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European Commission Against Racism and Intolerance

First report on Luxembourg

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INTRODUCTION

The European Commission against Racism and Intolerance (ECRI) was set up in 1994, at the instigation of the first Summit meeting of Heads of State and Government of the member States of Council of Europe, to combat the growing problems of racism, xenophobia, anti-Semitism and intolerance threatening human rights and democratic values in Europe. The members of ECRI were chosen for their recognised expertise in questions relating to racism and intolerance.

The task given to ECRI was to: review member States' legislation, policies and other measures to combat racism, xenophobia, anti-Semitism and intolerance and their effectiveness; propose further action at local, national and European level; formulate general policy recommendations to member States; and to study international legal instruments applicable in the matter with a view to their reinforcement where appropriate.

One aspect of the activities developed by ECRI to fulfil its terms of reference is its country-by-country approach, which involves carrying out an analysis of the situation in each of the member States in order to provide governments with helpful and concrete proposals.

The procedure adopted for the preparation of country-specific reports can be summarised thus:

- a. The preliminary collection of information as well as the preparation of the texts of the preliminary draft reports are carried out in small working groups of ECRI. Preliminary sources of information used are wide-ranging, including, inter alia, replies provided by governments to a questionnaire sent out by ECRI, input from the relevant national members of ECRI, information on national legislation collected for ECRI by the Swiss Institute of Comparative Law¹, information from international and national non-governmental organisations, various publications and the media.
- b. ECRI examines and discusses the preliminary draft report on each country in plenary session and adopts a draft report.
- c. The report is sent to the relevant government for a process of confidential dialogue conducted through a government-appointed national liaison officer. The draft country report is re-examined and possibly revised in the light of the comments provided by the latter.
- d. The report is then adopted in its final form by ECRI in plenary session, and transmitted through the Committee of Ministers of the Council of Europe, to the government of the country in question. Two months after this transmission, the report is made public, unless the government of the country concerned expressly requests that it is not made public.

The first series of eleven ECRI's country-specific reports² were transmitted to the governments of the countries concerned in July 1997. The reports are accordingly now made public. The following report contains ECRI's analysis and proposals concerning Luxembourg.

It should be noted that ECRI is carrying out its country-by-country procedure by preparing reports for all forty member States of the Council of Europe. This first series of eleven reports,

¹ The report prepared by the Swiss Institute (ref: CRI (97) 38), covering relevant legislation in member States of the Council of Europe is available from ECRI's Secretariat.

² Reports on Belgium, the Czech Republic, Finland, Greece, Hungary, Iceland, Ireland, Lithuania, Luxembourg, Malta and Poland.

for which the procedure was completed by June 1997, will be followed by other series of reports on the remaining member States of the Council of Europe. The order in which the reports are produced has no significance other than that these are the first reports to be completed.

The publication of this report represents the start of an on-going and active process of exchange between ECRI and the authorities of each of the member States, in order to identify solutions to the problems of racism and intolerance facing Europe. ECRI will also welcome the input of non-governmental organisations and other parties working in this field to ensure that its work is as constructive and helpful as possible.

REPORT ON LUXEMBOURG³

Introduction

Luxembourg is a small country covering an area of 2,586 km² bordered by Germany in the East, Belgium in the West and France in the South. However, in spite of its small size, the country possesses a number of quite particular features: it has three administrative languages (Letzeburgisch, French and German) and more than 30% of the population are non-citizens. It can be noted that the manifestations of racism, xenophobia, antisemitism or intolerance in Luxembourg are not serious enough to warrant alarm.

³ Note: Any development subsequent to 7 June 1996 is not covered by the following analysis and is not taken into account in the conclusions and proposals.

