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ECRI REPORT ON LUXEMBOURG

(fifth monitoring cycle)

Adopted on 6 December 2016

Published on 28 February 2017

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FOREWORD

The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

In the framework of its statutory activities, ECRI conducts country monitoring work, which analyses the situation in each of the member States of the Council of Europe regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country monitoring deals with all member States on an equal footing. The work takes place in 5-year cycles, covering 9-10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, those of the third round at the end of 2007, and those of the fourth round in the beginning of 2014. Work on the fifth round reports started in November 2012.

The working methods for the preparation of the reports involve documentary analyses, a visit to the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidence. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on a large number of national and international written sources. The in situ visit provides the opportunity to meet with the parties directly concerned (both governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final ECRI report.

The fifth round country-by-country reports focus on four topics common to all member States: (1) Legislative issues, (2) Hate speech, (3) Violence, (4) Integration policies and a number of topics specific to each one of them. The fourth-cycle interim recommendations not implemented or partially implemented during the fourth monitoring cycle will be followed up in this connection.

In the framework of the fifth cycle, priority implementation is requested again for two specific recommendations chosen from those made in the report. A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

The following report was drawn up by ECRI under its own responsibility. It covers the situation at 30 June 2016; developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.

SUMMARY

Since the adoption of ECRI's fourth report on Luxembourg, progress has been made in a number of areas.

The authorities are in the process of grouping together several institutions in a House of Human Rights. Moreover, they are planning to extend criminal-law protection against hate speech to transgender persons. The courts place a broad interpretation on the provisions on incitement to hatred and thus also punish racist insults and defamation.

In general, politicians and the media do not resort to hate speech. Due to a significant element of social control in Luxembourg society, the residents in general do not openly engage in hate speech either. Very few cases of racist or homophobic/transphobic violence were brought to ECRI's attention.

The public prosecutor's office and the courts respond firmly to hate speech and media coverage of relevant trials amplifies their preventive effect. Victims of hate speech on the internet can access a website to report hateful remarks and seek help and advice. A campaign to raise awareness of hate speech was prepared for the start of the new school year in 2016.

In the field of integration policies, the authorities implemented an action plan from 2010 to 2014. This plan also included actions to combat discrimination. Extensive activities are carried out to ensure the good-quality reception and proper integration of persons seeking international protection. Very few young people with migration backgrounds say they have been victims of discrimination.

Preschool education, which is particularly beneficial for children with migration backgrounds, is free and obligatory from the age of four. Furthermore, the unemployment rate of people born abroad is relatively low. In 2015 the state signed an agreement with the Muslim community providing for it to receive funding. In March 2016, draft legislation was tabled with the aim of facilitating access for foreign residents to Luxembourg nationality.

A positive trend may be observed in attitudes towards LGBT persons. Since 2015 marriage has been open to same-sex couples and all married couples can adopt children on an equal footing. A progressive bill on name changes and gender recognition for transgender persons was submitted in February 2016.

ECRI welcomes these positive developments in Luxembourg. However, despite the progress achieved, some issues give rise to concern.

The Constitution establishes a right to equality for Luxembourgers only. The penal code does not make racist or homophobic/transphobic motivation an aggravating circumstance and the grounds of language and gender identity are still missing from several criminal-law provisions.

The Centre for Equal Treatment (CET) cannot receive complaints of discrimination. Furthermore, neither the CET nor the Ombudsperson can represent victims of discrimination in the courts. As a result, there is no procedure enabling all victims of discrimination to assert their rights easily.

The referendum held in 2015 on the right to vote for foreigners contributed to an assertion of national identity. Latent xenophobia shows through in the populist press and on the internet, which is used to spread hateful remarks aimed in particular at refugees, Muslims and foreigners in general. The media and internet access providers do not comply sufficiently with the rules they have introduced to prevent the dissemination of such remarks. There are also too many cases in which the police and the media disclose the ethnic origin of the alleged perpetrators of offences.

Although the authorities have commissioned several evaluation reports on integration policies, they have not implemented certain central recommendations made. Furthermore, they have neither adopted a new action plan nor put in place a system of

indicators to steer integration policies and assess their impact. Children with migration backgrounds encounter significant difficulties in the school system and have results well below the average. Among migrants with a low level of education, unemployment and poverty rates are relatively high. Social housing is not sufficiently developed.

There are very few official studies on the situation of LGBT persons in Luxembourg. Because there continues to be marked intolerance towards LGBT persons, most of them do not disclose their sexual orientation or gender identity. The issue of sexual diversity is not systematically addressed in schools and it remains difficult for transgender persons to change their first name and gender in public records and official documents.

In this report, ECRI requests that the authorities take action in a number of areas; in this context, it makes a series of recommendations, including the following.

The authorities should enshrine everyone's right to equality in the constitution and provide in the Penal Code for racist and homophobic/transphobic motivation to constitute an aggravating circumstance. They should make it possible for the CET to receive complaints. They should also give the CET and the Ombudsperson the necessary powers to conduct effective investigations and participate in court proceedings. To enhance the effectiveness and independence of these two bodies as well as the National Council for Foreigners, the authorities should consider bringing them closer together or even merging them and attaching them entirely to the parliament.

The police and the judiciary should put in place a system for recording and monitoring racist and homophobic/transphobic incidents, publish relevant statistics and set up a regular round table for dialogue with civil society. The authorities should also initiate a review of the regulatory framework for the media in order to prevent the dissemination of hate speech, particularly on the internet. Furthermore, they should introduce compulsory human rights education in school curricula, which covers the right to equality.

The authorities should rapidly adopt a new integration action plan, provide it with an appropriate budget and implement all the activities set out in that plan*. They should also develop a system of integration indicators and evaluate the implementation of the action plan every year. At the same time, they should ensure that children with migration backgrounds are able to attain the level of linguistic proficiency needed for lasting success at school. Positive measures should be taken to facilitate access to the labour market for persons of migrant origin with a low level of education. There should be more investment in social housing.

The authorities should promote understanding and respect for LGBT persons and provide young LGBTs with the information, protection and support they need. They should also adopt as soon as possible legislation on name changes and gender recognition for transgender persons.*

* This recommendation will be subject to a process of interim follow-up by ECRI within two years from the publication of this report.

FINDINGS AND RECOMMENDATIONS

I. Common themes

1. Legislation to combat racism and racial discrimination¹

1. ECRI has already discussed in previous reports the conformity of Luxembourg legislation with its General Policy Recommendation (GPR) No. 7 on national legislation to combat racism and racial discrimination. Therefore, in this fifth report it will address only remaining shortcomings.

- Criminal law

2. Article 457-1.1 of the Luxembourg Penal Code (PC) makes it a criminal offence to commit incitement to hatred, violence and the forms of discrimination mentioned in Article 455 PC. This is not entirely in line with § 18a of GPR No 7, according to which any incitement to discrimination should be punishable. Moreover, language and gender identity are missing from the grounds mentioned for incitement to hatred. While ECRI welcomes the fact that the authorities have recently added “sex change” to the grounds set out in Article 454 PC,² it considers that it would be preferable to replace this term by “gender identity”. This is already used in Luxembourg legislation,³ is well defined in international instruments and would also protect transgender persons who do not wish to undergo a sex change through surgery.⁴
3. Luxembourg criminal law does not explicitly make racist insults, racist defamation or racist threats criminal offences,⁵ or the expression of the ideologies referred to in § 18d of GPR No. 7. At the same time, ECRI takes positive note of the fact that the courts place a broad interpretation on the provisions on incitement to hatred and accordingly apply them to many cases involving racist insults and defamation. The general rules on insults (Articles 448.1, 444.1 and 561-7 PC), defamation (Article 443 PC) and threats (Article 327 PC) are also applicable to such acts. However, ECRI notes that this does not entirely comply with § 18b to d of its GPR No. 7, or to Articles 4 and 5 of the Additional Protocol to the Convention on Cybercrime, which Luxembourg has ratified without making a reservation. This relates primarily to Article 561.7 PC which stipulates that insults shall be punishable by a fine ranging from €25 to €250, whereas Article 13.1 of the Convention on Cybercrime and Articles 5.1 and 8.1 of its Additional Protocol provide that racist and xenophobic motivated insult should be established as a criminal offence subject to penalties which include deprivation of liberty. § 23 of GPR No. 7 also recommends that the law should provide for dissuasive sanctions.
4. § 18g of GPR No. 7 recommends making it a criminal offence to create any racist organisation and take part in any activities of such an organisation. Article 457-1 PC does not go as far as this as it only makes it a criminal offence to participate in the activities of an organisation whose objectives or activities consist in incitement to hatred.

