

**European Commission
against Racism and Intolerance**

**Third report on
Luxembourg**

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COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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Foreword

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

One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyses the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.

The country-by-country approach deals with all member States of the Council of Europe on an equal footing. The work is taking place in 4-5 year cycles, covering 9-10 countries per year. The reports of the first round were completed at the end of 1998 and those of the second round at the end of the year 2002. Work on the third round reports started in January 2003.

The third round reports focus on "implementation". They examine if ECRI's main recommendations from previous reports have been followed and implemented, and if so, with what degree of success and effectiveness. The third round reports deal also with "specific issues", chosen according to the different situations in the various countries, and examined in more depth in each report.

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

ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to propose, if they consider it necessary, amendments to 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 report of ECRI.

The following report was drawn up by ECRI under its own and full responsibility. It covers the situation as of 16 December 2005 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.

Executive summary

Since the publication of ECRI's second report on Luxembourg on 8 July 2003, progress has been made in a number of areas highlighted in the report. Luxembourg has ratified the European Charter for Regional or Minority Languages. It has also adopted a new law easing the requirements for foreigners' participation in local elections. The establishment of the office of Ombudsman, which is empowered, *inter alia*, to examine complaints by foreign residents, is also a step forward in the fight against racial discrimination in Luxembourg. Furthermore, the Grand Duchy now has a commission responsible for receiving complaints about the media.

However, a number of recommendations set out in ECRI's second report have not been or have been only partially implemented. Thus, most of the international legal instruments mentioned in the second report, including Protocol No.12 to the European Convention on Human Rights, have not been ratified. Luxembourg is still delaying transposing the European Union directives on equal treatment into its national legislation in spite of a European Court of Justice judgment against it for this omission. Moreover, specialised bodies such as the National Council for Foreigners and the Consultative Commission on Human Rights still lack the human and material resources they need to fulfil their tasks. Housing conditions for asylum seekers and refugees still leave much to be desired, and the bill on the right of asylum and complementary forms of protection has been strongly criticised by the United Nations High Commissioner for Refugees and by NGOs. It has also been the subject of a formal opposition by the Council of State, on two occasions. ECRI notes that no policy has been introduced to integrate communities from an immigrant background in matters such as employment and housing. It also notes that the Luxembourg Government has still not signed an agreement granting the Muslim religion official recognition.

In this report ECRI recommends that the Luxembourg authorities take additional measures in a number of areas. It recommends that they ratify Protocol No.12 to the European Convention on Human Rights, among other instruments. It also considers that the Luxembourg Government should adopt as soon as possible the bills on nationality and on the asylum application procedure, as well as the bill transposing the European Union directives, by taking account of the criticisms and recommendations made regarding them. ECRI considers it essential to adopt a clear policy for integrating members of immigrant communities in all areas, especially on the labour market, in order to eliminate any discrimination that they suffer. As part of this policy, public awareness measures should be reinforced in order to fight prejudices and stereotypes against Muslims. ECRI calls on the Luxembourg Government to take more account of the opinions of specialised bodies such as the Consultative Commission on Human Rights on issues relating to racism and racial discrimination when it takes initiatives aimed at combating these trends. ECRI moreover believes that the judiciary, the police and the staff of the Luxembourg Detention Centre should be offered basic and on-going training on the issues of racism and racial discrimination.

I. FOLLOW-UP TO ECRI'S SECOND REPORT ON LUXEMBOURG

International legal instruments

1. In its second report, ECRI recommended that Luxembourg ratify Protocol No.12 to the European Convention on Human Rights, the Framework Convention for the Protection of National Minorities, the European Charter for Regional or Minority Languages and the European Convention on the Legal Status of Migrant Workers. It also strongly encouraged Luxembourg to ratify the Convention on the Participation of Foreigners in Public Life at Local Level and the European Convention on Nationality.
2. ECRI welcomes Luxembourg's ratification, on 22 June 2005, of the European Charter for Regional or Minority Languages, which came into force on 1 October 2005. It has also been informed by the Luxembourg authorities that the bill on ratification of Protocol No.12 to the European Convention on Human Rights was tabled in the Chamber of Deputies on 6 April 2004, for adoption. ECRI therefore hopes that the protocol will be ratified soon, since it has been before this Chamber for more than a year. ECRI notes that Luxembourg has signed the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.
3. ECRI notes that Luxembourg does not intend to ratify the Framework Convention for the Protection of National Minorities because it considers that there are no national minorities in the Grand Duchy. ECRI also notes that Luxembourg has not ratified the European Convention on Nationality. The Luxembourg Government has informed ECRI that this convention will be ratified once the new law on nationality has been adopted¹.
4. Luxembourg has not ratified the Convention on the Participation of Foreigners in Public Life at Local Level or the European Convention on the Legal Status of Migrant Workers. The Grand-Duchy has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families either.

Recommendations:

5. ECRI recommends that Luxembourg ratify Protocol No.12 to the European Convention on Human Rights as soon as possible. It also recommends that it ratify the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.
6. ECRI reminds Luxembourg of the importance of ratifying the Framework Convention for the Protection of National Minorities, the European Convention on Nationality, the Convention on the Participation of Foreigners in Public Life at Local Level, the European Convention on the Legal Status of Migrant Workers and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

¹ For further information on the law on nationality, see below the section of the report entitled "Constitutional provisions and other basic provisions".

Constitutional provisions and other basic provisions

- *Legislation on nationality*

7. In its second report, ECRI strongly encouraged the Luxembourg Government to amend its legislation in order to introduce dual nationality, by drawing inspiration from the principles enshrined in the European Convention on Nationality.
8. ECRI is pleased to note that a new bill on nationality, which is currently being drafted, provides for dual nationality. Among other things, this bill will make it easier for second-generation immigrants to acquire dual nationality by choice. The Luxembourg authorities have also informed ECRI that the bill provides for the shortening of the procedure for acquiring Luxembourg nationality. However, applicants for Luxembourg nationality will be required to have knowledge of Luxembourg's three official languages, namely French, German and Letzeburgisch. On this point, NGOs deplore the shortage of facilities and methods for assessing this knowledge. In addition, in his general policy statement of 12 October 2005, the Luxembourg Prime Minister stated that the Minister of Justice would table this bill on dual nationality at the end of spring 2006. However, NGOs and members of civil society criticise the government for supplying very little information on the bill and on the legislative process concerning it. This lack of transparency is all the more unfortunate because 40% of Luxembourg's population are foreign and the bill is therefore of interest to a large number of people.

Recommendations:

9. ECRI recommends that Luxembourg adopt the bill on nationality as soon as possible. It calls on Luxembourg to take account of the European Convention on Nationality in this matter and to ensure that NGOs, members of civil society and the general public are fully informed of the content of the bill so that the bodies empowered to deal with legislation may take account of their views.

Criminal law provisions

10. In its second report, ECRI drew Luxembourg's attention to the fact that Article 457-5 of the Penal Code, which contained a general clause stating that "the ban on discrimination does not apply to differential treatment provided by or resulting from another legal provision", was very broad in scope. It therefore recommended that Luxembourg interpret this provision in the light of the case-law of the European Court of Human Rights.
11. Since the publication of the second report, a new bill transposing Directive 2000/43/CE implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/CE establishing a general framework for equal treatment in employment and occupation is in the process of being adopted in Luxembourg². This new bill provides for the amendment Article 457-5 of the Penal Code by prohibiting any differential treatment, except with regard to nationals other than those of the European Union countries and stateless persons, in matters of entry into Luxembourg and of the right to vote. While welcoming this amendment, ECRI notes the case-law of the European Court of Human Rights, which has stated that the principle of

² For further information on the transposition of these two directives into Luxembourg's domestic law, see below the part of the report entitled "Civil and administrative law provisions"

equal treatment is infringed if the differential treatment has no objective and reasonable justification³.