I LEGAL ASPECTS⁴

A. International Legal Instruments

1. Luxembourg has signed most of the relevant international instruments in this field. The European Charter for Regional or Minority Languages was signed on 5 November 1992. On 29 January 1993 and again on 28 October 1993, the Ministry of Foreign Affairs asked the Ministry of Cultural Affairs to draw up an explanatory memorandum to be submitted to the Chamber of Deputies with a view to their ratifying the Charter. As regards ILO Conventions, the Ministry of Employment feels that these conventions bring no extra advantages in the field of labour legislation because the implementation of European Union directives goes much further than the ILO texts. Nonetheless, it is planned that ratification of some of the ILO conventions will be included shortly among a series of measures set in motion by the Ministry of Employment. ECRI feels that ratification of the two following instruments should also be accelerated and completed: the European Charter for Regional or Minority Languages and the ILO Convention on Discrimination (Employment and Occupation). Luxembourg should also ratify the Framework Convention for the Protection of National Minorities.
2. It is noted that Luxembourg, by its declaration of 8 July 1996, recognised the competence of the Committee for the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals under Luxembourg's jurisdiction claiming to be victims of a violation by Luxembourg of any of the rights set forth in the Convention. By the same declaration of 8 July 1996, Luxembourg designated the Permanent Special Commission against Racial Discrimination, set up in May 1996 under Article 24 of the Law of 27 July 1993 on the integration of foreign nationals, for the implementation of the optional second paragraph of Article 14. This body has competence to receive and examine petitions from individuals or groups of individuals under Luxembourg's jurisdiction who claim violations of the rights set out in the Convention for the Elimination of Racial Discrimination, as well as a range of other responsibilities (see under "Specialised bodies").

B. Criminal Law Provisions

3. The Penal Code sanctions the following instances of discrimination: refusing goods or services to non-citizens or on grounds of race; practising discrimination on grounds of a person's race, colour or ethnic origin when offering or providing goods or services; advertising the intention of refusing to offer a good or a service or of practising discrimination.
4. Incitement to discrimination, hatred or racial violence or to the commission of the acts mentioned in paragraph 3 above as well as any incitement to hatred or racial violence in respect of an individual by means of the spoken or printed word or images or symbols of any type, whether published, displayed, distributed, sold, offered for sale or placed on public view, are also punishable offences. It is an offence to belong to an organisation with racist aims, though such organisations are not themselves prohibited. A law of 8

⁴ A full overview of the legislation existing in Luxembourg in the field of combating racism and intolerance is provided in the publication CRI (95) 2 rev. prepared for ECRI by the Swiss Institute of Comparative Law (see bibliography).

August 1985 prohibits genocide. The war gave rise to regulations concerning its effects, and the repression of war crimes is foreseen in the Law of 24 December 1974, which provides for the imprescriptibility of war crimes.

5. A bill supplementing the Penal Code which will make racism, revisionism and other acts based on illegal discrimination offences was tabled on 25 July 1995. Emphasising that this bill has the merit of containing provisions designed to remedy some of the deficiencies of the present laws, ECRI strongly encourages its adoption as planned by the Luxembourg authorities.

C. Civil and Administrative Law Provisions

6. The law of 27 July 1993 is the backdrop for a whole series of civil and administrative measures aimed at facilitating the process of integration for non-citizens in Luxembourg. ECRI sees this law in a highly positive light and stresses that it could provide an example of "good practice" on which other countries could draw.
7. Taking an empirical approach to the subject, this three-part law aims to co-ordinate on a practical level the social measures taken to help non-citizens. The institutional part of the law provides for a network of advisory, decision-making and co-ordinating structures; the government will participate in this process via an inter-ministerial committee, the municipalities via "advisory committees for foreigners", and the community at large through a "national council for foreigners". This institutional section also provides for a Government "Commissioner's Office for Foreigners", whose task will be to monitor the implementation of the law and also to take action in the areas of employment, social security, voluntary organisations and information for non-citizens, as well as organising wide-ranging consultations with non-citizens' committees and associations. It should also be noted that the social aspect of the law of 27 July 1993 regulates the authorisation and financing of temporary infrastructures and lodging, such as reception centres and accommodation.