¹ According to ECRI's General Policy Recommendation (GPR) No.7, “racism” shall mean the belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons. “Racial discrimination” shall mean any differential treatment based on a ground such as “race”, colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

² See the Act of 3 June 2016.

³ Section 1.10 of the Act of 19 June 2013, Luxembourg Gazette, Part A 2013: 1571 et seq.

⁴ See Council of State 2015b: 2 and Centre for Equal Treatment (CET) 2015: 11 et seq.

⁵ See, however, Articles 457-1.1 and 457-3.1 PC on incitement to hatred and the denial of crimes against humanity by making threats.

5. Moreover, the Luxembourg Penal Code does not, as recommended in § 21 of GPR No. 7, provide for racist motivation to result in a more severe penalty. Although the authorities state that the Luxembourg Penal Code currently only contains provisions on mitigating circumstances, the courts can nonetheless take into account racist or homophobic/transphobic motivation when determining sentence. ECRI believes the authorities should codify this practice as the inclusion of a provision on harsher penalties for racist or homophobic/transphobic motivation is an important preventive signal for the whole of society and therefore constitutes a key element of hate crime legislation.
6. ECRI strongly recommends that the Luxembourg authorities bring their legislation into line with its General Policy Recommendation (GPR) No. 7; in particular, they should (i) expressly provide that racist or homophobic/transphobic motivation constitutes an aggravating circumstance for any ordinary offence, (ii) explicitly make public insults, public defamation and racist and homophobic/transphobic threats a criminal offence and (iii) include the grounds of language and gender identity in the provisions of the Penal Code aimed at combating racism and homophobia/transphobia.

- **Constitutional law**

7. The provisions of the Luxembourg Constitution on the right to equal treatment are not fully in line with Article 14 of the European Convention on Human Rights (ECHR), Article 1 of Protocol No. 12 to the ECHR and on § 2 of ECRI's GPR No 7. Although Article 14 ECHR provides that the enjoyment of the rights and freedoms set forth shall be secured without discrimination on any ground, Articles 10bis.1 and 111 of the Luxembourg Constitution contain an important distinction: Article 10bis.1 states that [only] Luxembourgers are equal before the law, whereas Article 111 provides that foreign nationals only enjoy the protection given to persons and property and do so subject to the exceptions established by the law. Even though the Luxembourg courts primarily refer, when dealing with human rights, to the ECHR, which is directly applicable, ECRI considers that the authorities should bring the provisions of the Luxembourg Constitution into line with the above-mentioned international instruments and standards.

- **Civil and administrative law**

8. In its fourth report, ECRI recommended that the Luxembourg authorities provide for the Equal Treatment Act of 28 November 2006 to prohibit discrimination on grounds of nationality, language and skin colour. ECRI regrets that this recommendation has not been implemented, even though Article 14 ECHR and Article 1 of Protocol No. 12 to the ECHR prohibit discrimination on these three grounds. The same applies to the ground of gender identity.⁶ ECRI therefore reiterates its recommendation to insert these grounds of discrimination into the Equal Treatment Act. At the same time, it wishes to point out that, according to the explanatory memorandum to Protocol No. 12, the ban on discrimination does not prevent the retention of a number of distinctions based on these criteria when there is an objective and reasonable justification for this.⁷
9. ECRI wishes to point to a number of other shortcomings in the protection of victims of discrimination. ECRI recommends in § 5 of its GPR No. 7 that the law should provide for positive measures to compensate for disadvantages suffered by certain groups, but Luxembourg law only allows such measures in the area of labour law (Article 252-3 of the Labour Code).⁸

⁶ ECHR 2016.

⁷ CoE, Committee of Ministers 2000: §§ 18 et seq.

⁸ The CET deplores this "hierarchy of grounds of discrimination", CET 2016: 45 et seq.

10. Nor does the Equal Treatment Act expressly state that segregation, discrimination by association, the announced intention to discriminate, inciting others to discriminate or aiding others to discriminate (§ 6 of GPR No. 7) are considered forms of discrimination. There is no case law in this connection either.
11. The aforementioned Act also does not apply to all areas, in contrast to the recommendation in § 7 of GPR No. 7, but only to two areas mentioned in sections 2 and 3.⁹ Its scope is consequently more limited than that of Article 1 of Protocol No. 12, which contains no restriction in this regard. ECRI accordingly encourages the authorities to abolish the limits to the scope of the Equal Treatment Act.
12. According to Article 11.2 of the Constitution, the public authorities are required to eliminate any obstacles that may exist with regard to gender equality. By contrast, Luxembourg law contains no similar obligation concerning racial or homophobic/transphobic discrimination. Nor does it provide for an obligation for the authorities to positively promote equality (§ 8 of GPR No. 7). As far as the award of public contracts is concerned, the authorities have not informed ECRI that the parties that obtain these contracts, as well as loans, grants or other benefits, are required to comply with and promote a policy of non-discrimination (§ 9 of GPR No. 7).
13. According to § 10 of GPR No. 7, the law should ensure that easily accessible judicial and/or administrative proceedings, including conciliation procedures, are available to all victims of discrimination. In this connection, ECRI notes with concern that almost ten years after the entry into force of the Equal Treatment Act there are virtually no court judgments on its provisions.¹⁰ This suggests that existing judicial procedures are not readily accessible, even though there is a system of legal aid and there are associations that could assist victims of discrimination before the courts.¹¹
14. Nor are there any extra-judicial procedures that victims of discrimination could use to assert their rights. The National Council for Foreigners (CNE) has not reappointed its Special Commission responsible for receiving complaints about racial discrimination. For its part, the Centre for Equal Treatment (CET) only has the power to provide victims of discrimination with an advice and guidance service. The law gives it the right neither to deal with complaints, nor to carry out mediation, nor to take legal action to assert the rights of victims of discrimination. In this connection, ECRI refers to the recommendations made in § 24 of this report.
15. Although Article 455 PC provides for criminal penalties in discrimination cases, neither the Equal Treatment Act nor any other legal instrument explicitly states that compensation for pecuniary and non-pecuniary damage must be paid to victims of discrimination. Nor is there any case law in this area.¹² ECRI accordingly considers that the authorities should bring their legislation into line with § 12 of its GPR No. 7 and explicitly make legal provision for the payment of such compensation.
16. As far as the suppression of funding and the dissolution of racist organisations are concerned, Luxembourg law only implements a small proportion of the

⁹ In this context, it should be noted that another Act of 29 November 2006 deals with the principle of non-discrimination within the civil service.

¹⁰ CET 2015: 45; European network of legal experts in the non-discrimination field 2014: 10 and 100 and 2015: 57.

¹¹ The only task of the equality delegates created under Article 414-15 of the Labour Code is to operate in the field of gender equality (Article 241-1 of the Labour Code; CET 2015: 46).

¹² European network of legal experts in the non-discrimination field 2015: 48 et seq.; see also Moyse F., Salerno A. 2009: 236 et seq.

recommendations in §§ 16 and 17 of GPR No. 7, which call for the suppression of any public financing of all racist organisations and their dissolution, including all racist political parties. In contrast, section 18 of the Act of 21 April 1928 only provides for the dissolution of an association that seriously breaches the law or public order. Article 38 PC only provides for the dissolution of a legal entity if it has been created or misused to commit a crime punishable by a term of imprisonment equal to or higher than three years.

17. ECRI recommends that the Luxembourg authorities bring their anti-discrimination legislation, in general, into line with its General Policy Recommendation No. 7, as indicated in the previous analysis, and in particular (i) enshrine in the constitution everyone's right to equal treatment, (ii) bring the list of grounds of discrimination and the scope of anti-discrimination legislation into line with the ones of Article 14 of the European Convention on Human Rights and Article 1 of its Protocol No. 12 and (iii) provide for the obligation to abolish the public financing of and dissolve any organisation that promotes racism.

- **Specialised national bodies**¹³

18. As mentioned in §§ 34 to 56 of the fourth ECRI report, Luxembourg has set up a considerable number of bodies whose task is to combat racism and discrimination.¹⁴ In the same report, ECRI recommended examining the added value of each of these bodies in order to avoid overlapping powers and ensure maximum efficiency. In its conclusions on the implementation of some of the recommendations in that report¹⁵, it noted that the National Council for Foreigners had not reappointed the Special Commission (CPSDR), which had the power to receive complaints about racial discrimination.
19. In the present report, ECRI focuses on two independent bodies whose task is to combat racism, homophobia/transphobia, discrimination and intolerance: the Centre for Equal Treatment (CET) and the Ombudsperson.
20. As described in the fourth report, the CET has the power to issue recommendations and reports on equality and discrimination, to provide information and documentation in these areas and to provide aid to victims of discrimination (section 10 of the Equal Treatment Act). By contrast, it is authorised neither to represent victims in court proceedings nor to institute court proceedings directly. Nor does it have any quasi-judicial power and can therefore not be asked to deal with complaints and applications or take binding decisions. The law also does not provide it with adequate powers to gather information and evidence (Principle 3d-g of GPR No. 2 on specialised bodies to combat racism and § 24 of GPR No. 7).¹⁶ In view of these significant shortcomings, ECRI recommended for interim follow up that Luxembourg strengthen the CET by giving it in particular the right to take part in legal proceedings. After the abolition of the CPSDR, it has become even more important to implement this recommendation.

