



**International Convention on
the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION**

Thirteenth periodic reports of States parties due in 2003

Addendum

LUXEMBOURG* ** ***

* This document contains the tenth, eleventh, twelfth and thirteenth periodic reports of Luxembourg due on 31 May 1997, 1999, 2001 and 2003 respectively. For the ninth periodic report and the summary records of the meetings at which the Committee considered those reports, see documents CERD/C/277/Add.2 and CERD/C/SR.1193 and 1194.

** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

*** The annexes to the present report can be consulted in the files of the secretariat.

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I. GENERAL

1. Land and population

1. As at 1 March 2002, the total population of the Grand Duchy stood at 448,300 persons, of whom 170,000, or 38.07 per cent, were foreign nationals (source: Central Statistical and Economic Research Service (STATEC)). Persons of some 161 different nationalities live or are resident in Luxembourg. In recent decades the country has become a multicultural State in which peoples from all over Europe and even other continents live side by side. The national language is Luxembourgish and the administrative languages are French, German and Luxembourgish.

2. Although the proportion of the resident population who are not Luxembourg nationals has increased to some 58 per cent (the proportion is plus or minus 61.5 per cent for the non-active population), there has been no escalation in manifestations of intolerance and racism.

2. General political structure

3. The following information supplements that provided by Luxembourg in its revised core document (HRI/CORE/1/Add.10/Rev.1, 26 July 1996) prepared for the monitoring bodies.¹

4. The Grand Duchy of Luxembourg is a constitutional monarchy and a parliamentary democracy, with Grand Duke Henri of Luxembourg as its Head of State.

5. Under the Luxembourg Constitution, the heir presumptive is the legal successor to the crown when the throne falls vacant as a result of the death or abdication of the sovereign.

6. On 24 December 1999, Grand Duke Jean announced his intention to abdicate in favour of his eldest son, Henri.

7. The latter succeeded to the throne on 7 October 2000.

8. H.R.H. Grand Duke Henri, as lieutenant-representative, had already begun exercising the day-to-day grand ducal prerogatives on behalf of his father in 1998.

The present Government

9. Strictly speaking, the Government is the executive organ composed of the Grand Duke and serving ministers. In common parlance, the Government denotes all ministers and secretaries of State who assist the Grand Duke in the discharge of his constitutional powers.

10. Since the parliamentary elections of 13 June 1999, the Luxembourg Government, under Prime Minister Jean-Claude Juncker, has consisted of a coalition of the Christian Social Party and the Democratic Party.

11. The present Government is composed of 12 ministers and 2 secretaries of State.

12. The coalition's current policy is based on the 1999-2004 government programme.

Establishment of the office of an ombudsman (Act of 22 August 2003)

13. On 16 July 2003 the Chamber of Deputies adopted the bill on the establishment of the office of an ombudsman in Luxembourg.
14. In his address to the Chamber of Deputies, the Prime Minister said that “[t]he Ombudsman is neither a judge nor a national arbitrator but a facilitator of relations between the authorities and civil society”, adding that the bill was “an important measure of reform”.
15. The establishment of the office of an ombudsman in Luxembourg is part of the administrative reform policy aimed at bringing government closer to the people and improving relations between the authorities and the general public.
16. The idea of appointing an ombudsman also reflects the Government’s goal of creating a more participatory society in which people are better able to air their grievances.
17. The Ombudsman’s mandate is to assist individuals in challenging administrative decisions by the State and the communes and by public establishments under their authority. Such decisions must have been taken on a case that directly affects the person applying for assistance to the Ombudsman.
18. Any member of the public who believes that, in a case in which he or she has a direct interest, a public authority has failed to perform its duties or has breached existing legislation may - through a written complaint or an oral statement to the Ombudsman’s secretariat - request that the case be brought to the notice of the Ombudsman.
19. The complaint may be submitted directly or indirectly to the Ombudsman through a member of the Chamber of Deputies.
20. Where a complaint seems to be well-founded, the Ombudsman advises the complainant and the authority that made the challenged decision and makes recommendation for a friendly settlement. The recommendations may also contain proposals to improve the performance of the service in question.
21. The Ombudsman, who is attached to the Chamber of Deputies as an independent authority, does not receive instructions from any other body and is not answerable either to the administrative authorities or to the Government.
22. The national Ombudsman will be a man or woman of Luxembourg nationality, who is a university graduate and proficient in the country’s three languages.
23. He or she is appointed for a non-renewable eight-year term by a simple majority of the Chamber of Deputies.
24. The idea of appointing an ombudsman in Luxembourg first arose in 1976. The then Government had introduced a bill in the Chamber of Deputies on the appointment of a commissioner-general to supervise the administration of the State and communes. Owing to the reservations expressed at the time, the bill had to be shelved.

