



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Committee against Torture**

**Information received from Luxembourg on  
follow-up to the concluding observations on its  
eighth periodic report\***

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\* The present document is being issued without formal editing.



## **Follow-up information on paragraphs 18, 34 and 36 of the concluding observations (CAT/C/LUX/CO/8)**

### **I. Searches**

#### **Follow-up information relating to paragraph 18 of the concluding observations**

1. The Committee recommends that the State party exercise strict supervision of body search procedures and ensure that such searches are not degrading and that invasive body searches are conducted only in exceptional cases, in the least invasive manner possible, by trained staff of the same sex, and with full respect for the person's dignity and gender identity, in accordance with rules 50–53 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).
2. The Committee invites the State party to consider alternatives to invasive body searches (intimate body cavity and full body searches), including the use of electronic devices such as body scanners.
3. In view of the inadequacy of the legal framework, which did not reflect the practical reality of body searches, and in view of the particularly sensitive nature of body searches and the risk of humiliation arising from the very nature of that measure, a procedure for body searches was established under the Act of 3 February 2023 amending: first, the Code of Criminal Procedure with regard to body searches; second, the amended Act of 18 July 2018 on the Grand Ducal Police; and third, the amended Act of 19 February 1973 on the sale of medicinal substances and the fight against drug addiction.<sup>1</sup>
4. This procedure defines body searches and imposes strict conditions on how they are to be conducted. The amendments to the Code of Criminal Procedure set out the circumstances in which they may be carried out. The amendment to the amended Act of 18 July 2018 on the Grand Ducal Police, for its part, sets out the circumstances in which the police are authorized to conduct body searches. Lastly, the amended Act of 19 February 1973 on the sale of medicinal substances and the fight against drug addiction provides that criminal investigation officers, customs officers and police officers are authorized to conduct body searches of persons suspected of violating the Act or its implementing regulations.
5. Since the introduction of the new legal framework, the new provisions have been integrated into the curriculum of the Police Training School, particularly as part of administrative and investigative policing courses. These courses provide detailed explanation of the legal framework and how to carry out searches (simple, full body and intimate body cavity searches). A reminder of fundamental principles is also systematically provided. Officers in training receive theoretical instruction on the subject before going on to revisit the principles during practical work.
6. The Act of 3 February 2023<sup>2</sup> provides that during body searches, human dignity must be respected and any humiliation of the person subjected to the search must be avoided. The person subjected to the search can be detained only as long as is strictly necessary for that procedure.
7. The Act draws a distinction between administrative searches, which are always security searches, and criminal searches, which may take the form of security or investigative searches, depending on the purpose of the search. A distinction is made in relation to administrative and criminal searches between three types of search: a simple search, a full body search and an intimate body cavity search. Any transition from one level of search to the next is subject to strict conditions.

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<sup>1</sup> <https://legilux.public.lu/eli/etat/leg/loi/2023/02/03/a81/jo>.

<sup>2</sup> Code of Criminal Procedure, art. 48-11 bis.

8. A simple search is carried out by frisking the body or using electronic detection equipment, without the person being searched having to partially or completely remove clothing. A simple search includes checking the individual's personal belongings. When conditions permit, simple searches may be carried out by criminal investigation staff or officers of the same sex as the person subjected to the search.

9. A full body search<sup>3</sup> may be carried out only where a simple search or the use of electronic detection equipment is insufficient. It is conducted by criminal investigation staff or officers of the same sex as the person subject to the search. A full body search requires the person concerned to remove some or all clothing. It consists of a visual inspection of the naked surface of the body, the inside of the mouth and ears and the armpits and crotch. A full body search is required in order to transition to an intimate body cavity search.

10. The intimate body cavity search consists of checking body cavities or openings other than those covered by the full body search, with the person concerned partially or completely undressed. In compliance with the guarantees associated with individual rights, intimate body cavity searches must be justified by significant evidence, which must then be recorded in the relevant report. It is therefore necessary for there to be concrete, objective considerations that make it possible to move from a full body search to an intimate body cavity search. Such a search must in addition be authorized by the public prosecutor or ordered by the investigating judge in the case of pretrial proceedings. Intimate body cavity searches are furthermore carried out by a doctor, who issues a certificate following the search. For security reasons, the doctor may request the presence of criminal investigation staff or officers.

11. Full body and intimate body cavity searches are performed out of sight of third parties.

12. In the absence of the consent of the person concerned, simple and full body searches may be carried out under physical restraint. The person concerned is informed of this possibility prior to any search.

13. Only the level of restraint strictly necessary for the search to be carried out is authorized. Under no circumstances should the application of restraint be prolonged beyond the time strictly necessary to complete the search.

14. In the absence of consent to submit to an intimate body cavity search, the person searched is, without prejudice to legal recourse, punishable with a fine of between €251 and €1,000 or a prison sentence of between 8 days and 3 months, without prejudice to the penalties set forth in the Criminal Code for obstructing an officer from performing assigned duties.

