

Council of Europe contribution for the 15th UPR session regarding Luxembourg

Prevention of Torture

On 28 October 2010, the Council of Europe's Committee for the Prevention of Torture (CPT) published a report on its periodic visit to Luxembourg in April 2009, together with the Luxembourg Government's response. Both documents are attached below.¹

During the 2009 visit, the CPT's delegation reviewed the measures taken by the Luxembourg authorities to implement recommendations made by the Committee after its previous visits. It focused in particular on the safeguards afforded to persons deprived of their liberty by the police, and the situation at Luxembourg Prison and the State Socio-Educational Centre at Dreibern. In addition, the delegation visited the Neuro-Psychiatric Hospital at Ettelbruck, where it paid particular attention to the living conditions and treatment of patients placed in closed units for minors and adults. The legal safeguards in the context of the procedure for involuntary placement of mentally ill persons were also examined.

A complete list of the CPT's recommendations, comments and requests is contained in Appendix I to the report.²

In their response, the Luxembourg authorities make reference to various measures being taken to improve the situation in the light of the recommendations made by the CPT.



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Fight against racism and intolerance

23 February 2012, the European Commission against Racism and Intolerance (ECRI) published its fourth report on Luxembourg. The report which includes Government observations is attached below.³

ECRI's Chair ad interim, François Sant'Angelo, said that, while there have been positive developments, issues of concern persist. For example inequalities in employment remain and the Centre for Equal Treatment (Centre pour l'égalité de traitement - CET) should be strengthened.

In 2006, Luxembourg introduced legislation against racial discrimination and in 2008 the CET was set up as the Luxembourg body with the task to promote, analyse and monitor equality of treatment between all persons without discrimination on grounds of, among others, "race" or ethnic origin, religion or other beliefs. The 2008 law on free movement of persons and immigration simplified the system for granting work permits to foreigners.

However, the need to pass a test on spoken Letzeburgisch is an obstacle to the acquisition of Luxembourg nationality for a number of foreigners. The school drop-out rate is particularly high

¹ Available in French only.

² pp. 57-69.

³ A summary of the report can be found on pp. 7-9.

among foreign pupils. The division of labour among several bodies combating racial discrimination is problematic, since their terms of reference overlap in some cases. The ethnic origin or the language spoken by a person arrested continue to be mentioned in the media without its being necessary for the understanding of the news.

The report contains findings and recommendations regarding the following issues:

- I. Existence and implementation of legal provisions⁴
- II. Discrimination in various fields including education, employment, housing and administration of justice⁵
- III. Racist violence⁶
- IV. Racism in public discourse⁷
- V. Vulnerable/target groups including Muslim communities and Roma⁸
- VI. The Jewish community⁹
- VII. Reception and status of non-nationals¹⁰
- VIII. Conduct of law enforcement officials¹¹
- VIII. Monitoring racism and racial discrimination¹²

ECRI selected the following three specific recommendations for which it requests priority implementation from the authorities and which it will revisit in two years' time:¹³

- Strengthen the CET by enabling it to take part in legal proceedings, by giving it the necessary human and financial resources, and by ensuring that the persons or bodies to which it addresses itself are obliged to reply;
- Ensure that the Detention Centre near the Luxembourg airport has staff sufficiently well trained to deal with the persons detained;
- Increase the human and financial resources allotted to the National Council for Foreigners, help it to acquire a higher profile and make premises available for holding its meetings adequately.



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Protection of Minorities

Luxembourg has signed but not yet ratified the Framework Convention for the Protection of National Minorities. For this reason, it not yet concerned by the monitoring procedure undertaken by the Council of Europe Advisory Committee on this Convention.

Social and economic rights

Luxembourg ratified the European Social Charter on 10/10/1991 and accepted 69 of the Charter's 72 paragraphs.

⁴ pp. 11-21.

⁵ pp. 22-25.

⁶ p. 25.

⁷ pp 25-26.