¹³ Independent authorities expressly entrusted with the fight against racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as ethnic origin, colour, citizenship, religion and language (racial discrimination), at national level.

¹⁴ Mention might also be made of the Ombuds Committee for Children's Rights.

¹⁵ ECRI 2014.

¹⁶ See in this connection the recommendation in CET 2015: 43.

21. The institution of the Ombudsperson has considerably more resources and visibility than the CET.¹⁷ Its task is to receive complaints about the operation of the administrative authorities of the state and local authorities.¹⁸ In this context, it has responsibility for dealing with cases of discrimination involving a public authority. The Ombudsperson can make recommendations to the administrative authority and the complainant, propose an amicable settlement, suggest amendments to legal instruments, demand information on action taken in response to its intervention and, if no satisfactory reply is received, publish its recommendations (section 4 of the Act of 22 August 2003). However, it too does not have all the powers it should have according to ECRI's recommendations: the law does not provide it with sufficient powers to gather information and evidence and it has neither the right to initiate nor participate in court proceedings.
22. ECRI takes positive note of the fact that the government has, nearly five years after the publication of the last ECRI report, taken concrete steps to house these two institutions as well as the Advisory Committee for Human Rights (CCDH) and the Ombuds Committee for Children's Rights under one roof.¹⁹ A plot of land for the construction of the "House of Human Rights" has been found and an appraisal of the needs of the four institutions has been carried out. Grouping these bodies together in this way will help to improve co-operation between them.
23. However, ECRI encourages the authorities to go further. It points out that there is currently no readily available remedy that would enable victims of discrimination to assert their rights (see §§ 13 and 14 above). In order to rectify this significant shortcoming, the authorities should draw on ECRI's GPRs 2 and 7 and give the CET the right to deal with complaints. They should also give the CET and the Ombudsperson appropriate powers to conduct effective investigations²⁰ and the right to initiate and participate in judicial and administrative proceedings (§ 24 of GPR No. 7).²¹ In order to do so, these institutions should have staff with legal training or the possibility of using lawyers. In order to ensure maximum efficiency, consideration could be given to bringing the two organisations closer together or even merging them. The CNE could, in turn, be integrated into the CET as an advisory body. At the same time, it would be advisable to make these institutions even more independent, for example by attaching the CET to the parliament, also with regard to its budget (Principle 5.2 of GPR No. 2).
24. ECRI recommends that the Luxembourg authorities (i) give the Centre for Equal Treatment and the Ombudsperson the right to hear and consider complaints, (ii) give the Centre for Equal Treatment and the Ombudsperson the powers necessary to conduct effective investigations (especially the power to request the production of documents and other elements, to seize documents and other elements and to question people), (iii) give them the right to initiate legal proceedings and (iv) to give them the right to participate in judicial and administrative proceedings. The Luxembourg authorities should also consider bringing these two institutions as well as the National Council for Foreigners closer together or even merging them and attaching them entirely to the parliament.

¹⁷ Its annual budget is about 1.3 million euros, whereas the CET's budget was reduced from more than 200 000 euros in 2009 to 87 000 euros in 2015 (CET 2015: 7). The CNE only has a budget of 6 000 euros. See in this connection CET 2015, 46.

¹⁸ Sections 1 and 2 of the Act of 22 August 2003 creating an ombudsperson.

¹⁹ See in this regard the Government Programme for 2013: 7.

²⁰ According to § 52 of the explanatory memorandum to GPR No. 7, the main powers are: requesting the production for inspection and examination of documents and other elements, the seizure of documents and other elements for the purpose of making copies or extracts, and questioning persons.

²¹ See in this connection CET 2015: 41 and Moyses F., Salerno A. 2009: 236.

2. Hate speech²²

- Scale of the phenomenon

25. The Luxembourg authorities do not publish any statistics on hate speech. The Public Prosecutor's Office has informed ECRI that there were four convictions for hate speech in 2015 (3 in 2014, 2 in 2013, 2 in 2012, none in 2011 and 1 in 2010). The police recorded 28 cases of this type in 2015, 43 in 2014 and 29 in 2013. In 2014, the Minister of Justice stated that the figures did not necessarily reflect the scale of the phenomenon.²³ It is indeed possible that many instances of hate speech were not reported to the authorities. The website stopline.bee-secure.lu²⁴ has noticed a big increase in reports of potentially racist content: in 2015 it received 309 reports (compared with just 28 in 2014) and forwarded 79 cases to the police.
26. These data show that the positive situation in Luxembourg is under threat. On the one hand, ECRI notes with satisfaction that political parties, politicians and the principal media generally do not resort to hate speech. Moreover, ECRI was informed that in Luxembourg, due to its size, there is a very significant element of social control due to which the residents in general do not openly engage in hate speech either. Even though some racist individuals participate in the activities of racist organisations in neighbouring countries, there is no racist organisation in Luxembourg itself according to the authorities.²⁵
27. Furthermore, very few instances of homophobic/transphobic hate speech, such as a case involving homophobic insults and death threats against the Prime Minister, are recorded.²⁶ By contrast, developments have been positive as far as attitudes towards LGBT persons are concerned. As far back as 2012, only 18% of the 318 participants in a study thought that the expression of hatred and aversion towards LGBT persons was fairly or even very widespread in Luxembourg. This is the lowest percentage observed in the 28 EU member states.²⁷
28. On the other hand, several factors are contributing to a rise in racist hate speech. ECRI first of all regrets the negative impact of the referendum held on 7 June 2015 on the right of "foreigners" to vote in national elections. The importance of that event is underlined by the fact that it was only the fifth referendum in Luxembourg in nearly a century. Many of ECRI's interlocutors regretted that the Government however had not held an information campaign. Although the referendum was well-intentioned, the debate surrounding it contributed to an assertion of identity and a fixation on the main criterion used to define that identity, namely the Luxembourg language, Letzeburgisch.²⁸ Since then, many non-nationals feel excluded from society, especially those finding it hard to learn Letzeburgisch.
29. Furthermore, ECRI regrets the increase in hate speech associated with the reception of refugees and foreigners in general, who are criticised for taking advantage of the services and social welfare benefits available in Luxembourg. This kind of speech and the above-mentioned assertion of identity seem to be fuelled by the economic disadvantage suffered by some Luxembourgers,

²² This part covers racist and homophobic/transphobic speech. For a definition of "hate speech", see § 6 of the preamble to ECRI's GPR No. 15 on combating hate speech and Recommendation No. R (97) 20 of the Committee of Ministers to member states on "hate speech", adopted on 30 October 1997.

²³ Ministry of Justice 2014; L'Essentiel 2014.

²⁴ This website has been set up by several NGOs for the anonymous reporting of illegal content.

²⁵ See, however, Luxemburger Wort 2015d.

²⁶ Luxemburger Wort 2015b. The perpetrator was given a 15-month suspended sentence at first instance.

²⁷ EU FRA 2012: question on "daily life" no. 3; EU FRA 2013b: 23.

²⁸ See in this connection Luxemburger Wort 2015c.

especially in rural areas. The debate is also influenced by the neighbouring countries and their media, which are widely read and consumed in Luxembourg. Here, too, ECRI notes with satisfaction that the authorities and the principal media are promoting diversity, mutual respect and understanding and that they are conducting the debate with considerable sensitivity and that subjects that could provoke xenophobic reactions are dealt with in such a way as not to fan fears. At the same time, latent xenophobia shows through in the tabloid press²⁹ and the involvement of foreigners in criminal activities is a recurrent issue. In many cases, the nationality of suspects is mentioned in police press releases and the Luxembourg media, sometimes in a subtle way by means of photographs or mentioning the language they speak. In this connection, mention should also be made of the xenophobic letter sent by a well-known lawyer to the mayor of the City of Luxembourg and published in the press.³⁰

30. ECRI also regrets to note a considerable rise in Islamophobia in Luxembourg.³¹ A link is often made between Islam, terrorism, disrespect for women, and refugees. Women wearing a head-scarf are insulted and even spat on. During the days after the January 2015 attacks in Paris (Charlie Hebdo and Hyper Cacher) two cases of Muslim pupils being verbally attacked by teachers with words like “Are you satisfied now?” or “When you’re grown-up, will you do the same?” were reported.
31. The internet is being used more and more often to disseminate this hate speech. While the debate surrounding the referendum contributed to loosen tongues, many people seek anonymity on the internet to disseminate hate speech that they would not dare to voice without this coverage. This speech, which goes as far as incitement to murder³², is aimed at refugees, especially non-Syrian refugees, frontier workers and visible minorities. Not only are social media, especially Facebook, used but also internet forums of other media, such as Radiotélévision de Luxembourg (RTL) and the daily newspaper l’Essentiel. A considerable proportion of criminal prosecutions instituted for hate speech concerns messages posted on the internet. A person convicted for a text on Facebook referred for example to the return of Hitler, which was “necessary to clean the country of refugees”.³³ To prevent such hateful comments, the media no longer provide discussion forums on certain subjects.

