



ECRI REPORT ON LUXEMBOURG

(fourth monitoring cycle)

Adopted on 8 December 2011

Published on 21 February 2012



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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.

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

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work is taking place in 5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, and those of the third round at the end of the year 2007. Work on the fourth round reports started in January 2008.

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 provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final report of ECRI.

The fourth round country-by-country reports focus on implementation and evaluation. They examine the extent to which ECRI's main recommendations from previous reports have been followed and include an evaluation of policies adopted and measures taken. These reports also contain an analysis of new developments in the country in question.

Priority implementation is requested for a number of specific recommendations chosen from those made in the new report of the fourth round. No later than two years following the publication of this report, ECRI will implement a process of interim follow-up concerning these specific recommendations.

The following report was drawn up by ECRI under its own and full responsibility. Except where expressly indicated, it covers the situation up to 23 June 2011 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.

SUMMARY

Since ECRI published its third report on Luxembourg on 16 May 2006, progress has been made in a number of fields covered in that report.

Luxembourg ratified Protocol no. 12 to the European Convention on Human Rights. The protocol, which provides for a general prohibition on racial discrimination¹, came into force in the Grand Duchy on 1 July 2006. A new law, which came into force on 1 January 2009, introduced the principle of dual nationality.

Luxembourg introduced legislation against racial discrimination with the adoption of the laws of 28 and 29 November 2006 transposing Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

The law of 28 November 2006 contains general provisions prohibiting discrimination based, among other things, on religion or beliefs and real or supposed membership or non-membership of a race or ethnic group. That law introduces a distinction between direct and indirect discrimination. Further, the concept of harassment is mentioned as a form of discrimination. Incitement to discriminatory treatment is also prohibited. The law of 28 November 2006 also introduces the principle of sharing the burden of proof. The law applies to all persons, whether public or private, physical or legal, including public bodies, with regard to employment, social protection, including social security and health care, social benefits, education and access to public goods and services, including housing. This law broadly meets the criteria set out in ECRI General Policy Recommendation no. 7 on national legislation to combat racism and racial discrimination.

The Centre for Equal Treatment (*Centre pour l'égalité de traitement - CET*) set up in 2008 is the Luxembourg body specialising in the fight against racial discrimination. The task of the CET is to promote, analyse and monitor equality of treatment between all persons regardless of race or ethnic origin, gender, sexual orientation, religion or other beliefs, handicap or age. It is empowered to assist persons who consider themselves to be victims of discrimination by providing advice and guidance services for them.

The law of 29 August 2008 on free movement of persons and immigration changed the system for granting work permits to foreigners. Furthermore, residence and work permits are now combined into a single document, which simplifies administrative procedures.

The Luxembourg press council adopted a code of ethics in which it is stated that the press undertakes to avoid and combat any discrimination on grounds of gender, race, nationality, language, religion, ideology, ethnic origin, culture, class or beliefs, while ensuring respect for the fundamental rights of the human being.

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

One of the principal conditions for obtaining Luxembourg nationality is passing the spoken Letzeburgisch examination. This examination is compulsory not only for persons who have not completed 7 years' schooling in public schools in Luxembourg or in private schools following the state school curriculum, but also those who have not been residing in Luxembourg since at least 31 December 1984. However, ECRI was informed that this is a difficult test and may be an obstacle to the acquisition of Luxembourg nationality for a number of foreigners.

¹In accordance with General Policy Recommendation No. 7, racial discrimination is understood as meaning any difference of treatment based on grounds such as "race", colour, language, religion, nationality or national or ethnic origin which has no objective and reasonable justification.

The law of 28 November 2006 contains some shortcomings which should be remedied. For example, it does not cover nationality, language or colour. Moreover, since it came into force in 2006 no cases involving this law have come before the courts. Although there have been information campaigns to publicise the laws of 28 and 29 November 2006, it would seem that further measures bringing them to the knowledge of potential victims of racial discrimination are necessary.

The CET cannot be a party to legal proceedings. Furthermore, those to whom it addresses itself following a complaint are not obliged to reply to it, which considerably lessens its ability to act on complaints. Nationality is not among the grounds covered by the CET, yet some 40% of persons living in Luxembourg are foreigners. The CET's premises are in a building that is hard to find, so that the organisation suffers from a lack of visibility. Another problem the CET faces is that its budget has been cut by the authorities. Moreover, that budget is decided on solely by the authorities. Furthermore, the CET is not well known to the public, and its secretariat consists of just two persons, including a secretary.

There are several bodies to combat racial discrimination in Luxembourg, which raises the problem of apportioning powers among them since their terms of reference overlap in some cases.

Very few foreign pupils enter the traditional secondary education system, while they constitute the majority of pupils in technical education. Further, the school drop-out rate is particularly high among foreign pupils, in particular those of Cape Verde origin.

Statistics reveal inequalities in employment. For example, persons born abroad are still more affected by unemployment than those born in Luxembourg. There is also a difference between nationals of third states and Community nationals, the unemployment rate for the former being higher than that for the latter.

It seems that no in-depth study has been done on the situation of immigrants in relation to the labour market. ECRI was informed that discrimination and racism exist in the employment sphere, particularly against Blacks.

According to information obtained by ECRI, when a person is arrested, his/her ethnic origin or usual language is mentioned in the media.

Representatives of the Muslim communities informed ECRI that Muslims continue to defend themselves against stereotypes and prejudice in relation to terrorism and that the authorities remain passive on this matter.

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

ECRI recommends that the Luxembourg authorities evaluate the Letzeburgisch language test required for acquisition of Luxembourg nationality.

ECRI recommends that the Luxembourg authorities amend the law of 28 November 2006 to ensure that it prohibits discrimination on grounds of nationality, language and colour in accordance with its General Policy Recommendation no. 7. ECRI recommends that the Luxembourg authorities conduct information campaigns to familiarise the public in general and minority groups in particular with the law of 28 November 2006.

ECRI recommends that the Luxembourg authorities strengthen the CET by enabling it to take part in legal proceedings, by giving it the necessary human and financial resources and by ensuring that the persons or bodies to which it addresses itself are obliged to reply.*

ECRI recommends that the Luxembourg authorities examine the added value of each body which exists to combat discrimination in order to avoid overlapping powers and ensure maximum efficiency.

With regard to education, ECRI recommends that the Luxembourg authorities take steps to tackle the high school drop-out rate among foreign pupils.

With regard to Muslim communities, ECRI recommends that the Luxembourg authorities arrange for the one in the northern municipalities to have a cemetery. It also recommends that they ensure that Luxembourg's Muslim communities have a mosque meeting all appropriate criteria.

ECRI recommends that the Luxembourg authorities ensure that the criteria for implementation of Article 342 of the Penal Code on organised begging are clearly defined. It strongly recommends them to ensure that Roma are not stigmatised or unfairly targeted by any measures taken by the police to combat organised begging. ECRI recommends that the Luxembourg authorities combat any discrimination against Roma on the part of campsite managers.

ECRI recommends that the Luxembourg authorities ensure that the detention centre is given sufficiently well trained staff to deal with the persons held.*

ECRI recommends that the Luxembourg authorities increase the human and financial resources allotted to the National Council for Foreigners (NCF). ECRI also recommends that the Luxembourg authorities help the NCF to achieve a higher profile. It recommends that they make premises available to the Council for its meetings.*

* The recommendations in this paragraph will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

FINDINGS AND RECOMMENDATIONS

I. Existence and implementation of legal provisions

International legal instruments

1. In its third report, ECRI recommended that Luxembourg ratify as soon as possible Protocol No. 12 to the European Convention on Human Rights and the Convention on Cybercrime and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.
2. ECRI welcomes the ratification by Luxembourg of Protocol no. 12 to the European Convention on Human Rights, on 21 March 2006. This protocol, which lays down a general prohibition on racial discrimination, entered into force in the Grand Duchy on 1 July 2006. Luxembourg has not ratified the Convention on Cybercrime or its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. However, the Luxembourg authorities have informed ECRI that there is a draft law concerning the ratification of these instruments which is scheduled to be introduced at the beginning of 2012.
3. ECRI recommends that Luxembourg ratify at the earliest opportunity the Convention on Cybercrime and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.
4. In its third report, ECRI reminded 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, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
5. Luxembourg has not yet ratified the Framework Convention for the Protection of National Minorities. The Grand Duchy has not ratified the European Convention on Nationality either. It has, however, explained to ECRI that the ratification of the European Convention on Nationality requires that the law of 23 October 2008 on nationality be amended. This law having entered into force only on 1 January 2009, the Luxembourg Government will carry out an in-depth assessment of it in the course of 2012. After this assessment, it will be decided whether the law will be adapted in order to fill any lacunae brought to light by the review. After such a review, ratifying the European Convention on Nationality could be envisaged. Luxembourg has neither signed nor ratified the Convention on the Participation of Foreigners in Public Life at Local Level. Luxembourg has neither signed nor ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the authorities explain this by the existence of incompatibilities between the Convention and Community law.
6. ECRI reiterates its recommendation that Luxembourg ratify the Framework Convention for the Protection of National Minorities. It recommends that Luxembourg ratify the European Convention on Nationality as soon as possible. It again recommends that Luxembourg sign and ratify the Convention on the Participation of Foreigners in Public Life at Local Level. It also recommends that Luxembourg sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

