imprisonment, may thus give rise to extradition in accordance with the applicable provisions.

98. The Extradition Act remains applicable and allows for extradition even in the absence of an international treaty.[60] Extradition would be possible even in the unlikely event that the extradition of a suspect in a case of enforced disappearance was requested by a State whose law punishes such acts with a maximum penalty of less than 1 years' imprisonment, since the provisions of the Convention rank higher than national legislative provisions.

99. Compliance with article 13 (1) and (7) of the Convention is ensured by the fact that the court in chambers of the Court of Appeal, which is responsible for reviewing legality, verifies that extradition requests are made only for criminal offences and not for a political offence, an offence connected with a political offence or an offence inspired by political

[54] Code of Ethics for Luxembourg judges.

[55] Act of 23 January 2023 on the Status of Judges, arts. 21 and 22.

[56] Code of Ethics of the Grand Ducal Police, art. 10.

[57] Art. 14 (1): "Any police officer who is subject to investigation or pretrial proceedings in application of the provisions of the Code of Criminal Procedure or to disciplinary proceedings and whose presence in the workplace is incompatible with the proper conduct of the preliminary investigation, the pretrial proceedings or the disciplinary proceedings may be temporarily reassigned to another service of the Police."

Art. 15 (1): "Any police officer who is subject to investigation or pretrial proceedings in application of the provisions of the Code of Criminal Procedure or to disciplinary proceedings and whose continued employment in the Police is incompatible with the interests of the service or the proper conduct of the preliminary investigation, the pretrial proceedings or the disciplinary proceedings may be suspended from duty."

[58] Council of Europe, European Convention on Extradition of 13 December 1957.

[59] Act of 20 June 2001, art. 3 (1), as amended.

European Convention on Extradition, art. 2.

[60] Act of 20 June 2001, art. 1 (1), as amended.

motives. It also verifies whether extradition requests have been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, membership of a particular social group or political opinions, or whether compliance with the request would cause harm to that person for any one of these reasons.[61] In such cases, on the basis of the opinion of the court in chambers of the Court of Appeal, the Minister of Justice refuses to grant extradition.

100. To date, the Luxembourg authorities have not received any extradition requests in connection with enforced disappearances.

Article 14
Mutual legal assistance

101. Mutual legal assistance may be based on multilateral or bilateral treaties.

102. On 14 February 2024, Luxembourg signed the Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and Other International Crimes, which applies in cases of enforced disappearance.

103. In the absence of a specific treaty, the Act of 8 August 2000 on International Mutual Assistance in Criminal Matters, as amended, allows for the broadest possible mutual assistance.

104. Luxembourg is also a party to a number of international conventions obliging it, under certain conditions, to provide legal assistance in any proceedings concerning offences the punishment of which, at the time mutual assistance is requested, falls within the jurisdiction of the judicial authorities of the requesting country.[62]

105. To date, however, there have been no requests relating to cases of enforced disappearance.

Article 15
International cooperation – Assistance to victims

106. Please refer to the comments related to article 14 of the Convention for information on how assistance to victims encompasses relevant international mutual assistance measures.

107. To date, no examples of cooperation in cases of enforced disappearance have been reported.

Article 16
Prohibition of expulsion or refoulement

108. As indicated in part II (C), Luxembourg applies the principle of the primacy of international standards, which include the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 (art. 3), the European Convention on Human Rights (art. 3), the Dublin Regulation, the Charter of Fundamental

[61] Act of 20 June 2001, art. 4, as amended.

[62] For example, the Convention established by the Council in accordance with article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union.

In respect of States members of the European Union, mutual legal assistance in criminal matters is regulated by the Act of 1 August 2018: (1) transposing Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters; (2) amending the Code of Criminal Procedure; and (3) amending the Act of 8 August 2000 on International Mutual Assistance in Criminal Matters.

Rights of the European Union (arts. 18 and 19) and the Treaty on the Functioning of the European Union (art. 78).

109. This means that Luxembourg recognizes and applies the case law of the European Court of Human Rights. Notably, it applies the Court's judgment of 7 July 1989 in the case of *Soering v. United Kingdom*, in which the Court interpreted article 3 of the European Convention on Human Rights as prohibiting in an absolute manner the deportation of foreign nationals at risk of torture or inhuman or degrading treatment in their country of origin, if there are substantial grounds for believing that the person concerned would face a real risk of ill-treatment and it has been shown that he or she would be personally and specifically exposed to such risks.

110. The Court's reasoning is reflected in article 129 of the Act of 29 August 2008 on the Free Movement of Persons and Immigration, as amended, which provides that: "A foreign national may not be expelled or deported to another country if he or she can establish that his or her life or freedom would thereby be seriously endangered, or that he or she would be treated in a manner contrary to article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, or articles 1 and 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment."

111. Accordingly, no expulsion order may be executed by the Luxembourg authorities against foreign nationals without a prior examination of their individual situation if they claim that they would be exposed to such risks if returned to their country of origin. This examination is based on all information provided and all available sources and focuses in particular on the foreign national's personal situation, links to his or her country of origin and the situation prevailing in that country.

112. Equally, no person may be extradited "where there are substantial grounds for believing that the person requested would be in danger of being subjected to torture as defined in articles 11 and 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms."[63]

113. As to the competent authorities, extraditions may be carried out only on the basis of an extradition request. The Minister of Justice takes the decision in the form of a ministerial decree, based on supporting documentation and the reasoned opinion of the court in chambers of the Court of Appeal, which hears the person concerned by the request and his or her defence counsel, as well as the Public Prosecutor's Office, in a public hearing.

114. Deportation orders are issued by the minister responsible for immigration, after examining the situation of the person concerned and the consequences of the decision (as mentioned above). In particular, it must be verified that the foreign national does not run the risk of being transferred by his or her country of origin to a country where his or her life or physical safety would be threatened.

115. The person concerned by an expulsion decision may lodge an appeal for its annulment with the Administrative Tribunal and, where appropriate, file an appeal with the Administrative Court. The Tribunal is responsible for verifying that the measure is lawful after reviewing the supporting documentation.

116. In carrying out their duties, police officers in charge of deportations and extraditions are specifically trained to ensure not only the safety of the person concerned, but also their own safety. An important aspect is ensuring proportionality between security imperatives and individual rights. However, the topic of enforced disappearance has never been addressed in that regard.

[63] Act of 20 June 2001, art. 21, as amended.

Article 17
Prohibition of incommunicado detention

Prohibition of incommunicado detention

117. In accordance with article 5 of the European Convention on Human Rights, no provision of Luxembourg law authorizes incommunicado detention. Luxembourg has enshrined the right to personal liberty and allows deprivation of liberty only in exceptional circumstances and in accordance with the law: "(1) Individual freedom is guaranteed. (2) No one may be prosecuted, arrested or deprived of his or her liberty except in the cases provided for and in the form determined by the law. (3) Except in cases of flagrante delicto, no one may be arrested other than on the basis of a reasoned judicial decision, which must be presented at the time of arrest or within 24 hours at the latest. (…)"[64]

118. Since deprivation of liberty may be carried out only on the basis of a legal decision issued by an authority empowered to take such a decision by law, it is always official and verifiable. Accordingly, all deprivation of liberty is carried out in officially recognized, regulated and controlled places, with article 159 of the Criminal Code punishing any "officer of the Public Prosecutor's Office, judge or public officer who has detained or caused to be detained a person outside of the places determined by the Government or by the public administration". The Code of Criminal Procedure requires anyone with knowledge of such a situation to report it.[65]

Deprivation of liberty and competent authorities

119. The Code of Criminal Procedure determines the situations in which a person may be deprived of his or her liberty and the authorities competent to order deprivation of liberty in the following terms:

120. Detention carried out by a criminal investigation police officer with the authorization of the State prosecutor is governed by article 39 of the Code of Criminal Procedure, while detention ordered by an investigating judge is governed by article 91 (1) of the Code of Criminal Procedure.[66] It may be ordered only when there is serious and consistent evidence of guilt of a crime or misdemeanour and may not exceed 24 hours. In accordance with the provisions of article 39 and article 93, this period may be extended once by reasoned order of the investigating judge in certain specific cases.[67] This provision also requires that detainees be informed of their rights, including the right to appeal, the fact that they may be deprived of their liberty for a maximum period of 24 hours before being brought before an investigating judge, the right to make statements and answer questions put to them, the right not to self-incriminate, the presumed nature and date of the offence for which they are being detained and the right to be examined by a doctor or to have a doctor appointed by their family. This information must be provided in writing in a language that the person understands and against a receipt. In addition, the detainee has the right to notify, without undue delay, a person of his or her choice or the consular authorities of the State of which he or she is a national in the case of a non-Luxembourg national. Information relating to detention and release must be recorded in the records of police questioning, in accordance with article 39 (8) of the Code of Criminal Procedure.

