

NATIONAL LEGAL MEASURES TO COMBAT RACISM AND INTOLERANCE IN THE MEMBER STATES OF THE COUNCIL OF EUROPE

LUXEMBOURG, Situation as of 1 December 2004

General Overview

Preliminary Note: This table is accompanied by an explanatory note.

COUNTRY: LUXEMBOURG	Constitutional provisions	Specific legislation	Criminal Law	Civil and Administrative Law
Norms concerning discrimination in general	Yes, Article 111.	No	Yes, Act of 19 July 1997	Collective agreements and laws on employment contracts protecting foreigners.
Norms concerning racism	No	No	Yes, Act of 9 August 1980 and Press Act of 1869 – Act of 19 July 1997.	Yes, Act of 27 July 1993 concerning the integration of foreigners in the Grand Duchy of Luxembourg.
Relevant jurisprudence	Yes	No	Yes, judgment delivered under the 1869 Press Act.	

EXPLANATORY NOTE

LUXEMBOURG / GENERAL OVERVIEW

The Grand Duchy of Luxembourg ratified the New York Convention of 1966 on the Elimination of All Forms of Racial Discrimination, which came into force in 1978. Accordingly, a law of 9 August 1980 was enacted in pursuance of the Convention to

supplement the Criminal Code by inserting Articles 454 and 455, which punish various forms of racial discrimination. These articles were amended by an Act of 19 July 1997, which inserts a definition of racial discrimination in the new Article 454 of the Criminal Code, increases the penalties prescribed for racist offences and creates new offences.

The Criminal Code does not prescribe penalties for violent racist assaults as such, which are thus dealt with under the ordinary criminal law.

It should be mentioned that, according to the case-law data bank of the Legal Information Centre in the Luxembourg Prosecutor's Office, no judicial decision has yet been handed down on the basis of Articles 454 to 457-4 of the Criminal Code.

In addition, the Act of 27 July 1993 on the integration of foreigners is facilitating the process of integrating foreigners in the Grand Duchy and provides for social action on their behalf, for example with regard to housing, training, leisure activities, reception, travel or repatriation and help in participating in social life, etc.

Section 3 of this Act forbids any discrimination based on race. There is not yet any case-law on the subject.

In July 1994 the Minister of Justice set up a working group within the Legislative Studies Committee with the task of reforming the Criminal Code. A subgroup was responsible for priority consideration to the problems of racism, with a view to proposing possible legislative changes¹.

The Act of 19 July 1997 is a result of this work. Among other things, it gives associations the right to sue for damages in criminal proceedings in respect of offences covered by Articles 453 to 457-4 of the Criminal Code.

Lastly, it should be noted that Article IX of the Act of 8 September 2003 repealed Article VI of the Act of 19 July 1997 giving associations the right to sue for damages in criminal proceedings in respect of offences covered by Articles 444-2 and 453 to 457-4 of the Criminal Code.

Constitutional Law: Luxembourg

Preliminary Note: This table is self-sufficient and is not accompanied by an explanatory note

Constitutional provision	Scope	Relevant jurisprudence	Remarks
Article 111 Protection of foreigners	Every foreigner in the territory of the Grand Duchy enjoys protection of his or her person and property, save for the exceptions established by the law.	According to a decision of the Council of State of 4 February 1964, foreigners enjoy all rights which are not specifically denied to them. Unless	This provision is interpreted broadly by the courts.

prescribed otherwise, foreigners are equated with nationals. No right may be denied to a foreigner, unless the legislator has explicitly decided to that effect.

Criminal Law: Luxembourg

Preliminary Note: This table is self-sufficient and is not accompanied by an explanatory note.