The law on Luxembourg nationality

7. In its third report, ECRI recommended that Luxembourg adopt the bill on nationality as soon as possible. It called 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.
8. A new nationality law was passed in Luxembourg on 23 October 2008 and entered into force on 1 January 2009. ECRI notes with interest that this law introduces the principle of dual nationality. A person wishing to acquire Luxembourg nationality no longer has to renounce his/her nationality of origin, provided that the law in force in his/her country of origin allows this. The principal conditions for obtaining Luxembourg nationality are: 1) minimum length of effective and legal residence of 7 years; 2) passing the spoken Letzeburgisch examination, 3) obligatory attendance at three civic instruction classes, one of which must cover Luxembourg institutions and one, fundamental rights, and 4) not having been sentenced to a prison term of more than 1 year. Persons who fulfil at least one of the following criteria are exempted from passing the test of spoken Letzeburgisch or attending civic education classes: 1) those who have attended, in Luxembourg, for at least 7 years public schools or private schools following the state curriculum; or 2) those who have been residing in Luxembourg legally, effectively and without interruption since 31 December 1984.
9. ECRI was informed that the proficiency level required in the Letzeburgisch language is level B1 (independent user - threshold level)² of the Common European Framework of Reference for Languages (CEFR) for oral comprehension, and level A2 (basic user - waystage)³ of the same framework for oral expression. Candidates for naturalisation, who are required to pass the test, must be able to understand a person speaking in Letzeburgisch on an everyday subject (work, leisure activities, family, media etc.) and to speak Letzeburgisch well enough to be able to greet someone, ask that person about him/herself, to obtain simple information, and ask for or give directions.
10. ECRI was informed that language leave of 200 hours is granted for learning Letzeburgisch. This leave enables foreigners working on Luxembourg territory to attend language classes during their working hours in order to learn or improve their knowledge of the Letzeburgisch language. The Luxembourg authorities have informed ECRI that although taking part in Letzeburgisch classes is not compulsory for those wishing to apply for Luxembourg citizenship, application fees for these classes can be partially reimbursed. ECRI was also informed that steps have been taken to enable children to learn Letzeburgisch from their earliest years. ECRI notes these measures taken to facilitate proficiency in Letzeburgisch. However, it has received information to the effect that immigrants (who are mainly of Italian, Portuguese, Cape Verde or Balkan origin) do not speak Letzeburgisch. Moreover, it was informed that many people do not apply for Luxembourg nationality because this test is so

² Can understand the main points of clear standard input on familiar matters regularly encountered in work, school, leisure, etc.

³ Can communicate in simple and routine tasks requiring a simple and direct exchange of information on familiar and routine matters. Can describe in simple terms aspects of his/her background, immediate environment and matters in areas of immediate basic need.

difficult.⁴ Although the Luxembourg authorities have indicated that the language test has been evaluated, a reassessment of this test would appear to be necessary to ensure that it is not a hindrance to the acquisition of nationality by persons wishing to acquire it. This is all the more important as there are in Luxembourg, in addition to the Letzeburgisch language, two other official and widely used languages (French and German) which all pupils have to learn at school. The Luxembourg authorities have informed ECRI that in 2010, the pass rate for the language test varied between 72 and 87% and that the average percentage of those who passed as concerns the first 23 sessions which were organised between December 2008 and March 2011, was 77%. The Luxembourg authorities have further indicated that the acceptance rate for applications for acquiring or recovering Luxembourg citizenship from 2009 to 2010 is 99,72% and that this high rate can be explained by the fact the municipalities screen files. The authorities have specified that registry officials can only register the applications of those seeking to obtain Luxembourg citizenship who fulfil the legal criteria and produce all the documents required by the legislator. If the legal criteria are not fulfilled or if the file does not contain all the necessary documents, the registry official cannot register the application. The Luxembourg authorities have indicated that it is up to the Ministry of Justice to check the integrity of the applicants.

11. ECRI recommends that the Luxembourg authorities re-evaluate the examination of spoken Letzeburgisch which is organised in the framework of the procedure for acquiring Luxembourg nationality by naturalisation.

Criminal law provisions

12. In its third report, ECRI recommended 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 differential treatment must have an objective justification and be reasonable.
13. Since ECRI's third report on Luxembourg was published, the law of 28 November 2006 transposing Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation has been adopted. That law abrogates paragraph 5 of Article 457 of the Penal Code, which contained a general clause stating that the prohibition of discrimination did not apply to differences provided for in, or following from, another clause. ECRI welcomes this change.
14. In its third report, ECRI again recommended that the Luxembourg authorities 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. ECRI also reiterated its recommendation that the Luxembourg authorities incorporate into the Penal Code provisions prohibiting the creation or leadership of a group promoting racism, and support for such groups or participation in their activities.
15. ECRI was informed by the Luxembourg authorities that there is no provision in the Luxembourg Penal Code enabling judges, when determining a sentence, to

⁴ According to government statistics, between 1 January 2009 and 31 December 2010, the Ministry of Justice dealt with 8 322 applications to obtain or recover Luxembourg nationality and 8 299 were accepted. The authorities have indicated that the 23 people to whom nationality was refused had been sentenced to a prison sentence of a certain seriousness or to imprisonment for more than 5 years. However, the authorities do not indicate the percentage of persons who have obtained or recovered Luxembourg nationality who took the language test and attended civic instruction classes.

consider the racist motivation of an ordinary offence as an aggravating circumstance except in cases of profanation of graves, burial places and corpses.⁵ The Luxembourg Penal Code does not contain any provision prohibiting the creation or leadership of a group promoting racism, and support for such groups or participation in their activities either.

16. In its third report, ECRI also recommended that the Luxembourg authorities ensure that racist acts⁶ are punished in accordance with the relevant provisions of the Penal Code. It recommended that they 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 recommended that they ensure that when a complaint of racism is lodged, the victim is informed of all the choices available and has the assistance of a lawyer.
17. There seems to be little case-law in Luxembourg on racist crime; on this matter, the Luxembourg authorities consider that this can be explained by the small size of the country and the small number of racist crime committed therein. Whilst noting the Luxembourg authorities' information, ECRI nevertheless considers that research should be done to ascertain the reasons for this lack of case-law on racist crime in Luxembourg. This is all the more important as the Centre for Equal Treatment (CET)⁷ has informed ECRI that it received 10 complaints of racist acts in 2010 and 6 in 2011, indicating that racist acts are committed in Luxembourg. Moreover, according to the Fundamental Rights Agency of the European Union (FRA), racism is not appropriately punished in Luxembourg: indeed, between 2006 and 2007 no sentences were meted out in Luxembourg when proceedings were brought. The Luxembourg authorities have informed ECRI that the CET carries out anti-discrimination campaigns as well as information campaigns aimed at potential victims and the police. However, the Luxembourg authorities have not provided information on the dates of these campaigns, who took part in them and their content.
18. ECRI was informed that no information campaigns for the benefit of victims of racist acts and the judiciary and police on the relevant provisions of the Penal Code have been organised since its third report was published. It is also informed that there are few reception facilities for victims of racism to inform them about all the options available.
19. ECRI recommends that the Luxembourg authorities carry out research to ascertain the reasons for the lack of case-law on racist crime. It also recommends again that they conduct information campaigns aimed at the potential victims of racist offences about the relevant provisions of the Penal Code.

Civil and administrative law provisions

20. In its third report, ECRI recommended that the Luxembourg authorities ensure that Article 3 of the law of 27 July 1993 on foreigners is better known to the persons concerned, such as potential victims of discrimination and judicial actors, so that it may be better implemented. It also recommended adoption of the law transposing Directive 2000/78/EC and Directive 2000/43/EC without delay. It considered it essential that all the bodies empowered to do so should be able to put forward their views and recommendations on the bill.

⁵ Article 453 of the Penal Code.

⁶ Racism is understood as meaning the belief that a ground such as "race", colour, language, religion, nationality or national or ethnic origin justifies contempt of a person or group of persons or the notion of superiority of a person or group of persons.

⁷ See "Anti-discrimination bodies and other institutions" below for more information about this institution.

21. ECRI notes with interest that Directives 2000/78/EC and 2000/43/EC were transposed into Luxembourg law by the laws of 28 and 29 November 2006.
22. The law of 27 July 1993 was abrogated and replaced by the law of 16 December 2008 on reception and integration of foreigners into the Grand Duchy of Luxembourg. The prohibition of discrimination in Article 3 of the law of 27 July 1993 appears in Article 1 of the law of 28 November 2006.
23. ECRI notes in this connection that the law of 28 November 2006 contains general provisions prohibiting discrimination based, among other things, on religion or beliefs and real or supposed membership of a race or ethnic group. For the first time in Luxembourg legislation, that law introduces a distinction between direct and indirect discrimination. Further, the concept of harassment is mentioned as a form of discrimination. Incitement to discriminatory treatment is also prohibited. The law of 28 November 2006 also introduces the principle of sharing the burden of proof. The law applies to all persons, whether public or private, physical or legal, including public bodies with regard to employment, social protection, including social security and health care, social benefits, education and access to public goods and services, including housing. Article 3 of the law provides that payments of any kind made under public or equivalent schemes, including public social security or social protection schemes, do not come within the scope of the law in as far as it prohibits any discrimination based on criteria other than race or ethnic origin.
24. The law of 28 November 2006 authorises certain non-profit associations to exercise the rights secured to a victim of racial discrimination before a civil or administrative court. The basis for this may be of two kinds: on the one hand, without reference to an individual case of discrimination, such an organisation may exercise the rights secured to a victim of discrimination when the group interests which it defends are infringed, even if no material or non-material prejudice to itself arises; on the other hand, it may also exercise those rights in a case where the victims of a discriminatory act are considered individually, provided they give their express consent to the organisation's legal intervention.
25. Some shortcomings in the law of 28 November 2006 remain to be remedied. For example, the law does not cover nationality, language or colour, as advocated in ECRI's General Policy Recommendation no. 7 on national legislation to combat racism and racial discrimination. However, it should be noted that Article 454 of the Penal Code forbids discrimination based on skin colour and citizenship. This lacuna is only partially filled, as discrimination based on language is not forbidden. ECRI is also informed that not one case has come before the courts in respect of this law although it has been in force since 2006.
26. The law of 29 November 2006 transposes Directives 2000/78/EC and 2000/43/EC into the legislation governing the status of civil servants. This law lays down a general prohibition on the various forms of discrimination as defined by the law of 28 November 2006 in the public service. ECRI notes with interest that the law of 29 November provides for positive measures. It provides that the principle of equality of treatment does not prevent the maintenance or adoption of specific measures designed to prevent or compensate for disadvantages linked to religion, race or ethnic origin in order to ensure full equality in practice. The Luxembourg authorities have informed ECRI that the CET carries out anti-discrimination campaigns as well as information campaigns aimed at potential victims and the police.
27. Although ECRI has been informed that information campaigns to publicise the laws of 28 and 29 November 2006 have been conducted, further measures to

bring them to the notice of possible victims of racial discrimination appear to be needed.