121. Administrative police officers may take into administrative detention persons who have reached the age of majority who are undermining public order or endangering themselves or others. In such cases, officers must immediately notify the minister or his or

[64] Constitution, art. 17 (1)–(3).

[65] Arts. 615–618.

[66] This is done by a summons, the purpose of which is to "give formal notice to the person against whom it is issued to appear before the investigating judge on the date and at the time indicated in the summons", or an arrest warrant, which "can be issued against the accused only if there is a risk of flight, if there is a risk of the concealment of evidence or if the accused fails to appear. Risk of flight is legally presumed when the act is punishable by law with a criminal penalty."

[67] Article 39 of the Code of Criminal Procedure provides for flagrante delicto investigations into crimes and offences against State security and acts of terrorism and terrorist financing and that an extended detention period is permitted for such offences.

her delegate accordingly and the detention may not "last longer than the time required by the circumstances warranting detention to put an end to the disturbance and may in no case exceed 12 hours."[68] According to article 14 (2) of the Grand Ducal Police Act: "Any person placed in administrative detention must be informed without delay that he or she is to be deprived of liberty, the reasons for and the maximum duration of the deprivation of liberty. At the time of arrest, the person concerned must be informed in writing and against a receipt in a language that he or she understands, except in duly recorded cases when this is physically impossible, of his or her right to be examined by a doctor and to notify a person of his or her choosing." According to the same provision: "Administrative detention must be recorded in a report that must include the name of the administrative police officer who effected the detention, the reasons for the detention, the place, dates and times of the start and end of the detention, a statement by the detainee that he or she has been informed of his or her right to be examined by a doctor and to notify the person of his or her choosing and to have recorded any other statements that he or she wishes. The report must be presented to the detainee for signature. If the detainee refuses to sign, his or her refusal and the reasons for it must be recorded. The report must be sent to the minister and the mayor, with a copy given to the person concerned."

122. Preventive detention may be ordered either by the investigative judge in accordance with article 94 of the Code of Criminal Procedure or by the court in chambers of the Tribunal or Court of Appeal (Code of Criminal Procedure, art. 130) "when there is serious evidence of guilt and if the act carries a criminal penalty or a correctional penalty of a maximum of 2 years' imprisonment or more" or "(1) If the accused presents a risk of flight; a risk of flight is legally presumed when the act is punishable by law by a criminal penalty; (2) if there is a risk of the concealment of evidence; (3) if there is reason to fear that the accused may make use of his or her freedom to commit further offences."

123. Criminal or misdemeanour sentences are handed down by the courts and tribunals, and the enforcement of custodial sentences, which are intended to punish offenders and therefore take place after conviction, is ordered by the public prosecutor on the advice of a sentencing committee when the sentence exceeds 4 years.[69]

124. Administrative detention may be carried out only pursuant to a decision of the minister responsible for immigration under article 120 of the Act of 29 August 2008 on the Free Movement of Persons and Immigration, as amended, in order to prepare for the expulsion of the person from the national territory, in accordance with a request for transfer by air or when custody in a holding area exceeds the 48 hours, in which case the foreign national may be detained in a closed facility (unless other, less coercive measures can be effectively applied).[70] Foreign nationals may be placed in administrative detention if there is a flight risk or if the person concerned prevents or impedes the return or expulsion procedure. Minors in detention must be held in a space that is appropriate and tailored to the needs of children of their age, in accordance with their best interests.

125. The person concerned must be notified of the ministerial decision regarding his or her placement in administrative detention in writing against a receipt by a criminal investigation police officer in a language that the person can reasonably be expected to understand.

126. In accordance with the Act of 28 May 2009 on the Holding Facility, administrative detention may be carried out only at the Holding Facility. Minors may be detained only as a measure of last resort and only after it has been established that other, less coercive measures cannot be effectively applied. In such cases, detention must be for the shortest possible time. Unaccompanied minors may be detained only in exceptional circumstances and every effort

[68] Act of 18 July 2018 on the Grand Ducal Police, art. 14.

[69] Code of Criminal Procedure, art. 678.

[70] Detention may continue for up to one month and may be maintained only as long as the expulsion procedure is under way and is being carried out with due diligence. The period of detention may be renewed by the competent minister for one month up to three times, if the requisite conditions continue to be met and the renewal is necessary for the purposes of the expulsion procedure. The detention may be extended twice for a further month, if, despite every effort, the expulsion procedure takes longer due to a lack of cooperation on the part of the person concerned or delays in obtaining the necessary documents from third countries.

must be made to place them in appropriate accommodation. In all cases, the best interests of the child must be taken into account.

127. In the case of applicants for international protection, detention may be ordered only by the minister responsible for immigration on a case-by-case basis, where detention is necessary and other, less coercive measures cannot be effectively applied. The placement decision must include the factual and legal grounds on which it is based and detention may be ordered only for the shortest possible time, not exceeding three months.[71] Detention decisions may be issued only for the following reasons:

(a) In order to determine or verify his or her identity or nationality;

(b) In order to ascertain elements relevant to the basis for the application for international protection that cannot be established without detaining the applicant, particularly when there is a risk of flight;

(c) When required to protect national security or public order;

(d) In accordance with article 28 of Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) or when there is a non-negligible risk of flight indicating that the applicant intends to hide from the authorities for the sole reason of obstructing the expulsion procedure. A non-negligible risk of flight is assumed in the following cases:

(i) If the applicant has previously evaded, in another member State, the determination of the State responsible for examining his or her application for international protection or the execution of a transfer decision or an expulsion order;

(ii) If the applicant is the subject of an alert in the Schengen Information System for the purposes of refusing entry and stay or an alert for the purposes of return;

(iii) If the applicant’s application for international protection has been rejected in the member State responsible for its examination;

(iv) If the applicant is again present on national territory after the effective execution of a transfer measure, or if he or she has evaded the execution of a previous transfer measure;

(v) If the applicant has forged, falsified or used an identity or travel document in a name other than his or her own;

(vi) If the applicant has concealed elements of his or her identity or if it is shown that he or she has used multiple identities either on the national territory or on that of another member State;

(vii) If an applicant who has refused proposed accommodation cannot provide proof of his or her actual place of residence, or if an applicant who has accepted proposed accommodation has abandoned it without legitimate reason;

(viii) If the applicant has expressed the intention not to comply with a decision on his or her transfer to the State responsible for examining his or her application for international protection, or if such an intention is clear from his or her conduct;

(ix) If the applicant, without a legitimate reason and despite having been duly summoned or informed, has not complied with a preparatory measure necessary for the material execution of his or her transfer to the responsible member State, or if he or she has previously demonstrated his or her intention not to comply with such a measure;

[71] The detention decision referred may be renewed by the minister for periods of three months at a time if the conditions for detention continue to be met, but the total period of detention may not exceed 12 months.

(e) When, in connection with a return procedure under article 120 of the Act of 29 August 2008 on the Free Movement of Persons and Immigration, as amended, the applicant has been detained in order to prepare for the return and proceed with the expulsion process and there are reasonable grounds to believe that he or she has submitted an application for international protection for the sole purpose of delaying or preventing the enforcement of the return decision despite already having had the opportunity to avail himself or herself of the asylum procedure; in this case, the period of placement under the present Act runs from the day on which the application for international protection is lodged.[72]

128. Involuntary hospitalization of persons with a mental illness in the psychiatric department of a hospital or in a specialized psychiatric facility may take place only in application of the provisions of the Act of 10 December 2009, as amended, (a) on the Involuntary Hospitalization of Persons with a Mental Illness, (b) amending the Act of 31 May 1991 on the Police and the Inspectorate General of the Police, as amended, and (c) amending article 73 of the Municipal Act of 13 December 1988, as amended. The only persons or authorities with the power to order commitment are the judicial authorities in the event of criminal irresponsibility by reason of mental disorder,[73] the guardian or curator of an adult lacking capacity, a member of the family of the person to be admitted, the mayor and the heads of Grand Ducal police stations or, in their absence, an administrative police officer.[74]

129. If the commitment is ordered by the judicial authorities, article 71 (2) of the Criminal Code provides that: “If the investigating judge or trial court finds that the accused or the defendant is not criminally liable pursuant to this article, and that the mental illness that left the accused or the defendant without discernment or control over their actions when the acts were committed persists, the judge or court shall order the commitment of the accused or the defendant to a facility or service authorized by law to accommodate persons subject to a commitment order who pose a danger to themselves or others.” The investigating judge or trial court may, in any case, assign a lawyer to the accused or defendant if he or she has not chosen one.”