- Responses to hate speech

32. ECRI considers that a determined response is necessary to confront this rise in hate speech. As experience shows, this increase must be understood as a serious alarm signal indicating a dynamic that may lead to the use of violence if not dealt with effectively.³⁴
33. ECRI therefore takes positive note of the firm reaction of the public prosecutor’s office and the courts. This action, organised by a prosecutor specialising in this field, may be mentioned as an example of good practice. The public prosecutor’s office periodically brings the most serious cases of hate speech before the courts

²⁹ For an example see footnote 38.

³⁰ “Your city has become disgusting and people are getting angry. The air is full of the stink emanating from the daily streams of disgusting, insolent beggars who, thanks to the generosity of the intelligent Schengen agreements, come to us from far-off Romania with no checks being made on them. These unspeakable individuals take possession of strategic points in the Grand-rue. They piss passers-by off and take advantage of every moment they’re distracted to extort money from them. No one is dealing with this riff-raff.” A few days later, the author said that “by writing this letter, I wanted to condemn the organised, and therefore criminal, begging”, 5minutes.rtl.lu 2015a.

³¹ See already L’Essentiel 2012.

³² Luxemburger Wort 2015c and e.

³³ L’Essentiel 2015.

³⁴ See e.g. Schmahl 2015, 33 et seq. and the references provided.

and the courts pass sentences that can be as severe as terms of imprisonment in the case of repeat offenders. These convictions are given significant media coverage, which amplifies their general preventive effect and deters other potential perpetrators. They are also coupled with additional penalties and measures, such as the seizure of computer equipment or a ban on voting.³⁵

34. In view of the considerable increase in hate speech on the internet, ECRI thinks the authorities should fine-tune their activities in this area. As already recommended in § 6 of this report, they should remedy the shortcomings in the protection afforded by the criminal law against racism and homophobia/transphobia by making racist and homophobic/transphobic insults, defamation and threats criminal offences and providing for racist and homophobic/transphobic motivation to constitute an aggravating circumstance. Moreover, the police and judicial authorities should publish their statistics on hate speech. To this end, they should, as ECRI recommends in § 12 of its GPR No. 11 on combating racism in policing, establish and operate a system for recording and monitoring racist and homophobic/transphobic incidents. This system should also comprise information on the extent to which these incidents are brought before the prosecutors and eventually qualified as racist or homophobic/transphobic offences. Furthermore, the authorities should make sure that complainants (individuals and organisations) be effectively informed about the progress and outcome of the investigations, by observing the provisions of the law of 6 October 2009 on the reinforcement of the rights of victims of criminal offences (Articles 1 and 3 to 6 of this law).
35. ECRI recommends that the police and judicial authorities establish and operate a system for recording and monitoring racist incidents and the extent to which these incidents are brought before the prosecutors and eventually qualified as racist or homophobic/transphobic offences. The authorities should publish these statistics.
36. At the same time, the police, the public prosecutor's office, the CET and the Ombudsperson should set up a regular round table to enable a dialogue with civil society and groups targeted by hate speech (§ 18 of GPR No. 11). This round table and regular discussions should in particular help to remedy the possible under-reporting of racist or homophobic/transphobic offences. Representatives of Muslim communities have indicated that they would be interested in discussing the issue of radicalisation and the recruitment of jihadists in Luxembourg with the authorities. The round table could be the right place to address this issue.
37. ECRI recommends that the police and judicial authorities set up a regular round table to enable a dialogue with civil society and bodies specialising in combating racism and homophobia/transphobia.
38. Furthermore, ECRI encourages the CET, the Ombudsperson and the CCDH to condemn hate speech publicly and take action against it.
39. With regard to hate speech on the internet, ECRI welcomes the initiatives taken to combat hate speech: a "stopline" has been set up to enable hateful remarks to be denounced, and a new "helpline" has been established to help victims. Moreover, groups have formed on Facebook to launch "counter-speech" as a response to hate speech.
40. At the same time, ECRI thinks the authorities should ensure that the social networks and internet access providers take more effective steps to prevent the distribution of hate messages. It notes for example with interest that § 3.9 of Facebook's Statement of Rights and Responsibilities states: "You will not use Facebook to do anything unlawful, misleading, malicious, or discriminatory".

³⁵ Moreover, Pierre Peters, a notorious repeat offender, was unable to register with the bar after repeated convictions for hate speech.

Facebook's "Community Standards" state that any hate speech will be removed.³⁶ To date, however, rules like these are not complied with in many cases. ECRI therefore encourages the authorities to urge the social networks and internet access providers to ensure compliance.

41. The media regulators, especially the Press Council (sections 23 et seq. of the Act on freedom of expression in the media) and the Independent Audiovisual Authority of Luxembourg (ALIA), should also be more proactive with regard to hate speech. In the last few years, these two bodies have not issued a single opinion condemning racist or homophobic/transphobic remarks.³⁷
42. ECRI considers that the authorities and the Press Council should first of all review the regulatory framework for the media and bring it into line with the principles of GPR No. 7. For example, neither Article 5 of the Press Council's Code of Ethics nor the commentaries on that article make it clear whether the press must only avoid direct discrimination or whether it must also avoid indirect discrimination and "forms of communication that could foster an atmosphere conducive to creating in the audience negative feelings towards a community". The Press Council should also be given the right to open proceedings on its own initiative and be able to take decisions concerning media outlets outside its membership.³⁸ As far as ALIA is concerned, section 26bis of the Electronic Media Act of 27 July 1991 only contains a ban on incitement to hatred based on five grounds: race, gender, opinion, religion and nationality.
43. Moreover, these two bodies should draw up, together with the media, an action plan to combat hate speech in remarks posted on their websites. This plan could for example include eliminating the possibility of posting anonymous comments.
44. With regard to police press services and the media, they should do more to ensure they only disclose to the public information on the ethnic origin, colour³⁹, language, religion or nationality of the alleged perpetrator of an offence when that disclosure is strictly necessary and serves a legitimate purpose, such as in the case of a wanted notice (§ 88 of GPR No. 11).
45. ECRI recommends that the Luxembourg authorities (i) initiate a review of the regulatory framework for the media in order to prevent and eliminate hate speech in this area, (ii) encourage the media to develop measures to combat hate speech on their websites, (iii) work towards ensuring that the social media and internet access providers ban hate speech in their conditions of use and enforce that ban, (iv) ensure that the police and the media only disclose information concerning the race, ethnic origin, colour, language, religion, nationality or national or ethnic origin, sexual orientation and gender identity of the alleged perpetrator of an offence when that disclosure is strictly necessary and serves a legitimate purpose, and (v) give the Press Council the right to open proceedings on its own initiative and be able to take decisions concerning any print media outlet. All these measures should strictly comply with the principle of media independence.
46. In view of the rise in hate speech, ECRI welcomes the development of prevention plans aimed at the population as a whole. Mention might be made in particular of

³⁶ <https://www.facebook.com/legal/terms> and <https://www.facebook.com/communitystandards>, accessed on 25.04.2016.

³⁷ The ECRI delegation was informed during its contact visit to Luxembourg about the publication of a considerable number of hate messages on press and broadcast media websites and at least one anti-Semitic press article.

³⁸ The front pages of issues 352 and 450 of the tabloid Lëtzebuerg Privat, for example, promote an atmosphere conducive to creating in the audience "negative feelings towards a community" within the meaning of the commentary on Article 5 of the Press Council's Code of Ethics.

³⁹ For details of a case involving the disclosure of a person's skin colour, see Decision No. 17 of the Press Council's Complaints Commission of 22.10.2007.

the organisation in schools of an awareness campaign on hate speech and discrimination in the 2016/2017 school year. ECRI also notes with satisfaction the launch of the “No hate” campaign in Luxembourg and a compulsory course on internet security for all Class 7 pupils. These projects are strongly based on civil society.