Recommendations:

12. ECRI recommends that Luxembourg ensure that any amendments to Article 457-5) of the Penal Code to be made in the law transposing the European Union directives include the principles that a differential treatment must have an objective justification and be reasonable.
13. In its second report, ECRI recommended that Luxembourg adopt a criminal law provision to the effect that racist motivation constitutes an aggravating circumstance for any offence.
14. The Luxembourg authorities have informed ECRI that no provision to the effect that the racist motivation of an ordinary offence constitutes an aggravating circumstance in determining the sentence to be handed out has been incorporated into the Penal Code. They further stated that since the second report, the racist motivation of an offence has been considered in 22 cases, but that in some of these the proceedings have been discontinued. This is the first time the State Prosecutor has supplied such statistics since the Penal Code provisions on racism and intolerance came into force in 1997. ECRI notes, however, that these statistics were collected solely because the Special "Racism" Commission requested them. It would also seem that the racist element of an offence is taken into account only in very few cases. ECRI therefore considers that a provision expressly providing for racist motivation to be taken into account could ensure that judges pay closer attention to it.
15. In its second report on Luxembourg, ECRI felt that criminal legislation should prohibit the creation of groups that promote racism, and support for such groups or participation in their activities.
16. The Luxembourg authorities have informed ECRI that they do not intend to ban racist organisations because they believe that Article 457-1 of the Penal Code, which provides for penalties in respect of anyone belonging to such an organisation, is sufficient. Furthermore, according to the Luxembourg authorities, organisations whose activities infringe public order and which take the form of non-profit-making associations⁴ can be dissolved. ECRI nevertheless considers that a provision expressly prohibiting racist organisations and membership of such organisations⁵ would serve to counter this phenomenon more effectively. This is all the more important because the Luxembourg authorities have informed ECRI that the courts have recently been dealing with a case concerning a White Power group composed of young people who had illegally imported arms into Luxembourg.
17. The Luxembourg authorities have informed ECRI that in 2004, 13 complaints of racism were filed with the prosecuting authorities. One of these cases, which concerns antisemitic e-mails sent in a work context, is currently before the courts. Another concerns a person who posted on the Internet, with racist comments, photos of a young Congolese woman who set herself alight and burned to death in 2004 to protest against the discrimination to which she and her family had been subjected by the administration.

³ See among others the "Case relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium, 23/7/1968.

⁴ ASBL – Association sans but lucratif.

⁵ See also Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination and Article 20 of the International Covenant on Civil and Political Rights.

18. The authorities have stated that many cases, particularly those in which swastikas are painted on gravestones or walls, have not been solved because the perpetrators could not be identified. The Luxembourg authorities have also informed ECRI that some cases involving racism have been resolved through criminal mediation and that in three such cases the victim and the perpetrator of the racist act reached an agreement. According to the authorities, the choice of mediation depends on the seriousness of the offence and the perpetrator's capacity to realise the full significance of his or her act. If these two requirements are not met, criminal proceedings are brought. The victim may also refuse to resort to mediation. ECRI hopes that the victim's decision is fully respected and that he/she is assisted by a lawyer in making his/her choices.
19. ECRI notes that the Luxembourg courts still receive too few complaints of racist acts, and considers that there is still much to be done to ensure that the relevant provisions of the Penal Code are fully applied. On this point, the Luxembourg authorities have said that since the 2002-2003 judicial year, a judge has been specially appointed to examine all cases involving racism and racial discrimination. This will enable him to specialise in these matters and take a consistent approach to this type of cases. ECRI welcomes this decision, which reflects the authorities' intention of punishing racist acts. However, it hopes that the other Luxembourg judges will receive training on the issue of racism.⁶

Recommendations:

20. ECRI again recommends that the Luxembourg Government include in the Penal Code a provision enabling judges, when determining a sentence, to consider the racist motivation of an ordinary offence as an aggravating circumstance, as ECRI advocates in its General Policy Recommendation No.7 on national legislation to combat racism and racial discrimination⁷.
21. ECRI reiterates its recommendation that the Luxembourg Government incorporate into its Penal Code provisions prohibiting the creation or leadership of a group promoting racism, and support for such groups or participation in their activities, as it proposes in its General Policy Recommendation No.7⁸.
22. ECRI recommends that the Luxembourg Government ensure that racist acts are punished in accordance with the relevant provisions of the Penal Code. It recommends that the government conduct information campaigns on these provisions and the relevant procedure for the benefit of victims of racist acts and the judiciary and police. ECRI also recommends that the government ensure that when a complaint of racism is lodged, the victim is informed of all the choices available and with the assistance of a lawyer.

Civil and administrative law provisions

- *Article 3 of the law of 27 July 1993 on the integration of foreigners*

23. In its second report on Luxembourg, ECRI noted that Article 3 of the law of 27 July 1993 on the integration of foreigners, which prohibited all discrimination on grounds including race, colour and ethnic or religious origin, was the only civil and administrative law provision banning racial discrimination.

⁶ For further information on the training of the judiciary on issues relating to racism and racial discrimination, see below the part of the report entitled "Administration of justice".

⁷ See paragraph 21.

⁸ See paragraph 18-g of the recommendation.

24. The Luxembourg authorities have stated that the National Council for Foreigners and the Government Commissioner's Office for Foreigners, which are responsible for ensuring the integration of foreigners in Luxembourg, were set up under the law of 27 July 1993⁹. However, ECRI notes that there is no case-law on Article 3 of this law. Furthermore, it notes that neither potential victims of racial discrimination nor the authorities appear to be aware of the existence of this article.

- **Bill transposing directives 2000/43/CE and 2000/78/CE**

25. In its second report, ECRI encouraged Luxembourg to take account of the guidelines on civil and administrative law set out in its General Policy Recommendation No.7 when transposing Directive 2000/43/CE implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/CE establishing a general framework for equal treatment in employment and occupation.

26. ECRI regrets to have to note that since the publication of its second report, Luxembourg has still not transposed the two above-mentioned directives, despite a European Court of Justice judgment condemning it for this delay in 2004¹⁰. Furthermore, ECRI notes that the Council of State has given a negative opinion on the initial bills (transposing the two directives separately)¹¹. The Council of State, which held that the bills were far from meeting the requirements of the two directives, did not consider it necessary to examine them in detail. The government therefore drew up a new bill to which the latest changes were made during the week of 19 September 2005. This new bill, on which the Council of State will again have to give an opinion, will therefore not be adopted until 2006 at the earliest. NGOs and members of civil society deplore the slowness of the process, which has lasted more than three years. They also take the view that little information is emerging about the process and the actual content of the new bill. In view of all this information, ECRI believes that Luxembourg's delay in transposing the two directives on equal treatment is proof that a firm political will is lacking.

27. ECRI considers it all the more important to adopt the above-mentioned bill transposing the directives without delay because it contains provisions of particular importance in combating racial discrimination. The bill provides, *inter alia*, for the burden of proof to be shared between the complainant and the defendant in discrimination cases, and for the setting up of an Equality Centre empowered to receive complaints of racial discrimination. ECRI hopes that this body will be set up in line with the principles stated in its General Policy Recommendation No.2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level. While welcoming the inclusion of these provisions, ECRI notes that there are still some lacunae in the bill, especially as regards protection against discrimination in employment, since the bill does not appear to cover the public sector in the same manner as the private sector.