130. The admission procedure must be carried out in accordance with the Act of 10 December 2009, as amended, irrespective of whether the request comes from the judicial authorities or a third party or a representative of the State. Thus, the person concerned may be admitted only following a written request from the director of the facility, accompanied by a medical certificate issued by a doctor not attached to the psychiatric department of the admitting hospital, attesting to the need for admission. If the admission conditions are not met, the director will inform the person concerned of his or her right to leave the establishment.

131. In addition, the law provides that the involuntary commitment of persons receiving psychiatric care must be limited and establishes a special commission responsible for safeguarding the rights of the person committed.[75] Persons committed must be informed of their rights, including their right to appeal to the district court, within 12 hours of admission. The right of appeal may also be exercised at the request of any interested party who can prove a degree of kinship or the nature of his or her relationship with the person committed on judicial order.

Monitoring of places of deprivation of liberty and registers of detainees

132. The law of Luxembourg requires all cases of deprivation of liberty to be recorded in an official register.

[72] Act of 18 December 2015, as amended, (1) on International Protection and Temporary Protection; (2) amending the Act of 19 August 1991 on the Legal Profession, as amended, the Act of 29 August 2008 on the Free Movement of Persons and Immigration, as amended, and the Act of 28 May 2009 on the Holding Facility; (3) repealing the Act of 5 May 2006 on the Right to Asylum and Complementary Forms of Protection, as amended, article 22 (2).

[73] Criminal Code, art. 71.

[74] Act of 10 December 2009 on the Involuntary Hospitalization of Persons with a Mental Illness, as amended, art. 7.

[75] Act of 10 December 2009, as amended, arts. 32–38.

133. To this end, the Grand Ducal Police maintains detention registers for all the holding cells on its premises. These registers include most of the elements set out in article 17 (3) of the Convention. The elements that are not included in the registers are noted in:

- The internal service regulations (authorities controlling deprivation of liberty and procedure in the event of death)
- The physical examination form (a copy of which is given to the person concerned) or
- The record or report for the competent authority

134. With regard to preventive detention, in accordance with article 100 of the Code of Criminal Procedure, "On presentation of the commitment order, the accused will be admitted to and held in a prison, and the prison officer will give the law enforcement officer responsible for executing the commitment order an acknowledgement of the surrender of the accused."

135. The provisions of the Code of Criminal Procedure apply in all cases, requiring police and prison staff to register any person brought to them under a warrant:

- Article 608 reads: "All persons executing commitment orders, arrest warrants issued by the indictments chamber, arrests or sentences are required, before handing over the person they are to escort to the appropriate member of the prison staff, to enter in the register the document they are to carry; the handover document will be written in front of him or her. Everything will be signed by both him or her and the appropriate prison officer. The prison officer will sign and hand over a copy of the document as an acknowledgement of receipt."
- Article 609 reads: "No prison officer may, under pain of prosecution and punishment for arbitrary detention, receive or detain any person except by virtue of a committal order, an arrest warrant issued in accordance with the forms prescribed by law, or a commitment for trial before the assize court … a decree of indictment, or a ruling or sentence to afflictive (criminal) punishment or imprisonment, and without the transcription having been made in the register".

136. In addition to these provisions, the Grand Ducal regulation of 24 March 1989 on prison administration and internal regulations, which requires prisons to keep a register in which "all detainees admitted to prisons in any capacity whatsoever are recorded under their full name, date and place of birth, profession and place of residence, nationality, the name of the officer who requested admission, the date of admission and the date of discharge from the establishment. The order under which the detainee was handed over to the warden, with an indication of the date of the order and the authority that issued it and, in the event of voluntary compliance, the commitment order of the Chief Public Prosecutor will also be recorded."[76] The register is signed and initialled on each page by the Chief Public Prosecutor, who has the authority to review and approve the register. Articles 43 to 47 of the same Grand Ducal regulation list and explain the registers, files and other documents containing all the information relating to prisoners, such as the register of sentences, the register of punishments, the individual file containing a copy or partial copy of the judgment or sentence of each detainee,[77] as well as each prisoner's individual record, in accordance with the provisions of article 17 (3) of the Convention.

[76] Grand Ducal regulation of 24 March 1989, art. 42.

[77] When a person is taken into custody, the prison receives by right a copy of the judicial decision on the basis of which the detention is carried out, in accordance with article 17 (1) of the Prison Administration Reform Act of 20 July 2018, amending (1): the Criminal Code; the Code of Criminal Procedure; the Social Security Code; the Act of 3 April 1983 on the approval of the Theisen Foundation in Givenich; the Act of 19 February 1973, as amended, on the sale of medicinal substances and drug abuse control; the Act of 10 August 1991, as amended, on the legal profession; the Act of 17 April 1998, as amended, establishing the Neuropsychiatric Hospital (public establishment); the Act of 3 August 1998, as amended, instituting special pension schemes for State and communal civil servants and staff of the national railways; the Act of 10 December 2009 on the involuntary hospitalization of persons with a mental illness; the Act of 25 March 2015, as amended,

137. The holding cells of the Grand Ducal Police are monitored by the following independent bodies: the Inspectorate General of Police and the Ombudsman (national bodies) and the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe (international body).

138. The Department of Internal Inspection and Supervision, part of the Prisons Administration Directorate, is responsible for inspecting prisons in the Grand Duchy. In addition to internal inspection mechanisms, the country's legislation provides for a number of external control mechanisms for places of deprivation of liberty.

139. Firstly, the aforementioned Grand Ducal regulation assigns the general management and supervision of prisons to the Chief Public Prosecutor, who is the guardian of individual freedoms and responsible for the enforcement of custodial sentences and has the right to visit prisons "whenever necessary and at least four times a year".[78]

140. Secondly, other bodies whose aim is to protect fundamental rights have the power to conduct prison visits. Thus, article 12 of the Grand Ducal regulation lists, in addition to the Office of the Ombudsman,[79] to which the External Control Service for Places of Deprivation of Liberty of the Grand Duchy belongs, and the Luxembourg Committee on the Rights of the Child,[80] those authorities that have the right to access prisons in order to carry out their mission, namely State prosecutors, presidents of courts and tribunals, investigating judges, juvenile judges, the Auditor General and military auditors, as well as members of the prison administration and members of the social defence service, the Chamber of Deputies and visitors with written authorization from the Chief Public Prosecutor.[81]

141. Administrative detention can only take place at the Holding Centre. To that end, a copy of the detention order and the notice of detention are sent to the Centre and attached to the detainee's administrative file.

142. Pursuant to articles 1 and 2 of the Grand Ducal regulation of 17 August 2011 laying down the conditions and practical details of the detention regime at the Holding Centre and repealing article I of the Grand Ducal regulation of 20 September 2002 creating a holding centre for illegal aliens and amending the Grand Ducal regulation of 24 March 1989, as amended, on the administration and internal regime of prisons, a general register is kept in which all detainees received at the centre are entered under a sequential number. It records the full name, date and place of birth and nationality of the person concerned, the dates of admission and discharge, and the name of the officer who recorded the data. The date of notification of the document under which the detainee was admitted to the Centre is also entered in the general register.

instituting special transitional pension schemes for State and communal civil servants and staff of the national railways; and repealing (2) the Act of 21 May 1964, as amended, on: 1. the reorganization of prisons and young offenders' institutions; 2. the establishment of a social defence service; and the Act of 4 April 1978 empowering prison guards to exercise certain general policing powers.

78 Grand Ducal regulation of 20 July 2018, art. 19.

79 With the approval by the Grand Duchy of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations on 18 December 2002, the Office of the Ombudsman was, pursuant to the Act of 11 April 2010, designated as the national preventive mechanism. In carrying out his or her duties, the Ombudsman makes regular visits to the various places where persons are deprived of liberty.