25. The institution of the present office of ombudsman was announced in a government statement of 12 August 1999: “The Government will support the Chamber in its reform of the right of petition. We recommend the appointment of a parliamentary ‘ombudsman’, a people’s delegate who will look into citizens’ complaints about their relations with the authorities, smooth out difficulties and submit reform suggestions to Parliament.”

3. Legal framework for the protection of human rights

26. In addition to the international human rights treaties to which Luxembourg is already a party, Luxembourg has signed the following instruments since 1997:

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

The ratification procedures are under way.

27. The Rome Statute of the International Criminal Court was signed on 13 October 1998 and ratified by the Act of 8 September 2000 amending article 118 of the Constitution.

28. Mention should also be made of the approval by the Act of 12 December 2002 of the Hague Convention on International Access to Justice of 25 October 1980 and the approval by the Act of 14 April 2002 of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption of 29 May 1993.

29. In addition, a bill to approve the amendment to the United Nations International Convention on the Elimination of All Forms of Racial Discrimination, signed in New York on 7 March 1996, has been introduced in the Chamber of Deputies.

30. It should further be noted that Luxembourg was one of the first Council of Europe States to sign Protocol No. 12 to the European Convention on Human Rights on non-discrimination, which was opened for signature in Rome on 4 November 2000. A ratification bill has just been drafted.

31. The European Commission, the Council of the European Union and the member States of the European Union proclaimed 1997 European Year Against Racism and Xenophobia, and in that context Luxembourg undertook to improve its legislation on discrimination.

32. While racial discrimination was not a particularly urgent national issue, there was no guarantee that Luxembourg would remain free from such behaviour in the long run. Given that racism of any kind is incompatible with democratic principles, the legislature, by adopting the Act of 19 July 1997, which supplements the Criminal Code by amending the offence of racism and criminalizing revisionism and other acts based on discrimination, sent a clear message to potential perpetrators of such offences by criminalizing all racist and revisionist behaviour.

33. It also treated racial discrimination no differently from other forms of discrimination to ensure that all discrimination was placed on the same footing.

34. Participation in the World Conference against Racism: a member of the Advisory Commission on Human Rights and a member of the Permanent Special Commission against Racial Discrimination of the National Council for Foreigners formed part of the official Luxembourg delegation.

II. GENERAL LEGAL FRAMEWORK FOR ACTION AGAINST RACIAL DISCRIMINATION

1. Policy overview

35. Since the submission of the second periodic report, mention should be made first and foremost of the official and effective establishment on 1 October 2000 of the Permanent Special Commission against Racial Discrimination, a standing subsidiary body of the National Council for Foreigners at the Complaints Office, which was mandated by a decision of the Government Council of 28 June 1996 to implement optional paragraph 2 of article 14 of the United Nations International Convention on the Elimination of All Forms of Racial Discrimination.

36. The Commission receives communications from individuals or groups of individuals subject to the jurisdiction of Luxembourg who claim to be victims of a violation by the Luxembourg State of any of the rights set forth in the Convention. It examines them and/or transmits them, at the complainants' request, to the United Nations Committee on the Elimination of Racial Discrimination.

37. The Commission also receives and examines petitions from individuals and groups of individuals subject to the jurisdiction of Luxembourg who claim to be victims of any violation of the rights set forth in the Convention.

38. When it examines communications and petitions, the Commission prepares, depending on the requirements of each case, a detailed opinion for the competent authorities and an opinion for the complainants to serve as guidance in seeking relief either through mediation or in the courts.

39. Five complaints have been filed with the Complaints Office since its establishment. Two were neighbour nuisance cases and led to proceedings before a justice of the peace. One involved a dispute between a private individual and a communal authority regarding electricity bills. A fourth case concerned a report by an NGO of the use of the term "niggers" by a speaker on a radio programme. These four cases are not covered by the Convention. The Complaints Office sent a letter to that effect to each complainant.

