

Pending cases against Luxembourg

Application Number	English Case Title	Date of Judgment	Date of Definitive Judgment	Meeting Number	Meeting Section
63286/00	SCHUMACHER	25/11/2003	25/02/2004	1043	4.2
73983/01	REZETTE	13/07/2004	13/10/2004	1043	4.2
40327/02	CASSE	27/04/2006	27/07/2006	1043	4.2
24720/03	ALLIANCE CAPITAL (LUXEMBOURG) SA	18/01/2007	18/04/2007	1035	4.2
33747/02	LAGHOUATI and others	05/04/2007	18/05/2007	1043	4.2
76240/01	WAGNER and J.M.W.L.	28/06/2007	28/09/2007	1043	4.2
2113/04	SCHNEIDER	10/07/2007	10/10/2007	1043	4.2
11282/05	ELECTRO DISTRIBUTION LUXEMBOURGEOISE (E.D.L.) S.A.	31/07/2007	31/10/2007	1043	4.2
302/04	LEMMER and NEIERTZ	13/05/2008	13/05/2008	1035	2
34471/04	JETZEN	04/03/2008	04/06/2008	1035	2

Cases against Luxembourg the examination of which has been closed in principle on the basis of the execution information received and awaiting the preparation of a final resolution

Application Number	English Case Title	Date of Judgment	Date of Definitive Judgment	Meeting Number	Meeting Section
38432/97	THOMA	29/03/2001	29/06/2001	1035	6.2
51773/99	SCHAAL	18/02/2003	18/05/2003	1035	6.2
51772/99	ROEMEN et autre	25/02/2003	25/05/2003	1035	6.2
44978/98	BERLIN	15/07/2003	15/10/2003	1035	6.2
13130/02	DATTEL AND OTHERS	04/08/2005	04/11/2005	1035	6.2
60255/00	PEREIRA HENRIQUES	09/05/2006	09/08/2006	1035	6.2
15048/03	MATHONY	15/02/2007	15/05/2007	1035	6.2

Main pending cases against Luxembourg

Case name :	ALLIANCE CAPITAL (LUXEMBOURG) SA v. Luxembourg	Appl N° :	
	24720/03		
Judgment of :	18/01/2007		
Final on :	18/04/2007		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1035-4.2(15/09/2008)		
Last exam :	1020-4.2(04/03/2008)		
First exam :	997-2(05/06/2007)		

NOTES OF THE AGENDA

24720/03 Alliance Capital (Luxembourg) S.A, judgment of 18/01/2007, final on 18/04/2007
 The case concerns an excessive interference with the applicant company's right of access to a court and consequently, with its right to a fair hearing (violation of Article 6§1). Proceedings were brought against the applicant company by two other companies (*Allianz Kapitalanlagegesellschaft* and *Allianz Asset Management*) and the first-instance and appeal courts ordered the applicant to change its business name. Following a material error made by the Court of cassation, which forgot to mention one of the two companies

in its judgment, the applicant company could not obtain a decision in its appeal in respect of one of the companies and was presented with two diametrically opposed findings in a dispute concerning applications which were related, not to say identical.

Individual measures: It transpires from the judgment that the dispute between the applicant company and the two other companies was settled: they reached an out-of-court agreement on the use of the business name in the various parts of the world (§21)

• *Assessment:* In these circumstances, the applicant company having made no further request, no other measure appears necessary.

General measures: Several measures have been taken to disseminate and publish the judgment of the Court. On 19/01/2007, the Minister of Justice transmitted the judgment to the State Prosecutor General, requesting him to inform the courts concerned about it. Furthermore, the Ministry of Justice published the judgment on its Internet site

(www.mj.public.lu/jurisdictions/arrets_concernant_le_luxembourg/Alliance_18_01_07.pdf). At the same time, an announcement was made in the *Journal Officiel* to draw the general public's attention to this judgment (Mémorial B No. 18, 12/03/2007). Finally, the judgment has been published in *CODEX*, January – February 2007.

