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**REPORT
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COMMISSIONER FOR HUMAN RIGHTS,**

**ON HIS VISIT TO THE GRAND DUCHY OF
LUXEMBOURG**

2 - 3 FEBRUARY 2004

**for the attention of the Committee of Ministers
and the Parliamentary Assembly**

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Introduction

In accordance with Article 3 e) of Committee of Ministers Resolution (99) 50 on the Council of Europe Commissioner for Human Rights, I was pleased to accept the invitation extended by Ms Lydie Polfer, the Luxembourg Minister of Foreign Affairs, to pay an official visit to Luxembourg on 2 and 3 February 2004. I was accompanied on my visit by Ms Satu Suikkari and Mr Julien Attuil. I would like first of all to thank the Minister of Foreign Affairs for all the resources which her Ministry provided to ensure the success of my visit, and would thank in particular Ms Anne Goedert for her indispensable support in organising the event. I should also like to thank Ambassador Mayer, the Permanent Representative of Luxembourg to the Council of Europe, for his invaluable help in preparing the visit and for accompanying me on the journey. Lastly, I would express my warm gratitude to the various Luxembourg authorities for their openness and unstinting co-operation.

During the visit I held discussions with Mr Jean-Claude Juncker, Prime Minister, Ms Lydie Polfer, Minister of Foreign Affairs, Mr Luc Frieden, Minister for Justice, and Ms Marie-Josée Jacobs, Minister for Family, Social Solidarity and Youth and Minister for the Advancement of Women. I also met the President and members of the Advisory Committee on Human Rights, the President of the Higher Court of Justice, the State Prosecutor and other magistrates, a representative of the Luxembourg Bar, the President of the Chamber of Deputies together with a number of members of the Legal Affairs Committee and of the Luxembourg Delegation with the Parliamentary Assembly of the Council of Europe, the new Ombudsman of the Grand Duchy of Luxembourg, the Director-General of the Grand Ducal Police Service, and various police officers. Lastly, I held exchanges of views with representatives of the civil society and visited the Luxembourg Prison, concentrating on the sections reserved for under-age persons and foreigners, as well as the Schrassig State Socio-Educational Centre (CSEE). In this connection I would like to thank the Prison Director and his team, as well as the Director of the Socio-Educational Centre and the youth workers I met, for their extremely helpful and forthcoming attitude.

General Observations

1. Luxembourg has long been a fervent defender of human rights and an ardent protector of democratic values. A founding member of the Council of Europe and the ECSC, Luxembourg enthusiastically plunged very early on into the adventure of constructing a just Europe united around basic human values. It was therefore no surprise when, in the run-up to the enlargement of the European Union, Luxembourg came to be used as a model and inspiration, but also as a counsellor, for many future member States.
2. As regards its human rights commitments vis-à-vis the Council of Europe, Luxembourg was one of the first States to ratify the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter "ECHR") on 3 September 1953, going on to ratify Protocols Nos. 1, 4, 6 and 7. It has also signed Protocol No. 13 concerning the abolition of the death penalty in all circumstances. In the social field, Luxembourg has ratified the European Social Charter. As a final comment in this connection, I might

- suggest that Luxembourg could complement its commitments in the fundamental rights field by ratifying Protocol No. 13 and Protocol No. 12 concerning the elimination of all kinds of discrimination, as well as signing and ratifying the Additional Protocol to the European Social Charter providing for a system of collective complaints.
3. It is greatly to Luxembourg's credit that every decision taken by the European Court of Human Rights¹ (hereafter "the Court") is immediately followed by a debate on the national legislation at issue and leads to new proposals for reform aimed at preventing any further violations. This desire for reform and transparency must be wholeheartedly welcomed and approved. In fact, it was because of this determination to reinforce the protection of its citizens that the Government recently created the office of Ombudsman. There can be no doubt that such an institution will play a prominent role in improving respect for the fundamental rights.
 4. However, some problems still remain in the fields of provision for young people in difficulty, certain aspects of the place of foreigners in society (particularly asylum-seekers and illegal immigrants), combating prostitution and trafficking in human beings, a number of organisational problems facing prisons and some delays in judicial investigations into economic and financial cases. During my visit I gained the impression that the Luxembourg authorities had a very open attitude to discussing the situation with regard to all these issues and would strive to identify the means of improving it as quickly as possible.

I. Provision for Minors in difficulty

5. The system for protecting under-age persons in Luxembourg is based on a Law adopted on 10 August 1992² (LPJ). This Law empowers the Youth Courts to adopt measures in the interests of the child in question. The Court can adopt measures concerning the custody, education and protection of the young person, who may be fostered in a family or placed in an "open centre" (State Socio-Educational Centre [CSEE]), or, if required by the child's circumstances or behaviour, in a "closed centre", namely the Luxembourg Prison.
6. One preliminary remark we might make is that Luxembourg criminal law provides that under-age persons are never responsible for their actions. The LPJ incorporates the principle that a person who was under the age of 18 at the time of commission of a criminal offence must be brought before the Youth Court rather than a criminal court. Consequently, the Youth Court can order placement of the young person even where he/she has not been convicted of any alleged offence. However, the Law also stipulates that the court may issue a placement order vis-à-vis "minors who habitually fail to

¹ For instance, Luxembourg instigated wide-ranging reforms in its judicial system following the Procola judgment, with changes to the jurisdiction of the State Council and creation of a Constitutional Court.