Offence	Source	Scope	Sanction	Relevant jurisprudence	Remarks
Definition of discrimination	Article 454 of the Criminal Code, Act of 19 July 1997.	Discrimination is a distinction on grounds of origin, skin colour, sex, sexual orientation, family status, state of health, disability, lifestyle, political or philosophical opinion, trade union activity, religion or membership of an ethnic group or race.			This definition also applies to distinctions made between legal entities on the basis of similar criteria.
Slander and libel.	Article 444, subparagraph 2 of the Criminal Code, Act of 19 July 1997.	Increases the penalties prescribed for libel and slander where the charges are based on a form of discrimination covered by Article 454.	Imprisonment for between one month and one year and/or a fine.		
Refusal of goods or services.	Article 455 (1) and (2) of the	Covers the refusal to offer goods and	Imprisonment for between 8 days and		A complaint must be lodged by

	Criminal Code, Act of 19 July 1997.	services to a person, group or community because of a distinction prohibited by Article 454.	2 years and/or a fine.	the person against whom the offence was committed (victim or association) in order for proceedings to be brought, Article 450 of the Criminal Code, Act of 19 July 1997.
Practice of discrimination.	Article 455 (3) of the Criminal Code, Act of 19 July 1997.	Covers all discrimination when offering or supplying goods or services.	Imprisonment for between 8 days and 2 years and/or a fine.	A complaint must be lodged by the person against whom the offence was committed (victim or association) in order for proceedings to be brought, Article 450 of the Criminal Code, Act of 19 July 1997.
Publicity concerning the intention to refuse to offer goods or services or to practise discrimination.	Article 455 (4) of the Criminal Code, Act of 19 July 1997.	Covers anyone who publicises their intention to refuse goods or services or to practise discrimination.	Imprisonment for between 8 days and 2 years and/or a fine.	A complaint must be lodged by the person against whom the offence was committed (victim or association) in order for proceedings

				to be brought, Article 450 of the Criminal Code, Act of 19 July 1997.
Interference with an economic activity based on discrimination.	Article 455 (5) of the Criminal Code, Act of 19 July 1997.	Covers discrimination intended to interfere with the normal pursuit of an economic activity.	Imprisonment for between 8 days and 2 years and/or a fine.	A complaint must be lodged by the person against whom the offence was committed (victim or association) in order for proceedings to be brought, Article 450 of the Criminal Code, Act of 19 July 1997.
Discrimination in working relations.	Article 455 (6) of the Criminal Code, Act of 19 July 1997.	Covers discrimination consisting in refusal to employ, penalties or dismissal.	Imprisonment for between 8 days and 2 years and/or a fine.	A complaint must be lodged by the person against whom the offence was committed (victim or association) in order for proceedings to be brought, Article 450 of the Criminal Code, Act of 19 July 1997.

Discrimination when offering employment.	Article 455 (7) of the Criminal Code, Act of 19 July 1997.	Covers discrimination consisting in making the offer of employment subject to a condition relating to the points covered by Article 454.	Imprisonment for between 8 days and 2 years and/or a fine.	A complaint must be lodged by the person against whom the offence was committed (victim or association) in order for proceedings to be brought, Article 450 of the Criminal Code, Act of 19 July 1997.
Discrimination by civil servants.	Article 456 of the Criminal Code, Act of 19 July 1997.	Covers anyone required to perform a public service who refuses a right or interferes with an economic activity by committing discrimination within the meaning of Article 454.	Imprisonment for between 1 month and 3 years and/or a fine.	A complaint must be lodged by the person against whom the offence was committed (victim or association) in order for proceedings to be brought, Article 450 of the Criminal Code, Act of 19 July 1997.
Incitement to racial discrimination, hatred or violence.	Article 457-1 of the Criminal Code, Act of 19 July 1997.	Covers anyone who encourages the acts referred to in Article 455, as well as racial hatred or violence towards a	Imprisonment for between 8 days and 2 years and/or a fine. Compulsory confiscation of the illegal material.	A complaint must be lodged by the person against whom the offence was committed (victim or

		<p>person or group of persons on the basis of a distinction prohibited by Article 454, by means of any words spoken in public, written material, printed matter, pictures or emblems, published, displayed, distributed, sold, placed on sale or exposed to the public view.</p>		<p>association) in order for proceedings to be brought, Article 450 of the Criminal Code, Act of 19 July 1997.</p>
<p>Membership of an organisation with racist goals.</p>	<p>Article 457-1 (2) of the Criminal Code, Act of 19 July 1997.</p>	<p>Covers membership of an organisation whose aims or activities consist of the commission of racist offences.</p>	<p>Imprisonment for between 8 days and 2 years and/or a fine.</p>	<p>A complaint must be lodged by the person against whom the offence was committed (victim or association) in order for proceedings to be brought, Article 450 of the Criminal Code, Act of 19 July 1997.</p>
<p>Violation of the integrity of a corpse.</p>	<p>Articles 453 and 457-2 of the Criminal Code, Act of 19 July</p>	<p>Allows more stringent penalties to be imposed for violation of corpses committed</p>	<p>Imprisonment for between 6 months and 3 years and/or a fine.</p>	<p>A complaint must be lodged by the person against whom the offence was</p>