47. In order to ensure an even more lasting impact, ECRI considers that the subject of human rights, especially the right to equality, should be given a permanent place in the school curriculum. The replacement of religious instruction and the course on ethics with the new, common subject “life and society” offers a unique opportunity to make this fundamentally important subject a firm part of the curriculum.⁴⁰ Such education is essential to provide every young person living in Luxembourg with in-depth knowledge of the non-negotiable foundations of society and to prevent not only hate speech and discrimination but also radicalisation and extremism. Teacher training in these areas should also be upgraded (principles II 2a and III of GPR No. 10 and §§ 4 and 93 of GPR No. 15).
48. ECRI recommends that the Luxembourg authorities introduce compulsory human rights education into all school curricula, especially as regards the right to equality and the prohibition of discrimination. Teachers should receive the necessary training in these subjects.

3. Racist and homophobic/transphobic violence

49. ECRI notes with satisfaction that very few cases of racist or homophobic/transphobic violence have been brought to its knowledge. For their part, the authorities have recorded no case in the last five years.⁴¹ At the same time, they point out that it is currently impossible for them to obtain complete statistical data in this area.⁴²
50. A few rare cases of xenophobic violence have, however, been reported.⁴³ In particular, ECRI was informed about several violent attacks against Muslim women wearing a headscarf. In one case, two Luxembourg women intervened and called the police. According to the Muslim community, the police intervention was, as in other cases, appropriate and the victim chose not to make a complaint. According to the results of an opinion poll published in 2011, 1% of people originating from former Yugoslavia and living in Luxembourg also said they had been victims of possibly racially motivated in-person crime over the past twelve months (attacks, threats or serious harassment).⁴⁴
51. According to another study carried out among LGBT persons by the European Agency for Fundamental Rights (FRA) in 2012, 17% of respondents living in Luxembourg said they had been victims of a physical or sexual attack or had been threatened with violence in the past five years; 55% of victims believed the perpetrator of the last attack could have acted out of homophobic/transphobic motives. Only 16% of those attacks were reported to the police.⁴⁵ The authorities pointed out that the statistical base for the study was relatively small (see § 26

⁴⁰ See in this connection Government 2016a and §§ 89 to 90 of this report.

⁴¹ They informed ECRI that a statement by the Minister of Justice in reply to a parliamentary question in October 2014 was based on an error. According to the Minister, racially motivated offences recorded in 2012 and 2013 mainly involved “assault and battery without causing incapacity to work, insults and threats against persons or property”, L'Essentiel 2014.

⁴² Luxemburger Wort 2015c.

⁴³ European Network of Legal Experts in the non-discrimination field 2014b. With regard to a case involving an allegation of police violence during the extradition of a person to Benin, ECRI has no indications of a possible racist motivation. As far as the burden of proof in such cases is concerned, ECRI refers to the case law of the ECtHR, for e.g. Ribitsch v. Austria, no. 18896/91, 4 December 1995: § 34, and Bursuc v. Romania, no. 42066/98, 12 October 2004: § 80.

⁴⁴ EU FRA 2011: 67.

⁴⁵ EU FRA 2012, questions on “violence and harassment”. 44% of these attacks were physical.

above). Luxembourg civil society has not informed ECRI about any serious homophobic/transphobic attacks that have taken place in the past five years.⁴⁶

52. ECRI has already expressed its concern about the rise in hate speech, which could be an early-warning sign of an increase in racist and homophobic/transphobic violence. In order to address this danger, ECRI once again refers to the recommendations made above, especially in § 37.

4. Integration policies

53. The composition of the population and the magnitude of migratory flows in Luxembourg show the need to pursue effective and well-structured integration policies.

- Data

54. Luxembourg is a Council of Europe member state with a particularly large proportion of foreign residents. At 1 January 2016, 46.7% of the population were foreign nationals. Of the 576 000 residents, 93 100 were Portuguese, 41 700 French, 20 300 Italian, 19 400 Belgian, 12 800 German, 6 100 British and 39 700 of non-EU origin.⁴⁷ The vast majority of foreign residents are EU citizens, come from a high-income country and are Roman Catholic.⁴⁸ 2.6% of the population belong to a non-Christian faith and 2% are Muslims.⁴⁹ Of the non-EU nationals, the biggest groups are of Montenegrin, Cape Verdean and Chinese origin.⁵⁰ In 2015, 23 803 foreigners arrived in Luxembourg, while 12 644 left the country; 2 447 people (0.42% of the population) applied for international protection. Only 37% of residents have two parents and four grandparents born in Luxembourg. The remaining 63% of the population are therefore first, second- or third generation migrants.⁵¹ The various groups of migrants have very different integration needs.

- Description of integration policies

55. The Act on the reception and integration of foreign nationals in the Grand Duchy of Luxembourg dates from 16 December 2008. According to section 2.1, the term integration designates a two-way process: the foreign national endeavours to participate on a long-term basis in the life of the host society, which for its part takes all social, economic, political and cultural steps to encourage and facilitate this arrangement.
56. In this process, the so-called “reception and integration contract” plays a key role. It is offered to foreign nationals with the aim of organising and facilitating their integration. As far as the state is concerned, the contract comprises the undertaking to provide language courses, civic education and other measures to bring about social and economic integration. The foreign nationals undertake to ensure their own livelihood according to their skills and abilities and to participate in the life of society (sections 8 et seq. of the Act). The contract has met with considerable success: since its introduction in October 2011, more than 4 500 persons with 135 different citizenships have signed such a contract.⁵²
57. The reception of people who apply for international and temporary protection has been reformed by an Act of 18 December 2015. ECRI regrets that its section on a “support plan” was withdrawn following an opinion issued by the Council of State,

⁴⁶ See in this connection the annual reports of ILGA-Europe.

⁴⁷ Grand Duchy of Luxembourg 2016: Population by gender and nationality at 1 January.

⁴⁸ OECD 2015: 62 and 72 et seq.

⁴⁹ Government 2016b. The Muslim community itself estimates the number of Muslims at 18 000 to 30 000.

⁵⁰ Government and University of Luxembourg 2015: 1.

⁵¹ OECD 2015: 17; CEPS 2009.

⁵² Government 2016g.

which considered that the provisions on the plan were not clear enough. They provided for the authorities to be able to offer applicants for protection a number of support measures to develop their skills and their autonomy.⁵³ At the same time, ECRI welcomes the fact that the Luxembourg Reception and Integration Agency (OLAI) and civil society carry out extensive activities, even in the absence of new regulations, to ensure the good-quality reception and proper integration of persons seeking international protection. The ECRI delegation was able to obtain information about this during its visit to two reception centres.⁵⁴

58. A specialised administrative body, the OLAI, is responsible for the reception and integration of foreign nationals. An interministerial committee for integration and OLAI co-ordinate policies in these areas and OLAI implements them. Combating discrimination is a key element of this work (section 3 of the Act of 16 December 2008).⁵⁵ On the basis of a Grand Ducal Regulation of 15 November 2011, the local authorities have set up municipal consultative integration committees.
59. OLAI implemented a “Multi-annual National Action Plan on Integration and against Discrimination 2010–2014”, based on the four areas for action mentioned in the Act of 16 December 2008: reception, integration, combating discrimination, and monitoring migration on the basis of data and studies.⁵⁶ After a consultation, OLAI decided in 2013 to prioritise education and employment.⁵⁷ In 2014, it published a five-yearly report on its work and held consultations on introducing a new action plan for 2015-2019.⁵⁸ During the contact visit it informed the ECRI delegation of its intention to transfer some work to the ministries in order to give them more responsibility and develop local integration plans with the local authorities. A group of ten local authorities has already finalised such a plan⁵⁹ and several others are in the process of drawing one up.⁶⁰ ECRI welcomes the fact that OLAI intends to finalise a new action plan in the course of 2017.
60. With regard to the political involvement of persons with migration backgrounds, the proposal in the June 2015 referendum to give all residents voting rights was rejected (see § 28 above). Subsequently, a new draft Nationality Act was tabled in March 2016. Its aim is to facilitate foreign residents’ access to Luxembourg nationality and it provides in particular for (i) making it easier for persons born in Luxembourg to take the country’s nationality, (ii) easing the conditions governing naturalisation – especially with regard to speaking Luxembourgish – and (iii) reintroducing for several groups of foreigners the right to opt for Luxembourg nationality.⁶¹

- **Evaluation of integration policies**

61. Luxembourg’s integration policies have recently been the subject of several evaluation reports. ECRI regrets that the first, a report by the University of Luxembourg in 2013, has not been published.
62. In a second report in 2014, the Economic and Social Council (CES) submitted a series of recommendations to the government. In particular, it recommends

⁵³ See section 14 of Draft Act No. 6775² and Council of State 2015a: 6 et seq.