² Law on the protection of young people, 10 August 1992, A-No. 70.

attend school, engage in immoral practices [etc] and whose physical or mental health is at risk”³. It follows that young offenders and under-age persons in difficulty are placed in the same structures.

7. The fact is that it would be desirable not to mix young “offenders” with other minors. Without stigmatising the “offenders”, it seems obvious that they require a different type of educational and rehabilitation work from young people who are facing social or affective problems. Moreover, separating offenders from problem youngsters could help prevent the latter from lapsing into delinquency under the influence of the former. It would therefore be useful as far as possible to keep under-age persons who could be described as “young offenders” separate from other minors.
8. Discussions should also be initiated on the duration of placement. I noted that decisions to place young people either in open centres or in prison are given for indeterminate periods, at least until the young person in question comes of age. It would appear that in practice the Youth Court frequently reviews the situation of minors, which very fortunately precludes any unjustified placements in the centres. However, this uncertainty makes it difficult for support staff to get together with the minor to construct a genuine educational project to be completed by a specific deadline. Moreover, it has an extremely negative effect on the children in question: it prevents them from preparing their immediate future and leads to grave doubts about their longer-term future. This situation could easily be improved by, for example, asking the Youth Court to specify an indicative period of placement, particularly when under-age persons are kept at the Luxembourg Prison.

A. Living conditions in the “CSEEs” (State Socio-Educational Centres)

9. Under-age persons who are to be placed in an open State rehabilitation establishment are taken into the Dreibern CSEE (for boys) or the Schrassig centre (for girls). These semi-open centres provide the children with socio-educational and vocational training activities, and also carry out preventive work with them.
10. General living conditions at the Schrassig CSEE looked excellent. The premises were well looked after, providing a suitable environment for the young people, and the staff seemed well aware of the importance of their task. For instance, the Centre management prefers to send the young people to outside schools in order to keep up the vital link between the child and society. Where outside schooling proves impossible, the youngsters can attend mixed classes inside the establishment.
11. Nevertheless, I also noted during the visit that the disciplinary system was open to improvement, particularly in terms of the conditions for placing minors in solitary confinement. Under Article 10 of the Grand Ducal Regulation of 9 September 1992⁴ the Director of the Centre may order the placement of a young person in the solitary

³ Article 7 of the aforementioned Law.

⁴ Grand Ducal Regulation of 9 September 1992 on security and disciplinary rules in State socio-educational centres, A No. 80.

confinement area for a duration of 10 days renewable, under certain conditions. Furthermore, there is a “scale” for the more common offences⁵. While the Director does have the option of solitary confinement, he can also mitigate the penalty, which he apparently often does.

12. While I do not contest the need to have a number of sanctions available, the same cannot be said of the conditions under which young people are placed in solitary confinement at the Schrassig Centre. The solitary confinement area comprises 6 cells fitted only with a bed and a washbasin fixed to the wall, a larger room with a table and some chairs, and a washing area with showers and toilets. Article 11 of the regulations stipulates that minors on whom a disciplinary measure has been imposed may be deprived of training, work, leisure and collective activities and the use of personal effects. In practice, the children can only use a very limited number of their personal effects, and are subject to special educational arrangements during this period⁶. Such strict application of the regulations, the near-complete lack of contact with other persons, in addition to the fact that the youngsters have no access to any outdoor areas for the duration of their confinement (which also prevents them from relaxing anywhere other than in their cells), can greatly distress the children. During my conversations with the young residents of the Centre I noted that any mention of solitary confinement frightened the younger ones⁷, and that they all found the penalties disproportionate. I personally consider the near-total isolation of the penalised minors excessive, and would invite the Luxembourg authorities to relax the conditions for solitary confinement, *inter alia* by providing the youngsters in question with access to an outdoor area for at least one hour a day and giving them access to some kind of recreational facilities (TV, games, etc).

B. Conditions of detention in the Luxembourg Prison

13. Article 6 LPJ provides that the Youth Court may place an under-age person in a “State disciplinary establishment” in cases of misconduct or dangerous behaviour. Such placement can be ordered by the Court on the minor’s first appearance, or where it considers that the latter should not attend an open centre, or where it is noted that a minor placed in a CSEE cannot remain in the Centre without endangering his/her own health or that of other persons. As in the case of placement in an open centre, the issue of an indeterminate period of placement is an obvious problem. Furthermore, there is another problem which I consider equally disturbing.
14. The “State disciplinary establishment” used for accommodating under-age males is in fact a special section of the Luxembourg Prison, the *Centre Pénitentiaire Luxembourgeoise*. I did not have time to meet any young female inmates during my visit, but they are held in a separate area, in the section of the prison reserved for female prisoners. I noted when inspecting the premises that the young people are not kept

⁵ For instance, 2 days’ solitary confinement for violence against another resident, and 10 days for drug-taking.