80 The Ombudsman for Children and Young People was established pursuant to the Act of 1 April 2020 establishing that office and amending: (1) the Act of 25 March 2015, as amended, establishing the salary system and the conditions and procedures for the promotion of civil servants; (2) the Act of 16 December 2008, as amended, on child and family support. The Office of the Ombudsman for Children and Young People is attached to the Chamber of Deputies and is therefore independent of the executive branch. It is tasked with protecting the rights of the child as defined in the Convention on the Rights of the Child adopted by the United Nations General Assembly on 20 November 1989 and approved under the Act of 20 December 1993, as well as the additional protocols to the Convention that have been ratified and approved by the Grand Duchy.

81 Grand Ducal regulation of 20 July 2018, art. 11, 12 and 13.

143. In addition to the information recorded in the general register, the detainee's individual administrative file contains copies of the detention order, the official notification and, where applicable, the medical certificate of fitness for detention, inventories of the detainee's belongings, a copy of the receipt for the detainee's belongings, an inventory of the room allocated to the detainee, an identity photo of the detainee, the disciplinary record listing any disciplinary sanctions imposed on the detainee and any other document concerning the execution of the detention order.

144. Finally, in the case of the involuntary commitment of a person with mental issues, the establishment is required to keep a register, each page of which must be numbered and initialled by the judge. "The register shows each patient's full name, age, place of birth, place of residence and occupation, as well as the date of detention or transfer, and the name, occupation and residence of the person who requested it, or the order or judgment by virtue of which it was carried out. The medical certificate is transcribed into the register, which also mentions the date and reason for the patient's discharge … The register is presented, on their request, to the persons responsible for monitoring the establishment."[82]

145. In addition to the requirement to keep the register, establishments are subject to supervision by the Minister of Health and the supervisory commissions appointed for this purpose in accordance with articles 39–42 of the Act of 10 December 2009, as amended, on the detention of persons suffering from a mental disorder.

Right to information and communication

146. In all cases of deprivation of liberty, the person deprived of liberty is guaranteed the right to maintain contact with the outside world, within the limits set in or pursuant to the law. Freedom of communication with the outside world is the rule. Prisoners are encouraged to maintain and improve their relations with their close relatives, as that helps with their rehabilitation on release. Thus, the prisoner may correspond in writing or by telecommunication with any person of his or her choice, subject to authorization by the competent officer of the law.[83]

147. In addition, persons deprived of their liberty have the right, provided for in the Prison Administration Reform Act of 20 July 2018, to receive visits under the terms and conditions determined in the provisions of the Grand Ducal regulation of 20 July 2018.[84] For example, an untried prisoner held in preventive detention may receive visits, only from a close relative and subject to the issuance of a visit permit in the name of the visitor, who must be able to prove his or her identity. The permit is issued either by the judge in charge of the investigation or by the representative of the Public Prosecutor's Office. Visits to any convicted prisoner serving a custodial sentence require the prior authorization of the prison governor.

148. The right of a person deprived of liberty to communicate with the outside world may only be restricted in three cases.

149. Firstly, this right may be restricted as a result of a disciplinary sanction imposed by the prison governor.[85] The list of punishments that may be imposed on prisoners is set out in article 197 of the Grand Ducal regulation. The punishments include placement in a punishment cell, which consists of the prisoner being kept, day and night, in a cell that he or

[82] Act of 10 December 2009, as amended, on detention for reasons of mental disorder, art. 40.

[83] Prison Service Reform Act of 20 July 2018, art. 25.

Articles 217–227 of the Grand Ducal regulation of 20 July 2018 provide a framework for the exchange of correspondence between prisoners and their relatives, as well as with their lawyer or the consular authorities. It should be noted that, with the exception of correspondence between prisoners and their lawyers or consular authorities, prisoners' correspondence may be subject to monitoring and withholding by the prison administration.

[84] Act of 20 July 2018, art. 21.

Grand Ducal regulation, arts. 228–243.

[85] Grand Ducal regulation, art. 234.

she must occupy alone.[86] The consequence of such a placement is deprivation of correspondence with the outside world and deprivation of visits.

150. Similarly, the governor may temporarily forbid or restrict visits. That decision may be based only on the interests of the good order and security of the prison and of third parties, or the risk of compromising the convicted prisoner's integration.

151. A person deprived of liberty (both untried and convicted prisoners) in respect of whom the prison governor has decided to ban visits may submit requests or complaints to the governor, or appeal to the Chief Public Prosecutor, with whom the prisoner may request a hearing, in accordance with articles 211–216 of the Grand Ducal regulation of 20 July 2018 on prison administration and internal regulations.

152. Secondly, the investigating judge can restrict an untried prisoner's right to communication. In particular, in accordance with article 84 (2) and (3) of the Code of Criminal Procedure, "(2) When the needs of the investigation so require, the investigating judge may issue a 10-day ban on communications. The ban may be renewed once for another period of 10 days. Orders banning communications must be justified and are recorded in the prison register. They are reported to the State prosecutor. The clerk of the court immediately notifies the accused and his or her counsel of the order by registered letter." The ban covers all possible forms and means of communication, including visits. In accordance with case law, when the two 10-day periods have expired, "the investigating judge may still, by a special decision, refuse to issue a visit permit when, for example, there is a risk of fraudulent collusion or pressure".[87]

153. A request to lift a restraining order issued by the investigating judge may be lodged with the judges' council chamber of the district court, or even with the judges' council chamber of the court of appeal when the investigation is conducted by a judge from the court of appeal. The appeal may be lodged by the accused person, his or her legal representative, spouse or any other person with a legitimate personal interest.[88]

154. Thirdly, in cases of flagrante delicto, the judicial police officer may, with the agreement of the State prosecutor, deny the detainee the right to notify a person of his or her choice,[89] and "the right to notify the consular authorities, as well as the right to communicate with them and receive visits from them if the needs of the investigation dictate otherwise".[90] In the event of an abusive ban, a detained person who has suffered harm may lodge an appeal for virtual nullity – which may be declared by a court even in the absence of an express statutory provision – with the judges' council chamber of the district court.

155. In the context of administrative detention, article 7 of the Act of 28 May 2009, as amended, on the Holding Centre stipulates that, on arrival, all new arrivals are given, against a receipt, a copy of the roll of the Bar Association and a list of organizations active in the field of providing care and support for persons likely to be subject to a removal order, and approved for that purpose by the minister responsible for immigration. They are informed of their right to telephone a person of their choice or to have such a person notified of their placement in administrative detention. Failing such notification by the detainee, an official of the Centre informs the person designated by the detainee without delay. The official informs the detainee of the outcome of the procedure and records it in the individual administrative file. To enable the detainee to maintain contact with his or her family or consular authorities, lawyer or any other person of his or her choice, he or she is given a cell phone with a SIM card and initial credit of €10, which can be renewed free of charge on a weekly basis. The detainee may purchase additional credits at any time. It should be

[86] Grand Ducal regulation, art.198. Under no circumstances does this deprivation apply to communication between the prisoner and his or her counsel (regulation, art. 199).

[87] Court of Appeal, 14 June 2017, Pas. 38, p. 608.

[88] Code of Criminal Procedure, art. 84 (4)–(6).

[89] Article 39 (4) (2) of the Code of Criminal Procedure provides for the possibility of such a ban "on the basis of one of the following compelling reasons: 1. where there is an urgent need to prevent a serious attack on the life, liberty or physical integrity of a person; 2. where there is an urgent need to avoid a situation that could seriously compromise criminal proceedings".

[90] Code of Criminal Procedure, art. 39 (5) (2).

emphasized in this context that the detainee corresponds freely and thus without supervision by post, fax or e-mail with the persons of his or her choice, and that the related communication costs are borne by the Centre. However, if there are serious indications of the presence of dangerous or illicit objects, the risk of escape or endangerment of the Centre's security, the use of the means of communication may be restricted or prohibited.

156. Article 15 of the aforementioned law stipulates that detainees may receive visitors freely and without supervision. Exceptionally, if there are serious indications of abuse, a risk of flight or endangerment of the Centre's security, the management may order visits to be supervised.