⁵⁴ The delegation visited the reception centres Lily Uden and Don Bosco. At the same time, it was also informed about difficult living conditions in an initial reception facility and delays in allocating tutors and providing schooling to unaccompanied minors.

⁵⁵ On the importance of this aspect of integration policies, see OSCE 2013: 38 et seq. For more details, see European network of legal experts in the non-discrimination field 2014b.

⁵⁶ OLAI 2010: 28.

⁵⁷ OLAI 2011: 14.

⁵⁸ OLAI 2014a and b.

⁵⁹ LEADER Miselerland 2015.

⁶⁰ OLAI 2016: 9

⁶¹ For more details see Ministry of Justice 2016.

replacing the interministerial committee for integration by a high-ranking body tasked with monitoring and measuring the effectiveness of actions carried out under the action plan. The 11 basic principles in the action plan should be implemented at the same time. The reception and integration contract should be replaced by a local immigrant reception agency, and the position of “integration officer” should be introduced on a general basis. These officers should be responsible for providing new arrivals with the necessary information and a “reception kit”. Preschool education should be made compulsory for three-year-olds and immigration policy should be accompanied by information and communication campaigns. A steering committee responsible for independent evaluation should be set up.

63. A third report in 2014 on the operation of OLAI recommended its fundamental restructuring, the identification of strategic objectives and the introduction of monitoring mechanisms, a clear organisational structure and “standardised management”, as well as the supervision and oversight of financial agreements concluded with third parties.⁶²
64. ECRI notes with regret that certain important recommendations, such as the adoption of a new strategic document with indicators⁶³ have so far not been implemented.⁶⁴
65. Given the importance for Luxembourg of the implementation of effective integration policies, ECRI considers that the authorities should give more priority to this subject. Responsibility for this matter should not be delegated to OLAI and the local authorities. Rather, a ministry should act as the driving-force for these policies. Moreover, the authorities should quickly adopt a new strategy and a new national integration action plan, as seems to be provided for by section 6 of the Act of 16 December 2008. Drawing up such a document with clear objectives serves to ensure that integration policies are targeted and coherent. Each of the activities planned for attaining these objectives should be accompanied by an appropriate budget. At the same time, this action plan is the tool of choice for allocating the responsibility for implementing the various measures to the key players. These players should include the ministries and other authorities in the fields of education, employment, housing and health.
66. ECRI recommends that the Luxembourg authorities quickly adopt a new national integration action plan and provide it with an appropriate budget. They should then ensure that all its objectives are achieved by implementing the measures set out in it.
67. In its fourth report (§ 131), ECRI once again recommended that the Luxembourg authorities set up a data collection system to assess the situation of persons with migration backgrounds. ECRI regrets that the authorities do not appear to have implemented this recommendation. ECRI considers, like the CES and the University of Luxembourg⁶⁵, that such a system of indicators⁶⁶ is essential for the efficient management of integration policies. Such indicators are vital in particular for assessing the impact of the various measures in the action plan and also serve to observe the extent to which goals have been achieved. Annual evaluations also enable to identify changes that need to be made to the action plan. In order to ensure this efficient management of integration policies, each

⁶² Ministry for Family Affairs, Integration and the Greater Region 2014, Government and University of Luxembourg 2015: 20.

⁶³ Ministry for Family Affairs, Integration and the Greater Region 2014

⁶⁴ As far as OLAI, for example, is concerned, several interlocutors informed ECRI that the change in its management had had a positive impact, but the other recommendations concerning its organisation had not been implemented.

⁶⁵ CES 2014: 4, 19 and 39.

⁶⁶ See for example EU, EC 2013a; CEFIS 2010.

objective and each measure in the new plan should be accompanied from the outset by indicators, target values, a timetable and an authority or person responsible for their implementation.

68. ECRI recommends for the third time that the Luxembourg authorities develop a system of integration indicators. The new national integration action plan should specify the actual measures to be implemented to achieve the goals set. Each goal and measure should be accompanied by indicators, target values, a timetable and an authority or person responsible for their implementation. Implementation should be assessed on an annual basis.
69. Education and the learning of the official languages are crucial for the successful integration of people with migration backgrounds. In this connection, it may be pointed out that the Luxembourg school system presents children with migration backgrounds with a considerable challenge: preschool education mainly takes place in Letzeburgisch, after which literacy education is in German and French is taught from Class 2 onwards.⁶⁷ Yet, about 60% of children speak a different language at home than Letzeburgisch.⁶⁸ Many even use a fourth language and are consequently given relatively little support at home in the difficult task of learning the three official languages – Letzeburgisch, German and French.
70. As studies show that attending a preschool programme is particularly beneficial for children with migration backgrounds⁶⁹, ECRI welcomes the fact that school attendance is compulsory and free of charge in Luxembourg for four- to sixteen-year-olds. However, attendance by three-year-olds in “early childhood education”, which is, incidentally, also free, is optional.⁷⁰ It may be assumed that all four- to five-year-old children with migration backgrounds attend preschool education, but the authorities publish no figures on the percentage of three-year-olds with migration backgrounds who attend early childhood education.⁷¹ Moreover, ECRI has not obtained any information on the level of language proficiency attained by children with migration backgrounds at the age of six when they move on to primary school, especially with regard to German, their future language of instruction.
71. The proportion of children of foreign nationality at school is continuing to grow and reached 44.1% at the end of 2015. The results of so-called second-generation children⁷² in reading literacy are well below the average. At the age of fifteen, the shortfall in their performance is more than 50 PISA score points, which corresponds to more than a year of schooling.⁷³ The proportion of foreign children in general secondary education, which is considered the most rewarding pathway, is only 21.9%, whereas the figure is approximately 40% in secondary technical education.⁷⁴ According to a study by the Ministry of Education, Children and Youth (MENJE), foreign children are also overrepresented among pupils who leave school early (41.7%). Portuguese, Italian and Cape Verdean pupils are particularly affected.⁷⁵ The majority of young new arrivals attending state schools

⁶⁷ On the languages of instruction in preschool and elementary education, see Government 2016d.

⁶⁸ Government 2016e; Ministry of Education, Children and Youth (MENJE) 2016: 77.

⁶⁹ OECD 2015: 248 et seq.: pupils who have attended a pre-primary facility in their present country of residence obtain better reading literacy results at the age of fifteen than those who have not attended this type of programme. In Luxembourg, the gap between the two groups is more than 40 points, which corresponds to approximately one year of schooling.

⁷⁰ Government 2016c.

⁷¹ UNICEF 2016 mentions for 2008-2012 a gross pre-primary attendance rate of 89.5% for all boys and 89.1% for all girls.

⁷² This term designates children with at least one parent born abroad.

⁷³ OECD 2015: 249, 251, 253. Progress was made between 2003 and 2012, *idem*, p. 294.

⁷⁴ MENJE 2014: 82.

⁷⁵ MENJE 2015: 14; see also CEFIS 2010: 101 et seq.

are from underprivileged social backgrounds.⁷⁶ The proportion of pupils from this disadvantaged group who nevertheless have very good school results is particularly low (less than 2%, OECD average 9%, children of parents born in Luxembourg 12%).⁷⁷

72. These figures show that additional efforts are necessary in the field of education to turn the right to equality into reality. In order to be able to develop and assess the measures needed to deal with the existing disparities, ECRI considers that the authorities should first of all determine the attendance rate of children with migration backgrounds in pre-primary education. Subsequently, they should stress, while recognising the value of multilingualism, the need to learn the languages of instruction⁷⁸ and persuade as many persons of migration origin as possible to register their children for preschool education. In addition, ECRI notes with interest the recommendation of the CES to further lower the age of compulsory preschool education.
73. Moreover, well before children go on to elementary school the authorities should assess their knowledge of Letzeburgisch and German, their future language of instruction. They should then take the steps necessary to ensure that children with migration backgrounds are able to acquire the knowledge of Letzeburgisch and German needed to succeed at school. In particular, they should consider intensifying the teaching of the languages of instruction during preschool and primary education, for example by improving individual support, assistance with homework, parental involvement in education, and teacher training. Finally, in view of the large number of pupils who speak a language other than Letzeburgisch or German at home, the authorities should study the possibility of intensifying the teaching of the third official language and introducing a French-language stream at elementary school and in general secondary education.⁷⁹ ECRI notes with interest that the authorities are studying and implementing several measures along these lines, such as the introduction of a French-language international class in the Lycée Technique du Centre which will make it easier for pupils to move to general secondary education, and the introduction of the international or European baccalaureate in other schools.
74. ECRI recommends that the Luxembourg authorities (i) continue promoting early childhood education , (ii) assess the knowledge of Letzeburgisch and German of children with migration backgrounds well before they move on to primary school, (iii) take the steps necessary to ensure that children with migration backgrounds are able to acquire the language level required for lasting success at school and (iv) study the possibility of introducing a French-language stream at elementary school and in general secondary education.
75. Although, overall, very few young people with migration backgrounds say they have been victims of discrimination, 11% of nationals of third countries (outside the EU) state that they belong to a group that is a victim of discrimination.⁸⁰ In addition, 37% of the population as a whole think that racial discrimination has risen in Luxembourg in the last few years.⁸¹ In this connection, ECRI refers to the recommendations already made in §§ 24 and 48 of this report on strengthening the CET and introducing human rights education at school. At the same time, it encourages the authorities to include in the new national integration action plan measures to combat the discrimination suffered in particular by nationals of third

⁷⁶ MENJE 2016: 78.