⁶ A teacher is specially detailed to attend the solitary confinement area, and so the children in question continue with their schooling, albeit in isolation from the other youngsters.

⁷ CSEEs sometimes take in 11- or 12-year-olds.

completely separate from the adult prisoners, and that contact between both groups is common, with the youngsters using certain facilities intended for the adult prisoners⁸. The lack of specific amenities for minors leads to a number of difficulties, including a restriction on activities outside the cells, especially at weekends when there are fewer prison staff members on duty.

15. Some progress has been made in the material conditions of detention. The young inmates are now in an area exclusively set aside for them, no longer being accommodated, as they were until recently, on the top floor of the prison's high-security block, where they were in direct contact with the toughest prisoners. However, in order to put an end to this thorny problem, I would invite the Luxembourg Government, as the CPT has been repeating since 1993 and as the United Nations Committee against Torture also recommended in its last report⁹, to prioritise the construction of a building specially earmarked for young detainees in order to keep them separate from the main prison, which cannot be considered a suitable environment for minors.

II. The place of foreigners in Luxembourg society

A. The place of legally resident foreigners

16. Luxembourg has 440 000 inhabitants, 38% of whom are not Luxembourg nationals (13% hold Portuguese nationality). This situation is explained by two specific features of the country. Firstly, its geographic location has made Luxembourg a transit area but also a receiving country throughout history. Furthermore, Luxembourg became a major immigration country in the 1970s when the national mining sector was booming. Secondly, this large foreign population is affected by the country's restrictive policy on nationality. At the moment Luxembourg law prohibits people from holding dual nationality¹⁰. This specificity, whose perpetuation is currently under discussion, has not prevented Luxembourg from ensuring the representation of foreigners' interests and their participation in public life.

1. Participation in public life

17. Luxembourg has a longstanding policy of promoting the integration of its foreign population into civic life. Since 1989¹¹, for instance, foreigners have been represented in their municipalities by Municipal Advisory Boards for Foreigners, which are mandatory bodies for all municipalities with a resident population of over 20% foreigners. The Boards are responsible for representing the interests of foreign residents at the municipal level, including ensuring participation by foreigners in municipal life, presenting the authorities with proposed solutions to specific problems involving foreigners and facilitating relations between the foreign and national populations. While we can only welcome the existence of such bodies, it should be

⁸ Including the sick bay, sports installations and the open-air areas.

⁹ Report by the Committee against Torture, 12 June 2002, CAT/C/CR28/2.

¹⁰ Except in cases of dual nationality at birth or where persons cannot renounce their original nationality.

¹¹ Grand Ducal Regulation setting up Municipal Advisory Boards for Foreigners, 5 August 1989.

noted, as ECRI pointed out in its last report¹², that they could be more representative, because at the moment they are made up of equal number of Luxembourg and foreign members of the municipality, and particularly because the whole membership is appointed by the Municipal Council. I would therefore invite Luxembourg to consider the possibility of making these bodies more representative of the foreign population in order to reinforce their role in ensuring participation by and integration of all citizens in municipal life.

2. *Voting rights*

18. In February 2003 Luxembourg adopted a law allowing non-Community foreigners to vote in local elections. This means that all residents in the country will be able to take part in the forthcoming municipal elections in 2005. However, I noted that the closing date for registration was 18 months before the elections, partly for organisational reasons. Even though it is regrettable that registration will stop so far in advance of the local elections, I can only welcome this opportunity for all Luxembourg residents to take part in voting.

B. *Treatment of asylum-seekers*

1. *Asylum procedure*

19. Asylum procedure is under the competence of the Ministry of Justice. In 2003, a total of 1549 persons applied for asylum in Luxembourg, constituting the largest number of asylum-seekers since 1999, at the height of the Kosovo conflict. Over the past year more than one-third of all asylum-seekers have been from Serbia and Montenegro, with total numbers from other countries never exceeding one hundred per State.

20. Persons wishing to submit an application for asylum in Luxembourg have to be registered by the competent governmental services. On registration, asylum-seekers are issued with an administrative document entitling them to a wide variety of benefits, given that the Luxembourg asylum procedure does not allow asylum-seekers to work. The State provides for their material needs¹³ until all available legal remedies are exhausted.

21. The benefits provided for asylum-seekers while their applications are being processed, and often for a long time thereafter¹⁴, are undeniably generous. In view of the large number of asylum-seekers as compared with its population and the length of the proceedings, Luxembourg uses a great number of reception structures to accommodate all these individuals. A number of NGOs informed me that some of these centres, particularly the Don Bosco Centre, were no longer in a position to provide its occupants

¹² ECRI, second report on Luxembourg adopted on 13 December 2003, paras. 22 and 23.

¹³ Housing and subsistence, as well as medical benefits and public transport throughout the country.