157. It must be emphasized that, pursuant to article 3-6 of the Code of Criminal Procedure, a measure restricting communication, whomsoever it originates from, cannot, under any circumstances, apply to the right of an untried prisoner or detainee to communicate with his or her lawyer and to be assisted by the lawyer during hearings, interrogations and investigative measures. The right to legal counsel may only be restricted, subject to conditions and reasoned, "insofar as this is justified in view of the particular circumstances of the case, on the basis of one of the following compelling grounds: 1. where there is an urgent need to prevent a serious attack on the life, liberty or physical integrity of a person; 2. where it is imperative that the judicial police officer or official or the investigating judge in charge of the investigation or preparatory inquiry act immediately to avoid seriously compromising criminal proceedings."[91]

158. The same applies to consular authorities, with whom the person deprived of liberty can in principle communicate freely, unless a ban on doing so is ordered by the investigating judge.

159. In the context of administrative detention, prohibitions on communication and visits do not apply to lawyers, doctors and officials of the Office of the Ombudsman, including the External Control Service for Places of Deprivation of Liberty of the Grand Duchy, the Ombudsman for Children and Young People and representatives of authorized international monitoring bodies, including the European Committee for the Prevention of Torture and independent national or international monitoring bodies and mechanisms.

160. The members of these monitoring bodies have free access 24 hours a day, 7 days a week, on simple presentation of their identity badge. They are accompanied wherever they wish on the centre's premises by an official. They have free access to all the centre's facilities on request.

Means of redress

161. Under the law of Luxembourg, anyone held in preventive detention during criminal proceedings has the right to lodge an application for release before the judges' council chamber or criminal chamber of the district court to which the case has been referred,[92] whose decision is subject to appeal. The accused and the State prosecutor may appeal against referral decisions made by the judges' council chamber of the court. Finally, a sentence of imprisonment handed down in the court of first instance may be appealed to a criminal chamber of the Court of Appeal.[93]

162. Finally, article 17 (2) of the Convention provides for the possibility for any person with a legitimate interest to apply for redress. This is only the case when the victim of enforced disappearance is, by definition, unable to exercise the remedy provided for under this provision. This remedy thus has its equivalent in the country's domestic law through the possibility for any person who has suffered harm as a result of an offence, and thus enjoys the status of victim, to either lodge a complaint with the Grand Ducal Police or the State prosecutor, or to lodge a complaint with the investigating judge by suing for damages in

[91] Code of Criminal Procedure, art. 3-6 (6).

[92] The chamber to be seized will depend on the stage of the proceedings. The judicial authority competent to deal with a request for provisional release is defined in article 116 of the Code of Criminal Procedure.

[93] Code of Criminal Procedure, art. 221.

criminal proceedings, which will enable the opening of an investigation in which the judicial authority has broad powers, as explained under article 12 of the Convention.

Article 18
Information about the detainee

163. In accordance with the comments made under article 17 of the Convention, a person held in preventive detention has the right to notify the person of his or her choice and to contact a lawyer.[94]

164. The law of Luxembourg places more importance on the right of the person deprived of liberty to inform the person of his or her choice than on the right of the third party to be informed. The aforementioned provisions are thus to be taken into consideration in conjunction with the monitoring of places of deprivation of liberty by authorized authorities, and the possibility for any person with a legitimate interest to obtain essential information relating to detention, either from the detainee's lawyer or consulate, or from the detainee him- or herself as part of his or her right to have contact with the outside world.

165. The same applies to detained foreign nationals, who enjoy free contact with their lawyer or consulate.

166. The balance struck between informing relatives and respecting the detainee's privacy recalls the Vienna Convention on Consular Relations of 24 April 1963, which provides for consular protection to be activated at the request of the person concerned by the deprivation of liberty.

167. Finally, under article 4-1 of the Code of Criminal Procedure, any person identified as having suffered harm as a result of an offence acquires the status of victim. Thus, any third party concerned or affected by an enforced disappearance could be granted the status of victim, and could thus have access to the desired information. Such a right is provided for in article 85 (2) of the Code of Criminal Procedure, which grants the accused, the party and their lawyers the possibility of consulting the case file. The same provision governs the right of consultation and the possible restrictions to which it may be subject.

168. It should also be pointed out that, in the context of deprivation of liberty, the detainee's right to communicate, whether with a person of his or her choice or in general, may, under certain conditions, be restricted "where there is an urgent need to prevent a serious attack on the life, liberty or physical integrity of a person" or "where there is an urgent need to avoid a situation that could seriously compromise criminal proceedings".[95] The same applies to non-nationals of Luxembourg, who may be "refused the right to notify their consular authorities, as well as the right to communicate with them and receive visits from them, if this is contrary to the requirements of the investigation or preparatory inquiry."[96]

169. Lastly, persons who may request information are protected against any ill-treatment or intimidation, which is punishable under the Criminal Code. Please refer, in this connection, to the comments related to article 12 of the Convention.

Article 19
Collection and protection of personal data

170. DNA identification in criminal cases is governed by the Act of 25 August 2006 on DNA Identification Procedures in Criminal Cases. The purpose of the Act is to regulate the use of DNA and its processing for the purpose of identifying a person in preliminary investigations and preparatory inquiries in criminal matters, and in the case of persons who

[94] Code of Criminal Procedure, art. 39 (4) and (5).

Code of Criminal Procedure, art. 52-1 (3) and (4).

Act of 18 July 2018 on the Grand Ducal Police, art. 14.

[95] Code of Criminal Procedure, art. 39 (4).

[96] Code of Criminal Procedure, arts. 39 (5) and 52-1 (4).

have been sentenced to imprisonment or a more serious penalty. To that end, the law specifies that, under privacy protection, only non-coding DNA segments (containing no genetic characteristics of the individual) can be used to establish a genetic profile.

171. There is no specific procedure in place for cases of enforced disappearance, the applicable procedure being that set out in article 43-1 of the Code of Criminal Procedure. In this context, it should be noted that the Grand Ducal Police does not hold a specific DNA database dedicated to the search for missing persons. However, in very exceptional cases, the establishment and insertion of a DNA profile of a missing person may be ordered by the public prosecutor and the investigating judge as part of a preliminary investigation or judicial inquiry, in the interests of determining the truth and establishing identity.[97] In the absence of a database for unidentified corpses and for missing persons, these profiles will be treated as found human cell profiles (traces). The data may be used for purposes of identification only. A DNA profile which has produced a negative result in a DNA comparison will be registered in the database and included the systematic comparison workflow (at national and international level) until a positive match is obtained. In the event of a positive result, the profile is marked as identified in order to remove it from the systematic comparison flow. The profile can also be removed from the database by decision of the State prosecutor or investigating judge, even where there is no positive match.

172. A sample may also be ordered for the purpose of establishing a DNA profile for each person who has been convicted under a court decision that has become final and sentenced to a term of imprisonment or a more serious penalty, in particular for the offence of enforced disappearance.[98] In this case, the sample will be taken by buccal swab or hair bulb collection performed by a criminal investigation officer, or a blood sample taken by a doctor in the presence of a criminal investigation officer.

173. A DNA profile is stored in one of two DNA databases: the forensic DNA database and the convicted offenders DNA database.

174. In the case of a missing person, it is stored in the forensic DNA database.

175. The convicted offenders database contains the DNA profiles of persons who have been finally sentenced to imprisonment or a more serious penalty, as well as every person in respect of whom detention has been ordered for the commission of one of the offences listed in article 48-7 (1) of the Code of Criminal Procedure, which includes the offence of enforced disappearance.

176. These databases, which are maintained by the forensic science department of the Grand Ducal Police, have been created to manage information from DNA analyses and, in compliance with the principle of personal data protection, may only be consulted by persons with the requisite authorization.[99]

177. Data from the processing of DNA may be communicated to competent national authorities and experts in the interest of the tasks entrusted to them, and to criminal investigation officers acting on the instructions of the State prosecutor or investigating judge in the context of a criminal investigation. Such data may also be communicated to other States, organizations or international institutions, in application of provisions relating to general regulations on the protection of personal data.

178. These data are to be considered as personal data as soon as the alphanumeric code of the DNA analysis is associated with information relating to a natural person, allowing that person to be identified.

[97] Code of Criminal Procedure, art. 48-4 (2).

[98] Code of Criminal Procedure, art. 48-7 (1) (15).

[99] Under article 9 of the Act of 25 August 2006, a number of people are empowered to consult and compare DNA profiles: the State prosecutor and the investigating judge in charge of the preliminary investigation or preparatory inquiry, experts in the interests of the missions entrusted to them, and criminal police officers acting on the instructions of the State prosecutor or the investigating judge.