⁹ For further information on these institutions' work, see below the part of the report entitled "Specific issues".

¹⁰ See case No.C-70/05.

¹¹ See, Avis du Conseil d'Etat sur les projets de loi Nos.5249 and 5248, 7 December 2004.

- **Electoral law**

28. On 12 February 2003, Luxembourg adopted a new electoral law, effective as from the 2004 general election, which eases the requirements governing non-citizens' voting rights. It grants EU nationals who have lived in Luxembourg continuously for at least five years the right to vote and stand in local elections. Non-EU nationals are now entitled to vote in local elections if they have a residence permit and have also lived in Luxembourg for five years. ECRI welcomes this amendment to the electoral law.
29. While acknowledging that the above-mentioned amendments are very recent, ECRI notes that only 17% of European Union nationals and 6% of non-EU nationals registered for the local elections held in October 2005. Moreover, only 5% of the candidates in those elections were foreigners, although this was an increase by comparison with the 1999 local elections. ECRI has been informed that some non-Luxembourgers may be discouraged from standing in local elections partly by the fact that locally elected representatives, even where they are foreign, are required to know Luxembourg's three official languages and that municipal councils' working language is Letzeburgisch. Furthermore, whereas participation in the vote is compulsory for Luxembourgers, the deadline for registering foreigners on the electoral register was set at 1 April 2004, ie 18 months before the elections. This may have been a further barrier to their participation in these elections.

Recommendations:

30. ECRI recommends that the Luxembourg Government ensure that Article 3 of the law of 27 July 2003 is made better known to the persons concerned, such as potential victims of discrimination and judicial actors, so that it may be better implemented.
31. ECRI strongly recommends that the government of the Grand Duchy of Luxembourg adopt the law transposing Directive 2000/78/CE and Directive 2000/43/CE without delay. It recommends in this respect that the government take account of all the points covered by the directives and of ECRI's General Policy Recommendations Nos.2 and 7. It also considers it essential that all the bodies empowered to do so should be able to put forward their views and recommendations on the bill.
32. ECRI recommends that the Luxembourg Government ensure that foreigners can fully participate in local elections by easing the deadline for registering to vote in such elections and the language requirements governing municipal councils' work.

Administration of justice

33. ECRI has been informed that for the past few years, Luxembourg judges have received basic and on-going training provided by a number of NGOs such as CARITAS and the *Comité de liaison et d'action pour les étrangers* (CLAE) - Liaison and Action Committee for Foreigners - on, *inter alia*, the legislation on asylum seekers and racial discrimination issues. The authorities have also stated that judges and prosecutors take human rights courses during their training, together with practical work experience on the subject. ECRI nevertheless notes with regret that issues concerning racism and racial discrimination are not part of a compulsory component of the training received by the judiciary. Although a judge has been specially appointed to deal with cases involving racism and racial discrimination, as stated above, ECRI believes that all Luxembourg judges should receive both basic and on-going training on these issues.

Recommendations:

34. ECRI recommends that the Luxembourg Government ensure that trainee judges and those already in post all be fully familiar with national and international legislation on racism and racial discrimination.

Specialised bodies and other institutions

35. For a discussion of the issues concerning specialised bodies and other institutions, see below the part of the report entitled "Specific issues".

Education and awareness-raising

36. In its second report, ECRI encouraged the Luxembourg Government to continue and step up its efforts to provide human rights training to the police, prison staff and the judiciary, by ensuring that the issues of racism and discrimination are included in this training. ECRI also stressed the need to extend this type of training to all public officials who come into contact with groups such as asylum seekers and immigrants.
37. The authorities have stated that they have taken some new initiatives such as organising contacts between the police college and the *Association de soutien aux travailleurs immigrés* (ASTI) - Association for the Support of Immigrant Workers - to put trainee police officers in touch with the problems on the ground. The police college also provides a total of ten hours' training on discrimination and racism. The authorities have further informed ECRI that police officers attend courses about foreigners, in which they learn how to behave with them¹². Young police officers also receive tuition on topics such as the far right and concentration camps.
38. The authorities have also informed ECRI that a course on human rights and the European prison rules for staff of the Luxembourg Detention Centre started in October 2005. ECRI considers it essential that the staff of this Centre, especially the prison officers, should receive training on the issues of racism and discrimination without delay. The Committee for the Prevention of Torture (CPT) stated in its report on Luxembourg published on 29 April 2004 that during its visit to Luxembourg in February 2003, it had received numerous allegations that prison officers in this prison subjected inmates to racist and/or xenophobic insults¹³.

Recommendations:

39. ECRI strongly recommends that the Luxembourg Government continue and improve basic and on-going training on issues concerning racism and racial discrimination provided to the police as well as to the staff of the Luxembourg Detention Centre and the Directorate of Immigration. It also recommends that the government pay special attention to the complaints of racist and/or xenophobic insults recorded in respect of prison officers of the Luxembourg Detention Centre, by conducting enquiries on the subject and taking disciplinary measures against anyone found guilty of such behaviour.

¹² For further information on police training on issues relating to racism and racial discrimination, see below the part of the report entitled "Conduct of law enforcement officials".

¹³ Report to the Government of the Grand Duchy of Luxembourg on the visit to Luxembourg conducted by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment (CPT) from 2 to 7 February 2003, CPT/Inf (2004) 12, paras 34 and 35.

40. In its second report, ECRI noted that the Luxembourg school system did not include specific human rights lessons, although the subject was tackled in a cross-disciplinary way at various levels and in different subjects such as history and languages. It further strongly recommended that the Luxembourg Government take steps to enhance pupils' mutual understanding and stressed the need to ensure that the teaching material used at all stages of education better reflect the different components of Luxembourg society.
41. The "Education" sub-commission of the Consultative Commission on Human Rights¹⁴ has informed ECRI that it has attempted to convey to the government the importance of providing teaching staff with training in human rights. In 2005, it also submitted to the government an "Outline of a consistent and multidisciplinary approach to human rights education"¹⁵ in which, among other points, it stated that it was important for young people to learn about Luxembourg's legislation when they were required to think about issues such as racism¹⁶. Unfortunately, ECRI notes that the Luxembourg Government does not appear to have taken account of this very important proposal in its general policy announced on 12 October 2005¹⁷. However, the latter has informed ECRI that teachers training to teach in secondary schools have transversal course components relating to human rights. ECRI further notes that teachers do not appear to value pupils' cultural diversity as the asset it really is. NGOs have informed ECRI that some teachers still perceive young foreigners as a liability because of their lack of knowledge of the languages spoken in Luxembourg and take the view that they lower classroom standards.
42. The Luxembourg Government should nevertheless be credited with a number of initiatives. For example, Article 4 of the law of 25 July 2005 setting up a pilot secondary school¹⁸ provides that pupils will receive education in values to ensure that they acquire appropriate knowledge of the main religions and currents of thought throughout the world. ECRI also welcomes the adoption of the law of 25 June 2004 on the organisation of secondary and technical secondary schools¹⁹, which provides in its Article 42 that incitement to racial hatred, to xenophobia and to religious intolerance is an offence punishable by definitive expulsion. It also notes that a number of steps, such as school trips to former concentration camps like Auschwitz, are taken to educate pupils about human rights. The Consultative Commission on Human Rights nevertheless observes that these remain "sporadic" measures which "often depend on the commitment of a single teacher or small group of teachers"²⁰. ECRI also notes that Luxembourg's school textbooks still do not adequately reflect the country's cultural diversity or the contribution of immigrant communities to Luxembourg society.

¹⁴ For further information on this commission, see below the part of the report entitled "Specific issues".