¹⁴ Luxembourg continues to provide accommodation and subsistence for many asylum-seekers whose applications have been rejected pending their return to their countries of origin.

- with decent accommodation. My discussions on this subject with the Minister for Family Affairs lead me to hope that an early solution will be found whereby the centre can be renovated or new installations provided.
22. It emerged from talks that the asylum procedures were too lengthy and created difficulties for rejected asylum-seekers in returning to their countries after a protracted stay in the country. At the time of my visit, the staff of the Justice Ministry department responsible for asylum procedures only comprised four persons responsible for examining and processing asylum applications. In view of the time currently taken for processing files and the potential of Luxembourg for attracting asylum-seekers, consideration should be given to increasing the staffing of this ministerial department, as this would expedite the processing of applications. Lastly, in reply to the argument that there are financial reasons for this understaffing, I would point out that the fact of maintaining asylum-seekers in Luxembourg territory for long periods is also very expensive to the community in terms of economic and human resources.
23. Where the asylum application is rejected, and failing an application to the Ministry of Justice to reconsider its decision, the foreigner can appeal against this decision to the administrative courts – the *tribunal administratif* (Administrative Court) and the *cour administrative* (Administrative Court of Appeal). The NGOs drew my attention to a number of individual cases of extradition that had taken place in spring 2003, on which the CCDH (Advisory Committee on Human Rights) has drawn up a highly instructive report¹⁵, revealing that the judicial system is empowered to consider all the claims put forward by rejected and/or expellee asylum-seekers. In the light of these events I would like to reiterate that it is absolutely necessary to submit all legal proceedings in the asylum field to a court competent to appraise whether the person in question is going to be sent back to a country where his/her life or freedom would be under threat¹⁶ and whether his/her return to such a country would be contrary to the principles of the ECHR. Moreover, I must stress the absolute, incontrovertible nature of the guarantees set out in Article 3 of ECHR, which prohibit the expulsion of a foreigner liable to be subjected to inhuman treatment or torture, even if he or she poses a threat to national security¹⁷.

¹⁵ Report by the Advisory Committee on Human Rights, *Avis sur les perquisitions du 31 mars 2003 et leurs conséquences* (Opinion on the official searches conducted on 31 March 2003 and their consequences), 16 December 2003.

¹⁶ Article 33§1 of the Convention on the Status of Refugees.

¹⁷ See judgment *Chahal vs. United Kingdom* (15 November 1996, Reports 1996-V), where the Court holds that “whenever substantial grounds have been shown for believing that an individual would face a real risk of being subjected to treatment contrary to Article 3 if removed to another State, the responsibility of the Contracting State to safeguard him or her against such treatment is engaged in the event of expulsion. In these circumstances, the activities of the individual in question, however undesirable or dangerous, cannot be a material consideration.” (§80).

2. *Situation of asylum-seekers whose application has been rejected*

a. *Voluntary return*

24. In 1999 Luxembourg introduced a voluntary return procedure for foreigners involving substantial financial and logistical assistance. Persons accepting “assisted” returns are eligible for a maximum grant of €1190 per adult and €595 per child, plus assistance with repatriating personal effects. While this is a commendable policy and must be welcomed, its implementation still poses some problems. First of all, the sum is granted on a gradually diminishing scale and does not take account of the possibility of rejected asylum-seekers appealing against the decision before the administrative courts. This means that foreigners must choose between appealing and obtaining the full grant for assisted return. Furthermore, the sum provided fluctuates depending on the person’s date of arrival, and it has recently been modified several times, which means that the persons in question can never know exactly how much they will in fact be receiving. Obviously, some of these dysfunctions are explicable by the fact that this assistance is recent in date and that Luxembourg must still cast round for the optimum solution to encourage the return of migrants. I would therefore invite Luxembourg to adopt a more consistent policy in this field in order to make the system of voluntary return, with its major advantages for rejected asylum-seekers, more predictable and transparent.

b. *Foreigners “placed at the Government’s disposal”*

25. In 2001, the average period of “placement at the Government’s disposal” (administrative detention of foreigners pending their removal) was 28.5 days, falling to 17 days in the first quarter of 2002. While there is no problem with the material conditions of detention, it would appear that the presence of detained expellees in the prison is leading to a number of difficulties.

26. Until recently, given that Luxembourg has no special structures for detaining such foreigners, they were held in the prison with the convicted prisoners. Further to two judgments of the Administrative Court of Appeal¹⁸, a special “aliens” section was set up under a Grand Ducal Regulation of 20 September 2002¹⁹ inside the premises of the Luxembourg Prison. However, although efforts have been made to keep the prisoners and the foreigners completely separate, contact apparently continues, particularly in the women’s section. Lastly, the lack of an appropriate structure has sometimes resulted in *de facto* solitary confinement. For instance, I was informed that a number of women had been detained for several days without any direct contact with other persons.

