

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report-

Universal Periodic Review:

LUXEMBOURG

I. BACKGROUND INFORMATION

Luxembourg is a State party to the *1951 Convention relating to the Status of Refugees* and to its *1967 Protocol*. Luxembourg is also a party to the *1954 Convention relating to the Status of Stateless Persons*. Luxembourg pledged at UNHCR's ministerial meeting in December 2011 to accede to the *1961 Convention on the Reduction of Statelessness*.

At the end of 2011, a total of 2,855 refugees, 1,694 asylum-seekers and 177 stateless persons were living in Luxembourg.¹ The number of asylum-seekers rose considerably during 2011, with 2,165 individuals lodging asylum applications. This represented an increase of 175 % compared to 2010, while the number of asylum requests had already risen from 426 in 2007 to 786 in 2010.² More than 70% of all asylum-seekers in 2011 originated from just two countries: Serbia (including Kosovo) (1,094) and the former Yugoslav Republic of Macedonia (FYROM) (452).³ In the first five months of 2012, the number of asylum requests remained at the same elevated level as in 2011 with 1,018 people seeking asylum between January and May 2012. While the number of asylum-seekers from Serbia and FYROM had fallen somewhat, there was a significant rise in the number of applications from Albania and Montenegro.⁴ The asylum authorities have recognized only a few asylum claims among the newly arrived asylum-seekers.

In 2011, the recognition rate of first requests for asylum was 4.34 % (3.95 % refugee recognition rate). The Administrative Tribunal recognition rate was 3.6% and the Administrative Court recognition rate was 2%.

The recent rise in the number of asylum-seekers is mainly due to an influx of Romas, many of whom have serious medical conditions. Their arrival has put great pressure on the existing reception facilities and on the asylum procedure. As a result, there is a risk of deteriorating public perception, which had traditionally been rather positive vis-à-vis asylum-seekers and migrants.

¹ UN High Commissioner for Refugees (UNHCR), *UNHCR Global Trends 2011*, June 2012, available at: <http://www.unhcr.org/4fd6f87f9.html>, Table 1, p. 39.

² Luxembourg Ministry of Foreign Affairs and Immigration, *L'évolution des demandes d'asile/de protection internationale au Luxembourg entre 2006-2011*, available at: <http://www.mae.lu/Site-MAE/Immigration/Chiffres-cles-en-matiere-d-asile>.

³ Luxembourg Ministry of Foreign Affairs and Immigration, *L'évolution des demandeurs d'asile/de protection internationale par pays/régions d'origine (2006-2011)*, available at: <http://www.mae.lu/Site-MAE/Immigration/Chiffres-cles-en-matiere-d-asile>.

⁴ Luxembourg Ministry of Foreign Affairs and Immigration, *Statistiques du mois d'avril 2012 concernant les demandes de protection internationale au Luxembourg*, available at: <http://www.mae.lu/Site-MAE/Immigration/Chiffres-cles-en-matiere-d-asile>.

Asylum-seekers have authorization to seek employment, if they have been in the asylum procedure for 9 months and have not yet received a first decision. However, in April 2009, UNHCR led a participatory assessment exercise focusing on access to the labour market for asylum-seekers and holders of “attestations de tolérance”, and the results showed that only 4% of asylum-seekers receive work permits, compared to 16% of holders of “attestations de tolérance”. Both groups testified that finding employment was difficult due to legal and administrative obstacles and to the precariousness of their status.

Legislation governing the return of illegal non-European Union nationals entered into force on 28 July 2011. The law transposed the EU “Returns Directive” 2008/115/EC, which established common standards and procedures in Member States for returning third-country nationals staying illegally. UNHCR and the Council of State provided comments on the draft bill, but the legislature only took a few of these comments into account.

In 2011, 20 forced returns reportedly took place (58 in 2009). Luxembourg has an agreement with the Red Cross regarding the monitoring of forced returns on charter flights. The Red Cross does not monitor the phase between the detention centre and the plane and does not monitor forced returns on regular flights. With the support of the Luxembourg Government, the International Organization for Migration is currently implementing a programme of assisted voluntary return. The programme targets different categories of migrants, including rejected asylum-seekers and persons who have withdrawn their asylum application. Since 2011, the programme has not covered persons who come from the Balkan countries and thus benefit from visa liberalization vis-à-vis the European Union. Therefore, only Kosovo is still included in the programme. The exclusion of the rest of the Balkan countries aims to prevent an influx of persons who may come to Luxembourg with the main goal of receiving reintegration assistance upon return.