40. A fifth case which was considered admissible is undergoing more detailed examination.

2. Other information

41. The Ministry of the Family participates through the Office of the Government Commissioner on Foreigners in the meetings of the support group for the Community Action Programme to combat discrimination. Under the Action Programme, Luxembourg implemented a project, with joint funding from the European Commission, involving an information and awareness campaign against discrimination within the meaning of article 13 of the Amsterdam Treaty and Council Directive 2000/78/EC. The campaign focused, during the period from November 2002 to August 2003, on countering discrimination in the world of work. Five posters and five leaflets dealing with each of the grounds of discrimination identified in article 13 were designed and produced, various anti-discrimination measures were publicized and different actors (world of work, civil society, the general public) were brought together to encourage reflection on measures to combat discrimination.

42. A second project (September 2003 to December 2004) developed by the Office of the Government Commissioner on Foreigners with joint funding from the European Commission seeks to build on the first campaign and consists of three main components (training, a media campaign aimed at the general public, and support for national NGO activities/campaigns). The project again targets the world of work and seeks to continue the public debate in Luxembourg society with the ultimate aim of promoting awareness in the Grand Duchy of Luxembourg of the existence of European and national legislation to counter discrimination.

Participation in the Durban Conference: voluntary contribution of the Luxembourg Government to the organization of the Conference and active participation in the proceedings

43. The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which was held in Durban from 31 August to 8 September 2001, was the culmination of more than two years of both regional and international preparatory work. Luxembourg, together with its partners in the European Union, was actively involved, both through the European preparatory Conference against Racism organized by the Council of Europe and the meetings of the Preparatory Committee for the World Conference.

44. Luxembourg was represented at the World Conference against Racism by a large delegation headed by the Deputy Prime Minister and Minister for Foreign Affairs, Ms. Lydie Polfer. In addition to the representatives of the Ministry of Foreign Affairs and the Ministry of the Family, the Luxembourg delegation included representatives of civil society, namely a member of the Advisory Commission on Human Rights and a member of the Commission against Racial Discrimination. The official Luxembourg delegation played an active part in the negotiations. In her address from the podium, the Minister for Foreign Affairs said, inter alia, that the Durban Conference should be the start of a process in which the world would invest in the present and the future while avoiding the mistakes of the past. She asserted that all countries have a duty to oppose intolerance and the mechanisms that give rise to racism. Lastly, Ms. Polfer stressed that the United Nations, which is founded on the Universal Declaration of Human Rights, explicitly espouses universality as the antithesis of discrimination.

3. Nationalities of persons living in Luxembourg

45. The following tables provide statistical data on foreigners living in Luxembourg.

Population censuses	1981	1991	2001	2003
	(per 1 000)			
Total population	364.6	384.4	439.5	448.3
of which:				
Women	186.7	196.1	223.0	227.3
Luxembourg nationals	268.8	271.4	277.2	277.6
Foreigners	95.8	113.0	162.3	170.7
Foreigners as percentage of whom:	26.3	29.4	36.9	38.1
Portuguese	29.3	39.1	58.7	61.4
Italian	22.3	19.5	19.0	19.0
French	11.9	13.0	20.0	21.6
Belgian	7.9	10.1	14.8	15.9
German	8.9	8.8	10.1	10.2
British	2.0	3.2	4.3	4.7
Dutch	2.9	3.5	3.7	3.6
Other EU		6.6	9.2	9.7
Others	10.6	9.2	22.5	24.6

Source: General State Registry.

Situation as at	1.01.1996	1.01.1997	1.01.1998	1.01.1999	1.01.2000	1.01.2001	1.01.2002	1.01.2003
Total	412 800	418 300	423 700	429 200	435 700	441 300	444 050	448 300
Luxembourg nationals	274 750	275 450	276 000	276 300	276 300	276 600	277 330	277 600
Foreigners	138 050	142 850	147 700	152 900	159 400	164 700	166 720	170 700
French	15 020	15 700	16 530	17 530	18 780	20 140	20 905	21 550
Belgian	11 800	12 450	13 200	13 810	14 520	15 080	15 445	15 900
German	9 660	9 860	10 020	10 260	10 500	10 600	10 130	10 200
Dutch	3 810	3 800	3 810	3 840	3 840	3 850	3 630	3 610
Italian	19 780	19 830	19 890	20 010	20 130	20 250	19 100	19 000
Portuguese	51 500	53 100	54 490	55 850	57 030	58 450	59 770	61 440
Spanish	2 800	2 820	2 910	2 940	2 970	3 030	2 840	2 870
British	4 200	4 360	4 400	4 430	4 580	4 850	4 545	4 650
Irish	850	890	930	970	1 020	1 140	995	1 040
Greek	1 150	1 190	1 250	1 260	1 280	1 350	1 170	1 170
Danish	1 920	1 970	2 000	1 990	2 040	2 190	2 010	1 990
Austrian	430	480	500	520	550	570	575	590
Swedish	690	800	860	950	1 050	1 150	1 235	1 220
Finnish	480	570	620	630	660	700	830	840
Others	13 960	15 030	16 290	17 910	20 450	21 350	23 540	24 630

Source: STATEC.