27. During my visit to the detained aliens section I also noted the extreme dearth of activities provided for them. Owing to the lack of staff, the inappropriateness of the place of detention and the need to keep detainees, remand prisoners and convicted prisoners apart, foreigners “placed at the Government’s disposal” only have one hour of

¹⁸ Gomez, 10 July 2001, No. 13611, and Tyuznyeva, 8 February 2002, No. 15433C.

¹⁹ Grand Ducal Regulation setting up a Provisional holding centre for illegally resident aliens.

- exercise outside their cells per day. Theoretically they can join in the same activities as the prisoners, namely sports and work, with the authorisation of the Ministry of Justice and the Director of the Luxembourg Prison, but in practice they very seldom take part in these activities because of the language barrier and slow bureaucratic procedures. Consequently, detained foreigners spend most of their days shut up in their cells despite the existence of a common room. I would therefore invite the authorities to introduce specific activities for these detainees as quickly as possible and to provide them with greater access to outdoor areas.
28. Moreover, restrictions on visits to the foreign detainees are severer than in respect of actual prisoners, which places the foreigners in a situation of *de facto* abandonment. For some of these people visits are their only means of communicating with a person capable of understanding their language. Although a regulation²⁰ was recently issued permitting foreigners to invite anyone with whom they wish to meet, this rule is still highly restrictive because detainees must send a letter of invitation to the person whom he or she wishes to meet. Furthermore, such “meetings” cannot be held until 4 days after the beginning of the detention, for family members, and 10 days after for NGO members. NGOs are not issued with a general pass, and each member must apply for individual authorisation²¹. During my talks with the Minister of Justice, the latter undertook to reduce the aforementioned period of time. I consider that this period should be cut back to a minimum or even abolished altogether, given that the detainees have nothing to do all day. Moreover, many repatriations are carried out before this period has elapsed, which deprives the expellee *de facto* of the opportunity of seeing his/her family and friends or of obtaining advice from an NGO on his/her rights.
29. Lastly, it would appear that the limitations of the current system of detaining foreigners in prison are liable to become evident in the near future because of the number of places available and their unsuitability for the specific needs of aliens. It is therefore essential that Luxembourg begin discussions right away on the expediency of opening a centre exclusively earmarked for foreigners unlawfully present in the territory, separate from any prison or other detention centre.

c. Procedure for removing illegal immigrants from the national territory

30. Removing foreigners forcibly from the territory, a practice recently adopted in Luxembourg, would not seem to present any particular human rights problems. However, the CCDH report on the matter highlights some lack of predictability and transparency in the procedure. I can only second this Committee’s opinion that a coherent policy must be adopted on such a sensitive subject. For example, it may seem surprising for persons unable to leave the territory (owing to a lack of travel documents,

²⁰ The aforementioned Grand Ducal Regulation of 20 September 2002.

²¹ CCDH, *L’expulsion et le refoulement du territoire des étrangers en situation irrégulière* (Refusal of entry to and removal from the territory of illegal immigrants), April 2003.

pending judicial proceedings) nonetheless to receive an invitation to do so; on the other hand, some forced removals are carried out without prior notice. The removal procedure, and more generally the system for protecting aliens, would be easier to observe if it were more consistent.

31. The CCDH also advises Luxembourg to adopt a number of measures, including the preventive one of “introducing into national law specific regulations absolutely prohibiting such practices as partial or total obstruction of the respiratory tract and the use of asphyxiating or incapacitating gases”. In the light of my Recommendation of 19 September 2001²², I can only support this initiative with a view to preventing any such measures from being used in future. Further, Luxembourg might also consider authorising the presence of a representative of a humanitarian organisation²³ throughout the removal procedure, in order to guarantee its transparency and respect for the fundamental rights of the persons being repatriated.

III. “Multifunction” prison and prison staff

32. Luxembourg has one single prison for the whole country, the *Centre Pénitentiaire de Luxembourg* (CPL). I would like first of all to stress the fact that the material conditions in all the various buildings I visited were very adequate. The management and support staff with whom I talked seemed to be alive to the prisoners’ problems and aware of the need to treat these people as humanely as possible. Nevertheless, the lack of specific structures in the country for certain groups of individuals who must be removed from society causes problems in the CPL. As stated above, the CPL takes in both convicted and remand prisoners, but also foreigners in administrative detention and minors. This situation also causes staffing difficulties.
33. Luxembourg would appear to suffer from a structural lack of prison support staff. It emerged from my discussions with the Director of the CPL that the latter had insufficient staff to guarantee proper supervision of all these different categories of detainees. Furthermore, some instructors’ posts had remained vacant because there had been no applicants of Luxembourg nationality, given that such posts were subject to a special nationality clause²⁴. Accordingly, consideration might be given to opening these posts to non-Luxembourgers, especially since foreigners account for a large percentage of the prison population²⁵. I would therefore invite Luxembourg to continue its reforms by bringing the number of wardens into line with the real needs in the CPL and opening up certain specialist posts to non-Luxembourgers.

²² Recommendation concerning the rights of aliens wishing to enter a Council of Europe member State and the enforcement of expulsion orders, CommDH/Rec(2001)1.

²³ As is the practice in some States, which authorise the presence of NGOs working in the asylum field.