¹⁵ See Rapport annuel de la Commission consultative des droits de l'homme 2003 et 2004, p.173- 180.

¹⁶ See Rapport annuel de la Commission consultative des droits de l'homme 2003 et 2004, p. 177 and 178

¹⁷ See the general policy statement presented to the Chamber of Deputies by Mr Jean-Claude Juncker, http://www.gouvernement.lu/salle_presse/actualite/2005/10/12juncker_chd/index.ht.

¹⁸ See Mémorial A (Official Gazette) No.139 of 26 August 2005.

¹⁹ See Mémorial A No.126 of 16 July 2004.

²⁰ See Rapport annuel de la Commission consultative des droits de l'homme 2003 et 2004, p. 179.

Recommendations:

43. ECRI calls on the Luxembourg Government to ensure that all teachers and educators receive basic and on-going training in human rights in general and issues concerning racism and discrimination in particular. It recommends on this point that the government take account of the recommendations made by all specialised bodies and individuals in this field.
44. ECRI recommends that the Luxembourg Government extend to all the country's schools the education in values provided for by the law of 25 July 2005 establishing a pilot secondary school. It also recommends that the government ensure that Article 42 of the law of 24 June 2005 on the organisation of secondary and technical secondary schools be written into the overall legislation governing education in Luxembourg.
45. ECRI reiterates its recommendation that the Government of the Grand Duchy of Luxembourg ensure that Luxembourg's school textbooks better reflect the country's diversity. It also calls on the government to implement a policy to promote multiculturalism in schools.

Reception and status of non-citizens

- *Refugees and asylum seekers*

46. In its second report on Luxembourg, ECRI strongly recommended that the authorities do all they could to meet asylum seekers' housing needs and ensure that they had decent living conditions.
47. ECRI notes with concern that although some progress has been made in housing for asylum seekers, many shortcomings remain. The Don Bosco Centre, which is the first reception centre for asylum seekers, has been refurbished, but according to the NGOs, living conditions there remain difficult. The authorities have informed ECRI that new facilities run by the Red Cross and CARITAS and co-funded by the state have been opened since the publication of the second report. They have further stated that they have recruited 15 more staff members to the Government Commissioner's Office for Foreigners and NGOs. However, the authorities themselves admit that these measures are inadequate. NGOs deplore the lack of supervision of the staff working in these centres and the fact that the persons responsible for the reception of asylum seekers receive no psychological support, which generates an atmosphere of tension. They have also informed ECRI that many municipalities still refuse to receive asylum seekers.
48. ECRI notes that reception centres for asylum seekers are supervised by security firms²¹. However, staff in these firms, who chiefly worked in the banking sector, are not qualified to look after asylum seekers. The United Nations High Commissioner for Refugees (UNHCR) has recommended that these persons receive basic training in this area, but without success. ECRI moreover notes with concern that there are no legal rules governing these firms' work and responsibilities.
49. In its second report, ECRI strongly encouraged the Luxembourg Government to consider the issue of the social benefits awarded to asylum seekers whose

²¹ The Ministry of the Family and Integration enlists the services of these firms.

application had been rejected in order to find a solution which does not infringe their dignity.

50. NGOs have informed ECRI that asylum seekers whose application has been rejected and who cannot, for various reasons, return to their country receive only food and accommodation. As a result, they are unable to pay for their medical care, for example, and continue to be in a precarious situation. On this matter, the Luxembourg Government has informed ECRI that the Government Commissioner for Foreigners issues, but on request only, a voucher permitting a rejected asylum seeker to consult a doctor or be admitted to hospital. According to the information supplied to ECRI, there are still hundreds of asylum seekers in Luxembourg who arrived there between 1998 and 2000, whose application has been rejected and whose situation has still not been regularised. As these persons no longer receive any social benefits, NGOs have stated that they have requested that their situation be regularised, to no avail. They also deplore the fact that although the children of asylum seekers whose application has been rejected are entitled to attend school, their parents are required to pay for school supplies themselves despite their lack of resources. On this point, the Luxembourg Government has informed ECRI that the Government Commissioner for Foreigners offers financial assistance for the purchase of school supplies, but that this is of a low amount. Moreover, NGOs criticise the absence of a clear procedure in the matter, which often makes these persons dependent on the goodwill of social workers.

Recommendations:

51. ECRI strongly recommends that the Luxembourg Government ensure that housing conditions for asylum seekers be improved without delay. It also recommends that they see to it that the persons who supervise the detention centres are duly qualified and trained. It considers that the government should work on this issue with the UNHCR, the Red Cross, CARITAS and any other organisations specialising in the protection of asylum seekers and refugees.
52. ECRI stresses the importance of establishing a legal framework governing the duties and responsibilities of all persons and institutions required to deal with asylum seekers and refugees.
53. It reiterates its recommendation that the Luxembourg Government ensure that the living conditions of asylum seekers whose application has been rejected do not infringe their dignity. It is important that a clear and humane social welfare procedure be set up to prevent these persons from falling into the hands of criminal networks in order to meet their basic needs. In this respect, ECRI calls on the Luxembourg Government to pay special attention to unaccompanied minors.
54. In its second report, ECRI took the view that it would be advisable to consider allowing asylum seekers to work or receive training in preparation for their possible future life in Luxembourg or their return to their country of origin.
55. Article 14 of the new bill on asylum procedure provides that asylum seekers can enter the labour market after nine months in Luxembourg, as long as their application is under consideration. However, while welcoming this step forward, ECRI notes that as one of the bill's main objectives is to shorten the asylum application procedure, many asylum seekers are likely to be unable to enjoy this right.
56. As regards the new bill on the right of asylum and complementary forms of protection, ECRI notes with great concern that the bill has been strongly criticised by the NGOs, including the *Collectif Réfugiés* (Refugee Collective), and the

UNHCR and the Council of State for its serious deficiencies. On 27 September 2005, the Council of State, which had given a negative opinion on the bill on 3 May 2005, gave an additional opinion in which it reiterated its formal opposition to some articles contained in the bill. The articles in question remove the right of appeal to a higher court, preclude any application to the administrative courts against a decision by the minister to resort to an accelerated procedure²² and allows for the detention of an asylum seeker whose application has been rejected for a period of 12 months²³. By stating its formal opposition to the bill, the Council of State is refusing to grant exemption from a second vote, which, under the terms of the law, delays its adoption by three months.

57. ECRI is concerned to note that as stated above, the stated aim of the bill on the right of asylum and complementary forms of protection is to reduce the length of the asylum procedure. However, this is liable to lead to situations in which persons effectively covered by the 1951 Convention relating to the Status of Refugees have their applications rejected and therefore risk being sent back to a country where they are victims of persecution. NGOs have also told ECRI that many points such as the right of access to training, which are inadequately detailed in the bill, are referred to grand-ducal regulations, which do not have the same legal scope. Moreover, Article 24 of the bill provides for asylum seekers to be systematically fingerprinted. Article 3 provides that an asylum seeker may be subjected to a body search “if necessary” and “in a spirit of respect for his or her dignity”, without specifying the circumstances in which such searches would be justified.
58. ECRI notes that the new bill has nevertheless taken account of some criticisms made by the above-mentioned bodies on issues such as, among others, that of unaccompanied minors, since tutors will now be systematically appointed to such minors in order to supervise their asylum applications. Moreover, in accordance with the Convention on the Rights of the Child, the bill recognises that unaccompanied minors henceforth have the right to be treated as minors up to the age of 18 and not 16 as stated in the first version. The bill has also set up complementary forms of protection.