4. Applications for asylum under the Geneva Convention

46. Until 1987 most seekers of asylum in the Grand Duchy of Luxembourg formed part of the quotas that the Luxembourg Government had accepted under international refugee settlement programmes.

47. Thus, the following quotas were accepted: in 1974 one quota from Chile; during the period 1978-1980 three quotas from Viet Nam and Cambodia; in 1982 one quota from Poland; in 1986 one quota from the Islamic Republic of Iran; and in 1987 one quota from Viet Nam.

48. The following tables provide statistical data on asylum-seekers registered in Luxembourg.

2000	Applications	Persons concerned	2001	Applications	Persons concerned
January	28	52	January	37	57
February	26	42	February	34	49
March	40	85	March	30	57
April	37	52	April	27	47
May	20	39	May	25	50
June	43	73	June	36	59
July	25	32	July	41	57
August	19	38	August	43	75
September	31	67	September	36	64
October	33	52	October	41	57
November	25	38	November	36	53
December	33	51	December	40	62
Total	360	621	Total	436	687

2002	Applications	Persons concerned	2003 (30 November)	Applications	Persons concerned
January	30	47	January	62	79
February	22	39	February	67	107
March	46	71	March	94	112
April	53	64	April	99	127
May	52	78	May	84	107
June	55	95	June	100	120
July	57	87	July	111	138
August	36	66	August	66	89
September	75	124	September	110	135
October	71	108	October	118	151
November	73	105	November	141	177
December	100	158	December		
Total	670	1 042	Total	1 052	1 342

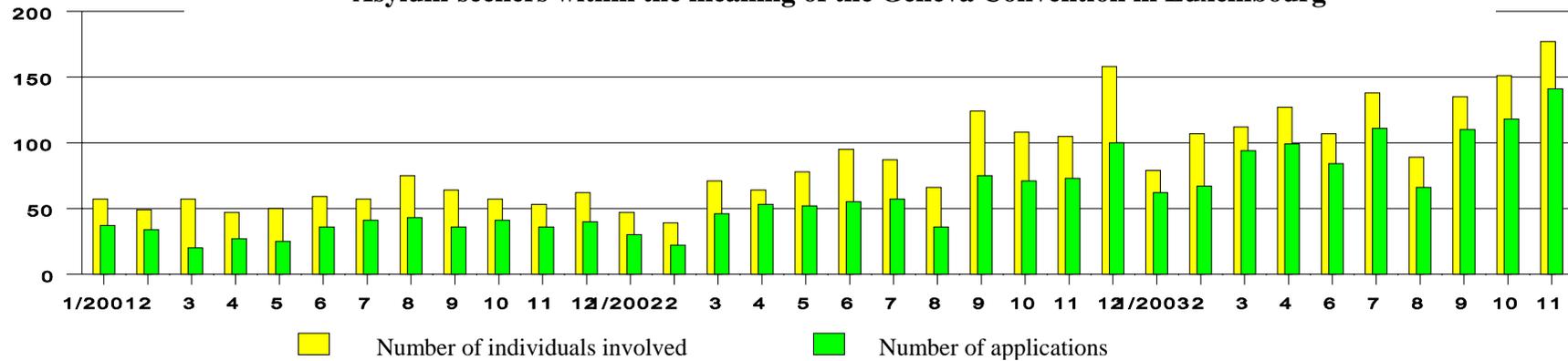
Notes: In 1997, 431 arrivals (including family members) were recorded (= 283 files to be processed), compared with 263 arrivals in 1996 (= 144 files), which represents an increase of 63 per cent. In 1996, a quota of 28 Iraqi refugees was accepted by Luxembourg as part of a resettlement arrangement.

In 1998, 893 applications for asylum involving 1,709 individuals were registered.

In 1999, 1,425 applications for asylum involving 2,921 individuals were registered.

The figures for 1998 and 1999 are due to the massive inflow of asylum-seekers, mostly from Albania and the province of Kosovo, but also from, inter alia, Montenegro, Bosnia and Macedonia.