15. In the event that a full body or intimate body cavity search is carried out, a report is drawn up stating the name of the criminal investigation staff or officer who carried out the full body search; the name of the person searched; the reasons for the search; the place, date and time that the search started and ended; and, where applicable:

- The fact that the full body or intimate body cavity search took place without the consent of the person concerned
- The fact that the search was carried out with the authorization of the public prosecutor or by order of the investigating judge
- The name of the doctor who performed the intimate body cavity search
- One copy of the report is given to the person searched and another is immediately sent to the public prosecutor

<sup>3</sup> Code of Criminal Procedure, art. 48-11 bis.

## II. Sexual and gender-based violence

### Follow-up information relating to paragraph 34 of the concluding observations

16. The Committee recommends that the State party ensure that all cases of gender-based violence, including domestic violence, especially those involving actions or omissions by State authorities or other entities that entail the international responsibility of the State party under the Convention, are thoroughly investigated, that alleged perpetrators are prosecuted and, if found guilty, punished appropriately, and that the victims or their families obtain redress, including adequate compensation.

17. The State party should also raise the statute of limitations for rape.

18. The chain of activity for responding to domestic violence is defined by the amended Act of 8 September 2003 and details the various services offering assistance and advice as well as the institutions dealing with victims and perpetrators of violence.<sup>4</sup>

19. Luxembourg has taken significant steps to complement its fight against domestic violence by adopting the Act of 20 July 2018 approving the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. This legal framework has given Luxembourg the means to criminalize other forms of gender-based violence, including female genital mutilation, under the Criminal Code. Recognizing that violence constitutes a serious violation of fundamental rights, Luxembourg continues to adapt and strengthen its system for the provision of care for victims of violence and its legal framework for protecting victims and punishing perpetrators. Under its government programme for the period 2023–2028, the Government has announced three flagship projects in this area, which are being developed under the coordination of the Ministry for Gender Equality and Diversity:

- A project aimed at establishing a centralized reception and support facility for all victims of violence, including victims of sexual violence
- A project aimed at developing a comprehensive strategy for combating all forms of gender-based violence based on the four pillars of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence: prevention, protection, prosecution and integrated policies
- A project aimed at strengthening the national system addressing the cases of perpetrators of domestic violence by introducing compulsory follow-up treatment for perpetrators who have been evicted from their homes, to be achieved by strengthening the amended Domestic Violence Act of 8 September 2003

20. Furthermore, with the adoption of the Act of 7 August 2023 amending the Criminal Code and the Code of Criminal Procedure with a view to strengthening capacity for combating sexual abuse and exploitation of minors,<sup>5</sup> penalties for sexual abuse have been increased, the statutes of limitations for sexual offences against minors have been extended and the statute of limitations for the rape of a minor has been eliminated.

21. The Act of 7 August 2023 is aimed at protecting sexual integrity and the right to sexual self-determination while removing terms incompatible with third-sex persons.

22. The rape of a minor has furthermore been established as a stand-alone offence under the Act, which provides for the application of penalties of a higher level for each subsequent infraction. The Act also provides for the prosecution as a separate offence of infractions committed against minors by a parent; a lawful, natural, or adoptive ascendant relative; any person in the collateral line up to the third degree; or any person related to the minor by marriage up to the third degree. As a result, the list of persons who may be the perpetrators of incestuous rape or sexual abuse has been extended to include persons who abuse a

<sup>4</sup> <http://data.legilux.public.lu/eli/etat/leg/loi/2003/09/08/n1/jo>.

<sup>5</sup> <https://legilux.public.lu/eli/etat/leg/loi/2023/08/07/a520/jo>.

recognized position of trust or influence and persons responsible for the minor or to whom the minor has been entrusted.

23. Lastly, several cases of non-applicability of statutory limitations have been established under the Act, with a view to affording greater judicial protection to minors while facilitating the prosecution of the most serious sexual offences. The third subparagraph of article 637 (2) of the Code of Criminal Procedure now provides a derogation to the two subparagraphs before it. The public right of action arising from one of the offences defined under articles 375–377, committed against minors, is thus not subject to a statute of limitations.

### **III. Intersex persons**

#### **Follow-up information relating to paragraph 36 of the concluding observations**

24. The Committee recommends that the State party continue its efforts, including the ongoing preparation of a bill on surgical operations for variations in sexual development, to end the performance of irreversible medical acts, especially surgical operations, on intersex children who are not yet capable of giving their full, free and informed consent, except in cases where such interventions are absolutely necessary for medical reasons. Measures should also be taken to ensure that victims of such interventions have access to effective remedies and to strengthen the collection of statistics on this issue.

25. The November 2023 coalition agreement provides *inter alia* for the adaptation of the 2018 National Action Plan to Promote the Rights of Lesbian, Gay, Bisexual, Transgender and Intersex Persons. That work is ongoing and takes into account measures and actions provided for by the first National Action Plan in relation to intersexed persons and by the coalition agreement, and its provisions in relation to intersex persons that have not yet been implemented.

26. Under its government programme for the period 2023–2028 as regards intersex children,<sup>6</sup> the Government will commit to respecting and strengthening the protection of non-binary gender identities. It will undertake to ensure that the procedures for sex reassignment and sex assignment for intersex persons are assessed and adapted to their needs. The Government will closely monitor and analyse the relevant legal frameworks in force in other countries of the European Union.

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<sup>6</sup> <https://gouvernement.lu/fr/publications/accord-coalition/accord-de-coalition-2023-2028/accord-de-coalition-2023-2028.html>.