II. ACHIEVEMENTS AND BEST PRACTICES

Accession pledge

At UNHCR’s ministerial meeting in Geneva on 7 and 8 December 2011 marking, *inter alia*, the 50th anniversary of the *1961 Convention on the Reduction of Statelessness*, the Luxembourg Government pledged to accede to the 1961 Statelessness Convention. UNHCR welcomes this pledge. An increase in the number of States Parties to this convention is essential to strengthening international efforts to prevent and reduce statelessness.

III. CHALLENGES AND RECOMMENDATIONS

Issue 1: The asylum procedure

Luxembourg has a solid asylum system, but there is still room for improvement.

Concerns regarding status determination in first instance and on appeal relate to remaining gaps in the system. For example, the Administrative Tribunal lacks investigative powers. Also, the asylum-seeker bears the burden of proof and has no opportunity for a hearing on appeal. In some decisions there is inadequate reasoning and misinterpretation of the refugee definition. In its 2009 activity report, the Administrative Tribunal noted some of these concerns and mentioned the possibility of creating a specialized section on immigration and asylum matters in the Administrative Tribunal. The section would receive support from staff in charge of assisting the magistrates in their investigations, notably with country-of-origin

research. The report also mentioned the possibility of establishing hearings for asylum-seekers in this specialized section.⁵ There has been no further development on this issue since then, and discussions have focused more on wider reform of the judiciary rather than on the establishment of a specialized tribunal.

The recent increase in asylum requests has placed serious strains on all stages of the asylum procedure. Moreover, Luxembourg prioritizes asylum claims of persons from Serbia, FYROM and Albania and treats these cases in an accelerated manner because these countries qualify as safe countries of origin. As a result, other asylum-seekers from countries such as Iraq and Afghanistan end up at the end of the line, with waiting periods, that can exceed one year before the first interview. In order to cope with the increase, the Immigration Directorate has hired new staff, who benefited in 2012 from training provided by the European Asylum Support Office and by UNHCR. However, despite the significant increase in the number of cases processed through accelerated procedures, at the appeal level, the Government has not hired new staff in the Administrative Tribunal or Court to respond to the increased numbers of appeals.

Recommendations:

- To make all necessary efforts to preserve the overall positive public perception of refugees and asylum-seekers.
- To ensure, including through the provision of adequate means, that both the Ministry of Foreign Affairs and the Administrative Tribunal and Court are able to issue quality decisions on asylum requests within a reasonable time, despite the recent increase in the number of asylum-seekers.
- To consider providing for a procedure which is better adapted to the determination of international protection needs at the Administrative Tribunal level, possibly including, *inter alia*, a shared burden of proof, judicial investigation powers and hearings.

Issue 2: Reception conditions

Until the recent increase in the number of asylum applications, the overall reception situation in Luxembourg had improved significantly, partly due to agreements between the authorities and some NGOs regarding the management of some centres, the decrease of asylum applications and the closure of centres where conditions had deteriorated. UNHCR nevertheless continues to advocate for improvement in the supervision of centres where there is no permanent presence of dedicated expert staff.

Asylum-seekers in Luxembourg are entitled to social assistance, which includes accommodation, a monthly allowance, public transport, urgent medical care, psychological assistance, social counselling, guidance for unaccompanied minors and sexual and reproductive advice. The amount of the monthly allowance depends on the age of the person, his or her family situation and whether or not meals are provided in his or her accommodation.

More recently, the increase in the number of asylum-seekers from the Balkans has put a serious strain on Luxembourg's reception facilities. As a result, existing centres became

⁵ *Rapport relatif au fonctionnement du tribunal administratif du Grand-Duché de Luxembourg du 16 septembre 2008 au 15 septembre 2009*, pp. 336-337, available at: <http://www.justice.public.lu/fr/publications/rapport-activites-administratives/rapports-juridictions-adm-2009.pdf>.

overcrowded, and until they increased their capacities, these centres could not accommodate some asylum-seekers in regular structures. UNHCR understands that the profile of those seeking asylum has also changed and that there are now more people with serious medical conditions and/or disabilities. This may mean that there is a need to provide for the means to increase specialized staff/support.

On 20 June 2012, the Government issued a grand-ducal regulation on reception conditions. The new regulation reduces the monthly allowance amount and creates additional grounds for withdrawal or reduction of social assistance, including in cases of subsequent applications.