The delegation has indicated that, given the Luxembourg authorities' view that national law already provides a procedure making it possible to request the rectification of a judicial decision in case of a material error, the government do not envisage other measures.

• *Assessment:* This argument was already developed during the proceedings before the European Court. In its judgment, the Court (which considered the merits together with the alleged inadmissibility on grounds of failure to exhaust domestic remedies), held that the applicant company had had no effective means of redress against the error at issue (see §§ 43 to 48 of the judgment). In the light of these findings of the Court, further comments from the authorities appear necessary.

The Deputies decided to resume consideration of this item at the latest at their 1035th meeting (16-18 September 2008) (DH) in the light of further information to be provided on general measures, in particular in the light of the European Court's findings in paragraphs 43 to 48 of the judgment.

Latest development

Letter from the Delegation of 29/02/2008 (individual and general measures).

Case name :	SCHNEIDER v. Luxemburg	Appl N° :	<u>2113/04</u>
Judgment of :	10/07/2007		
Final on :	10/10/2007		
Violation :		Payment status :	No just satisfaction
Theme / Domain :			
Next exam :	1043-4.2(02/12/2008)		
Last exam :	1028-4.2(03/06/2008)		
First exam :	1013-2(03/12/2007)		

NOTES OF THE AGENDA

2113/04 Schneider, judgment of 10/07/2007, final on 10/10/2007

The case concerns an interference with the applicant's right to the peaceful enjoyment of her possessions (violation of Article 1 of Protocol No. 1) on account of the obligation imposed on her applicant to include her land in a hunting area. The case also concerns an interference with her freedom of assembly and association inasmuch as, under a law of 1925, the applicant was forced to enrol in an association – *le syndicat de chasse* – although she disapproved of its aims (Violation of Article 11).

In spite of her declared ethical opposition to hunting and opposition to the inclusion of her land in a hunting zone, the syndicate to which she was required to belong pronounced in favour of her land being put up for rent. This decision was approved by the Ministry of the Interior and judicially endorsed in 2003 (administrative tribunal and court).

The European Court found that this system of compulsory enrolment placed the applicant in a situation which breached the fair balance which should exist between safeguarding property rights and the requirements of the general interest. To impose a legal obligation on an individual to belong to an association profoundly opposed to his or her own convictions, and to oblige that individual on the basis of such membership to authorise the association to use land which is his or her own property to conduct

activities of which he or she disapproves, exceeds the bounds of the fair balance of conflicting interests and may not be considered proportional to the aim pursued.

Individual measures: The applicant had not submitted any claim for just satisfaction; the Court held that it was unnecessary to make an award in that connection.

• *Information is awaited on measures taken or envisaged to put an end to the consequences of the violation found.*

General measures: What is called into question in this case is the Act of 20 July 1925 on land concessions for hunting and compensation of damage caused by game, which obliges landowners to join a hunting syndicate and lays down how land is to be incorporated into hunting zones.

The judgment of the European Court has been published in the Codex journal, issue of June-July 2007.

• *Further information is awaited on measures taken or envisaged to avoid repetition of the violation found in this case. Moreover, the dissemination of the European Court's judgment to administrative tribunals seems to be necessary.*

The Deputies decided to resume consideration of this item at the latest at their 1043rd meeting (2-4 December 2008) (DH), in the light of information to be provided on individual and general measures

Latest development

Letter from the Delegation of 17/02/2008 (general measures).

Case name :	WAGNER and J.M.W.L.v. Luxemburg	Appl N° :	<u>76240/01</u>
Judgment of :	28/06/2007		
Final on :	28/09/2007		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :			
Next exam :	1043-4.2(02/12/2008)		
Last exam :	1028-4.2(03/06/2008)		
First exam :	1013-2(03/12/2007)		

NOTES OF THE AGENDA

76240/01 Wagner and J.M.W.L., judgment of 28/06/2007, final on 28/09/2007

The case concerns a breach of the right to a fair trial of the applicants (a Luxembourg national and her Peruvian adopted child) on account of the refusal of the Luxembourg civil courts to examine a submission regarding an alleged violation of Article 8 of the Convention (violation of Article 6§1).