28. ECRI recommends that the Luxembourg authorities amend the law of 28 November 2006 in order to ensure that it prohibits discrimination on grounds of nationality, language and colour in accordance with General Policy Recommendation no. 7. ECRI recommends that the Luxembourg authorities conduct information campaigns to bring the law of 28 November 2006 to the notice of the public in general and to vulnerable groups in particular.
29. In its third report, ECRI encouraged the Luxembourg authorities to ensure that foreigners could participate fully in local elections by easing the deadline for registering to vote in such elections and the language requirements governing municipal councils' work.
30. The law of 19 December 2008 amending the electoral law substantially lengthened the deadlines for non-nationals of Luxembourg registering to vote. While registration deadlines for local elections used to be 18 months before the ballot, registration will henceforth be possible until the twelfth Friday before election day. ECRI welcomes the action taken on its recommendation. Furthermore, the length of residence in Luxembourg required for participation in European elections has been brought down from 5 to 2 years. The Luxembourg authorities have informed ECRI that in 2010 and until 14 July 2011, the Luxembourg Office for Reception and Integration (OLAI) coordinated an awareness campaign in order to encourage foreigners to register on electoral lists in view of the municipal elections of 9 October 2011.
31. ECRI notes with interest that a bill passed on 27 January 2011 now opens access to local office to all foreigners (Community nationals and others), including the offices of *bourgmestre*⁸ and *échevin*⁹ (the chamber of *bourgmestres* and *échevins* is the executive body of the municipality, except as concerns laws and police regulations whose execution is the purview of the *bourgmestre*). In order to be eligible, the candidate must: 1) have been resident in Luxembourg for at least 5 years; 2) have been resident in the municipality for 6 months; and 3) be proficient in Letzeburgisch for the duties of *bourgmestre*. However, councillors are permitted to speak at meetings in French or German. ECRI welcomes the implementation of its recommendation.

Training for members of the judiciary

32. In its third report, ECRI recommended that the Luxembourg authorities ensure that trainee judges and those already in post are all fully familiar with national and international legislation on racism and racial discrimination.
33. The Luxembourg authorities have informed ECRI that training of judges, during which racial discrimination is dealt with, is quite comprehensive and that they are trained at the *Ecole nationale de la magistrature* in Bordeaux (France). The authorities also stated that human rights are taught to young lawyers. They have further stated that members of the judiciary have the possibility of strengthening their knowledge of matters relating to racial discrimination during their continued training which also contains modules dealing with this subject.

⁸ A *bourgmestre* is a mayor.

⁹ An *échevin* is a deputy *bourgmestre*.

Anti-discrimination bodies and other institutions

- *Centre for Equal Treatment (CET)*
34. The CET was created in 2008 under the above-mentioned law of 28 November 2006.¹⁰ The CET functions entirely independently with the goal of promoting, analysing and monitoring equality of treatment between all persons regardless of race or ethnic origin, gender, sexual orientation, religion or other beliefs, handicap or age. It is empowered to assist persons who consider themselves to be victims of discrimination by providing advice and guidance services for them. It consists of 5 members including its chair, appointed for a 5-year term. Its secretariat comprises two persons including one secretary.
 35. In the performance of its tasks the CET may carry out studies, give opinions and issue recommendations. Once each year it submits a progress report to the government and parliament. The CET has to date given two opinions on legislative bills. On one occasion it was asked for its opinion on a bill to change the legal age of marriage, and on the other occasion it gave an opinion *proprio motu* on equality between men and women.
 36. The CET also organises lectures and debates for the purpose of generating public awareness. For example, in May 2009, with a view to the general elections it staged a debate with representatives of all the political parties on their programmes relating to combating discrimination.
 37. While welcoming the creation of this body, ECRI notes certain shortcomings in its terms of reference which remain to be remedied. For example, the CET informed ECRI that it cannot be a party to legal proceedings. It also said that it wished to have greater powers, since those to whom it addresses itself following a complaint (for example, businesses or ministries) are not obliged to reply, which considerably lessens its ability to act on complaints. Nationality is not among the grounds covered by the CET, yet some 40% of persons living in Luxembourg are foreigners. The CET has informed ECRI that its premises are in a building that is hard to find, so that the organisation suffers from a lack of visibility. On this question, the authorities have informed ECRI that the CET is located in the same place as other public institutions. The authorities consider that the CET can be found easily as it is close to the Luxembourg train station. Another problem the CET faces is that its budget has been cut by the authorities. In addition, that budget is decided on solely by the authorities. Finally, the CET says it is not yet well known to the public. ECRI notes, however, that generally speaking, the CET's activities as concerns the treatment of discrimination complaints has been assessed as positive by the FRA.
 38. ECRI strongly recommends that the Luxembourg authorities strengthen the Centre for Equal Treatment by enabling it to be a party to legal proceedings, by giving it the necessary human and financial resources, and by ensuring that the persons or bodies to whom it addresses itself are obliged to reply. ECRI also recommends that the Luxembourg authorities add nationality to the grounds on which complaints may be taken to the Centre for Equal Treatment. It also recommends that they take inspiration from its General Policy Recommendation no. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level with regard to any measures taken to strengthen the Centre for Equal Treatment.

¹⁰ See "Civil and administrative law provisions" above.

- *Ombudsman*

39. In its third report, ECRI strongly recommended that the Luxembourg authorities ensure that any recommendation made by the Ombudsman on the treatment of non-Luxembourg residents is taken into account without delay, given the precarious situations in which the people concerned by these recommendations may be. ECRI also recommended that the Luxembourg authorities ensure that the human and material resources available to the Ombudsman are sufficient to enable him to carry out all his tasks.
40. The Ombudsman has informed ECRI that he receives 15,000 requests each year from persons seeking, *inter alia*, information and advice. Half of these persons are foreigners, that is to say frontier workers or immigrants working in Luxembourg. The Ombudsman also said that he receives about 1000 complaints each year, the great majority of them concerning disputes with the authorities, questions of discrimination not arising very often. He also said that, generally speaking, the recommendations he makes concerning foreigners' rights are properly acted on, and that in 95% of cases the authorities act to remedy the situation.¹¹ According to the Ombudsman, the problems that arise concern administrative delays, which have consequences for foreigners especially. In 2010 in particular, several cases relating to the granting of work permits to nationals of third states were referred to the Ombudsman, who intervened by asking the authorities concerned to clarify the manner in which the legislation is applied.
41. ECRI notes with interest that since the passing of a law in April 2010, the Ombudsman is empowered to visit places of detention for monitoring purposes. In particular, he once visited the detention centre for persons in irregular situations which was located in the Luxembourg Detention Centre at Schrassig; he told ECRI that he was not satisfied by the conditions there. This detention centre is now closed.¹² The Ombudsman informed ECRI that a case of police brutality against an African has been referred to him. The investigation is in progress, and the Ombudsman has informed ECRI that he has insisted that the affair be clarified.
42. With regard to the resources allotted to the Ombudsman, he said that he had a staff of 6 persons assigned to traditional mediation work. It should, however, be noted that the work of this body rests essentially on the Ombudsman himself and that his personal qualities are of crucial importance.

- *Consultative Commission on Human Rights (CCDH)*

43. In its third report, ECRI strongly recommended that the Luxembourg authorities ensure that the Consultative Commission on Human Rights (CCDH) has sufficient resources to continue producing work of a high standard. ECRI also considered that they should consult this Commission more often and take account of its opinions, *inter alia*, when framing policies concerning ethnic minorities and foreigners.
44. The law of 21 November 2006 establishing a Consultative Commission on Human Rights in the Grand Duchy of Luxembourg endowed the CCDH with legal status, thus conferring on it the same formal rank as other human rights protection bodies such as the Ombudsman. That law provides that the CCDH

¹¹ There are cases in which the authorities have not acted on the Ombudsman's requests, such as the refusal to extend the tolerance status accorded to a group of asylum seekers from Kosovo whose applications were rejected. See *Médiateur, Rapport d'activités du 1er octobre au 30 septembre 2009*, p. 23.