²⁴ Ministry of Family Affairs instructors’ posts are not subject to this rule.

²⁵ 69% of the prison population were foreigners at the time of my visit.

IV. Prostitution and trafficking in human beings

34. Luxembourg has some 60 cabarets which are legally regarded as entertainment establishments and permanently employ some 350 artistes, virtually all from outside the European Community. Cabaret artistes enter Luxembourg under a special visa valid solely for Luxembourg territory. In order to obtain this visa, artistes must produce a contract of employment with the cabaret. On the basis of this contract Luxembourg issues a visa authorising the artiste to remain in Luxembourg for a renewable period not exceeding 6 months. Subsequently, given that the visa is issued on the basis of the contract, the artistes are totally dependent on the cabaret bosses. Every year, according to information which I secured from the authorities, Luxembourg issues visas to approximately 1200 artistes, most of whom are from central and east European countries.
35. Where their legal status is concerned, cabaret artistes are considered under case-law as unpaid workers who are exempted from the work permit requirement²⁶, and since they do not form a specific separate group, they are included in the socio-occupational category of independent intellectual workers²⁷.
36. The artistes are paid on a “fees” basis and therefore do not benefit from the ordinary-law social security scheme. Luxembourg labour law provides for regular medical examinations (recruitment tests, maternity examinations, etc) only for the actual employees of entertainment establishments, to the exclusion of artistes²⁸. Lastly, and above all, owing to their precarious legal status, they are “exempted” from compulsory social insurance²⁹. It is therefore clear that once they have entered Luxembourg territory these artistes are bereft of any kind of protection in terms of the right to work or social cover.
37. This means that the artistes are completely dependent on their employers, and this situation, combined with the liberal regulations on artistes’ visas, can only encourage the development of traffickers’ networks and expose these persons to a risk of trafficking in human beings.
38. I ascertained from talks during my visit that State representatives were well aware of the problem and that the subject had even been debated several times in Parliament. The Government authorities also told me that they wanted to identify a solution to the problem. I therefore invite the authorities to urgently review its policy in this field, restricting the issuing of this type of visa in order to prevent any risk of the procedure being used for unlawful purposes. Further, I would invite the authorities to introduce an

²⁶ Reply provided by the Ministry of Family Affairs, Social Solidarity and Youth on 21 August 2000 to parliamentary questions Nos. 576 and 579 of 25 May 2000; www.chd.lu.

²⁷ Reply provided by the Ministry of Health and Social Security on 4 July 2000 to parliamentary question No. 576 of 25 May 2000; www.chd.lu.

²⁸ Reply provided by the Ministry of Family Affairs, Social Solidarity and Youth, *loc. cit.*

²⁹ Articles 4 (1) and 179 (1) of the Social Insurance Code.

effective system for protecting witnesses in order to facilitate the dismantling of possible networks for trafficking in human beings, while at the same time protecting the victims of this criminal trade. Obviously, such changes cannot, on their own, put an end to such trafficking, and Luxembourg can only provide a lasting solution to the problem of trafficking in women by stepping up its co-operation with all the other European countries.

V. Justice and police

A. Length of judicial proceedings

39. While my interview with representatives of the judiciary revealed that the Luxembourg judicial system overall operates smoothly, I also noted that some problems remained vis-à-vis the length of criminal proceedings. In the 1980s, the financial boom in Luxembourg and the country's general attractiveness led to growing numbers of complex economic and financial cases. This increase in the number of judicial cases, combined with some lack of organisation and staffing in the judiciary and the police department, led to a sizeable backlog of cases. Nevertheless, the Luxembourg authorities have recently taken steps to reduce the time taken for prior judicial investigations.
40. Between 2000 and 2004 the number of investigating judges was doubled and working methods were reorganised in the judiciary and police. Moreover, I was told that investigating judges have always given priority to cases in which the defendant was remanded in custody in order to reduce the length of such detention to a minimum. The reforms initiated have not yet come fully to fruition, which is why I would invite the Luxembourg authorities to remain vigilant as to the efficacy of this reform and to increase the resources available to the judiciary if the need persists.

B. Police violence

41. Luxembourg has recently seen the emergence of excessive use of force by police officers, particularly during demonstrations. Such violent incidents are limited in number and have only occurred in very particular circumstances, but they are nonetheless disturbing. I mentioned this problem to the Director General of the Grand Ducal Police, who undertook to enter into constructive dialogue with representatives of civil society. Such dialogue would simultaneously tackle the complaints submitted by NGOs and prevent such incidents from happening again in future.

VI. Domestic violence

42. Where domestic violence is concerned, Luxembourg recently adopted a law enabling the person responsible for violence to be evicted from the family home for up to 3 months. The basic principles of this law were based on a system which has already proved effective in Germany and Austria. It means that the victims of the violence are no longer forced to leave home to undergo additional humiliation. The actual

implementation of the legislation would seem to be producing useful results. Three months after its entry into force, 66 applications had already been forwarded by the police to the competent public prosecutors. 34 of these 66 applications led to eviction orders. Accordingly, the adoption and implementation of such a law must be welcomed, and I can only hope that other States will follow in Luxembourg's footsteps in this field.