The case also concerns an interference in the right to respect for family life on account of the Luxembourg courts' refusal to declare the enforceability of a Peruvian judgment granting the first applicant full adoption of a child. This refusal stemmed from the absence of any provision in Luxembourg law enabling an unmarried person to be granted full adoption of a child (violation of Article 8). In this connection the European Court observed that a broad consensus existed in Europe on the issue of adoption by unmarried persons; Finally the case concerns discrimination against the applicants on account of the difference in treatment sustained by the second applicant compared with children whose full adoption granted abroad is recognised in Luxembourg and because the first applicant suffered in her daily life the indirect consequences of the obstacles facing by the second applicant, her child (violation of Article 14 combined with Article 8).

Individual measures: The European Court reiterated that the child's best interests had to take precedence in cases of that kind and considered that the Luxembourg courts could not reasonably disregard the legal status which had been created on a valid basis in Peru and which corresponded to family life within the meaning of Article 8

• *Information is awaited on measures taken or envisaged to erase consequences of the violation for the applicants*

General measures:

1) Violation of Article 6§1: In the European Court's view, the issue of the incompatibility of the first-instance decision with Article 8 – with particular reference to whether it was in accordance with good international relations – was one of the main grounds of appeal raised by the applicants, and as such called for a specific and explicit reply. The court of appeal, however, had omitted to reply to the submission that public policy dictated precisely that the Peruvian adoption decision should be declared enforceable, in accordance with Article 8. Moreover, the *Cour de cassation* had upheld the stance taken by the first-instance

and appeal courts, despite its case-law according to which the Convention produced direct effects in the Luxembourg legal system.

The judgment of the European Court was published in the Codex journal, issue of June-July 2007.

• *Dissemination of the Court's judgment to all civil courts and the Cour de cassation also seems necessary.*

2) Violations of Article 8 and Article 14 combined with Article 8: The refusal by the Luxembourg courts to declare the Peruvian judgment enforceable stemmed from the absence of provisions in Luxembourg

• *Information is awaited on measures taken or envisaged to avoid future repetitions of the violation found.*

The Deputies decided to resume consideration of this item at the latest at their 1043rd meeting (2-4 December 2008) (DH), in the light of further information to be provided in individual and general measures.

Latest development

Letters of the delegation of 17/12/2007 and 03/08/2008 (individual measures, general measures and just satisfaction).

Case name :	SCHUMACHER v. Luxembourg	Appl N° :	<u>63286/00</u>
Judgment of :	25/11/2003		
Final on :	25/02/2004		
Violation :		Payment status :	Paid in the time limit
Theme / Domain :	Length of criminal proceedings		
Next exam :	1043-4.2(02/12/2008)		
Last exam :	1028-4.2(03/06/2008)		
First exam :	885-2(01/06/2004)		

NOTES OF THE AGENDA

- Cases mainly concerning length of criminal proceedings

63286/00	Schumacher, judgment of 25/11/03, final on 25/02/04
73983/01	Rezette, judgment of 13/07/2004, final on 13/10/2004
40327/02	Casse, judgment of 27/04/2006, final on 27/07/2006
33747/02	Laghouati and others, judgment of 05/04/2007, final on 18/05/2007
11282/05	Electro Distribution Luxembourgeoise (E.D.L.) S.A., judgment of 31/07/2007, final on 31/10/2007

These cases concern the excessive length of certain civil and criminal proceedings which began in 1991 and 1996 (violations of Article 6§1).