Recommendations:

- To make available to all asylum-seekers the level and quality of the valuable specialized support available in some reception centres – as a result of agreements between the Luxembourg authorities and some NGOs – where there is a permanent presence of dedicated expert staff.
- To continue to provide asylum-seekers with sufficient support to meet their basic needs, bearing in mind their profile and specific needs and making sure the support lasts for the entire asylum procedure until they receive a final decision on their asylum claim.

Issue 3: Detention of asylum-seekers

Luxembourg does not detain persons who apply for asylum at the border. Asylum-seekers detained in Luxembourg mainly belong to two categories: asylum-seekers undergoing “Dublin” procedures and, more rarely, persons who apply for asylum in immigration detention centres. The Luxembourg Government currently does not detain unaccompanied children, but the 28 May 2009 Act on the *centre de rétention* (the detention centre for migrants residing illegally on the territory) and the 1 July 2011 Act implementing the EU “Returns Directive” explicitly allow detention of unaccompanied children. The regulation stipulating the conditions and operating rules of the detention centre does not contain any provisions adapting the system to the needs of unaccompanied children.⁶

A new detention centre for aliens awaiting deportation (including rejected asylum-seekers) opened in summer 2011 in Findel, not far from the Luxembourg airport. The new centre can accommodate 88 people. Men and women live on different corridors. The Government may only hold families with children for a maximum of 72 hours. Overall, the conditions in Findel are good and are a significant improvement from those in the Schrassig prison, where such persons were previously held.

Recommendations:

- To embed in legislation the current good practice of not detaining unaccompanied children.
- To consider alternatives to detention for vulnerable persons.

Issue 4: Resettlement

Luxembourg does not have a structural resettlement programme. In 2009, the Government resettled 29 Iraqis from Syria and Jordan in the framework of the wider European effort to resettle Iraqis. This operation has received positive assessments, but the timely availability of

⁶ Règlement grand-ducal du 17 août 2011 fixant les conditions et les modalités pratiques du régime de rétention du Centre de rétention.

permanent housing was a challenge. In 2010, six persons were relocated from Malta to Luxembourg.

Recommendation:

- To consider adopting a structural resettlement programme, even if this is for a limited number of refugees.

Issue 5: Family reunification

Some concerns exist regarding the family reunification procedure in Luxembourg. Reported problems include the duration of the procedure, difficulties in obtaining travel documents or visas for family members who cannot obtain those documents in their country of origin and difficulties proving a family relationship. In addition, beneficiaries of international protection only have three months to submit their application for family reunification in order to receive exemption from more demanding conditions (i.e. a stable income, adequate housing and health insurance).

Recommendation:

- To ensure that family reunification of beneficiaries of international protection takes place without undue delay in a positive and humanitarian spirit and consider facilitating, when needed, the issuance of travel documents for family reunification purposes.

Issue 6: Statelessness

Luxembourg is party to the *1954 Convention relating to the Status of Stateless Persons*. There is no specific legislation on statelessness, but an *Arrêté grand-ducal*⁷ notes that the Minister of Labour, Employment and Immigration is competent to determine whether a person is stateless. There is however, no dedicated procedure for the determination of statelessness status in Luxembourg. According to Government sources, in 2009, the Government issued 47 passports to stateless persons, the majority of whom were in the process of acquiring the Luxembourg nationality. Out of the 47 applicants, 23 were first-instance requests and 24 were renewals. However, little is known about how these individuals are found to be stateless, the number of people seeking recognition as stateless, or the characteristics of the stateless population and the official status of such persons.

Luxembourg has pledged to accede to the *1961 Convention on the Reduction of Statelessness*. It plans to do so after an amendment to its nationality law expected in 2013.

The *1961 Convention on the Reduction of Statelessness* establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life. This treaty is therefore complementary to standards contained in other human rights treaties. An increase in the number of State parties is essential to strengthening international efforts to prevent and reduce statelessness and ensuring full enjoyment of a number of these rights.

Recommendations:

- To ensure that the planned reform of nationality law complies with the *1961 Convention* and with other international standards.

⁷ Arrêté grand-ducal du 27 juillet 2009 portant constitution des Ministères, article 1^{er}, available at : <http://www.legilux.public.lu/leg/a/archives/2009/0173/a173.pdf#page=2>.



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

- To ensure that the reform of the nationality law provides facilitated access to nationality for stateless persons in line with Luxembourg's obligations under the 1954 Statelessness Convention.
- Introduce a formal statelessness determination procedure to better comply with protection obligations owed to stateless persons pursuant to the 1954 Convention Relating to the Status of Stateless Persons.

Human Rights Liaison Unit
Division of International Protection
UNHCR - Geneva
July 2012