Final observations and Recommendations

43. Luxembourg manifestly has a long tradition of respect for human rights and basic human values, and is constantly seeking to ensure increasingly effective compliance with the fundamental rights of the individual. The exchanges of views which I held during my visit with the most senior Luxembourg officials convinced me that the authorities really would do their utmost to solve the small number of problems with which they are currently faced. In order to shore up their firm determination and assist them in pursuing their aims, and in accordance with Article 8 of Resolution (99) 20, I would recommend the following measures:

- 1) to accord absolute priority to construction of a special centre for the detention of minors;
- 2) to determine, at least on an indicative basis, the duration of placement of minors in open or closed centres;
- 3) to humanise the conditions of solitary confinement in the Schrassig CSEE by providing the minors in question with access to an outdoor area;
- 4) as far as possible to keep young people who can legitimately be described as "offenders" separate from other minors;
- 5) to expedite the processing of asylum applications, notably by reinforcing the team responsible for this task;
- 6) as soon as possible to introduce activities for foreigners detained in prison and provide them with greater access to outdoor areas;
- 7) to reduce or even abolish the requisite period before foreigners detained in prison can receive visits;
- 8) to increase the number of wardens in the Luxembourg Prison and provide access to certain specialist posts for non-Luxembourgers;

9) to establish effective supervision of the issuing of cabaret artistes' visas in order to prevent any risk of their being used for such unlawful purposes as trafficking in human beings; and to introduce an appropriate system for protecting witnesses and victims of this criminal activity;

10) to ratify Protocols 12 and 13 to the ECHR and to sign and ratify the Additional Protocol to the European Social Charter providing for a system of collective complaints.

44. In accordance with Article 3 f) of Resolution (99) 50, this report is addressed to the Committee of Ministers and the Parliamentary Assembly.

ANNEX TO THE REPORT

Comments of the Government of Luxembourg *[Currently being translated into English]*

The Commissioner for Human Rights decided to append to his report the following comments of the Government of Luxembourg submitted during the presentation of the report to the Committee of Ministers of the Council of Europe, on 8 July 2004.

Le gouvernement luxembourgeois souhaiterait remercier le Commissaire aux droits de l'Homme pour son rapport et pour les expressions de gratitude aux différentes autorités gouvernementales rencontrées au cours de sa visite.

Conformément à la conclusion du Commissaire selon laquelle «le Luxembourg [...] ne cesse de vouloir assurer un respect toujours plus effectif des droits fondamentaux», les autorités luxembourgeoises confirment leur volonté de prendre dûment en considération les réserves exprimées par le Commissaire sur certains dossiers. Il convient dès lors de préciser que ses recommandations ont déjà, pour la plupart, reçu une réponse de la part des ministères compétents.

Ainsi, le Luxembourg présente ci-après ses commentaires sur chacune des recommandations figurant à la fin du rapport de M. Gil-Robles.

Recommandation 1

Le 5 mai 2004, la loi portant réorganisation du Centre socio-éducatif de l'Etat a été votée. Cette loi prévoit la création d'une unité de sécurité au Centre socio-éducatif de l'Etat de Dreibern.

Il convient également de mentionner que dans le cadre du projet de loi portant modification de la loi modifiée du 10 août 1992 relatif à la protection de la jeunesse, projet de loi qui vient d'être déposé à la chambre des Députés, il est prévu de modifier l'article 26 de la loi précitée qui prévoit la garde d'un mineur dans une maison d'arrêt pour un terme ne dépassant pas un mois, en limitant cette faculté à la seule hypothèse d'une situation exceptionnelle où un mineur représente un danger pour l'ordre ou la sécurité publics.

Recommandation 2

La détermination de la durée de placement des mineurs dans les centres qu'ils soient ouverts ou fermés est de la compétence du Tribunal de la Jeunesse. De fait, actuellement la durée moyenne de séjour des mineurs dans les Centres socio-éducatifs de l'Etat s'élève à 4 mois.

La durée moyenne de placement de mineurs à la section disciplinaire du Centre pénitentiaire de Luxembourg (CPL) est actuellement de deux mois. Veuillez trouver ci-joint le tableau qui reprend la durée moyenne et la variation du séjour des mineurs en prison de 2000 à 2003.

<i>Année</i>	<i>Nombre de mineurs accueillis pendant l'année en cours</i>	<i>Longueur du séjour</i>	<i>Moyenne du séjour</i>
2000	25	Entre 1 jour et 23 mois	4,5 mois
2001	24	Entre 1 jour et 12 mois	3,5 mois
2002	45	Entre 1 jour et 9 mois	2,6 mois
2003 (huit premiers mois)	26	Entre 2 jours et 8 mois	2 mois

Recommandation 3

Suite aux recommandations du Comité européen pour la Prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT), les responsables des Centres socio-éducatifs de l'Etat ont examiné les possibilités de garantir le droit de l'exercice en plein air aux pensionnaires en isolement temporaire. Les travaux d'infrastructure permettant l'exercice en plein air aux pensionnaires en isolement temporaire ont été achevés fin 2003 au Centre socio-éducatif de l'Etat de Dreibern. A Schrassig les travaux y relatifs sont prévus pour 2004.