Recommendations:

59. ECRI recommends that the Luxembourg Government ensure that the right to enter the labour market, granted to asylum seekers under the bill on the right of asylum and complementary forms of protection, does not remain a dead letter because these persons are unable to benefit from it in practice.
60. ECRI urges the Luxembourg Government to take account of the additional opinion of the Council of State on the bill on the right of asylum and complementary forms of protection. It also strongly recommends that the government ensure that the suggestions made by NGOs and the UNHCR on the bill are taken into consideration. It considers it extremely important that the bill is finalised and adopted without delay.

²² The Articles in question are Articles 17, 20 and 23 of the bill. See Avis complémentaire du Conseil d'Etat n° 46; 884 Doc. Parl.5302, concernant le projet de loi relatif au droit d'asile et à des formes complémentaires de protection, p. 1.

²³ These appear to be cases in which the travel documents required to deport the asylum seeker have not yet been drawn up and cases in which the asylum seeker has not produced any information establishing his or her identity or nationality. See the additional opinion, p.2.

- **Placement at the government's disposal**

61. In its second report, ECRI expressed its concern at the conditions in which foreigners were held and at the fact that non-governmental organisations which so requested were unable to obtain permission to visit their places of detention. It therefore recommended that these requests be granted.
62. Although the law on the placement at the government's disposal of foreigners whose papers are not in order or whose deportation has been ordered provides that they shall be placed in an appropriate establishment, ECRI notes that they are almost systematically held in a purpose-built wing of the Luxembourg Detention Centre. It is seriously concerned to note that NGOs still have difficulty in gaining access to these persons, since all requests to visit them have to be authorised by the Ministry of Justice and if the latter refuses or does not answer, NGOs have no access to these persons. However, they are seldom granted these visiting rights, which is a particularly serious problem if the person concerned is to be deported from Luxembourg. As a result, according to NGO estimates, some 200 persons are currently said to be held in Luxembourg Detention Centre in a state of total isolation. On this point, the Luxembourg Government claims for its part that there are only 60 at most. Moreover, the Luxembourg authorities have stated that a detention centre is to be built in 2007. ECRI is pleased to note that the Luxembourg Government has asked the Collectif Réfugiés for its opinion on the subject²⁴ and it hopes that the government will take it into account.

Recommendations:

63. ECRI urges the Luxembourg Government to ensure that everyone detained for administrative reasons enjoys all the rights granted to persons deprived of their liberty in Luxembourg, including the right to receive visits and the right of access to a lawyer.

- **Regularisation procedure for immigrants with no legal status**

64. In its second report, ECRI expressed the hope that the special government unit set up to regularise these immigrants' situation would take account of the difficulties facing them and would consider their situation on a case-by-case basis, bearing in mind the fundamental principles of human rights and the situation in each person's country of origin, before any decision to deport them was considered.
65. ECRI has been informed that the special government unit has been closed down. Regularisations therefore ended on 31 December 2002 and several waves of forced or voluntary repatriation have taken place since then. According to the Luxembourg authorities, 69 persons living illegally in Luxembourg were forcibly repatriated in 2003 and 56 the following year. Moreover, in April 2003 the Consultative Commission also gave a detailed opinion on the deportation and *refoulement* of foreigners living illegally in Luxembourg, in which it made numerous detailed recommendations on the procedures and principles to be complied with in the matter²⁵. However, it would seem that not all the commission's recommendations have been taken into account.

²⁴ See "Le Collectif Réfugiés Luxembourg face au concept de centre de rétention" (The Luxembourg Refugees Collective and the concept of detention centre), Opinion requested by the Luxembourg Government from the "Refugees Collective" (LRF) at the meeting on 24 October 2004 and issued by the LRF on 13 January 2005.

²⁵ See Rapport annuel de la commission consultative des droits de l'homme 2003 et 2004, p. 9-118. For further information on this commission, see below the section of the report entitled "Specific issues".

Recommendations:

66. ECRI recommends that the Government of the Grand Duchy of Luxembourg take account of the opinion given by the Collectif Réfugiés when the new detention centre is built.
67. ECRI reiterates its recommendation that the Luxembourg Government ensure that any steps taken with regard to immigrants with no legal status comply with the fundamental principles of human rights and take account of the particular situation of the person concerned. It also calls on the government to take account of the recommendations made on the subject by the Consultative Commission on Human Rights.

Access to public services

- *Access to housing*

68. In its second report, ECRI strongly encouraged the Luxembourg authorities to fight discrimination in the housing sector by applying the legislation in force and raising awareness of the issue among property owners and housing professionals. It also recommended that they resolve the problem of the shortage of social housing, which particularly affects families of non-EU immigrants, as soon as possible.
69. ECRI regrets to note that the housing problems highlighted in the second report remain unsolved. Foreigners, immigrants and refugees still have difficulty finding decent accommodation partly because of the cost of housing. In addition, the authorities do not appear to have included in their policy the issue of racial discrimination in housing matters. For example, the Housing Observatory set up in 2003 to collect housing data does not take account of the issues of racism and racial discrimination in its studies. ECRI also regrets to have to note that the Ministry of Housing does not seem to be particularly preoccupied by the problem of racial discrimination in this area, since the steps it has taken to encourage a better social mix take no account of this issue. On this matter, the Luxembourg Government claims that the housing department encourages property developers who carry out construction projects with the financial assistance of the state to ensure a social mix when they are planning to build housing. However, ECRI has been informed that no campaign has been conducted to make property owners and estate agencies aware of the issues of racism and discrimination.

Recommendations:

70. ECRI reminds the Luxembourg Government of the urgent need to find solutions to the housing problems facing minority groups. It stresses the importance of the ministries concerned becoming aware of this issue and of intragovernmental co-operation on the subject. ECRI also reiterates that it is necessary to publicise the legislation on discrimination and apply it in the housing sector, and to bring home the issues of racism and racial discrimination to all those concerned by this problem.

- *Access to education*

71. In its second report, ECRI strongly encouraged the Grand Duchy of Luxembourg to pursue its efforts to facilitate the integration of foreign children and the children of asylum seekers into Luxembourg schools. It also welcomed the appointment of intercultural mediators from these children's countries of origin.
72. ECRI has been informed that only 10% of foreign children and children from an immigrant background attend standard secondary schools and that 80% of them

are in technical schools. On this issue, the Luxembourg government has declared that in 2004/2005, 16.6% of foreign children and 38.2% of Luxembourg children attended standard secondary schools, whilst 83.4% and 61.8% respectively attended technical secondary education. In its report on Luxembourg presented in 2004 under the Programme for International Student Assessment (PISA), the Organisation for Economic Co-operation and Development (OECD) noted that pupils whose families are from an immigrant background perform less well than their Luxembourg counterparts²⁶. This study also noted a strong correlation between the parents' socio-occupational status and the pupils' performance, a fact which particularly affects pupils from an immigrant background because their parents are often near the lower end of the socio-economic scale. In view of these conclusions, ECRI hopes that the measures taken by the authorities such as stepping up efforts to teach Letzeburgisch to foreign pupils and pupils from an immigrant background and publishing a German textbook which includes an approach to German as a foreign language, will bear fruit. This is all the more important because knowledge of the Grand Duchy's three official languages is a key factor for the integration of non-Luxembourgers and people from an immigrant background into the labour market.