¹²For more information on this, see "Reception and status of non-citizens" below.

is to enjoy complete independence in discharging its functions and to be composed of independent persons. The term of office of those persons is increased from 3 to 5 years, which should facilitate continuity in the work of this body. As regards its tasks, the text underlines the possibility of the CCDH taking initiatives to promote and protect human rights, which appears to give it greater autonomy than hitherto. It is also required to facilitate cooperation among various national and international institutions for the defence of human rights. In particular, a representative of the government, the Ombudsman, the Chair of the Ombuds-Comité fir d'Rechter vum Kand (the Ombudsman Committee for Children's Rights), the chair of the National Data Protection Commission and the chair of the college of the CET are invited to attend the CCDH's plenary meetings in an advisory capacity. ECRI thus notes with interest that the Luxembourg authorities have taken steps to strengthen the CCDH. With regard to the resources allotted to the CCDH, ECRI considers that they could be substantially increased, since in its annual report for 2010 this body states that its operating budget amounted to 12,500 euros for that year, which appears derisory.

45. Concerning the frequency of referrals to the CCDH by the government, ECRI finds that progress has been made since the publication of its third report. For example, while the government referred only one case to the CCDH between 2003 and 2007, it made three such referrals in 2008 and four in 2009. At the same time, however, it would seem that the greater number of referrals to the CCDH is not necessarily accompanied by a stronger inclination on the part of the authorities to pay heed to this body's recommendations. Only one of the opinions given in 2008 and 2009 related to foreigners and discrimination. It was on the draft legislation on freedom of movement and immigration.¹³ However, the criticisms voiced by the CCDH on the subject were not taken into account in the final version of the law. On the other hand, some amendments to the bill transposing the directives on discrimination were made in accordance with the CCDH's opinion.

- *National Council for Foreigners (CNE)*

46. In its third report, ECRI recommended that the Luxembourg authorities ensure that the National Council for Foreigners (CNE) had sufficient human and material resources to perform its tasks. It also recommended that they ensure that the CNE's mode of operation enabled it to carry out its projects. ECRI further recommended that the Luxembourg authorities consult the CNE when framing policies concerning foreigners.
47. The primary task of the CNE is to give its opinion to the government when asked to do so. The law of 16 December 2008 on reception and integration of foreigners modified the CNE's composition. The number of foreigners' representatives has been increased from 15 to 23 (including a representative of refugees), 7 of whom represent third states. The total number of members is now 34. So parity does not exist between the Luxembourg and foreign members and this, according to the CNE, may well change the nature of the discussions. The authorities have informed ECRI that the new composition of the CNE had not yet entered into force on 14 September 2011 as the draft Grand-Duchy regulation concerning the modalities for nominating representatives of the CNE as well as on distribution according to nationality, was submitted to the Counsel of State for its opinion on 12 May 2011 and that they are currently awaiting this opinion. Members' term of office has been increased from 3 to 5 years. On this matter, the authorities have indicated that this aims to increase the CNE's visibility as well as continuity in its functioning.

¹³ See "Reception and status of non-citizens" for further information on this law.

The CNE's autonomy is enhanced by the law of 16 December 2008 to the extent that its chair is now elected by a majority of members, unlike the earlier practice whereby the Government Commissioner for Foreigners was automatically appointed to the chair. The CNE told ECRI that it would be assisted by the OLAI. The CNE said that it needed guaranteed administrative and logistic resources as it had no premises or funds for its various activities. The Luxembourg authorities have indicated on this matter that the offices of OLAI are provided to the CNE free of charge so that it may hold its meetings there and that a staff member of the OLAI carries out the functions of secretary for the CNE. The authorities have also indicated that upon a duly reasoned and justified request, the CNE receives specific funds from the OLAI. The CNE also said to ECRI that it suffered from lack of visibility.

48. ECRI reiterates its recommendation to the Luxembourg authorities to increase the human and financial resources allotted to the National Council for Foreigners. ECRI also recommends that the Luxembourg authorities help the National Council for Foreigners acquire a higher profile. It recommends that they provide the Council with premises of its own for holding its meetings.

49. In its third report, ECRI recommended that the authorities 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 recommended that the authorities ensure that the Commission has sufficient human and material resources to perform its tasks efficiently.

50. The Permanent Special Commission against Racial Discrimination is an organ of the CNE. Nothing appears to have been done to create greater awareness of its powers to receive complaints under Article 14 (2) of the International Convention on the Elimination of All Forms of Racial Discrimination. ECRI recalls that, according to that article, any State Party which makes a declaration as provided for in paragraph 1 may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions from individuals and groups of individuals within its jurisdiction who claim to be victims of a violation of any of the rights set forth in the Convention and who have exhausted other available local remedies. So the Permanent Special Commission against Racial Discrimination has an important part to play in combating this phenomenon in Luxembourg. It seems that this Commission suffers from the same lack of resources and visibility as the CNE.

51. ECRI reiterates its recommendation to the Luxembourg authorities that the power of the Permanent Special Commission against Racial Discrimination to receive complaints under Article 14 (2) of the International Convention on the Elimination of All Forms of Racial Discrimination be better known to potential victims of racial discrimination. Further, ECRI recommends that the Luxembourg authorities act to ensure that the Commission has greater visibility and the necessary human and financial resources to perform its tasks efficiently.

- *Luxembourg Office for Reception and Integration (OLAI)*

52. Since the third ECRI report, the OLAI has been established under the law of 16 December 2008 on reception and integration of foreigners. It is responsible to the Ministry of the Family and Integration. Its task is to organise the reception of foreign newcomers and facilitate their integration through the implementation and co-ordination of the policy on reception and integration. The Office works in close conjunction with the relevant ministries via the

interministerial integration committee. The OLAI is also tasked with the provision of social assistance to foreigners who have no entitlement to existing welfare and allowances. Combating discrimination is one of the OLAI's central tasks, in accordance with the law of 16 December 2008 on reception and integration of foreigners. However, the law does not state what actual forms of discrimination OLAI's work is to address or the exact powers conferred on it in this field. The OLAI has informed ECRI that it intends to launch, in September 2011, an optional reception and integration contract open to all foreigners, whether from European Union or third states. That contract covers Letzeburgisch, French or German classes geared to individual demand, costing 5 or 10 euros, and civic education courses. The latter will include lessons in history, customs and the functioning of Luxembourg's institutions. The OLAI states that there will not be an examination at the end of the civic education course, but that there is one at the end of the Letzeburgisch classes. The Luxembourg authorities have indicated to ECRI that the integration contract also comprises a day on which the signatory candidates are provided with practical information on societal life in Luxembourg.

53. The OLAI has informed ECRI that a national plan of action aimed at integration and combating discrimination has been set down for the years 2010 to 2014. According to the OLAI, various actions and projects have been put in place and carried out in the framework of this plan. The priorities for 2011 have been identified and information about those for 2012 has been requested. The authorities have informed ECRI that the Prime Minister has requested that the Economic and Social Council monitor and assess this plan. ECRI does not know the extent to which the public are informed of the OLAI's activities in the field of combating discrimination. The OLAI asserts that it works alongside the CET. Furthermore, it conducted an awareness-raising campaign on discrimination as part of Diversity Day in November 2009 and again in October 2010. However, ECRI notes that the law of 16 December 2008 on reception and integration of foreigners does not state the forms of discrimination which the OLAI is expected to combat. On this matter, the Luxembourg authorities have explained that by extension of the competencies relating to discrimination provided for by the law on equality of treatment of 28 November 2006, the law of 16 December 2008 on reception and integration of foreigners has created a legal basis covering all fields which the OLAI deals with on this matter, namely, among others, ethnic or racial origin, religion or convictions. However, this body does not combat discrimination based on nationality.

54. ECRI recommends that the Luxembourg authorities take steps to clarify the role of the Luxembourg Office for Reception and Integration in combating discrimination in Luxembourg. Further, it recommends that they ensure that the role of the Luxembourg Office for Reception and Integration in combating discrimination is known to the public.

- *Overall assessment*

55. ECRI considers that the creation by the Luxembourg authorities of bodies to combat the above-mentioned kinds of discrimination demonstrates a desire on their part to create machinery for combating racial discrimination among other things. However, the proliferation of these bodies poses the problem of apportionment of powers among them. ECRI has noted that some of these bodies were very active whilst others were less so and were little known. Their resources and mandates should be harmonised.

56. ECRI recommends that the Luxembourg authorities examine the added value of each body which exists to combat discrimination in order to avoid overlapping powers and ensure maximum efficiency.

II. Discrimination in various fields

Education

57. In its third report, ECRI called upon the Luxembourg authorities to ensure that all teachers and educators receive initial and on-going training in human rights in general and issues concerning racism and discrimination in particular. ECRI recommended that the education in values provided for by the law of 25 July 2005 establishing a pilot secondary school be extended to all the country's schools. It also recommended that they 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. ECRI also reiterated its recommendation that the authorities of the Grand Duchy of Luxembourg ensure that Luxembourg's school textbooks better reflect the country's diversity. It also called on them to implement a policy to promote respect for diversity in schools.
58. The Luxembourg authorities have informed ECRI that the human rights course for teachers, which at present is an optional course, is to become compulsory. However, the CCDH has informed ECRI that no serious training in human rights and human rights education is provided for future post-primary teachers as part of their initial training. While taking note of this measure, ECRI is unsure whether questions of racism and racial discrimination will be included in the course as they should be.
59. The Luxembourg authorities have also informed ECRI that the education in values provided for in the law of 25 July 2005 establishing a pilot secondary school has not been extended to all the country's schools.
60. ECRI notes with interest the information provided by the Luxembourg authorities to the effect that the law of 6 February 2009 on the organisation of basic education incorporates Article 42 of the law on the organisation of secondary and technical schools, which provides that anyone inciting racial hatred, xenophobia or religious intolerance shall incur the penalty of definitive expulsion.
61. The Luxembourg authorities have informed ECRI that since the third report, new textbooks have been written for civic and social education classes. These textbooks contain chapters on subjects such as living together. The Luxembourg authorities say they are endeavouring to reflect the diversity of Luxembourg society in these textbooks.
62. In its third report, ECRI recommended that the Luxembourg authorities 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 considered that all the measures taken for that purpose should be enshrined in law so that they apply throughout the country.
63. New measures have been taken with respect to the reception of newcomers. For example, the law of 6 February 2009 on the organisation of basic education provides that every pupil entering primary school without sufficient proficiency in Letzeburgisch or entering one of the next three levels without sufficient proficiency in German or French is entitled to attend reception classes. However, the Luxembourg authorities have informed ECRI that it is the reception classes that have the highest drop-out rate. According to the Luxembourg authorities, the success rate is the same in integration classes. They also said that they would be publishing a Letzeburgisch-as-foreign-language textbook for children over the age of 12.