⁸ pp. 27-28.

⁹ p. 28.

¹⁰ pp. 29-32.

¹¹ pp. 33-34.

¹² p. 34.

¹³ p. 35.

It has signed the Revised European Social Charter on 11/02/1998 but has not yet ratified it.

It has signed but not ratified the Additional Protocol to the European Social Charter and the Amending Protocol to the European Social Charter.

It has neither signed nor ratified the Additional Protocol providing for a system of collective complaints.

Cases of non-compliance

Thematic Group 1 "Employment, training and equal opportunities"

► Article 10§4 – Right to vocational training - Full use of available facilities
Nationals of non-EU states party to the Charter or the revised Charter residing or working lawfully in the country are not guaranteed equal treatment with regard to financial assistance for training.
(Conclusions XIX-1, p. 9 'Conclusion')

Thematic Group 2 "Health, social security and social protection"

► Article 12§4 – Right to social security - Social security of persons moving between states
Accumulation of insurance or employment periods completed by nationals of States Parties not covered by Community regulations or by bilateral agreements is not guaranteed.
(Conclusions XIX-2, p. 16 'Conclusion')

► Article 13§1 – Right to social and medical assistance – Adequate assistance for every person in need

- Eligibility to the guaranteed minimum income (RMG) benefit is linked to dismissal for serious misconduct.
- Persons aged under 25 and in need are not entitled to the RMG benefit and the Emergency Residence Act does not provide enough income replacement guarantees.
- Persons who do not accept the job offered or fail to accept employment measures lose their entitlement to the RMG benefit and the Emergency Residence Act does not provide enough income replacement guarantees.
- Persons who have been dismissed for serious misconduct and therefore lose entitlement to the RMG benefit are not provided adequate income replacement guarantees under the Emergency Residence Act.
- Foreign nationals, lawfully resident in Luxembourg are not entitled to social benefits on an equal footing with nationals.

(Conclusions XIX-2, p. 19 'Conclusion')

► Article 13§4 – Right to social and medical assistance – Specific emergency assistance for non-residents
Legislation and practice do not guarantee that all unlawfully present foreigners receive emergency social assistance for as long as they might require it.
(Conclusions XIX-2, p. 21 'Conclusion')

Thematic Group 3 "Labour rights"

► Article 2§4 – Right to just conditions of work - Right to compensatory time off in dangerous occupations
There is no system for reducing working time or giving additional paid leave to those employed in dangerous or unhealthy occupations.
(Conclusions XVIII-2, 'Conclusion') (Conclusions XIX-3 (2010) – Introduction only)

► Article 4§2 – Right to a fair remuneration - Right to increased remuneration for overtime

After the ninth hour of overtime State officials and employees are not entitled to an increased compulsory rest period or to increased remuneration if the overtime was performed between 6 and 10 p.m. or not during the week-end or public holidays.

(Conclusions XVIII-2) (Conclusions XIX-3 (2010) – Introduction only)

► Article 5 – Right to organise

National law does not permit trade unions to freely choose their candidates in joint works council elections, regardless of their nationality.

(Conclusions XVIII-1) (Conclusions XIX-3 (2010) – Introduction only)

Thematic Group 4 “Children, families, migrants”

► Article 8§2 – Right of employed women to protection – Illegality of dismissal during maternity leave

It has not been established that, where there is no reinstatement, compensation that is sufficient both to fully compensate the victim of an unlawful dismissal and to deter the employer is provided for in law.

(Conclusions XIX-4 (2011), ‘Conclusion’)

► Article 19§4 – Right of migrant workers and their families to protection and assistance – Right to equal treatment in trade union matters

1. It has not been established that migrant workers lawfully resident in the country are treated no less favourably than Luxembourg nationals with regard to remuneration and other working conditions ;

2. Certain categories of workers cannot be elected to joint works councils;

3. It has not been established that migrant workers lawfully resident in the country are treated no less favourably than Luxembourg nationals with regard to accommodation.