Asylum-seekers within the meaning of the Geneva Convention in Luxembourg



2001	Applications	Individuals involved	2002	Applications	Individuals involved	2003	Applications	Individuals involved
January 2001	37	57	January 2002	30	47	January 2003	62	79
February	34	49	February	22	39	February	67	107
March	30	57	March	46	71	March	94	112
April	27	47	April	53	64	April	99	127
May	25	50	May	52	78	May	84	107
June	36	59	June	55	95	June	100	120
July	41	57	July	57	87	July	111	138
August	43	75	August	36	66	August	66	89
September	36	64	September	75	124	September	110	135
October	41	57	October	71	108	October	118	151
November	36	53	November	73	105	November	141	177
December	40	62	December	100	158	December		
On 31.06	189	319		258	394		506	652
On 31.07	230	376		315	481		617	790
On 31.08	273	451		351	547		683	879
On 31.11							1 052	1 342
On 31.12	436	687		670	1 042			

5. Migratory flows

49. Throughout the 1990s, the number of first arrivals opting for residence in Luxembourg was in the region of 10,000 per year. As a result of outflows - ranging from 6,000 to 8,000 since 1996 - the migratory surplus, which had remained steady at around 4,000, has been declining since 2000. The decrease is due to the slowdown in economic growth and a reduction in new job offers compared with preceding years. Moreover, there has been a strong response to job offers from non-resident nationals of the three neighbouring countries (France, Belgium, Germany), whose numbers have been steadily rising.

Year	Inflow	Outflow	Migratory surplus
1996	10 027	6 355	3 672
1997	10 423	6 591	3 832
1998	11 630	7 574	4 056
1999	12 794	8 075	4 719
2000	11 765	8 121	3 644
2001	12 135	8 824	3 311
2002	12 101	9 452	2 649

50. The number of residents who are not Luxembourg nationals has been increasing each year. As at 1 January 2003, they were estimated by STATEC to number 170,700 in an overall population of 448,300, or 38.1 per cent. The Office of the Government Commissioner on Foreigners has direct responsibility for the whole of this resident population. In addition, non-resident cross-border workers, who were estimated to number 106,000 at the end of 2003, fall directly under the authority of the Permanent Special Commission of the National Council for Foreigners on the question of cross-border workers.

6. Asylum-seekers and refugees

51. There was a massive inflow of asylum-seekers in the late 1990s, largely owing to the problems in parts of the former Yugoslavia. Thus, between 1 January 1996 and 31 December 2001, a total of 6,638 individuals, adults and children, sought protection in Luxembourg as asylum-seekers under the Geneva Convention. Compared with 2000, the number of new arrivals showed a slight increase in 2001: 686 individuals compared with 628.

52. The majority came from Montenegro, with the second largest group coming from Kosovo, followed by Serbia.

III. INFORMATION RELATING TO ARTICLES 2 TO 7 OF THE CONVENTION

Article 2

1. Information on the legislative, judicial, administrative or other measures which give effect to the provisions of article 2, paragraph 1, of the Convention, in particular:

A. Measures taken to give effect to the undertaking to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation

53. Mention should be made, first and foremost, of the Act of 19 July 1997 which supplements the Criminal Code by amending the offence of racism and criminalizing revisionism and other acts based on unlawful discrimination.

54. The drafters of the Act sought to use the opportunity of redefining the offences concerned to include a whole set of categories of discrimination that were just as reprehensible as racism.

55. The Luxembourg legislature undertook to provide appropriate legal means for taking resolute action against racist and xenophobic acts. Thus, in the case of insult or attacks on a person's reputation, article 444 of the Criminal Code was supplemented by a second clause introducing a harsher penalty for slander and defamation where the defamatory allegations are motivated by unlawful discrimination as defined by new article 454 of the Criminal Code.

56. The legislature furthermore reserved a separate chapter for racism, revisionism and other categories of discrimination.

57. In addition, article 453 of the Criminal Code punishes abuse of a corpse. The violation or desecration of tombs, graves or monuments to the memory of the dead is punishable under the same article and the penalty is increased if the act is accompanied by abuse of a corpse.

58. Article 457-2 of the Criminal Code furthermore prescribes special penalties where breaches of article 453 of the Code were committed on account of the actual or supposed membership or non-membership of the deceased persons in a particular ethnic group, race or religion.