These cases present similarities, as each of them the excessive length of criminal proceedings was the main problem. In the Rezette and Casse cases, pursuant to the rule that civil proceedings arising from a criminal offence must await the decision of the criminal court, the civil proceedings had been postponed pending the completion of certain criminal proceedings, the length of which had also been excessive.

The Casse and Laghouati cases also concern the lack of an effective remedy (violation of Article 13).

In addition, the Casse case concerns the fact that the applicant was not informed of the nature of the accusations against him (violation of Article 6§3a). In fact he had been under accusation since 1996, but had never been charged, or summonsed to appear before the investigating magistrate.

Individual measures:

1) Schumacher and Laghouati cases: none, the proceedings at issue being now closed.

2) Rezette and Casse cases: In the Rezette case, the delegation has stated that the criminal proceedings at issue (in which the applicant was not indicted) were now closed, so that the civil proceedings could be resumed.

• *Information is awaited on the state of progress of the proceedings in the cases of Rezette and Casse, and on their acceleration, in particular for the Casse case.*

General measures:

1) Violations of Article 6§1:

• *Origin of the violations:* It emerges both from the judgments and from the analysis provided by the delegation that the excessive length of the criminal proceedings at issue is due mainly either to factors specific to the cases or to the excessive workload of the Police Criminal Investigation Department (*Service de Police Judiciaire, SPJ*) and of the investigating magistrates of the Luxembourg *Tribunal d'arrondissement*.

However, in the Luxembourg authorities' view, there is no structural problem as such concerning the length of criminal proceedings.

• *Measures adopted:*

- *Excessive workload of the SPJ:* Staff has been reinforced, from 138 officers in 2003 to 169 in 2005. Furthermore, the Ministries of the Interior and of Justice have reorganised the SPJ, effective since 1/12/2003. This reorganisation, instituting regular meetings between the police and the judiciary, is mostly aimed at improving the SPJ's efficiency through, among other things, better co-ordination between the judiciary and the head of the SPJ by minimising the time needed to carry out enquiries requested from the SPJ so as to accelerate treatment of criminal cases by the courts. Thus prosecutors and investigating magistrates are now in a better position to supervise the evolution of enquiries made by the SPJ. The government add that it is working consistently to improve the material, human and organisational working conditions of the police staff and the courts as well as the rules of procedure, not least in criminal matters.

- *Excessive workload of investigating magistrates:*

First, here too, staff has been increased. In this respect, the delegation recalled Law of 24/07/2001 (programme of recruitment of judges and other staff), already noted in the Scheele case (ResDH(2003)89). A second programme of recruitment was provided in a law of 1/07/2005 on increasing this time the staff of the Public Prosecutor's office. More specifically, a law of 12/08/2003 also provided an increase in the number of investigating magistrates in the Luxembourg *tribunal d'arrondissement*, from 6 in 1996 to 13 in 2004. Secondly, this increase in staff made it possible to reallocate files between investigating magistrates, taking into account their specialisation and experience.

Thirdly, improvements were made concerning the inventory of cases pending before investigating magistrates.

Finally, the Law of 6/03/2006, adopted to improve the everyday operation of criminal justice, introduced measures to reduce investigating magistrates' workload among others (the text of the law may be found at the following link;

<http://www.legilux.public.lu/leg/a/archives/2006/0471503/0471503.pdf?SID=b8a998ca93a034e01a0c2f2a48e76ba8>).

Now, a simplified form of pre-trial investigation makes it possible to take more steps in the investigation without it being mandatory to open of a pre-trial investigation, with the attendant workload for investigating magistrates. This law also introduced probation into Luxembourg law, as an alternative to detention on remand - a very severe measure requiring priority treatment of the files requesting such a measure, thus having an influence on the steady management of cases by investigating magistrates.

• *Measures under adoption concerning the rule that civil proceedings arising from a criminal offence must await the decision of the criminal court.* In the Rezette and Casse cases, the civil proceedings lasted too long because of postponements pending the completion of related criminal proceedings. In itself, the rule that civil proceedings arising from a criminal offence must await the decision of the criminal court has not been criticised by the European Court; on the contrary, it recalled that delivering a judgment on the civil issue before the end of the criminal proceedings could be incompatible with the requirements of the proper administration of justice.