(Conclusions XIX-4 (2011), ‘Conclusion’)

► Article 19§8 and 19§10 – Right of migrant workers and their families to protection and assistance – Guarantees concerning deportation – Equal treatment for the self-employed

A permit to reside may be revoked where an individual has insufficient personal resources in circumstances which go beyond those permitted by the 1961 Charter.

(Conclusions XIX-4 (2011), ‘Conclusion’)

Please see attached below regarding Luxembourg Conclusions XIX-1, Conclusions XIX-2, Conclusions XVIII-2, Conclusions XIX-3 (2010), Conclusions XVIII-1, Conclusions XIX-4 (2011) as well as the fact sheet.



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Action against Trafficking in Human Beings

The evaluation of Luxembourg by the Group of Experts on Action against Trafficking in Human Beings (GRETA) will take place at the end of 2012 or beginning of 2013.

Preventing and Combating Violence against Women and Domestic Violence

Luxembourg has signed but not yet ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence. For this reason, it is not yet concerned by the monitoring procedure to be carried out by a Group of experts on action against violence against women and domestic violence (GREVIO) once the convention enters into force.

Council of Europe Commissioner for Human Rights

On 12 March 2012 at the end of his two-day visit to Luxembourg, the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, issued a Press Release¹⁴. "The current increase in the number of persons seeking asylum in the country requires fair and effective procedures and a humane response", he said.

The Press Release states that in 2011, almost 2 200 persons applied for asylum in Luxembourg, compared with just over 500 in 2009. Persons from the Western Balkans, particularly Roma, account for much of this difference. Following difficulties in ensuring adequate accommodation for the newcomers, the authorities have now improved the material conditions of the reception facilities. "However, further steps could be taken" said the Commissioner, "including to improve the respect of the privacy of families and access to psychological support, especially for vulnerable persons".

Noting the current plans to reduce the monthly cash allowance for asylum seekers, the Commissioner called on the authorities to avoid a regression of living conditions and continue to ensure decent standards. Furthermore, the Commissioner expressed his hope that "the extremely difficult situation that many Roma experience in their countries of origin, notably as a result of pervasive discrimination, will be taken into account when their applications are considered".

The Commissioner visited the newly built detention centre for irregular migrants, which opened in the summer of 2011. The material conditions in this institution are good. However, in some cases persons have been detained although there were no realistic prospects for their removal. "In such cases, there is no justification for depriving people of their liberty", stated the Commissioner.

Another problem which the Commissioner identified was that irregular migrants who had served a sentence in prison were moved to this detention centre and only then were formal procedures for removal initiated. Such formalities could have been initiated at an earlier stage, thereby avoiding unnecessary periods of detention.

As for juvenile justice, the construction of a dedicated facility for the detention of minors, which had been pending for a long time, has now started; a security unit at Dreibern socio-educational centre should open at the beginning of 2013. The Commissioner notes that the ongoing reform of the penitentiary administration introduces the principle that no minor is to be put in an adult prison unless they are over 16 and have committed a serious offence. In this connection, the Commissioner recalls that the UN Convention on the Rights of the Child provides that the detention of a child shall be used only as a measure of last resort and for the shortest appropriate period of time.

¹⁴ Attached below.

The Commissioner also recommends that Luxembourg ratify the Framework Convention for the Protection of National Minorities and the Revised Social Charter and that it accept the procedure allowing organisations to submit collective complaints under the Charter. Finally, the Commissioner considers that a strengthening of the powers of the Centre for Equal Treatment would be desirable.



Press Release
Luxembourg.mht

http://www.coe.int/t/commissioner/News/2012/120312Luxembourg_en.asp

European Commission for Democracy through Law (Venice Commission)

At its 81st Plenary Session (Venice, 11-12 December 2009), the Venice Commission adopted an interim opinion on the draft constitutional amendments of Luxembourg, which is attached below.



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