	1997.	because of membership of an ethnic group, nation, race or religion.			committed (victim or association) in order for proceedings to be brought, Article 450 of the Criminal Code, Act of 19 July 1997.
Publication of racist writings.	Section 15 (2) of the Press Act of 20 July 1869.	Allows penalties to be imposed for the publication, public display, distribution, sale, placing on sale or public wearing of any signs or symbols likely to cause a rebellion or a public disturbance. Also punishes all public seditious utterances.	Imprisonment and/or a fine.	Judgment of the Luxembourg District Court of 23 December 1992 convicting three persons who had displayed the old German sign (Reichskriegsflagge) and given the Hitler salute on the public highway.	
	Article 457-1 (3) of the Criminal Code, Act of 19 July 1997.	Allows penalties to be imposed for the printing, possession, manufacture, transport, import, export, circulation, etc of any writings or medium for speech or images likely to encourage racist	Imprisonment for between 8 days and 2 years and/or a fine. Compulsory confiscation of the illegal material.		A complaint must be lodged by the person against whom the offence was committed (victim or association) in order for proceedings to be brought, Article 450 of the

		offences.		Criminal Code, Act of 19 July 1997.
Negationism and revisionism.	Article 457-3 of the Criminal Code, Act of 19 July 1997.	Covers anyone who has contested, minimised, justified or denied the existence of war crimes or crimes against humanity as defined in the statutes of the International Military Tribunal of 8 August 1945 or the existence of a genocide as defined by the Act of 8 August 1985.	Imprisonment for between 8 days and 6 months and/or a fine.	A complaint must be lodged by the person against whom the offence was committed (victim or association) in order for proceedings to be brought, Article 450 of the Criminal Code, Act of 19 July 1997.
Additional penalties.	Article 457-4 of the Criminal Code, Act of 19 July 1997.	Introduces additional penalties for the offences covered by Articles 455 to 457-3 of the Criminal Code.	Additional penalty: deprivation of the rights listed in Article 11 of the Criminal Code: right to vote, to be elected, to stand for election, to hold public office or employment, to teach, to act as an expert or tutor, etc.	
Genocide	Act of 8 August 1985.	Punishes the authors of genocide	Life imprisonment.	Section 6 gives the Luxembourg

	within the meaning of the Convention of 9 December 1948.		courts universal jurisdiction to punish genocide.
	Also punishes plots formed for the purpose of committing genocide.	Imprisonment for between 10 and 15 years.	

Civil and Administrative Law: Luxembourg

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Provision	Scope	Consequences of breach	Relevant jurisprudence	Remarks
Section 3 of the Act of 27 July 1993 concerning the integration of foreigners in the Grand Duchy of Luxembourg as well as social action for the benefit of foreigners.	Prohibits any discrimination against a person, group of persons or community on the grounds of race, colour, descent, national or ethnic origin or religion.	Penalties prescribed in Articles 454, 455 and 456 of the Criminal Code.		The purpose of this Act is to facilitate the process of foreigners' integration in Luxembourg and organise social action for them. Foreigners are to be given assistance with housing, training, leisure activities, reception, travel, repatriation, participation in the life of the community, etc.
General laws on collective agreements and employment contracts.	Right to work, protection of working conditions: minimum wage and social benefits, for example.			These laws apply to foreign workers irrespective of origin, including stateless persons and refugees.
Section 6 of the	This section			

Act of 27 July 1991 on electronic media	states that the content of broadcasts by Radio Luxembourg must not include any incitement to hatred based on race, sex, opinions, religion or nationality.	
Section 28 of the Act of 27 July 1991 on electronic media.	Stipulates that television advertising must not violate human dignity, be discriminatory on grounds of race, sex or nationality or attack religious or political opinions.	

Note

¹ Referring back to the proposals made in 1991 by an MP, André Hoffmann.