179. The details of persons who are involuntarily placed in an institution are entered in a register[100] containing their personal data. This register, which includes the medical certificate attached to the admission application, contains no genetic data. For control purposes, it must be available at all times for presentation to the supervisory authorities.

180. Finally, in the case of a missing persons investigation, the police can gather information about the missing person's state of health (e.g. whether they are taking medication, their mental state and whether they are addicted to psychotropic substances) from their relatives. When a missing person is reported at international level,[101] details of his or her state of health are not visible, as they are only collected to assess whether the person's physical integrity is in danger. However, it is possible to share a document containing more information with police services in some specific countries when, for example, the disappearance concerns a protected adult or when the person requires specific care.

181. The processing of such personal data is carried out under the responsibility of the Chief Public Prosecutor, who may delegate the exercise of his or her powers to a public prosecutor. The protection of this data is guaranteed under the Act of 1 August 2018 concerning the protection of individuals with regard to the processing of personal data in criminal matters as well as in matters of national security[102] and, more specifically, its article 9, according to which "the processing of genetic data or biometric data for the purpose of uniquely identifying a natural person … is authorized only in cases of absolute necessity, subject to appropriate safeguards for the rights and freedoms of the person concerned, and only: (a) when authorized by the law of the European Union or pursuant to the present Act or another legal provision of Luxembourg; (b) to protect the vital interests of the person concerned or of another natural person; or (c) where the processing relates to data manifestly made public by the person concerned." Furthermore, this article of the Act sets out various provisions governing the processing and storage of data.[103] With regard to data collected by the judicial authorities, including the Public Prosecutor's Office, and the administrative

[100] The obligation to keep a register, and the data entered in it, derive from article 40 of the Act of 10 December 2009, as amended, on the involuntary hospitalization of persons suffering from mental disorders.

[101] Alerts are issued by the central contact point in the International Relations Department.

[102] The Act of 1 August 2018 concerning the protection of natural persons with regard to the processing of personal data in criminal matters and in matters of national security and amending: (1) the Act of 7 March 1989, as amended, on the administration of justice; (2) the Act of 29 May 1998, as amended, approving the Convention based on article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention), signed in Brussels on 26 July 1995; (3) the Act of 20 December 2002 approving the Convention based on article K.3 of the Treaty on European Union, on the use of information technology for customs purposes, signed at Brussels on 26 July 1995; – the agreement on the provisional application between certain member States of the European Union of the Convention drawn up on the basis of article K.3 of the Treaty on European Union, on the use of information technology for customs purposes, signed at Brussels on 26 July 1995; (4) the Act of 15 June 2004, as amended, on classification of rooms and security clearance; (5) the Act of 16 June 2004, as amended, reorganizing the State Socioeducational Centre; (6) the Act of 25 August 2006, as amended, on DNA identification procedures in criminal matters and amending the Code of Criminal Investigation; (7) the Act of 24 June 2008 concerning the control of travellers in accommodation facilities; (8) the Act of 29 March 2013, as amended, on the organization of criminal records; (9) the Act of 19 December 2014, as amended, facilitating the cross-border exchange of information concerning road safety offences; (10) the Act of 25 July 2015, as amended, establishing automatic systems for monitoring and punishment; (11) the Act of 5 July 2016 reorganizing the State Intelligence Service; (12) the Act of 23 July 2016 introducing specific status for certain personal data processed by the State Intelligence Service; (13) the Act of 22 February 2018 on the exchange of personal data and information in police matters; (14) the Act of 18 July 2018 on the Grand Ducal Police; and (15) the Act of 18 July 2018 on the Inspectorate General of Police.

The Act applies in particular to "the processing of personal data for the purposes of the prevention, investigation, detection or prosecution of criminal offences, investigations and prosecution or the execution of criminal penalties, including protection against and prevention of threats to public security" (art. 1).

[103] Articles 18–27 of the Act concern the general obligations of persons responsible for data processing. Articles 28–30 relate to data security, whether in connection with processing or the notification to the competent authority or the person concerned of a breach of personal data.

authorities, the present Act provides for the creation of a judicial control authority[104] whose members are bound by professional secrecy.

182. In addition, the Act of 2 August 2002 concerning the protection of individuals with regard to the processing of personal data provided for the creation of the National Commission for Data Protection, responsible for ensuring respect for the fundamental rights and freedoms of individuals, and in particular their privacy, in the use and storage of personal data. Its status as an independent authority gives it the legitimacy and authority to protect citizens by ensuring that they have effective access to the data contained in data processing operations concerning them. In particular, the Commission verifies the legality of files and of any collection, use or transmission of information concerning identifiable individuals. In order to carry out its duties, the Commission has the power to impose sanctions in the event of non-compliance with legal provisions. In addition to the possibility of criminal penalties and liability actions governed by ordinary law, any person has a legal remedy in the event of the implementation of a processing operation in breach of the formalities laid down by the aforementioned law.[105]

183. In the same vein, the Act of 29 July 2023 amending: (1) the Act of 18 July 2018on the Grand Ducal Police, as amended; (2) the Act of 18 July 2018 on the Inspectorate General of Police, as amended; (3) the Act of 1 August 2018 on the Processing of Passenger Name Record Data; (4) the Act of 5 July 2016reorganizing the State Intelligence Service, as amended; (5) the Criminal Code, is intended to provide a framework for the processing of personal data carried out in the files of the Grand Ducal Police. In particular, the Act provides a general framework for the processing of personal data, notably by limiting the length of time during which data may be retained or accessed, and by introducing penalties in the event of misuse of access rights. To this end, data relating to members of the Police who have consulted data, the information consulted, and the date and time of consultation are recorded and kept for a period of five years.

184. Finally, national and international alerts issued as part of an active search for a missing person are deleted as soon as the person has been found.

Article 20
Restrictions on the right to information

185. Where article 20 (1) of the Convention is concerned, reference may be made to the comments relating to article 18.

186. Restrictions on the right to information are governed by the Code of Criminal Procedure. Thus, any restriction on the right to information of a person in detention is only temporary and must "(a) be proportionate and not go beyond what is necessary; (b) be for a strictly limited time period; (c) not be based solely on the nature or gravity of the alleged offence; and (d) not undermine the overall fairness of the proceedings".[106] In all cases, the decision to impose a restriction is taken by the criminal investigation officer after an oral agreement has been reached with the investigating judge, to be confirmed by means of a written, reasoned agreement, or by the investigating judge after the person has been charged.[107]

187. Restrictions on the right to information during deprivation of liberty that do not comply with articles 39 and 52-1 of the Code of Criminal Procedure constitute virtual nullities. In contrast to formal nullities, which are expressly provided for by law and incurred by the mere violation of the relevant legal provision, virtual nullities require proof that some grievance or harm has been suffered by the person invoking them.[108]

[104] Articles 40–43.
[105] Article 39.
[106] Code of Criminal Procedure, arts. 39 (4) and 52-1 (4).
[107] Code of Criminal Procedure, art. 85 (2).
[108] Court of Appeal, court in chambers, 14 June 2022.

188. All decisions taken in respect of a prisoner by prison governors may be the subject of an administrative appeal submitted to the director of the prison or a judicial appeal submitted to the Sentence Enforcement Chamber in the form and under the conditions laid down by law.[109]

189. Under the Grand Ducal regulation of 24 March 1989 on prison administration and internal regulations, as amended, prisoners have the right to file a complaint with the Chief Public Prosecutor[110] against any prejudicial disciplinary measure taken against them by the prison governor.

190. The aforementioned Grand Ducal regulation contains a number of provisions that give prisoners the right to file applications or complaints with the prison governor, or appeals with the Chief Public Prosecutor or even the Head of State, the Chamber of Deputies, the Government, the Minister of Justice or the judicial authorities.[111] These applications, complaints or appeals are supported by a number of rights for prisoners, namely, the right to be heard and the right to a response within a reasonable time frame.

191. Thus, while the law of Luxembourg does not provide for any specific judicial remedy for third parties seeking access to information of the kind referred to in article 18 (1) of the Convention, it does guarantee that any person suspecting that a violation has occurred has the right to report it, to file a complaint and even, if the third party has suffered harm as a result of the violation, to file a complaint accompanied by a claim for damages.