⁷⁷ OECD 2015: 240, 253.

⁷⁸ See in this connection in particular the preamble to the European Charter for Regional or Minority Languages.

⁷⁹ At the moment, French is used as language of instruction only in the technical secondary education.

⁸⁰ OECD 2015: 281 and 347.

⁸¹ CET 2015: 17. 35% think the same applies to discrimination on religious grounds.

countries. ECRI notes with interest that OLAI is currently initiating such measures.

76. The situation of people with migration backgrounds on the job market needs to be considered from a nuanced perspective. Although the unemployment rate of people born abroad is relatively low in Luxembourg (7% compared with the OECD average of about 12.5%), it is also 3% higher than the unemployment rate among Luxembourg nationals.⁸² Within this group of people, it is necessary to make another distinction: on the one hand, more than 45% of foreigners have a higher-education qualification and nationals of high-income countries are successful on the job market. On the other hand, the employment rate is relatively low among those with a low level of education⁸³ who do not have a good command of the official languages. Persons with a low level of education are also concentrated in less well-paid jobs. For example, 75% of low-skilled jobs are held by persons with migration backgrounds and the poverty rate is six times higher among nationals of third countries than among Luxembourg nationals. Cape Verdean nationals, applicants for international protection and persons of Muslim religion encounter in particular problems on the labour market. In the building sector, for example, working conditions are very hard. Owing to the low wages and the high cost of housing, a number of workers are forced to live together in the same accommodation.
77. ECRI was given several reasons for the difficulties experienced by this second group on the job market. As far as applicants for international protection are concerned, the conditions for accessing the job market are extremely difficult to meet and the employer has to apply for a new work permit every six months. In the first ten weeks of 2016, only six people obtained such a permit. First-generation migrants with a low level of education have little opportunity to learn the official languages, which prevents them from getting better jobs. Many also have difficulties in having qualifications obtained abroad recognised.
78. These facts show the need to focus integration policies on the needs of the most vulnerable groups. In order to facilitate their access to the job market, the authorities should do more to promote the teaching of the official languages among adults with migration backgrounds, invest in their vocational training and make it easier to have qualifications obtained abroad recognised. Moreover, the learning of the official languages would facilitate their involvement in Luxembourg society. With regard to obtaining Luxembourg nationality, which can be seen as an ultimate step in integration, the authorities should ensure that all persons with migration backgrounds are able to acquire the necessary level of linguistic proficiency. The requirement to possess a high degree of proficiency in only one of the official languages could result in indirect structural discrimination if it leads disproportionately to the exclusion of certain ethnic groups.
79. As far as applicants for international protection are concerned, ECRI considers that the authorities should facilitate their access to the job market. As studies have shown, access to employment is crucial for being recognised in Luxembourg society, and the image of the jobless applicant for international protection can be a factor leading to a rise in xenophobia.⁸⁴
80. ECRI recommends that the authorities adopt positive measures to facilitate access to the job market for persons with migration backgrounds with a low level of education. In particular, they should intensify the teaching of the official languages to adults with migration backgrounds, invest in their vocational

⁸² For this paragraph, see OECD 2015: 17, 27, 33, 120, 170 and 334 and CEFIS 2010: 111 et seq. Cross-border workers are not included in these figures.

⁸³ This is also true for the population as a whole, Grand Duchy of Luxembourg 2016: "Chômeurs selon le niveau de formation 2006 – 2016".

⁸⁴ See in this connection CEFIS 2010: 111 et seq.

training, facilitate recognition of qualifications obtained abroad and ease the conditions for accessing the job market imposed on applicants for international protection.

81. The authorities should also develop social housing to ensure that workers in the low-paid sectors of the job market can obtain appropriate accommodation. This will contribute not only to the integration of workers with migration backgrounds but also benefit low-wage workers with Luxembourg nationality.
82. ECRI recommends that the Luxembourg authorities develop measures in the social housing field for the benefit of low-paid workers.
83. In order to ensure the successful integration of religious minorities, it is crucial for the authorities and members of every religious community to promote tolerance and respect fundamental rights and freedoms, including the right to equality. ECRI accordingly welcomes the signing on 26 January 2015 of an agreement between the state and the Muslim community to regulate their mutual relations. At the same time, ECRI regrets that, according to the authorities, it will take two years to have the necessary amendments to the Constitution adopted to release the funding provided for by the agreement for the benefit of the Muslim community. Moreover, several Muslim associations are still subject to tax and the Muslim community encounters many problems in the case of plans to renovate or build new mosques. In many localities, there are still no appropriate facilities for Muslim funerals. ECRI considers that the authorities should speed up the implementation of the agreement and remove any remaining structural discrimination.

II. Themes specific to Luxembourg

1. 4th cycle recommendations subject to interim follow-up

84. The first recommendation in ECRI's fourth report on Luxembourg subject to interim follow-up urged the authorities to strengthen the Centre for Equal Treatment. Its implementation has been discussed in §§ 20 to 24 of the present report. In its conclusions on Luxembourg in 2015, ECRI considered that the second of these recommendations had been fully implemented and that there it should no longer examine the implementation of the third recommendation.⁸⁵

2. Policies to combat discrimination and intolerance towards LGBT persons⁸⁶

- Data

85. In Luxembourg, few data and studies are available on the situation of lesbian, gay, bisexual and transgender (LGBT) persons. In an opinion poll on discrimination conducted for the CET in 2014, 2% of respondents said they were homosexual, 1% said they were bisexual and 3% gave no reply.⁸⁷ Four transgender persons applied to the courts for recognition of their gender in 2013 and 2014 and five more in 2015.
86. The survey on LGBT persons carried out in 2012 by the FRA contained the replies of 318 LGBT persons concerning Luxembourg.⁸⁸ 33% replied that they had felt themselves discriminated against or harassed in the last twelve months owing to their sexual orientation (European average 47%) and 38% because of their gender identity. 10% of respondents had felt discriminated against when looking for a job, 18% at the workplace, 9% when looking for housing, 4% by health professionals, 16% by school or university staff and 16% by the staff of a

⁸⁵ ECRI 2015.

⁸⁶ For the terminology, see the definitions in Council of Europe Commissioner for Human Rights 2011.

⁸⁷ CET 2015: 12, study based on a national representative sample of 1 020 persons.

⁸⁸ See § 27 above and EU FRA 2013: 25. 59% of respondents were gay, 16% were lesbians, 13% were bisexual 12% were transgender persons.

café, restaurant, bar or nightclub. Only 5% said they had reported incidents of discrimination (European average 10%).⁸⁹ The CET received only one complaint linked to sexual orientation in 2012 and 2013 and five in 2014 and 2015.⁹⁰ 68% of respondents had never spoken openly at school about their sexual orientation or, indeed, their gender identity, and only 29% had been open about these subjects at work. According to the CET study conducted in 2014, 49% of the overall population were of the opinion that sexual orientation based discrimination had declined in the previous few years.⁹¹

- **Policies and legislation**

87. ECRI is pleased to note a high degree of openness in Luxembourg society as far as lesbian and gay persons are concerned.⁹² For example, the awareness campaign and discussions surrounding the adoption of the Marriage Equality Act were experienced very positively by LGBT persons. Since 1 January 2015, marriage has been open to same-sex couples, and all married couples have equal rights to adopt children. The marriages of the Prime Minister and the Deputy Prime Minister under the new Act resulted in few intolerant remarks. The pride marches (GayMat) organised every year in Esch-sur-Alzette by the LGBT communities have also passed off without any difficulties.
88. At the same time, there continues to be intolerance towards LGBT persons. Although this intolerance often remains hidden due to strong social control, it is a primary reason why many LGBT persons still do not dare to reveal their sexual orientation or their gender identity. This applies even more to a particularly vulnerable LGBT group: young LGBTs who, in the already difficult period of puberty, are confronted with the existential issue of “coming out”.
89. ECRI notes with regret that the subject of sexual diversity is not yet dealt with systematically in Luxembourg’s schools. In this respect it recommends developing courses on equality and the prevention of discrimination for all pupils (see § 48 above), which should also address the question of sexual diversity. At the same time, ECRI considers that the authorities should ensure that young LGBTs have easy access to the information, assistance and protection necessary to live in accordance with their sexual orientation and gender identity.
90. ECRI recommends that the Luxembourg authorities implement measures to promote understanding and respect for LGBT persons, especially in schools. They should also provide all pupils and students with the information, protection and support necessary to enable them to live in accordance with their sexual orientation and gender identity.
91. The situation of transgender persons remains particularly complicated. There are currently no specific legal provisions governing the change of their first name and recognition of their gender in public records and official documents. The courts have laid down extremely restrictive conditions regarding gender recognition: individuals require a transsexualism diagnosis issued by medical experts which must relate to physical transformation by means of hormone treatments and surgical procedures and to the psychological aspect, the details of which must generally be drawn up by a psychiatrist. The person concerned must also be sterile. Since the entry into force of the Marriage Equality Act, a divorce is no longer necessary.