59. The legislature broke new ground with article 457-3 of the Criminal Code, which punishes the questioning, trivializing, justification or denial of war crimes or crimes against humanity, as defined in article 6 of the Charter of the International Military Tribunal annexed to the London Agreement of 8 August 1945, be it orally, in writing or through any other audio-visual medium.

60. The same penalties are prescribed for persons who question, trivialize, justify or deny the existence of genocide as defined by the Act of 8 August 1988 on the punishment of genocide.
61. Furthermore, Luxembourg is currently incorporating in its domestic legislation Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.
62. The bill incorporating the Directive has just been introduced in the Chamber of Deputies.
63. The purpose of the bill is to strengthen Luxembourg's anti-discrimination legislation by establishing a legal framework for action against direct or indirect discrimination on grounds of race or ethnic origin.
64. Mention should also be made of the Act of 24 July 2001 amending the Luxembourg Nationality Act of 22 February 1968 with a view to substantially relaxing the conditions for obtaining Luxembourg nationality.
65. The Act was designed to ease the conditions for obtaining Luxembourg nationality through naturalization or by choice. For acquisition of Luxembourg nationality by naturalization, for example, the Act reduced the requirement for effective regular residence on Luxembourg territory from 10 to 5 years.
66. It also abolished the upper age limit for voluntary declarations by those wishing to obtain Luxembourg nationality by choice.
67. Applications are no longer subject to a registration fee.

B. Measures taken to give effect to the undertaking not to sponsor, defend or support racial discrimination by any persons or organizations

68. Articles 454 and 455 of the Criminal Code punish racial discrimination committed against either a natural person or a legal entity: see paragraph 4 of the article.
69. The criminal sanctions prescribed are a prison term of from eight days to two years and a fine of from 251 to 25,000 euros or one of those penalties alone.
70. In addition, article 457-4 of the Criminal Code stipulates that a person convicted of racial discrimination (articles 455, 456, 457-1, 457-2 and 457-3 of the Criminal Code) may be sentenced to deprivation of civic rights.
71. The bill to incorporate in domestic legislation Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin lays down the principle that there must be no discrimination founded on race or ethnic origin.
72. Adopting a broad definition of discrimination, it embraces the following notions of direct and indirect discrimination, harassment and ordering of discrimination:

Direct discrimination occurs when, for reasons of race or ethnic origin, a person is treated less favourably than somebody else is, has or would be treated under comparable circumstances;

Indirect discrimination occurs when an ostensibly neutral arrangement, criterion or practice may entail a specific disadvantage for persons of a given race or ethnic origin compared with other persons, unless the arrangement, criterion or practice is objectively justified by a legitimate goal and the means of attaining that goal are appropriate and necessary;

Harassment is also regarded as a form of discrimination when undesirable conduct related to race or ethnic origin is designed to, or has the effect of, violating a person's dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment.

Conduct that consists in ordering somebody to practise discrimination against persons for reasons of race or ethnic origin also constitutes discrimination.

C. Measures taken to review government, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists

73. Ensuring the integration of persons of different races has been a priority goal of recent Governments in the Grand Duchy of Luxembourg.

74. It is interesting to note here, however, that article 457 of the Criminal Code allows derogations from the prohibition of discrimination (resulting from article 455 of the Criminal Code).

75. The cases listed in article 457 of the Criminal Code show that there are objective circumstances in which discrimination should be deemed justifiable. These circumstances exist in the case of:

Discrimination founded on state of health, where such discrimination consists of acts aimed at preventing or ensuring coverage of a risk of death, risk of bodily harm or risk of unfitness for work or invalidity;

Discrimination founded on state of health or disability where denial of employment or dismissal is based on the medically attested incapacity for work of the person concerned;

Discrimination in recruitment founded on nationality, where possession of a particular nationality constitutes, pursuant to the statutory provisions governing public service, the regulations governing the practice of certain professions and labour law provisions, a prerequisite for engaging in an occupation or professional activity;

Discrimination founded on nationality, with respect to entry, residence and the right to vote in the country, where possession of a particular nationality constitutes, pursuant to the legal and statutory provisions governing entry, residence and the right to vote in the country, a prerequisite for entry, residence and exercise of the right to vote in the country;

Differential treatment provided by or resulting from any other provision of law.

76. The European Commission against Racism and Intolerance criticized Luxembourg, especially in its second report of 13 December 2002 (CRI (2003) 38), on the ground that article 457, paragraph 5, of the Criminal Code contains a general clause stating that “the ban on discrimination does not apply to differential treatment provided by or resulting from another provision of law”.