Article 21
Release

192. When a prisoner is admitted to a prison, he or she is "committed in accordance with the laws and regulations in force. No one may be admitted without a valid commitment order".[112] In this regard, the prison keeps a record of all inmates admitted, including the date of admission and the date of release. The margins of the register also contain references to the various records kept in the registry office of the prison.[113] These records include the record of punishments, the record of defendants who are subject to an order to appear, a detention order or an arrest warrant, the record of the daily population of the prison, the prisoners' personal files[114] and the release schedule.

193. The prison register is signed and initialled on every page by the Chief Public Prosecutor and must be presented to him or her for monitoring and approval purposes during the general inspection of the establishment.[115]

194. Consequently, any prisoner whose sentence has expired or whose imprisonment has been terminated for any other reason will be released and must receive a certificate of release at the time of release. A copy of the certificate is placed in the prisoner's personal file.[116] The Public Prosecutor's Office, the sentence enforcement service and the social protection service are informed of the prisoner's release via the daily report and the individual forms.

195. The release of persons detained by the Grand Ducal Police must be mentioned in the records of police questioning. Under articles 39 (8) and 52-1 (6) of the Code of Criminal

[109] Prison Service Reform Act of 20 July 2018, arts. 34 and 35.
[110] Art. 212.
[111] Section V. – Applications and appeals by prisoners; arts. 211–216.
[112] Grand Ducal regulation of 24 March 1989 on prison administration and internal regulations, as amended, art. 139.
[113] These records are listed under article 43 of the amended Grand Ducal regulation of 24 March 1989 on prison administration and internal regulations, as amended.
[114] Article 44 of the Grand Ducal regulation refers to the personal file containing all the information relating to the prisoner, including information on his or her sentence and admission to the prison.
[115] Grand Ducal regulation, as amended, art. 42.
[116] Prisoners are released in accordance with the procedures set out in articles 152–159 of the above-mentioned Grand Ducal regulation.

Procedure, these reports must specify the date and time of the person's arrest and the date and time when he or she will either be released or brought before the investigating judge.

Article 22
Penalties for obstruction and failure to provide information

196. As explained in the comments made in relation to article 17 of the Convention, the law of Luxembourg guarantees all persons deprived of their liberty the right to challenge the lawfulness of the decision that gave rise to the deprivation of liberty.

197. The registry office of the prison is responsible for ensuring the lawfulness of the detention of incarcerated individuals and the release of those eligible for release. The office is therefore directly responsible for maintaining the detention and release records and acts under the authority of the governor. The obstruction of justice and any failure to comply with the obligation to record information on inmates may result in disciplinary or criminal sanctions, or even engage the responsibility of the State.

198. Under articles 147, 155–157, 159, and 434–438 of the Criminal Code, public officials incur criminal responsibility for illegally or arbitrarily arresting or detaining a person, causing him or her to be arbitrarily arrested or detained, neglecting or refusing to put an end to an unlawful detention brought to their knowledge when they have the power to do so, or refusing to display their records in accordance with the law.

199. Under the Code of Criminal Procedure, criminal responsibility is also incurred by all prison officers and judges who have become aware of an arbitrary detention, and all prison officers who refuse to present inmates, or produce an order forbidding them from doing so so, or who refuse to show records.[117]

Article 23
Training

200. Civil servants, police officers, military personnel and other staff are subject to national and international law in carrying out their duties, including the norms protecting human rights.

201. The effective implementation of the Convention requires all officials to undergo pre-service and in-service training, including in general, specific, theoretical and practical subjects. For example, the pre-service training undergone by police officers covers the laws and procedures to be respected (the Criminal Code and the Code of Criminal Procedure), ethical standards, administrative and investigative policing, human rights and fundamental freedoms. Pre-service training also includes a practical induction stage in police stations and the Criminal Investigation Branch to enable trainees to rapidly assimilate theoretical knowledge through practical experience.

202. The same applies to prison officers, who are required to undergo training in human rights, the European Prison Rules, the organization of the judicial system, the Criminal Code and the Code of Criminal Procedure, among other subjects, when they are recruited to work in prisons. The subjects taught depend on the officer's salary band.[118]

203. Although these subjects do not specifically address the Convention, compliance with the legal framework as it is taught entails the prohibition of acts constituting or contributing to enforced disappearance.

204. In addition to this training, the Convention is implemented through specific codes of ethics for certain officers. These codes define a set of fundamental ethical values and applicable rules of conduct.

[117] Code of Criminal Procedure, arts. 615–618.

[118] The subjects are set out in the Grand Ducal regulation of 17 November 2016 establishing the procedures and subjects of the final examination taken on completion of special training with a view to final admission, as well as the examination for promotion to the various salary bands within the prison administration.

205. All training courses, whether delivered to civil servants in general or to police and prison officers, cover the obligation for officials to inform the State prosecutor if they become aware of an offence, including enforced disappearance. This includes the obligation to report arbitrary detention. The obligation to report an offence is highlighted in the codes of ethics applicable to officers involved in arresting persons and taking them into custody.

206. The comments made in connection with article 6 of the Convention contain information in respect of laws that prohibit orders prescribing, authorizing or encouraging enforced disappearance and ensure that punishment is handed down to anyone refusing to comply with such an order.

Article 24
Rights of victims

Victims

207. The concept of victim and the rights associated with this concept are recognized both for disappeared persons themselves and for any persons who have suffered harm as a result of an enforced disappearance.

208. Article 4-1 of the Code of Criminal Procedure establishes that any person identified as having suffered harm as a result of an offence acquires the status of victim. Such victims have the right either to initiate public proceedings[119] or to participate in criminal proceedings, and therefore in the criminal trial, by suing for damages, which enables them to learn the truth about the acts of enforced disappearance of which the judicial authorities are aware.[120]

209. The victim's right to reparation is guaranteed under the law of Luxembourg. Article 3 of the Code of Criminal Procedure and articles 44–50 of the Criminal Code establish the right of victims to request reparation during a criminal trial or separately in a civil suit and the obligation of all convicted persons to pay damages.

210. Furthermore, all persons deprived of their liberty in conditions incompatible with article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms have the right to reparation for harm suffered under the Act of 30 December 1981 on Compensation for Unjustified Pretrial Detention, as amended.

211. With regard to compensation for victims, the law of Luxembourg is in compliance with European and international law.[121] However, in certain cases (where the perpetrator is unknown, cannot be found or is insolvent), victims of bodily harm can obtain compensation from the State[122] for the harm that they have suffered.

212. Victims can obtain support and assistance from a number of associations or from the victim support service of the Public Prosecutor's Office, which offers psychological care. Victims are informed of their rights and directed to the appropriate services.

213. During criminal proceedings, and at all stages of the proceedings, including when the sentence is being served, the victims and perpetrators of an offence may, provided that the facts have been acknowledged, be offered a form of restorative justice that enables both victims and perpetrators to play an active role in resolving the difficulties resulting from the offence and, in particular, in remedying any kind of harm resulting from its commission.

214. The victim's right of association is guaranteed by article 26 of the Constitution.

[119] Code of Criminal Procedure, art. 1 (2).

[120] Code of Criminal Procedure, art. 4-1.

[121] Council of the European Union, Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (Official Journal L 82, 22 March 2001); Council Directive 2004/80/EC of 24 April 2004 relating to compensation to crime victims (Official Journal L 261, 6 August 2004); European Convention on the Compensation of Victims of Violent Crimes of 24 November 1983.

[122] Act of 12 March 1984, as amended, governing compensation for certain victims of bodily injury resulting from an offence and the punishment of fraudulent insolvency.

Genetic data

215. The law of Luxembourg makes no specific provision for the systematic collection of ante-mortem data relating to disappeared persons and their relatives and does not provide for the establishment of such databases.

Legal regime governing missing persons

216. The Civil Code provides for two mechanisms relating to missing persons: a judgment recognizing that a person is presumed to be missing, which is issued by the guardianship judge at the request of the interested parties or the public prosecution service; and a judgment declaring that a person is missing, which is issued when 10 years have elapsed since the judgment recognizing that a person is presumed to be missing, or when 20 years have elapsed since the person ceased to appear at his or her place of domicile.