64. Another measure taken by the Luxembourg authorities is the creation of an official status for intercultural mediators under the law of 6 February 2009 concerning basic education personnel. Intercultural mediators are foreign nationals recruited as state employees and responsible for promoting the integration of foreign pupils. However, these mediators work in primary schools only.
65. Despite the above-mentioned measures, sources indicate that only 18.6% of foreign pupils enter traditional secondary education, while they account for 42.5% of pupils in technical education. Moreover, the school drop-out rate is particularly high among foreign pupils, especially those of Cape Verde origin.
66. ECRI recommends that the Luxembourg authorities take all necessary steps to tackle the high school drop-out rate among foreign pupils.

Employment

67. In its third report, ECRI recommended that the Luxembourg authorities 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 recommended that they 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.
68. The law of 29 August 2006 on free movement of persons and immigration changed the system for granting work permits to foreigners by introducing new categories of permit. Furthermore, ECRI notes with interest that residence and work permits are now combined into a single document, which simplifies administrative procedures. The salaried worker's residence permit is obtained for a maximum period of one year and is valid for only one sector or one occupation. It may be renewed on the first occasion for two years, the employment restrictions being maintained. From the second renewal onwards, which prolongs the period of validity by three years, the person concerned may engage in any occupation in any sector. The different categories of work permit (A, B and C) have been abolished. Furthermore, a bank guarantee is no longer required. In addition, it is now the worker himself/herself who applies for the work permit, not the employer. Once a salaried worker's first residence permit (valid for one year) has been issued, a change of employer is possible. At the first renewal the period of validity of the residence permit is extended to two years, and after the second renewal to three years with no restrictions. ECRI welcomes these measures, which have eased the system for granting work permits to non-EU foreigners. In addition, ECRI has been informed that the law of 29 August 2006 on free movement of persons and immigration appears to be correctly applied.
69. ECRI recalls that since the adoption of the laws of 28 and 29 November 2006, examined above,¹⁴ the prohibition on discrimination in the employment sphere is expressly enshrined in Luxembourg's civil and administrative law. Moreover, the law of 28 November 2006 provides that any clause in a contract of employment, an agreement or an organisation's internal rules which contradicts the principle of non-discrimination is to be considered null and void. Similarly, a dismissal may be set aside if it is the result of discrimination. However, ECRI notes that the legislation on discrimination in employment is still rarely applied, in particular because lawyers are unfamiliar with the law. The Luxembourg authorities have informed ECRI that since 2006 the OLAI has been regularly organising training and meetings geared towards awareness, namely with the

¹⁴ See "Civil and administrative law provisions".

Young Bar of Luxembourg. According to the authorities, in 2006, the first training was held in cooperation with the European Academy of Law of Trèves to train some 20 lawyers on the subject. Moreover, in 2007, a conference organised by the organisation of the Young Bar was supported in the framework of activities which were co-financed by the European Year of Equal Opportunities for All. However, the Luxembourg authorities have not provided information on more recent training that lawyers may have received on matters of discrimination in employment.

70. Statistics reveal inequalities in the field of employment. For example, persons born abroad are still harder hit by unemployment than those born in Luxembourg. In 2009 the unemployment rate for the former was 4.4% as against 1.8% for the latter. There is also a difference between nationals of third states and Community nationals, the unemployment rate for the former being higher (13.3% in 2009) than for the latter (3.1% in 2009).¹⁵
71. No in-depth study appears to have been carried out on the situation of immigrants on the labour market. Such a study would be necessary, since ECRI was informed that discrimination and racism exist in the employment sphere, particularly against Blacks. Moreover, ECRI has no information on any measures taken by the Luxembourg authorities to establish a clear, ongoing policy designed to ensure better integration of immigrants into the labour market.

Housing

72. In its third report, ECRI reminded the Luxembourg authorities of the urgent need to find solutions to the housing problems facing minority groups. It stressed the importance of the ministries concerned becoming aware of this issue and of intragovernmental co-operation on the subject. ECRI also reiterated 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.
73. According to studies carried out on social exclusion linked to housing, non-Community nationals are over-represented, depending on nationality. ECRI notes that Caritas has published two booklets entitled *Louer sans discriminer* ("Renting without discrimination"), whose purpose is to offer practical information to help estate agents and landlords combat discrimination in housing. Furthermore, estate agents have drawn up a charter containing a section on discrimination.
74. ECRI was informed that the cost of housing in Luxembourg remains a major obstacle for many people. The OLAI acts to alleviate the situation by running a number of reception facilities for persons enjoying refugee status, immigrants and homeless foreigners. In addition, through the Ministry of Housing, the State provides a guarantee called "slum-loans" aimed at making it easier for large families (three children and more) who cannot provide sufficient guarantees of their own to obtain a mortgage which they need to acquire housing which meets their needs.

Administration of justice

75. In its third report, ECRI strongly recommended that the Luxembourg authorities vote at the earliest opportunity on the law providing for interpretation services for the victims and suspected perpetrators of criminal offences.

¹⁵ CEPS/INSTEAD, Complementary Data Collection, Annex 1, p. 4.

76. The Luxembourg authorities have informed ECRI that victims and suspected perpetrators of criminal offences are entitled to the services of an interpreter when at a police station.

III. Racist violence

77. There is little data on racist violence in Luxembourg. Very few acts of racist violence are recorded in the country. Between 1 October 2009 and 30 June 2010, just eleven complaints of violence against the person were lodged with the police. As for the CET, it has not received a single complaint of racist violence. Furthermore, for the years 2008 and 2009 the European Union's Agency for Fundamental Rights placed Luxembourg in the group of countries where the criminal justice machinery for collecting official data on racist crime and violence was of limited quality. Reporting of judicial investigation and prosecution procedures is said to be rare, and detailed information often available only on request. Further, only offences in the category of general discrimination are recorded in Luxembourg in particular.

78. ECRI recommends that the Luxembourg authorities collect data on any racist violence there may be in Luxembourg. It also recommends that they carry out campaigns designed to encourage victims of this kind of act to make a complaint.

IV. Racism in public discourse

- Media

79. In its third report, ECRI recommended that the Luxembourg authorities 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 called on the government to ensure a more active implementation of the legislation on discrimination to media circles when this proves necessary.
80. ECRI notes with interest that on 28 March 2006 the Luxembourg Press Council adopted a code of ethics in which it is stated that the press undertakes to avoid and combat any discrimination on grounds of gender, race, nationality, language, religion, ideology, ethnic origin, culture, class or beliefs, while ensuring respect for the fundamental rights of the human being. ECRI notes with concern information that the ethnic origin or the language spoken by a person arrested is mentioned too often in the media. It has no information on measures taken to halt this practice.
81. ECRI has no information on any training in questions of racism and racial discrimination given to journalists. The Luxembourg authorities have informed ECRI that in order to increase the media's awareness of its key role in shaping public opinion on foreigners, and consequently, on their integration process, a workshop entitled "Listening to one another and acting with and in the media" was organised in cooperation with the Press Council within the framework of the National Conference on Integration; more than 200 people from the civil society and political sectors met at this conference to discuss issues concerning foreigners in Luxembourg. However, although this workshop is a good initiative, ECRI considers that more measures are necessary to help journalists' training on issues pertaining to racism and racial discrimination. Moreover, the legislation on racism does not appear to have been applied in a more active manner to the world of journalism since ECRI's third report.

82. ECRI encourages the Luxembourg authorities to make the media aware, without undermining their editorial independence, of the need to ensure that the information they provide does not help to breed a climate of hostility towards members of ethnic minorities. It also recommends that the authorities support any initiatives taken by the media in this field and supply them with the resources necessary to provide initial and in-service training in human rights in general and racism issues in particular. ECRI reiterates its recommendation that the Luxembourg authorities make every effort to prosecute and punish members of the media who incite racial hatred.

- *Internet*

83. ECRI was informed that racism is to be found on the Internet in Luxembourg. In 2010, 22 cases of racism or antisemitism were seen on the Internet and 6 were reported to the Luxembourg police. ECRI does not know what action was taken on them. ECRI notes that in March 2010, the CET¹⁶ organised a round table on the theme of "Combating racist content on the Internet". That round table is an example of positive initiatives which the authorities ought to support and encourage.

- *The general public*

84. In its third report, ECRI strongly recommended that the government of the Grand Duchy of Luxembourg continue conducting public awareness campaigns on the adverse consequences of racism and xenophobia.

85. ECRI was informed by civil society representatives that there is no overt racism in Luxembourg, but that it tends to be covert and openly voiced only in discussion forums on the Internet. Civil society representatives also told ECRI that there is resentment towards Portuguese persons, those from the Balkans, those from Cape Verde and those who come from across the border to work. ECRI was given to understand that there is insufficient regular contact between people from different origins.