77. Luxembourg has taken those observations into account and amended the provision that was criticized.

78. Article 7 of the bill incorporating in domestic legislation the aforementioned Directive 2000/43/CE is worded in such a way as to restrict the scope of article 457, paragraph 5, of the Criminal Code to differential treatment based on nationality provided by or resulting from any other provision of law, and to provisions or conditions governing the entry into and residence in the territory of member States of nationals of third countries and stateless persons, and to those governing the legal status of the nationals of third countries and stateless persons concerned.

D. Measures taken to give effect to the undertaking to prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization

79. As already indicated, the legislature has devoted a separate chapter in the Criminal Code to racism, revisionism and other categories of discrimination.

80. Article 454 of the Criminal Code defines discrimination and lists the grounds of discrimination, including racial discrimination. Any distinction based on the following grounds is thus discrimination: origin, skin colour, gender, sexual orientation, family status, state of health, disability, morals, political or philosophical opinion, trade union activities, actual or alleged membership or non-membership of a particular ethnic group, nation, race or religion.

81. Moreover, such discrimination is punishable when directed against both natural persons and legal entities, groups or communities through their members or some of their members.

82. Article 455 of the Criminal Code addresses acts punishable on one of the grounds of discrimination set forth in article 454 of the Criminal Code such as those pertaining to the provision or enjoyment of property, to the provision of a service, or to recruitment, to mention just a few.

83. In addition, as already indicated, the bill incorporating into domestic legislation Council Directive 2000/43/CE of 19 June 2000 prohibits all direct or indirect discrimination on the grounds of race or ethnic origin.

84. In practice, if a natural or legal person has suffered harm as a result of a discriminatory decision, that person may sue for compensation in the courts under the ordinary law of fault liability.

85. The burden of proof in such cases normally lies with the complainant, who must present evidence of the physical act that constituted the breach of equality rights. It may, however, prove difficult to obtain evidence in discrimination cases, in which the defendant often has possession of useful information. The burden of proof is one of the main reasons for victims' reluctance to report instances of discrimination.

86. As victims of discrimination on grounds of race or ethnic origin must have an effective remedy in the civil courts, it follows that provision must be made for a shift in the burden of proof to offset the disadvantage at which the victim of discrimination is placed. The bill therefore provides for a shift in the burden of proof.

87. The defendant will therefore be required to prove that there was no breach in practice of the principle of equality of treatment, for instance by demonstrating that the difference in treatment was justifiable on objective grounds unrelated to race or ethnic origin.

88. It should further be noted that both private individuals and non-profit-making associations, referred to in article 4 of the bill, benefit from the shift in the burden of proof.

E. Measures taken to give effect to the undertaking to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division

89. The Act of 19 July 1997 which supplements the Criminal Code by amending the offence of racism and criminalizing revisionism and other acts based on unlawful discrimination allows certain non-profit-making associations pursuant to article VI (subsequently article 3-1 of the Code of Criminal Procedure) to institute proceedings as a civil complainant in criminal courts in cases involving racist offences that are directly or indirectly harmful to the collective interests they were established to defend.

90. Since then any countrywide non-profit-making association that has legal personality and has been approved by the Ministry of Justice may exercise a victim's rights in criminal courts under the circumstances described in the preceding paragraph, even if the collective interest it seeks to defend is identical to the social interest defended by the public prosecutor.

91. Pursuant to the Act of 19 July 1997, however, where the offence was committed against individuals, the association cannot exercise the rights of a civil party as the principal victim unless the persons concerned state explicitly in writing that they have no objection.

92. It is important to note that the Office of the public prosecutor may, of its own motion, institute proceedings for any act of discrimination on any of the grounds mentioned

in article 454 of the Criminal Code, and that, in addition to ex officio proceedings by the Office of the public prosecutor or proceedings following a complaint by a victim, certain associations may also institute proceedings as a civil complainant.

93. The bill that has just been introduced in Parliament enhances the litigation rights of non-profit-making associations by allowing them to bring legal proceedings in civil courts. Any countrywide non-profit-making association constituted for the purpose of opposing discrimination on grounds of race or ethnic origin, which has had legal personality for at least five years on the date on which the acts occurred and has already been approved by the Ministry of Justice, may exercise the rights of a victim of discrimination in civil courts in respect of acts that constitute a violation of article 1 of the bill and that are directly or indirectly harmful to the collective interests that it defends pursuant to its articles of association, even where the existence of a material or moral interest is not established.