D. Specialised bodies

8. In view of the importance of giving priority to measures aimed at the full implementation of legislation and other measures to combat racism and intolerance, ECRI notes the establishment of a specialised body to this end in Luxembourg, within the framework of the "Commissioner's Office for Foreigners". Three permanent special commissions (CPS) were set up during May 1996 in application of Article 24 of the "Law on the integration of foreigners", one for frontier workers, one for "municipal advisory commissions for foreigners" and one to combat racial discrimination. These CPS bring together members of the "National Council for Foreigners" and other individuals chosen for their expertise or representative position in the relevant sector. The permanent special commission to combat racial discrimination will have the task of preparing advice and proposals against all forms of racial discrimination, either on its own initiative or at the request of the government or the "National Council for Foreigners", preparing projects and programmes, especially in the field of education, cultural and social activities, training of public officials, with the aim of improving mutual understanding between the various communities in Luxembourg.

II POLICY ASPECTS

E. Reception and status of non-citizens

- ***Elections to professional bodies***

9. The occupational chambers operate on an elective basis. These chambers play an important planning and advisory role in the decision-making processes which directly or indirectly affect the interests of their members. The right to vote is acquired irrespective of nationality or residence, except in the trades association, the chamber of commerce and the association of civil servants. Accordingly, it would be desirable that the right to vote irrespective of nationality which already applies in the other chambers be extended to the latter associations, particularly to the trades association and the chamber of commerce.

- ***Welfare law***

10. There was in the past a degree of discrimination stemming from the fact that birth and maternity allowances were granted subject to a residence requirement. A judgment on this subject was given by the Court of Justice of the European Communities on 10 March 1993 in the case C-11/91. ECRI notes that, following this judgement of the Court of Justice of the European Communities, Luxembourg changed on 31 July 1995 the law on the granting of birth and maternity allowances as regards EU nationals.

- ***Legal Aid***

11. According to Article 2 (1) of the Law of 10 August 1995 on legal aid, such aid is available without discrimination to any individual who lacks sufficient means.

F. Education and training

- ***Linguistic problems***

12. It can be noted that the requirement of proficiency in the three languages spoken in Luxembourg (Letzeburgisch, French and German) could make it difficult for citizens of Luxembourg of foreign origin to gain access to the civil service. While recognising the efforts made in Luxembourg to alleviate in the long term the effects of this regulation, it is felt that such efforts should be actively continued in order to deal with the problem in a proactive way, by means of various pedagogical initiatives aimed at teaching the three languages in the school system.

- **Media**

13. As regards media, there have been praiseworthy efforts in the Luxembourg press to condemn manifestations of discrimination. Acts of racism as well as some situations of inequality have been condemned by the media.

General data as supplied by national authorities

For reasons of consistency, ECRI, in its CBC reports, has, in this box, reproduced statistical data only from the replies of Governments to ECRI's questionnaire. The questionnaire was sent to the Luxembourg authorities on 13 July 1994.

ECRI accepts no responsibility for the data below.

30% of the population are non-citizens, of whom 90% (28,7 % of the population) come from European Union countries. 52% of wage-earners are foreigners (including transfrontier workers).

Population of Luxembourg: 378,400. This figure is taken from the Council of Europe publication "Recent demographic developments in Europe" (see bibliography)

BIBLIOGRAPHY

This bibliography lists the main sources consulted during the examination of the situation in Luxembourg: it does not cover all the various sources of information (media, contacts within the country, national NGOs ect) which were utilised.

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12. Court of Justice - Case C -151/94, Commission v. Luxembourg - Infringement by the State - Income tax - Reimbursement of excess charges made in the context of retention at source - reimbursement subject to residence during the tax year. Discrimination.
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17. Letzebuerger Journal of 9 March 1995, Page 4, "La Chambre de Travail informe - modifications en matière d'allocations de naissance et de maternité - accord de principe de la Chambre de Travail".
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19. Decision of the Court of Justice of 10 March 1993, Case C-111/91