Recommandation 4

La Direction générale des établissements pénitentiaires soutient cette recommandation et s'assurera de la séparation des mineurs « délinquants » des autres mineurs.

La Commission de Surveillance et de Coordination a chargé la direction des Centres socio-éducatifs de l'Etat de promouvoir l'institution progressive de groupes de vie accueillant chacun des pensionnaires présentant des particularités similaires. En outre, il convient de souligner une fois de plus que dans la plus grande majorité de la population des Centres socio-éducatifs de l'Etat, auteurs et victimes se confondent. Les Centres socio-éducatifs de l'Etat considèrent qu'une de leurs principales missions consiste à éviter la stigmatisation d'auteurs malheureux et à instituer un climat de sécurité qui interdit d'autres formes de transgression.

Recommandation 5

Depuis la visite de Monsieur Gil-Robles, quatre autres personnes compétentes pour auditionner les demandeurs d'asile ont été engagées. En vue de l'accélération du traitement des requêtes, l'effectif afférent a donc été doublé.

Recommandation 6

Cette recommandation pourra être exécutée dans la mesure où il sera procédé à l'engagement d'un nombre accru de personnel surveillant.

Recommandation 7

Le Ministère de la Justice est actuellement en train d'examiner les modalités permettant une réduction du délai.

Recommandation 8

Le Gouvernement a décidé en date du 29 mars 2004, sur demande de Monsieur le Ministre de la Justice, la création de 15 nouveaux postes de gardien, ces gardiens étant à affecter au CPL à Schrassig. La procédure de recrutement est en cours et l'examen-concours aura lieu le 5 juillet 2004.

La question de l'accès de certaines professions spécialisées à des non-Luxembourgeois est de la compétence du législateur. En l'état actuel de notre législation, les postes de fonctionnaires au CPL sont accessibles uniquement à des Luxembourgeois.

Il est un fait que deux postes d'éducateur gradué sont toujours vacants.

Recommandation 9

A sa réunion du 16 avril 2004, le Conseil de Gouvernement a décidé que, dans le cadre des mesures de lutte contre la traite des êtres humains, l'Etat luxembourgeois n'émettra plus d'autorisations pour les ressortissants d'Etats non membres de l'Union européenne souhaitant travailler à Luxembourg comme « artiste de cabaret » ou dans une activité similaire, avec effet au 1^{er} mai 2004.

Cette décision est basée sur les considérations suivantes :

- Cette pratique a été vivement critiquée lors de la visite par le Commissaire aux droits de l'homme, M. Alvaro Gil-Robles au Luxembourg début février 2004.
- Les autorités judiciaires luxembourgeoises ont procédé le 31 mars 2004 à des perquisitions en douze endroits différents dont deux cabarets, ainsi qu'à l'arrestation de 5 personnes. Deux des personnes arrêtées exerçaient des fonctions dites d'agents artistiques dont l'activité consistait à recruter à l'aide de correspondants étrangers des

jeunes femmes afin que celles-ci s'adonnent à des activités artistiques dans différents cabarets du pays. Les données de l'enquête ont établi qu'il ne s'agit pas uniquement d'une affaire de proxénétisme mais également d'une affaire de traite d'êtres humains.

- Enfin un autre élément important est un jugement du Tribunal d'Arrondissement de Luxembourg, chambre correctionnelle du 19 février 2004, qui a clairement retenu l'existence d'un contrat de louage de service entre l'artiste de cabaret et le cabaretier de sorte que les artistes seraient soumises à l'obligation du permis de travail au sens des articles 24 et 25 de la loi du 28 mars 1972 sur l'entrée et le séjour des étrangers.

Recommandation 10

Le projet de loi de ratification du Protocole N° 12 de la Convention européenne des droits de l'homme, relatif à l'élimination de toute discrimination a été déposé à la Chambre des Députés le 6 avril 2004 et par la suite envoyé pour avis au Conseil d'Etat. Ceci implique que le Luxembourg devrait très prochainement être en mesure de ratifier le Protocole en question.

En ce qui concerne le Protocole n° 13 de la Convention, relatif à l'abolition de la peine de mort en toutes circonstances, l'élaboration d'un exposé des motifs par le Ministère compétent est en cours. La ratification dudit protocole pourra avoir lieu dès l'aboutissement du processus législatif.

Remarque générale relative à la situation des demandeurs d'asile déboutés (point 25, page 10)

Le Gouvernement est conscient du fait que, même si la situation des personnes retenues (mises à disposition du Gouvernement) s'est améliorée depuis la création du « centre de séjour provisoire pour étrangers en situation irrégulière », cette situation peut encore être améliorée. Le Gouvernement continuera à s'y atteler.