73. The Luxembourg authorities have informed ECRI that there are currently 13 cultural mediators who speak nine languages, whose task is to help provide support to foreign pupils and pupils from an immigrant background. However, these mediators have no official status and work only under temporary contracts. The authorities have also informed ECRI that in 2005, a centralised service was set up within the Ministry for National Education in order to receive children over the age of 12 arriving in the country for the first time. However, the reception classes for these children are not provided for by law, so municipalities are not compelled to set them up. The authorities have stated that a new law on primary education, which will include provision for these classes, is in preparation. This law is also expected to provide for mediators and teachers who do not speak Luxembourg's three official languages to be hired as civil servants²⁷.

Recommendations:

74. ECRI recommends that the Luxembourg Government frame a clear long-term policy for improving the integration of foreign pupils and those from an immigrant background into the Grand Duchy's school system. It considers that all the measures taken for that purpose should be enshrined in law so that they apply throughout the country.

Media

75. In its second report, ECRI noted with concern that the media had been showing less tolerance for some time. It therefore considered it necessary to alert media professionals to the dangers of publishing racist or antisemitic statements and strongly supported any steps they might take to adopt and implement guidelines encouraging journalists to report on events in a more responsible manner and to receive training for the purpose.
76. ECRI has been informed that the media continue to mention the colour or nationality of a suspect when this is neither necessary nor relevant. Furthermore,

²⁶ See PISA 2003, International Student Assessment, Rapport national Luxembourg, le Gouvernement du Grand-Duché de Luxembourg, Ministère de l'Education nationale et de la Formation professionnelle, Iris Blanke, Bettina Böhm et Michel Lanners, (Service de coordination et de la recherche et de l'innovation pédagogiques et technologiques (SCRIPT)) Luxembourg, December 2004, pp. 86-90.

²⁷ The authorities stated that this law might be passed before summer 2007.

according to its sources, some media still convey a poor image of foreigners and particularly of asylum seekers. In this regard, Article 32 of the law of 8 June 2004 on the press set up a complaints commission which is to act both as a mediator and as a quasi-judicial body²⁸. Regrettably, however, this commission, which is headed by a retired judge, comprises only editors and journalists and does not therefore include anyone not involved in journalism. The Press Council has informed ECRI that a new code of professional ethics, which will take account of the issues of racism and racial discrimination, is being drawn up and should be adopted at the beginning of 2006.

Recommendations:

77. ECRI recommends that the Luxembourg Government help the media to do their job in a spirit of full respect for everyone, by promoting and supporting any initiatives to provide them with training courses on racism, racial discrimination and antisemitism. It also calls on the government to ensure a more active implementation of the legislation on discrimination to media circles when this proves necessary.

Climate of opinion

78. In its second report, ECRI drew the Luxembourg Government's attention to the principles laid down in the Charter of European Political Parties for a Non-Racist Society and hoped that these principles would be reflected in political life in Luxembourg.
79. The National Council for Foreigners has informed ECRI that discriminatory acts peaked in 2004 as a result of the populist discourse of some politicians, but that the situation calmed down in 2005. ECRI has also learnt that in 2004, a number of politicians openly equated Africans with drug dealers. Moreover, during the October 2005 local elections campaign, a number of parties used rhetoric which played on people's fears of insecurity, with xenophobic overtones. NGOs and members of civil society have also described a climate of latent racism in Luxembourg society, which is not expressed through violence but is nevertheless tangible.

Recommendations:

80. ECRI reiterates its recommendation that the Luxembourg Government ensure that politicians across the political spectrum refrain from using language likely to fuel racial hatred and xenophobia.
81. ECRI urges the Government of the Grand Duchy of Luxembourg to continue conducting public awareness campaigns on the adverse consequences of racism and xenophobia.

Conduct of law enforcement officials

82. In its second report, ECRI pointed out that if the police were made more aware of cultural differences, this might improve their relations with immigrant communities. It also encouraged the Luxembourg Government to pursue its efforts to provide basic and on-going training in human rights.
83. It appears that no steps have been taken to increase the police's awareness of the different communities living in Luxembourg. The authorities have also stated that few complaints have been made to the police on account of racist acts or behaviour on the part of police officers. Only 20 were received in 2004 and 15

²⁸ See Mémorial A No.85 of 8 June 2004, p.1207.

between January and June 2005, and these chiefly concerned racist insults. In general, however, no action is taken on complaints of this kind because, according to the authorities, there are no objective witnesses and because the complaints are considered unfounded. ECRI also notes with concern reports that the police tend to equate Africans with drug dealers, which sometimes causes wrongful arrests and imprisonment. Representatives of African communities have stated to the authorities that they encounter difficulties in submitting complaints on the subject. ECRI has been informed that when the police receive complaints from persons who have been subjected to discriminatory or racist acts by third parties, they refer them to a body responsible for providing them with assistance and support. The role of the police force itself in investigating complaints of this kind is therefore unclear. ECRI considers that all these problems reflect the police's insufficient knowledge of the issues relating to racism and racial discrimination and the way in which they should tackle them.

84. In its second report, ECRI firmly encouraged the Luxembourg Government to make all the necessary human and material resources available to enable the police to communicate properly with victims and alleged offenders who do not speak any of Luxembourg's official languages.
85. ECRI notes that a bill providing that any victim or offender who does not speak one of Luxembourg's languages is entitled to the services of an interpreter has been before the Chamber of Deputies for two years. As a result, to date, interpreters' services are provided only during criminal court hearings. This puts victims at a disadvantage in relation to other persons needing translation in this context. Moreover, ECRI considers that the fact that, as the authorities have stated, members of the police force are encouraged to attend language courses, only brings a partial solution to the problem.

Recommendations:

86. ECRI reiterates that the police would benefit from a better knowledge of the different communities living in Luxembourg and recommends that training be introduced for the purpose. It also recommends that the Luxembourg Government ensures that the independent body mandated to investigate complaints made against the police also examines those lodged by victims of racist acts and behaviour. It also considers it essential that all the necessary resources be made available to the police to allow them to investigate complaints submitted to them by, *inter alia*, victims of racism, and to take appropriate action on such complaints.
87. ECRI urges the Luxembourg Government to adopt without delay the law providing for interpreting services for victims and offenders.

Monitoring the situation

88. In its second report, ECRI encouraged the government of the Grand Duchy of Luxembourg to consider ways of setting up a consistent, comprehensive data collection system in order to evaluate the situation of the various minority groups living in Luxembourg and to gauge the scale of racism and discrimination in the country.
89. Luxembourg still lacks disaggregated data on the situation of the various minority groups in areas such as employment, education and housing. However, the National Data Protection Commission, which was set up in November 2002 after the transposition of Directive 95/46/CE on the protection of personal data, has

confirmed to ECRI that the law²⁹ authorises the collection of ethnic data. This commission can give permission to any body wishing to collect this type of data provided that it demonstrates the legitimacy and necessity of such data collection³⁰. The commission therefore ensures that this data is used advisedly and in a non-discriminatory manner. However, ECRI notes that not only are people unaware of the law and the powers of the National Data Protection Commission with regard to the collection of ethnic data, but many believe that the collection of such data is prohibited. As a result, the commission has never had to consider applications on the collection of ethnic data.

Recommendations:

90. ECRI recommends that the Luxembourg Government consider ways of setting up a consistent, comprehensive ethnic data collection system along the lines prescribed by the law of 2 August 2002 on the protection of individuals with regard to the processing of personal data, in order to evaluate the situation of the various minority groups living in the Grand Duchy and frame policies designed to resolve the problems facing them. ECRI considers that the government should conduct an information campaign on this law and on the National Data Protection Commission, aimed both at the general public and at civil servants and NGOs.
91. ECRI points out that a data collection system of this kind should also comply with European regulations and with the recommendations on data protection and the protection of privacy set out in its General Policy Recommendation No.1 on combating racism, xenophobia, antisemitism and intolerance. Moreover, the data collection system on racism and racial discrimination should take account of the gender dimension, especially in terms of the possibility of double or multiple discrimination. Generally speaking, data collection with a breakdown by ethnic origin should make it easier to identify the areas in which there may be direct or indirect racial discrimination and to work out the best ways of fighting this type of discrimination.