217. If a person is presumed to be missing, the guardianship judge, in accordance with articles 112–121 of the Civil Code, issues a judgment declaring that the person is missing, triggering several mechanisms to protect the person presumed to be missing. More specifically, one or more relatives of the missing person are appointed by the judge to represent that person in the exercise of his or her rights and to administer his or her assets.[123] In this case, the guardianship judge oversees the management of the missing person's pecuniary interests, for example, by determining the sums to be allocated annually for family maintenance or marriage expenses, establishing the administrative expenses or remuneration of the missing person's representative, appointing a notary to proceed with any division of assets, and so on.

218. The Public Prosecution's Office is specifically responsible for ensuring the protection of the interests of persons presumed to be missing.[124]

219. A declaration of absence affects the personal and property rights of the missing person, in that it produces the same effects as a death[125] from the date of transcription in the death register[126] of the terms of a judgment that has entered into force. In this regard, the procedure includes the posting of notices in two newspapers in Luxembourg – a notice announcing the application and a notice announcing the judgment declaring the absence – at the expense of the party submitting the application. If the court deems it necessary, the publication of other notices in any relevant place may be ordered.[127] In any case, the judgment is not handed down until at least one year after the publication of the excerpts from the application instituting proceedings.[128]

220. If the missing person reappears, or if he or she is proven to be alive subsequent to the judgment declaring the absence, action to annul the judgment may be brought at the request of the State prosecutor or any interested party.[129] In this case, the judgment relating to the annulment is entered in the margin of the judgment declaring the absence and in any register referring to it, and is also published in accordance with the procedures set out in article 123 of the Civil Code. However, even if the judgment declaring the absence is annulled, the missing person's marriage remains dissolved.[130]

Article 25
Children

221. Several kinds of conduct that contribute to the enforced disappearance of a child are classified as offences under the Criminal Code:

[123] Civil Code, art. 113.
[124] Civil Code, art. 117.
[125] Civil Code, art. 128.
[126] Civil Code, art. 127.
[127] Civil Code, art. 123.
[128] Civil Code, art. 125.
[129] Civil Code, art. 129.
[130] Civil Code, art. 132.

- The abduction of a child (arts. 368–371-1); the penalty is increased to long-term imprisonment if the child is under 16 years of age (art. 369)
- The concealment of a child (art. 365)
- Failure to hand over a child (art. 367), fraudulent abandonment and fraudulent adoption (arts. 367-1 and 367-2)
- Fraudulent activities relating to the civil status or identity of a child:[131] failure to declare the birth of a child (art. 361), concealment of the birth of a child or the substitution of him or her (art. 363), destruction of records or documents (arts. 241 and 242), forgery[132] (arts. 194 and 195)

222. The implementation of article 25 (1) (a) and (b) of the Convention has not required any amendments to be made to the criminal laws in force.

223. With regard to the mechanisms in place to search for and identify disappeared children, Luxembourg makes a distinction between children who face a risk of being abducted and children who have been abducted or disappeared.

224. If a child is abducted or disappeared, depending on the circumstances of the disappearance, the Grand Ducal Police, acting in accordance with a decision of the State prosecutor, may issue an Amber Alert, which brings the case to the attention of the public by sharing information about the disappearance and a photo of the child at the national or regional level.

225. To date, the Amber Alert mechanism has not been used in connection with an enforced disappearance.

226. The laws relating to adoption in Luxembourg provide for strong guarantees to meet the requirements of article 25 (2) and (4) of the Convention. Luxembourg has two forms of adoption: simple adoption and full adoption.

227. In the case of simple adoption, the parent-child relationship between the adopted child and his or her family of origin is maintained, and the adoption is revocable in cases where it originates in an enforced disappearance.[133] Revocation may be requested by the adopted child, the adopter, the adopted child's presumed birth parents, as well as by the public prosecution service in order to safeguard the child's best interests and guarantee respect for his or her fundamental rights.

228. Full adoption breaks all ties of filiation with the family of origin and is in principle irrevocable. However, article 368-4 of the Civil Code provides for an exception to the irrevocability of full adoption in cases where the adoption originates in an enforced disappearance within the meaning of article 442-1 bis of the Criminal Code. It may be requested by the adopted child, the adopter, the adopted child's presumed birth parent(s) or the public prosecution service.

229. The action for revocation may be brought in accordance with article 1045 of the new Code of Civil Procedure, and the revocation decision may be entered in the civil status records of the commune where the adoption order is recorded.

230. This provision was introduced by the Act of 17 December 2021 in order to ensure compliance with article 25 of the Convention. It allows adoption to be revoked in these specific circumstances, with particular attention being paid to the best interests of the child, which have constitutional rank, and his or her right to a stable identity.

[131] Civil status records are intended to provide definite proof of a person's status. They are regarded as authoritative until shown to be forgeries. The rules governing civil status and civil status records are mandatory rules of public order and the public prosecution service may act on its own initiative in respect of them. Municipal officers (civil servants) must therefore demonstrate responsibility in the performance of their duties, and act in accordance with the Civil Code (arts. 34–62).

[132] Making use of forged documents is punishable by the same penalties as forgery (Criminal Code, art. 197).

[133] Civil Code, art. 366.

231. In Luxembourg, the best interests of the child are enshrined in the Constitution. Article 15 (5) states that "in all decisions concerning the child, the child's best interests shall be a primary consideration. Every child is free to express his or her opinion on any matter that concerns him or her. The child's opinion is taken into account, in accordance with his or her age and ability to form his or her own views."

232. Articles 366 and 368-4 of the Civil Code provide that, in the course of the action for revocation, "if the adopted person is over 15 years of age, he or she may personally and without assistance continue with the revocation or defend the action. If the child is under 15 years of age, the request is made by or against the public prosecution service."

233. For information on cooperation with other States in the search or identification of children of disappeared parents, please refer to the comments related to article 14 of the Convention.

234. The authorities of Luxembourg have no statistical data on cases of enforced disappearance.

Annexes

Legal framework

(1) Constitution

(2) Act of 18 July 2018 on the Grand Ducal Police

(3) Act of 18 July 2018 on the General Police Inspectorate, as amended

(4) Act of 1 August 2018 on the Protection of Natural Persons with regard to the Processing of Personal Data in Criminal Matters and in Matters of National Security

(5) Act of 2 August 2002 on the Protection of Individuals with Regard to the Processing of Personal Data

(6) Act of 23 January 2023 on the Status of Judges

(7) Act of 23 January 2023 on the Organization of the National Council of Justice, as amended

(8) Act of 8 March 2017 on Strengthening Procedural Guarantees in Criminal Cases

(9) Act of 28 March 2023 supplementing the Criminal Code through the introduction of a general aggravating circumstance for felonies, misdemeanours and summary offences committed with a motive based on one or more of the elements referred to in article 454 of the Criminal Code

(10) Prison Service Reform Act of 20 July 2018

(11) Act of 10 December 2009 (a) on the Involuntary Hospitalization of Persons with a Mental Illness; (b) amending the Act of 31 May 1999 on the Police and the Inspectorate General of the Police, as amended; and (c) amending article 73 of the Communal Act of 13 December 1988, as amended

(12) Act of 30 December 1981 on Compensation for Unjustified Pretrial Detention, as amended

(13) Act of 25 August 2006 on Identification by Means of DNA Fingerprinting in Criminal Matters

(14) Act of 14 April 1992 establishing a disciplinary and criminal code for the Navy

(15) Amended Act of 16 April 1979 establishing State civil service regulations

(16) Act of 27 February 2012 bringing domestic law into line with the provisions of the Rome Statute of the International Criminal Court.

(17) Act of 31 January 1948 regulating air traffic

(18) Extradition Act of 20 June 2001, as amended

(19) Act of 8 August 2000, as amended, on international cooperation in criminal matters

(20) Grand Ducal regulation of 17 November 2016 establishing the procedures and subjects of the final examination taken on completion of special training with a view to final admission, as well as the examination for promotion to the various salary bands within the prison administration

Other instruments

(1) Code of Ethics for Judges

(2) Code of Ethics of the Grand Ducal Police

(3) Code of Ethics of the Inspectorate General of the Police

(4) Information sheet for victims

Case law

(1) Court of Appeal, order No. 465/17 of 14 June 2017 (refusal to issue visit permit)

(2) Luxembourg District Court, judgment No. 525/2007 of 8 February 2007 (statute of limitations)

(3) Court of Appeal, order No. 253/07 of 16 May 2007 (statute of limitations)

(4) Court of Appeal, order No. 396/01 of 13 November 2001 (primacy of international law)