⁸⁹ EU FRA 2012. See also Ministry of Family and Integration 2005: 66-70.

⁹⁰ See the CET’s annual reports, e.g. CET 2016: 35.

⁹¹ CET 2015: 18.

⁹² See § 27.

92. ECRI reiterates that in this area the Council of Europe Parliamentary Assembly recently drew up and adopted international standards that are much less stringent and, rightly, emphasise the right of transgender persons to self-determination.⁹³ Moreover, the recent case law of the ECtHR points in the same direction.⁹⁴ ECRI therefore welcomes the tabling on 23 February 2016 of a private member's bill in the Chamber of Deputies proposing that the change of a person's first name and the recognition of their gender be subject to the sole requirement that a doctor certify that the applicant has attended a consultation to receive information on this subject.⁹⁵ Taking note of the government's statement that it intends to go further, ECRI encourages the authorities to adopt progressive legislation in this area during the current parliament, thus contributing to the implementation of the right of transgender persons to self-determination.
93. ECRI recommends that the Luxembourg authorities adopt, as soon as possible, a law on name changes and gender recognition for transgender persons, drawing inspiration from international recommendations and especially from Resolution 2048 (2015) of the Council of Europe Parliamentary Assembly.
94. ECRI also considers that the Luxembourg authorities should, as has already been done in some neighbouring countries, initiate a debate and conduct an information campaign on the subject of intersex persons.⁹⁶ The debate and campaign should, among other things, focus on the practice of surgical procedures on very young children and on the arrangements to be made to respect their right to self-determination. In this connection, ECRI refers to the report and recommendations on this subject by the Council of Europe Commissioner for Human Rights.⁹⁷

⁹³ CoE, Parliamentary Assembly 2015.

⁹⁴ ECtHR 2015.

⁹⁵ Private Bill no. 6955 of 23 February 2016 relating to transsexuality and amending the Civil Code.

⁹⁶ See for example Deutscher Ethikrat 2012.

⁹⁷ CoE CommDH 2015, 9 et seq.

RECOMMENDATIONS SUBJECT TO INTERIM FOLLOW-UP

The two specific recommendations for which ECRI requests priority implementation by the Luxembourg authorities are the following:

- ECRI recommends that the Luxembourg authorities quickly adopt a new national integration action plan and provide it with an appropriate budget. They should then ensure that all its objectives are achieved by implementing the measures set out in it.
- ECRI recommends that the Luxembourg authorities adopt, as soon as possible, a law on name changes and gender recognition for transgender persons, drawing inspiration from international recommendations and especially from Resolution 2048 (2015) of the Council of Europe Parliamentary Assembly.

A process of interim follow-up of these two recommendations will be carried out by ECRI no later than two years after publication of this report.

LIST OF RECOMMENDATIONS

The position of the recommendations in the text of the report is shown in parentheses.

1. (§ 6) ECRI strongly recommends that the Luxembourg authorities bring their legislation into line with its General Policy Recommendation (GPR) No. 7; in particular, they should (i) expressly provide that racist or homophobic/transphobic motivation constitutes an aggravating circumstance for any ordinary offence, (ii) explicitly make public insults, public defamation and racist and homophobic/transphobic threats a criminal offence and (iii) include the grounds of language and gender identity in the provisions of the Penal Code aimed at combating racism and homophobia/transphobia.
2. (§ 17) ECRI recommends that the Luxembourg authorities bring their anti-discrimination legislation, in general, into line with its General Policy Recommendation No. 7, as indicated in the previous analysis, and in particular (i) enshrine in the constitution everyone's right to equal treatment, (ii) bring the list of grounds of discrimination and the scope of anti-discrimination legislation into line with the ones of Article 14 of the European Convention on Human Rights and Article 1 of its Protocol No. 12 and (iii) provide for the obligation to abolish the public financing of and dissolve any organisation that promotes racism.
3. (§ 24) ECRI recommends that the Luxembourg authorities (i) give the Centre for Equal Treatment and the Ombudsperson the right to hear and consider complaints, (ii) give the Centre for Equal Treatment and the Ombudsperson the powers necessary to conduct effective investigations (especially the power to request the production of documents and other elements, to seize documents and other elements and to question people), (iii) give them the right to initiate legal proceedings and (iv) to give them the right to participate in judicial and administrative proceedings. The Luxembourg authorities should also consider bringing these two institutions as well as the National Council for Foreigners closer together or even merging them and attaching them entirely to the parliament.
4. (§ 35) ECRI recommends that the police and judicial authorities establish and operate a system for recording and monitoring racist incidents and the extent to which these incidents are brought before the prosecutors and eventually qualified as racist or homophobic/transphobic offences. The authorities should publish these statistics.
5. (§ 37) ECRI recommends that the police and judicial authorities set up a regular round table to enable a dialogue with civil society and bodies specialising in combating racism and homophobia/transphobia.
6. (§ 45) ECRI recommends that the Luxembourg authorities (i) initiate a review of the regulatory framework for the media in order to prevent and eliminate hate speech in this area, (ii) encourage the media to develop measures to combat hate speech on their websites, (iii) work towards ensuring that the social media and internet access providers ban hate speech in their conditions of use and enforce that ban, (iv) ensure that the police and the media only disclose information concerning the race, ethnic origin, colour, language, religion, nationality or national or ethnic origin, sexual orientation and gender identity of the alleged perpetrator of an offence when that disclosure is strictly necessary and serves a legitimate purpose, and (v) give the Press Council the right to open proceedings on its own initiative and be able to take decisions concerning any print media outlet. All these measures should strictly comply with the principle of media independence.

7. (§ 48) ECRI recommends that the Luxembourg authorities introduce compulsory human rights education into all school curricula, especially as regards the right to equality and the prohibition of discrimination. Teachers should receive the necessary training in these subjects.
8. (§ 66) ECRI recommends that the Luxembourg authorities quickly adopt a new national integration action plan and provide it with an appropriate budget. They should then ensure that all its objectives are achieved by implementing the measures set out in it.
9. (§ 68) ECRI recommends for the third time that the Luxembourg authorities develop a system of integration indicators. The new national integration action plan should specify the actual measures to be implemented to achieve the goals set. Each goal and measure should be accompanied by indicators, target values, a timetable and an authority or person responsible for their implementation. Implementation should be assessed on an annual basis.
10. (§ 74) ECRI recommends that the Luxembourg authorities (i) continue promoting early childhood education , (ii) assess the knowledge of Letzeburgisch and German of children with migration backgrounds well before they move on to primary school, (iii) take the steps necessary to ensure that children with migration backgrounds are able to acquire the language level required for lasting success at school and (iv) study the possibility of introducing a French-language stream at elementary school and in general secondary education.
11. (§ 80) ECRI recommends that the authorities adopt positive measures to facilitate access to the job market for persons with migration backgrounds with a low level of education. In particular, they should intensify the teaching of the official languages to adults with migration backgrounds, invest in their vocational training, facilitate recognition of qualifications obtained abroad and ease the conditions for accessing the job market imposed on applicants for international protection.
12. (§ 82) ECRI recommends that the Luxembourg authorities develop measures in the social housing field for the benefit of low-paid workers.
13. (§ 90) ECRI recommends that the Luxembourg authorities implement measures to promote understanding and respect for LGBT persons, especially in schools. They should also provide all pupils and students with the information, protection and support necessary to enable them to live in accordance with their sexual orientation and gender identity.
14. (§ 93) ECRI recommends that the Luxembourg authorities adopt, as soon as possible, a law on name changes and gender recognition for transgender persons, drawing inspiration from international recommendations and especially from Resolution 2048 (2015) of the Council of Europe Parliamentary Assembly.

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