Muslims

92. In its second report, ECRI encouraged the Luxembourg Government to take all the necessary measures to raise public awareness of the dangers of intolerance with regard to the Muslim community. It also noted that the government was holding talks with this community with a view to granting Islam official recognition on the same footing as other religions, and that the process was shaping well.
93. A survey carried out in 2003 showed that Luxembourgers' opinions of Muslims and Islam varied according to the socio-economic status of the person questioned: people at the upper end of the socio-occupational scale have a better image of Islam and Muslims than people with little education and a low income. Following this survey, a conference on Islam was held with the aid of the University of Luxembourg to make Islam better known and start a dialogue. ECRI is pleased to note that representatives of the Muslim communities consider their religion to be generally well accepted in Luxembourg. It notes, however, that they consider some media outlets and politicians to have more negative attitudes. Furthermore, talks between representatives of the Muslim communities and the government on the signature of an agreement have still not reached a successful conclusion. Such an agreement would allow Muslims to enjoy the

²⁹ See, Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel, Mémorial A No.91 of 13 August 2002, p.1836.

³⁰ See Articles 6 g. and 14.

special legal status granted to recognised religions³¹. These have the status of public entities and are therefore granted special tax treatment enabling them to receive private funds and/or funds from some organisations. ECRI consequently hopes that the draft agreement on official recognition, which is currently being drawn up, will soon be adopted.

Recommendations:

94. ECRI recommends that the government of the Grand Duchy of Luxembourg conduct awareness campaigns aimed at all sections of society to combat prejudice and stereotypes about Muslims.
95. Moreover, ECRI recommends that the Luxembourg Government reach a solution as soon as possible, which would enable Muslims to practice their faith in identical conditions to those of other religious communities. It hopes that the Muslim communities will bring a contribution to this process.

II. SPECIFIC ISSUES

Access to employment for people from an immigrant background

96. In its second report, ECRI recommended that the Luxembourg Government take all the necessary measures to promote the integration of non-citizens into the employment sector and eliminate any discrimination that might occur in this area, particularly in terms of access to jobs, promotion, pay and redundancy.
97. ECRI has been informed that the main problems facing immigrant workers and non-EU foreigners in Luxembourg are the system for granting work permits³², the extreme segmentation of the labour market and the requirement that applicants for the civil service have a knowledge of Luxembourg's three official languages.
98. There are three types of work permit in Luxembourg: A, B and C permits. The A permit is valid for a year in a single occupation with a specified employer; the B permit is valid for four years in a single occupation with any employer, and the C permit, which is of indefinite duration, is valid in all sectors. The system for granting the A work permit, in particular, puts non-EU foreigners in an extremely difficult situation because it is linked to the residence permit (the validity of the work permit cannot exceed that of the residence permit) and is coupled with the requirement of a bank guarantee of up to 2,500 euros. Many foreigners have complained of the lack of a clear procedure for granting this permit. Moreover, although they are supposed to obtain a B permit after a year, many of them remain with A permits for periods of up to five years. On this point, ECRI notes that according to the Luxembourg Government, these types of cases are quite rare.
99. ECRI has also been informed that people from an immigrant background are over-represented in manual labour sectors and under-represented in areas such as banking and the civil service. The main causes of this de facto segregation include the language requirements and the fact that few of them gain access to higher education. The government does not appear to have conducted any detailed studies of the labour market situation of immigrant communities. It is therefore difficult to determine the part played by discrimination in this de facto segregation. According to a study carried out by one of Luxembourg's largest

³¹ Since the publication of the second report, such an agreement has been reached with the Serb and Romanian Orthodox Churches and the Anglican Church.

³² See below the section of the report entitled "Ombudsman".

trade unions, the LCGB³³, 12% of the persons questioned about psychological harassment at work stated that they had been victims of racism³⁴. This report also states that in 2004 19% of the persons questioned had been mocked because of their nationality, an increase of 12% over the previous year. The conclusions of the LCGB's report thus appear to reveal that racism and xenophobia at work are a problem which should be further examined in order to counter these phenomena, particularly as NGOs and civil society criticise the lack of a clear government policy for integrating immigrant communities more fully into the labour market.

Recommendations:

100. ECRI recommends that the Luxembourg Government ease the system for granting work permits to non-EU foreigners in order to give them better access to the labour market. It also strongly recommends that the government conduct detailed studies of the labour market situation of immigrants and frame a clear, long-term policy for integrating them more fully into the employment sector.

Specialised bodies and other institutions

- *National Council for Foreigners*

101. In its second report, aware that the National Council for Foreigners plays a vital role in a country in which foreigners make up 40% of the population, ECRI drew the national authorities' attention to the need to promote the action of this body by providing it with all the human and material resources it needs to fulfil its role in the best possible conditions.

102. ECRI notes that the National Council for Foreigners (CNE) is unable to carry out its tasks to the full because of its mode of operation and the human and financial resources available to it. Its secretariat consists of one person only, and the foreigners who are members of the CNE work for NGOs or non-profit organisations and therefore perform their CNE activities on a voluntary basis. Moreover, members of the CNE are elected for a three-year term of office, but as they are required to provide their budget estimates two years ahead, the projects they plan cannot be implemented in time. ECRI has been informed that because of its limited budget, as soon as the CNE wishes to carry out projects outside the institutional framework, for instance by organising seminars, it has to obtain the approval of the Ministry of the Family and Integration, which complicates its work. The CNE has informed ECRI that it has proposed a bill, which is currently under discussion, which would empower it to hold seminars and conferences for teachers and law enforcement officials. ECRI hopes that this bill will be adopted as soon as possible, since it would help to make the CNE more efficient.

103. ECRI has also been informed that although the CNE issues very good opinions, they are not disseminated to the public. On this subject, the Luxembourg Government has claimed to ECRI that the above-mentioned opinions are published as parliamentary documents and that they are communicated to the press, which is asked to publish them. However, ECRI notes that the government seems to have little interest in the CNE, which prevents it from having the high profile it should have.

³³ Lëtzebuenger Chrëschtliche Gewerkschafts-Bond.

³⁴ See, Association luxembourgeoise contre le harcèlement moral et le stress au travail, Mobbing asbl, 2004 Rapport, pp.23 and 32.

- ***Permanent Special Commission against Racial Discrimination***

104. In its second report, ECRI encouraged the Luxembourg Government to raise public awareness about the existence and role of the Permanent Special Commission against Racial Discrimination, and to provide this Commission with all the human and material resources it needed to perform its task in the best possible conditions.
105. ECRI notes that the Commission, a body within the National Council for Foreigners, does not appear to be known to potential victims of discrimination, as it has received only five complaints since it was set up in 1996. Although this Commission is empowered to receive complaints under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, it has not to date received any complaints under this Article. Moreover, it cannot refer cases to the courts and mediates between victims of racial discrimination and defendants only on an unofficial basis. It cannot, therefore, be regarded as a specialised body in accordance with the criteria of General Policy Recommendation No.2. ECRI further notes that this Commission does not have the necessary resources to perform its tasks in good conditions.