In view of these elements, the government is drafting a bill to give an optional character to application of the rule that civil proceedings arising from a criminal offence must await the decision of the criminal court (Article 3 of the Criminal Pre-trial Investigation Code).

• *Publication and dissemination of the judgments.* The Rezette judgment was published in *Codex* No. 12 of December 2004 and in the *Bulletin des Droits de l'Homme* (n°11-12 - 2005) edited by the Luxembourg Human Rights Institute. The Schumacher judgment was published in *Codex* No. 2 of February 2004. Furthermore, both judgments were transmitted by the Ministry of Justice to the State Prosecutor General, on 29/07/2004 and 11/12/2003 respectively, for the information of all interested judicial authorities. Finally, the Casse judgment was published in *Codex* No. 6 of June 2006.

• *Assessment: effect of these measures on the length of criminal proceedings:* *In view of the backlog which had accumulated before the measures taken, the beneficial effect of the measures on the length of criminal proceedings is only beginning to be perceptible. The Luxembourg authorities confirm, on the specific issue of investigating magistrates' workload, that there has been a considerable reduction of the accumulated backlog since the entry into force of these laws of 24 July 2001 and 12 August 2003*

• *Further information are expected, first, concerning the progress of the adoption of the measure consisting in making it optional for judges to apply the rule that civil proceedings arising from a criminal offence must await the decision of the criminal court, and secondly, if more precise data are available in the meantime, on the effects of the measures adopted..*

2) Violation of Article 13:

• *Present situation:* The Luxembourg authorities have indicated that under Luxembourg law it is possible to obtain reparation for any prejudice caused to citizens by the defective running of the Civil Service, through a

claim for damages lodged either under Articles 1382 ff. of the Civil Code of Luxembourg (general rules), or under a special law of 1/09/1988. Whilst taking note of these legislative provisions, it should also be noted that the European Court itself found in the above-mentioned Rezette case (and confirmed since then, see in particular the Dattel and others judgment of 04/08/2005), that the remedy provided by the Law of 1/09/1988 had not acquired a sufficient degree of legal certainty to be used or exhausted by the applicant for the purposes of Article 35§1 of the Convention. However, it may be noted that as recently as 5/04/2007 in its judgment in Laghouati and others against Luxembourg (not yet final at the time of writing), the European Court held that it could not reasonably speculate as to whether, in the future, the remedy advanced by the government (i.e. the remedy based on the law of 1/09/ 1988) will be considered effective with regard to the requirements of Article 13.

The Luxembourg authorities are aware of no case-law concerning the application of the Law of 1/09/1998 to cases of excessive length of judicial proceedings, other than those already presented before the European Court, the problem being that parties prefer to seise the European Court directly rather than using this internal remedy.

- *Measures under adoption.* The government is considering measures which might help to strengthen the effectiveness of the remedy provided by the Law of 1/09/1988. A preliminary draft amendment to this law is currently being prepared, aiming to set out more clearly the right to compensation for prejudice caused by excessively lengthy proceedings: a right which, as the government contends, already exists.

- *Further measures are expected in this respect.*

3) Violation of Article 6§3a): In the Casse case the violation was a consequence of the fact that the investigating magistrate did not inform the applicant of the accusations against him.

- *Information is awaited on the dissemination of this judgment to investigating magistrates as well as on other measures which might be taken or envisaged to avoid new, similar violations.*

The Deputies decided to resume consideration of these items at the latest at their 1043rd meeting (2-4 December 2008) (DH), in the light of information to be provided on individual measures, if need be, namely the acceleration of pending proceedings, as well as on general measures.

Latest development

Letter from the Delegation of 03/06/2008 (individual and general measures).