- *Political discourse*

86. In its third report, ECRI recommended that the Luxembourg Government ensure that politicians across the political spectrum refrain from using language likely to fuel racial hatred and xenophobia.

87. ECRI was informed that there is no hate speech in Luxembourg on the part of politicians. However, ECRI has been informed of the existence in Luxembourg of a politician with racist ideas who stood in the national elections without success, polling only 0.5% of the vote. That person had a website and publishes leaflets distributed by himself. ECRI welcomes the news that the *Association de soutien aux travailleurs immigrés (ASTI)* - Association for the Support of Immigrant Workers - lodged a complaint against his website and won, with the result that the site was closed down.

88. There is also a party, the ADR (*Alternativ Demokratesch Reformpartei*) with seats in the Luxembourg Parliament, which considers that there are too many foreigners in Luxembourg and that too much is done for them. Even though the ECRI has been told by civil society representatives that this party does not have a lot of influence, it considers that the Luxembourg authorities should check that its political language does not incite racial hatred.

¹⁶ For further information on this body, see "Anti-discrimination bodies and other institutions".

V. Vulnerable/target groups

Muslim communities

89. In its third report, ECRI recommended 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. ECRI also recommended that the Luxembourg authorities reach a solution as soon as possible which would enable Muslims to practise their faith in identical conditions to those of other religious communities. It hoped that the Muslim community would make a contribution to this process.
90. ECRI was informed by representatives of the Muslim communities that 80% of Muslims in Luxembourg come from the Balkans. ECRI notes with interest that, according to these representatives, the Muslim communities are well integrated in Luxembourg and that Muslims have good relations with the authorities, at both local and national level. ECRI was also informed that Muslims do not encounter any particular problems of discrimination in employment. There is a Muslim quarter at the Merl cemetery, a neighbourhood in Luxembourg City as well as in Esch; Muslims would like the northern municipalities to do likewise. The Muslim representatives told ECRI that the Muslim community conducts prayers in houses fitted out for this purpose, but that there are no Muslim religious buildings meeting the criteria of a mosque. They would, therefore, like to see a mosque in Luxembourg.
91. Representatives of the Muslim communities have informed ECRI that the media sometimes convey a very negative image of Muslims in Luxembourg. According to them, the media tend to publish more negative than positive articles about Muslims. The representatives of the Muslim communities also said that Muslims are constantly defending themselves against stereotypes and prejudice linked to terrorism and that the authorities remain passive on this matter. ECRI was informed that awareness-raising campaigns aimed at combating prejudice against Muslims have been conducted, but the latter were not involved. ECRI was told that a study which appeared in August 2010 shows that a degree of intolerance of Muslims exists, 14% of persons having said that they would not like to have persons from this group as neighbours.
92. An agreement between the state and the Muslim community (affording the latter the benefit of the special legal regime granted to approved religions) has still not been signed, although a draft was approved by the cabinet. This is due to the fact that the Muslim communities do not have a single representative as required by the Luxembourg state.
93. ECRI recommends that the Luxembourg authorities ensure that the Muslim community in the northern municipalities has a cemetery. It also recommends that they ensure that Luxembourg's Muslim communities have a mosque meeting all the criteria.

Roma

94. There are no Luxembourg citizens who declare themselves to be Roma. ECRI has been informed that there are about 500 settled persons who do not wish to be identified as Roma. On this matter, the Luxembourg authorities have indicated that according to the appendix to the communication of the European Commission of 5 April 2011¹⁷ on the question, this number is a maximum

¹⁷ Communication from the Commission of the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, An EU Framework for National Roma Integration Strategies up to 2020, Brussels, 5.4.2011, COM (2011) 173 Final

estimation and that the average estimation is rather 300 persons. The Roma present in Luxembourg are for the most part asylum seekers from the Balkans, the others being persons settled in neighbouring France who move to the Grand Duchy for short periods. ECRI was informed that since begging is no longer prohibited in Luxembourg, Roma are often arrested for organised begging under Article 342 of the Penal Code.¹⁸ According to figures provided to ECRI by the authorities, in 2008, 693 police reports were drawn up and in 2009, 1639. Moreover, in 2010, 59 police reports were drawn up for organised begging and vagrancy. It appears that Roma arrested for organised begging are searched and their money is confiscated, but no action is taken in most cases. The grounds for these arrests are therefore open to question. The police informed ECRI that when it submits files to the Prosecution, it receives no information on the follow-up given. Therefore, better coordination between the Prosecution and the police would be desirable.

95. ECRI was informed that Roma suffer discrimination from the managers of campsites who deny them access.¹⁹ Nor do parking areas specially provided for Travellers exist. Public opinion in Luxembourg also seems somewhat hostile to Roma: a study published in August 2010 states that 26% of persons questioned would not like to have them as neighbours despite their numbers being very low in Luxembourg.

96. ECRI recommends that the Luxembourg authorities ensure that the criteria for implementation of Article 342 of the Penal Code on organised begging are clearly defined. It strongly recommends that they ensure that any measure taken by the police to combat organised begging does not stigmatise or unfairly target Roma. ECRI recommends that the Luxembourg authorities combat any discrimination against Roma on the part of campsite managers.

VI. The Jewish community

97. The Jewish community in Luxembourg comprises some 1500 persons. ECRI welcomes the information that there is no antisemitic violence in the Grand Duchy, nor antisemitic incidents such as swastikas in Jewish cemeteries or other serious problems of antisemitism. This rather positive state of affairs contrasts with a case which arose in Luxembourg recently in which a complaint had been lodged against a retired female judge by the state prosecutor and the Israelite Consistory of Luxembourg for insulting the Jewish community and inciting racial hatred of it. In the course of a radio phone-in broadcast on RTL Radio Lëtzebuerg and later covered in the columns of the Tageblatt newspaper, the person concerned had accused the Jewish community of the Grand Duchy of complicity in the crimes committed by Israel because it remained silent and said nothing about those crimes. She stated that because of that silence, Jews in Luxembourg must be prepared to lose the respect they enjoyed in the Grand Duchy. She wondered, with reference to the Israelite Consistory and certain prominent Jewish persons, whether the time had not come for them to tell Israel to disown its policy. The person concerned also used such terms as “Jewish lobby”. She was acquitted at first instance of the charge of incitement to racial hatred, but convicted of insult. The appeal court acquitted her of the charge of insult. This case gave rise to a lot of comments and the decision of the courts sparked off many reactions.

¹⁸ Article 342 of the Penal Code provides that all persons engaged in organised begging, unless they be husband and wife, father or mother and their young children, or a blind or disabled person and his/her guide, shall be punishable by a term of imprisonment for between eight days and one month.

¹⁹ Article 167 of the Highway Code prohibits the parking of a non-coupled caravan on the public highway, and the use of a stationary or parked vehicle on the public highway as a dwelling.

VII. Reception and status of non-nationals

Asylum seekers and refugees

98. In its third report, ECRI drew the attention of the Luxembourg authorities to 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. ECRI urged the Luxembourg authorities 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. In addition, it strongly recommended that they ensure that the suggestions made by NGOs and the UNHCR on the bill were taken into consideration. It considered it extremely important that the bill be finalised and adopted without delay.
99. The Luxembourg authorities have adopted the law of 5 May 2006 on the right of asylum and complementary forms of protection, setting the legal framework governing the responsibilities and duties of the authorities and the rights of asylum seekers and refugees. That law provides for subsidiary protection status, which may be granted to persons who are not entitled to refugee status because they are not the subject of targeted persecution by the state but are at risk of falling victim to indiscriminate violence in their country of origin.
100. The law of 5 May 2006 on the right of asylum and complementary forms of protection envisages the possibility of recourse to a fast-track procedure in which the Minister for Foreign Affairs is required to decide on the application in question within a maximum period of two months. Article 20 of the law of 5 May 2006 sets out the cases in which the minister may initiate this procedure; these are cases concerning persons considered not to meet the requirements for obtaining refugee status. ECRI notes that the law of 19 May 2011 amending the amended law of 5 May 2006 on the right of asylum and complementary forms of protection allows for an appeal against a decision by the Minister on the legitimacy of an application for international protection within the framework of a fast-track procedure, which was not the case before.
101. ECRI notes with concern that Article 16 1) of the law of 5 May 2006 on the right of asylum and complementary forms of protection provides that any application for international protection by a citizen of the European Union is inadmissible. ECRI acknowledges the fact that it is rare for EU citizens to seek asylum, but the situation of some persons may justify protection under the 1951 Geneva Convention relating to the Status of Refugees. ECRI considers this provision to be discriminatory and encourages the authorities to amend it.
102. ECRI recommends that the Luxembourg authorities amend Article 16 1) of the law of 5 May 2006 on the right of asylum and complementary forms of protection so as to no longer restrict the right to seek and obtain international protection to non-EU nationals.
103. In its third report, ECRI recommended that the Luxembourg authorities 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, did not remain a dead letter because these persons were unable to benefit from it in practice. It considered that the authorities 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.
104. Article 14 of the law of 5 May 2006 on the right of asylum and complementary forms of protection provides that asylum seekers may enter the labour market nine months after submitting their application for international protection and before obtaining a reply to that application. At that point in time they may obtain

a temporary employment permit valid for six months and renewable. Further, ECRI considers the nine-month period excessive in view of the fact that the law of 5 May 2006 is based on the objective of reducing the length of procedures for examining applications for international protection to about six months.²⁰ ECRI considers that nine months without access to employment helps to make asylum seekers dependent on social welfare and fosters a negative image of them in society. In order to make asylum seekers more independent and neutralise negative attitudes towards them, the authorities are encouraged to grant them access to employment earlier than nine months after the submission of their application for asylum, as provided for today.