- ***Consultative Commission on Human Rights***

106. In its second report, ECRI encouraged the Luxembourg Government to increase the status of the Consultative Commission on Human Rights by adopting a constitutional or legislative instrument. It also expressed the hope that Luxembourg would pay full attention to the opinions given by this Commission, particularly on issues relating to the fight against racism and racial discrimination.
107. ECRI notes that the work of the Consultative Commission on Human Rights (hereinafter Consultative Commission) is still governed by a grand ducal regulation, not by a constitutional or legislative instrument. This Consultative Commission comprises three sub-commissions: 1. the "Education" sub-commission, 2. the "Discrimination" sub-commission and 3. the "Institutional issues" sub-commission. ECRI is pleased to note that its work is of a very high standard and that the Commission performs its consultative role to the full by giving opinions which are transmitted to the government and made public through the press and on the Internet. As stated earlier, this Commission has given opinions on the deportation and *refoulement* of persons living illegally in Luxembourg and on the bill on the right of asylum³⁵. It has also given opinions on issues such as foreigners' access to the civil service and integration difficulties in the school system. It has drawn up lengthy reports on the duration of the asylum application procedure and on the detention system for foreigners. It has also asked the Luxembourg Government to simplify the system for granting work permits to foreigners, and its "Education" sub-commission has discussed the issue of human rights education³⁶.

³⁵ For further information on this bill, see above the section of the report entitled "Reception and status of non-citizens".

³⁶ For further information on human rights education, see above the section of the report entitled "Education and awareness-raising".

108. ECRI notes that despite the high standard of the Consultative Commission's work, it lacks the human and material resources it needs to work in satisfactory conditions. Furthermore, it has to be acknowledged that as the Consultative Commission's opinions are not binding, the government hardly ever takes them into account. The government does not appear to consider it useful to consult the Commission either, so that most of the latter's opinions derive from its own decision to examine particular issues.

Recommendations:

109. ECRI recommends that the Luxembourg Government ensure that the National Council for Foreigners has sufficient human and material resources to perform its tasks. It also recommends that the government ensure that the CNE's mode of operation enables it to carry out its projects. ECRI further recommends that the government consult the CNE when framing policies concerning foreigners.
110. ECRI recommends that the government of the Grand Duchy make the general public more aware of the fact that the Permanent Special Commission against Racial Discrimination is empowered to receive complaints under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination. It also recommends that the government ensure that the Commission has sufficient human and material resources to perform its tasks efficiently.
111. ECRI strongly recommends that the Luxembourg Government ensure that the Consultative Commission on Human Rights has sufficient resources to continue producing work of a high standard. ECRI also considers that the government should consult this Commission more often and take account of its opinions, *inter alia*, when framing policies concerning ethnic minorities and foreigners.

- Ombudsman

112. In its second report, ECRI, having been informed of plans to appoint an Ombudsman, expressed the hope that he would be given a free hand to deal with difficulties linked to racism or racial discrimination in relations between the administration and the public, and that he would devote the necessary attention to these issues in collaboration with other existing bodies such as the Permanent Special Commission against Racial Discrimination.
113. ECRI welcomes the appointment of an Ombudsman on 21 January 2004. The Ombudsman, who is appointed for eight years, is responsible for "helping persons challenging a decision of the central or local government administration and of the public establishments under its authority"³⁷. The Ombudsman is attached to the Chamber of Deputies and acts entirely independently. He makes recommendations for improving the functioning of the administration and remedying gaps in legislative texts, but is not consulted when legislation is drawn up. He is assisted by a team of eight staff including four lawyers.
114. In his Activity Report for the period from 1 October 2004 to 30 September 2005, the Ombudsman said that he had received many complaints about the functioning of the foreigners and refugees department and the department responsible for granting work permits, both of which are part of the Immigration Directorate of the Ministry of Foreign Affairs and Immigration³⁸. In his Recommendation No.10 on the appropriate steps to take in order to speed up the processing of applications for the entry and residence of foreigners and the

³⁷ <http://www.gouvernement.lu/dossiers/viepol/mediateur/index.html>.

³⁸ See Rapport d'activité du 1^{er} octobre 2004 au 30 septembre 2005, p.20.

employment of workers, the Ombudsman deplored the fact that 13 claims lodged with him which are currently pending, had shown that the complainants waited on average six months to receive a reply from these departments and that the latter were even slow in answering his own requests. He therefore concluded that “these delays make it perfectly clear that the departments responsible for processing applications on the entry and residence of foreigners and applications for work permits do not function in accordance with the principles of proper administration”. He considered that there was a pressing need to find ways of improving the functioning of these departments and strongly recommended that the Ministry of Foreign Affairs and Immigration “seek the causes of these excessive delays, which are harmful to the public, and take appropriate steps to remedy them”³⁹. In spite of this recommendation, which would improve the reception of non-citizens in Luxembourg, ECRI regrets to note that by 30 September 2005, after a delay of several months, the Ombudsman had still not received a reply on the subject from the Ministry of Foreign Affairs.⁴⁰

115. In the above-mentioned report, the Ombudsman also stated that he had received complaints from persons from third countries who were engaged in divorce proceedings with their EU or Luxembourg spouses and whose residence permits had been withdrawn or refused. He made a recommendation on the subject⁴¹ in which he asked the government to “propose a legislative amendment to exempt the nationals of non-European Union countries married to Luxembourg citizens from the requirement of a work permit”⁴². The Ombudsman has also examined applications from persons who were refused a work permit when the employer had not declared the post vacant. Failure to formally and expressly declare a vacancy to the administrative authorities is a valid and sufficient reason for refusal of a work permit. ECRI is pleased to note that on 6 May 2005 the Government Council endorsed a change to the amended Grand Ducal Regulation of 12 May 1972 determining the measures applicable to the employment of foreign workers in Luxembourg following the Ombudsman’s recommendation on this subject⁴³. Other applications examined by the Ombudsman concern asylum seekers belonging to Kosovo ethnic minorities (Serbs and Gorani), who, thanks to his intervention, received tolerance status after their applications had initially been rejected. Some asylum seekers have also obtained residence permits in Luxembourg on humanitarian grounds, also as a result of steps taken by the Ombudsman⁴⁴.
116. In the light of the above, ECRI notes that, although he started work only very recently, the Ombudsman is already playing an important part in protecting the rights of foreign residents in Luxembourg. Moreover, for the moment, he is the only person empowered to receive and examine their complaints, since the Equality Centre, which as stated above is supposed to be set up under the law transposing Directives 2000/43/CE and 2000/78/CE, has not yet been set up. ECRI therefore considers it vital that the Ombudsman should have all the human

³⁹ *Ibid*, p.64.

⁴⁰ For further information on the granting of work permits to foreigners, see above the section of the report entitled “Access to employment for people from an immigrant background”.

⁴¹ Recommendation No.5-534-2004 relative à une réforme législative visant à affranchir les conjoints non-communautaires de ressortissants luxembourgeois de l’exigence d’un permis de travail, see Rapport d’activité du 1^{er} octobre 2004 au 30 septembre 2005, p.60-61.

⁴² Rapport d’activité du 1^{er} octobre 2004 au 30 septembre 2005, p.61.

⁴³ *Ibid*.

⁴⁴ Rapport d’activité du 1^{er} octobre 2004 au 30 septembre 2005, p.20 - 21.

and material resources he needs to perform his tasks in the best possible conditions.

Recommendations:

117. ECRI strongly recommends that the Luxembourg Government ensure that any recommendation made by the Ombudsman on the treatment of non-Luxembourger residents is taken into account without delay, given the precarious situations in which the people concerned by these recommendations may be.
118. ECRI recommends that the Luxembourg Government ensure that the human and material resources available to the Ombudsman are sufficient to enable him to carry out all his tasks.

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