105. ECRI recommends that the Luxembourg authorities amend the law of 5 May 2006 on the right of asylum and complementary forms of protection in order to reduce the time limit imposed on an asylum seeker for entering the employment market.

106. In its third report, ECRI strongly recommended that the Luxembourg authorities ensure that housing conditions for asylum seekers be improved without delay. It also recommended that they see to it that the persons who supervise the detention centres are duly qualified and trained.

107. ECRI has been informed that there are facilities organised by the OLAI²¹ and managed for it by the Red Cross and Caritas; the Luxembourg authorities have indicated that the costs relating to the functioning and staff, the rent and expenses of these facilities are met by the OLAI. According to the authorities, there are large, medium-sized and small facilities and the size of the rooms are in conformity with existing minimum standards. According to information supplied to ECRI, the smaller facilities where the rooms are small and often accommodate 3 persons have only one person to manage them. Living conditions there are said to be poor. According to the Luxembourg authorities, within the OLAI, there is a welfare officer who is in charge of each facility and persons seeking international protection are informed on arrival that they may call on these persons anytime during working hours. It appears, however, that this system does not ensure regular monitoring. ECRI considers that there is a shortage of accommodation for asylum seekers and not enough staff able to organise activities with the persons housed there. These problems are likely to be exacerbated by the increasing number of asylum seekers in Luxembourg since September 2010. ECRI has also been informed that the central government authorities (specifically, the Ministry of the Family and Integration) report that municipalities do not make available to them enough accommodation places for asylum seekers. In turn the municipalities reply that it is up to the authorities to build this accommodation. The Luxembourg authorities have confirmed that municipalities have been requested to put at OLAI's disposal either existing facilities or land on which new hostels for those seeking international protection can be built, but that to this day, very few municipalities have heeded this call. This stand-off between central government and local authorities does nothing to improve housing for asylum seekers.

108. ECRI strongly recommends that the Luxembourg authorities take steps to ensure that asylum seekers have decent housing in sufficient quantity.

109. In its third report, ECRI reiterated its recommendation that the Luxembourg authorities ensure that the living conditions of asylum seekers whose

²⁰ Ibid., Article 19 paragraph 1.

²¹ For more information about this institution, see "Anti-discrimination bodies and other institutions".

application has been rejected do not infringe their dignity. ECRI considered it 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 called on the Luxembourg authorities to pay special attention to unaccompanied minors.

110. Under the law of 5 May 2006, the tolerance status which an asylum seeker may obtain when his/her application has been rejected entitles the person concerned to a temporary employment permit, in addition to the social welfare already provided for under the former legislation.²² ECRI was informed by NGOs that, where the granting of tolerated status is concerned, differences of treatment may be observed between rejected asylum seekers depending on their country of origin.
111. The law of 5 May 2006 on the right of asylum and complementary forms of protection and the Grand-Ducal regulation of 1 September 2006 laying down the conditions and procedures for granting social welfare to persons applying for international protection make no mention of persons who do not have tolerance status as potential recipients of social welfare. Thus it would appear that the situation has not changed since ECRI's third report.
112. ECRI again recommends that the Luxembourg authorities ensure that asylum seekers whose applications have been rejected and who do not have tolerated status can receive social welfare while present on Luxembourg territory.
113. The Grand-Ducal regulation of 1 September 2006 also contains additional social welfare sections such as that on assistance to unaccompanied minors. However, there is no provision for a monetary benefit for minors below the age of 16. The law of 5 May 2006 also provides for tutors to be assigned to unaccompanied minors to assist them with the asylum application procedure. The general legislation on education confers on all children resident in Luxembourg the same right and the same obligation to attend basic education.

Placement at the government's disposal

114. In its third report, ECRI urged the Luxembourg authorities 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. ECRI also recommended that the opinion given by the *Collectif Réfugiés* be taken into account when the new detention centre was built.
115. The law of 29 August 2008 on freedom of movement and immigration provides that, before being removed from the territory, a person denied entry to Luxembourg territory may be kept for a maximum of 48 hours in a holding area located at the airport. NGOs have criticised this provision because the area in question is isolated and closed to any external supervision. Generally speaking, when a removal measure cannot be put into effect, a person may be placed in a closed facility for a maximum period of four months. However, the law of 28 May 2009 on the creation and organisation of the detention centre provides that persons or families accompanied by minors may not be kept for more than 72 hours. The Luxembourg authorities have informed ECRI that persons held for administrative reasons have the right to receive visits from NGOs or a lawyer. Furthermore, the *Collectif Réfugiés* has staff present at the administrative detention centre twice a week. ASTI visits detained persons twice a week.

²² The conditions and procedures for granting social welfare are laid down in the Grand-Ducal regulation of 1 September 2006.

116. The Luxembourg authorities have informed ECRI that the centre for temporary stay of foreigners in an irregular situation which was located within the Detention Centre in Schrassig was closed for good on 14 September 2011. They have indicated that since then, the detention centre, which is located in Findel, near Luxembourg airport, receives those placed in administrative detention under the supervision of officers trained to that end. The Luxembourg authorities also informed ECRI that the new detention centre has a capacity of 88 persons and will also be able to take women. It is reported that the persons held for administrative reasons encounter certain problems such as the fact that often they are not informed in a language they understand of the reasons for their being held, and about their rights and possible remedies and the conditions of their stay. ECRI hopes that the way in which the new centre will be run will resolve these problems and that the staff will have sufficient linguistic and legal knowledge.
117. ECRI recommends that the Luxembourg authorities ensure that any person held for administrative reasons is informed, in a language he/she understands, of the reasons for being so held, of his/her rights and possible remedies, and of the conditions of stay in the detention centre.
118. ECRI recommends that the Luxembourg authorities ensure that the detention centre has staff sufficiently well trained to deal with the persons detained.
119. On 15 October 2010, a bill was adopted by the Government Council for the purpose of establishing an alternative to administrative detention of foreigners in an irregular situation in a detention centre. That bill provides for the possibility of placing a person under house arrest before his/her voluntary or forcible return. The option will be offered to the person concerned if return is delayed for technical reasons only. ECRI welcomes the adoption, on 1 July 2011, of a law providing for the possibility of house arrest as an alternative to detention.²³

Regularisation of immigrants with no legal status

120. In its third report, ECRI reiterated its recommendation that the Luxembourg authorities 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 called on them to take account of the recommendations made on the subject by the CDDH.
121. The law of 29 August 2008 on free movement of persons and immigration provides that the situation of a person with no legal status may be regularised when the latter has been resident in Luxembourg for eight years and can show that he/she has worked in Luxembourg during that period. However, ECRI was informed that it is difficult for a person without legal status to supply the required documentation to show that he/she has been engaged in paid activity, and the period of eight years' residence and work may be regarded as excessive. A legal status may also be granted to persons who have attended school in Luxembourg for at least the past six years. Civil society representatives were informed that regularisation of persons with no legal status takes place on a case-by-case basis and that about 200 such persons are regularised each year.

²³ Although this report covers the situation up to 23 June 2011, ECRI considers it important to include this information provided by the authorities.

VIII. Conduct of law enforcement officials

122. In its third report, ECRI strongly recommended that the Luxembourg authorities continue and improve initial 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 recommended that they pay special attention to the complaints of racist and/or xenophobic insults lodged in respect of prison officers of the Luxembourg Detention Centre, by conducting investigations on the subject and by taking disciplinary measures against anyone found guilty of such behaviour.
123. According to the Luxembourg authorities, prison staff receive ongoing training every year under a programme which covers racism. However, NGOs consider that Detention Centre warders are still poorly trained. In particular, according to the NGOs, while some courses are envisaged as part of ongoing training, the management of the Centre often proves reluctant to grant the staff time off to actually attend courses. ECRI notes with concern information from NGOs reporting that racist and/or xenophobic treatment on the part of Detention Centre warders persists. ECRI has no information about any measures taken to investigate these cases. The Luxembourg authorities informed ECRI that no training in questions relating to racism and racial discrimination is given to the staff of the Directorate of Immigration.
124. ECRI recommends that the Luxembourg authorities take steps to provide initial and on-going training on issues concerning racism and racial discrimination to the staff of the Detention Centre. It recommends that the same training be given to the staff of the Directorate of Immigration.
125. In its third report, ECRI reiterated that the police would benefit from better knowledge of the different communities living in Luxembourg and recommended that training be introduced for the purpose. It also recommended that the Luxembourg authorities ensure that the independent body mandated to investigate complaints made against the police (the general police inspectorate) also examine those lodged by victims of racist acts and behaviour. It also considered 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.
126. The Luxembourg authorities have informed ECRI that its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing is taught to the police. Furthermore, the provisions of the Penal Code on racism are also taught to the police as part of their initial training. However, NGOs have informed ECRI that the police receive only 2 hours training on questions relating to racism and racial discrimination and need training on questions relating to foreigners, racism, prejudice, etc. The Luxembourg authorities have informed ECRI that racism and racial discrimination are dealt with within the framework of training on human rights, the rights and duties of officers, the Constitution and civil liberties, police ethics as well as on combating extremism. The authorities have indicated that the latter comprises a seminar organised by the police in cooperation with the Liaison Committee of Foreigners' Organisations and ASTI as well as a visit to the Documentation and Meeting Centre of the Hinzert concentration camp memorial. Whilst welcoming these initiatives, ECRI considers that more could be done to provide police officers with training on issues pertaining to racism and racial discrimination, which comprises the legal provisions in force on these phenomena.

127. ECRI recommends that the Luxembourg authorities improve the training given to members of the police force on questions relating to racism and racial discrimination.

IX. Monitoring racism and racial discrimination

128. In its third report, ECRI recommended that the Luxembourg authorities 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 to frame policies designed to resolve the problems facing them. ECRI considered that the authorities 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. In its third report, ECRI pointed 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.

129. The law of 16 December 2008 on reception and integration of foreigners provides that every five years the Ministry of the Family and Integration (in particular the OLAI) must submit a report on integration policy, the fight against discrimination and monitoring of migration. In the statement of guidelines for the bill in question, the Luxembourg authorities recognised that improving the integration process required an analysis of the data, studies and exact recent statistics on foreign populations in general and migration flows. However, ECRI notes that the law in question sets no practical mechanism in place for such monitoring. Moreover, the Luxembourg authorities do not always collect statistical data on individuals' ethnic origin or religion from which the scale of such discrimination might be gauged. In 2008 and 2009, the FRA classified Luxembourg among the countries for which the quality of the mechanisms for collecting official data on criminal justice as concerns racist crimes and violence is low.

130. The National Data Protection Commission informed ECRI that public information campaigns are conducted on the law of 2 August 2002 on the protection of individuals with regard to the processing of personal data. A training course on that law is also given at the civil service training institute. Furthermore, two conferences have been held with social work and psychologist NGOs, etc.

131. ECRI again recommends that the Luxembourg authorities set up a consistent, comprehensive ethnic data collection system in order to monitor the situation of minorities through data broken down by ethnic origin, language, religion and nationality, for example. These data should be collected in various areas of public action, fully respecting the principles of confidentiality, informed consent and a voluntary declaration by the persons concerned that they belong to a given group. In addition, the data collection system on racism and racial discrimination should allow for the factor of equality between women and men, especially from the standpoint of possible double or multiple discrimination.

RECOMMENDATIONS FOR INTERIM FOLLOW-UP

The three specific recommendations for which ECRI requests priority implementation by the Luxembourg authorities are the following.

- ECRI strongly recommends that the Luxembourg authorities strengthen the Centre for Equal Treatment by enabling it to take part in legal proceedings, by giving it the necessary human and financial resources, and by ensuring that the persons or bodies to which it addresses itself are obliged to reply.
- ECRI recommends that the Luxembourg authorities ensure that the detention centre has staff sufficiently well trained to deal with the persons detained.
- ECRI recommends that the Luxembourg authorities increase the human and financial resources allotted to the National Council for Foreigners. ECRI also recommends that the Luxembourg authorities help the National Council for Foreigners to acquire a higher profile. It recommends that they make premises available to the Council for holding its meetings.

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

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APPENDIX: GOVERNMENT'S VIEWPOINT

The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Luxembourg

ECRI, in accordance with its country-by-country procedure, engaged into confidential dialogue with the authorities of Luxembourg on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version (which, unless otherwise indicated, only takes into account developments up until 23 June 2011, date of the examination of the first draft).

The authorities also requested that the following viewpoint be reproduced as an appendix to the report.

OBSERVATIONS DU GOUVERNEMENT LUXEMBOURGEOIS SUR LE QUATRIÈME RAPPORT DE L'ECRI

Le Gouvernement luxembourgeois se félicite du dialogue continu qu'il mène avec l'ECRI et saisit l'opportunité pour formuler les observations suivantes concernant son rapport.

Ad point 94 :

La question du carré musulman dans un cimetière du Nord du pays a été discutée entre le Ministère des Cultes et le SYVICOL, syndicat des communes du Luxembourg. En effet les communes sont responsables en la matière. Un échange de lettres de 2008 a retenu que la mise à disposition devra se faire au niveau régional et relève de l'attribution des communes conformément à la loi du 1er août 1972 portant réglementation de l'inhumation et de l'incinération des dépouilles mortelles.

Les autorités luxembourgeoises rendent par ailleurs attentif au fait que la revendication de bénéficier d'une mosquée n'a pas été formulée comme objectif premier par les communautés musulmanes du Luxembourg à l'égard des autorités luxembourgeoises, notamment pas par la Shoura, assemblée des communautés musulmanes du Luxembourg, dans le cadre des discussions devant le cas échéant mener à la conclusion d'une Convention au sens de l'article 22 de la Constitution luxembourgeoise.

Il faut par ailleurs souligner que les différentes associations musulmanes sont réparties à l'heure actuelle en huit associations ou mosquées, qui ne font d'ailleurs pas toutes parties de la Shoura. Il semble donc difficile de mettre en pratique la recommandation de l'ECRI telle qu'elle est formulée, alors qu'elle pourrait vouloir signifier que les autorités luxembourgeoises devraient pourvoir à la mise à disposition des mosquées pour chacune des associations musulmanes qui sont caractérisées par des conceptions philosophiques assez différentes entre elles. Toutes ont d'ailleurs un lieu de prières qu'ils qualifient de mosquées.

Par ailleurs, quant à son principe-même, la mise à disposition de lieux du culte par les autorités civiles du Luxembourg semble en contradiction avec le principe constitutionnel de la séparation des Eglises et de l'Etat. La Convention régissant les relations entre les communautés religieuses et l'Etat, mentionnée au point 93 du rapport, dont la discussion sera continuée prochainement, se limitera nécessairement au contenu visé à l'article 22 de la Constitution luxembourgeoise en vertu duquel l'Intervention de l'Etat se limite à la nomination et l'installation des chefs des cultes, le mode de nomination et de révocation des autres ministres des cultes, la faculté pour les uns et les autres de correspondre avec leurs supérieurs et de publier leurs actes, ainsi que les rapports de l'Eglise avec l'Etat.

La recommandation visant la mise à disposition par voie d'autorité de lieux du culte, telle qu'elle est formulée, semble donc difficile à mettre en pratique selon le droit constitutionnel luxembourgeois, qui est issu d'une conception concordataire des relations entre l'Etat et les Eglises.

Ad point 95 :

Les développements de l'ECRI en relation avec les Roms suscitent de la part du gouvernement un certain nombre d'observations.

« L'ECRI a été informée que la mendicité n'étant plus interdite au Luxembourg, les Roms sont souvent arrêtés pour mendicité en réunion en vertu de l'article 342 du code pénal. Selon des chiffres fournis à l'ECRI par les autorités, en 2008, 639 procès-

verbaux ont été dressés et en 2009, 1639. De plus, en 2010, 59 procès-verbaux ont été dressés pour mendicité en réunion et vagabondage. »

Il convient de préciser que les chiffres dont fait état l'ECRI ne se rapportent pas aux procès-verbaux dressés à l'encontre de Roms, mais à l'ensemble des procès-verbaux établis pour ce type d'infractions.

« Il semblerait que les Roms arrêtés pour mendicité en réunion soient fouillés et leur argent confisqué, mais la plupart des affaires sont classées sans suite. On peut donc se poser la question du bien fondé de ces arrestations.»

Les fouilles et saisies pratiquées dans le cadre de la lutte contre la mendicité en réunion le sont en vertu des articles 31 et 40 du Code d'instruction criminelle aux termes desquels en cas de délit flagrant puni d'emprisonnement la Police saisit tout ce qui paraît avoir été le produit de l'infraction, tout ce qui paraît utile à la manifestation de la vérité ou dont l'utilisation serait de nature à nuire à la bonne marche de l'instruction et tout ce qui est susceptible de confiscation ou de restitution.

La Police applique les dispositions pertinentes du Code d'instruction criminelle sans égard aux origines de la personne concernée.

La police a informé l'ECRI que lorsqu'elle transmet les dossiers au Parquet, elle n'a pas d'informations sur la suite donnée. Une meilleure coordination entre le Parquet et la police serait donc souhaitable.

S'il est vrai que les fonctionnaires de police ne sont informés que de façon ponctuelle par le Parquet des suites réservées à une affaire qu'ils ont traitée, il ne saurait de là être conclu à un manque de coordination entre Parquet et Police.

Ad Point 100 :

Il convient de rappeler que, même si la loi modifiée du 5 mai 2006 relative au droit d'asile et à des formes complémentaires de protection ne le prévoit pas expressément, une assistance judiciaire gratuite découle nécessairement de la législation générale en matière d'assistance judiciaire et se vérifie également dans la pratique.

Ad Point 107 :

À l'heure actuelle, une proposition de refonte de la directive établissant des normes communes pour l'accueil des demandeurs d'asile est en cours de discussion dans les instances européennes. Le Gouvernement estime dès lors qu'il y a d'attendre l'issue de ces discussions avant de modifier les délais en matière d'accès des demandeurs d'asile au marché de l'emploi.

Ad Point 119 :

Il y a lieu de souligner que tant le règlement d'ordre intérieur que le guide du retenu sont déjà disponibles actuellement en français, albanais, anglais, arabe, chinois, farsi, russe, serbo-croate et que la traduction desdits documents en italien, portugais et espagnol est en cours, sachant par ailleurs que le Centre de rétention dispose de collaborateurs maîtrisant parfaitement ces trois dernières langues. Si jamais un retenu ne comprenait aucune des langues proposées (ce qui ne s'est à ce jour jamais produit), le Centre de rétention fera évidemment appel aux services de traducteurs.

Ad Point 120 :

Le personnel du Centre a bénéficié d'une formation initiale d'un mois (à raison de 8 heures par jour) tandis qu'un plan de formation continue est en voie d'élaboration.

Ad « Recommandations faisant l'objet d'un suivi intermédiaire » à la page 39 :

Il y a lieu de constater que le personnel du Centre de rétention a été formé spécifiquement pour s'occuper des personnes retenues.