94. However, where the offences were allegedly committed against individuals, the non-profit-making association may not exercise the rights of a victim of discrimination as the principal victim unless the persons concerned state explicitly in writing that they have no objection.

2. Information on the special and concrete measures taken in the social, economic, cultural and other fields to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms, in accordance with article 2, paragraph 2, of the Convention

95. The problem of racism, xenophobia or other forms of discrimination clearly cannot be solved by criminal sanctions alone. Even though Luxembourg legislation against racism and revisionism is progressive, an overarching and coherent structural policy against racism and xenophobia in the social, cultural and educational fields is also essential. Only such a preventive policy can diminish the factors conducive to the emergence of racist or xenophobic phenomena, especially since Luxembourg is the European Union country with the highest percentage of resident or employed non-nationals.

96. It is precisely with this end in view that article 5 of the bill incorporating Directive 2000/43/CE in domestic legislation states that clauses in company contracts, collective agreements or regulations and in the rules governing profit-making or non-profit-making associations, independent professions and workers' and employers' organizations that conflict with the principle of equality of treatment are null and void.

97. The bill also stipulates that the principle of equality of treatment shall not prevent the maintenance or adoption of specific measures to prevent or offset disadvantages related to race or ethnic origin.

98. Such differentiated treatment should not be considered discriminatory, since it relates only to positive action aimed at preventing or offsetting disadvantages related to race or ethnic origin experienced by a group of persons.

Article 3

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction

99. As racial segregation and apartheid are unknown in Luxembourg, there is no need to take measures to prohibit them.

Article 4

Information on the legislative, judicial, administrative or other measures which give effect to the provisions of article 4 of the Convention, in particular measures taken to give effect to the undertaking to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, racial discrimination, in particular:

- 1. To declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof**

100. Article 457-1 of the Criminal Code punishes any form of incitement to hatred or racial violence, be it oral, written or through any other audio-visual medium.

101. It also punishes the manufacture, possession, transport and dissemination in Luxembourg and abroad of material designed to incite hatred or racial violence against a natural person, legal entity, group or community.

102. The criminal sanctions prescribed are a prison term of from eight days to two years and a fine of from 251 to 25,000 euros, or one of those penalties alone.

- 2. To declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and to recognize participation in such organizations or activities as an offence punishable by law**

103. Freedom of association is guaranteed in article 26 of the Constitution of the Grand Duchy of Luxembourg.

104. It is true that Luxembourg law does not prohibit racist or xenophobic organizations as such, as is required under article 4 of the Convention.

105. Nevertheless, article 18 of the Non-Profit Associations and Foundations Act of 21 April 1928 provides for the possibility of a legal dissolution in the event

that an association, through its activities, disrupts public law and order. An application for legal dissolution may be filed before the civil court by the public prosecutor or a concerned third party.

106. Under this measure, the legislature did not intend to provide a special law prohibiting racist organizations per se.

107. In fact, it considered that prohibiting such racist organizations might drive their members underground and make it more difficult for the authorities to monitor such organizations.

108. Moreover, article 457-1 of the Criminal Code punishes all persons belonging to an organization whose aims or activities consist of inciting discrimination, hatred or racial violence, be it orally, in writing or through any other audio-visual medium.

109. Therefore, it is the individuals themselves, not the legal entity, who are held directly responsible and punished.

110. The criminal sanctions prescribed are a prison term of from eight days to two years and a fine of from 251 to 25,000 euros, or one of those penalties alone.

3. Not to permit public authorities or public institutions, national or local, to promote or incite racial discrimination

111. It is important to note that article 456 of the Criminal Code imposes particularly harsh sentences in cases of unlawful discrimination by a person entrusted with public authority or charged with public service duties in the exercise of their functions, whether that discrimination was directed against a natural person, legal entity, group or community of people.

112. This type of discrimination is punishable by a prison term of from one month to three years and a fine of from 251 to 25,000 euros, or one of these penalties alone.

113. The aforementioned bill, which incorporates into domestic law Council Directive 2000/43/EC, provides for the same penalties against a person entrusted with public authority.

114. However, it is worth noting that the bill applies to both the private and public sectors.

115. Thus, any discrimination based on race or ethnic origin will be punished in accordance with these instruments.

Article 5

Information on the legislative, judicial, administrative or other measures which give effect to the provisions of article 5 of the Convention.

1. The right to equal treatment before the tribunals and all other organs administering justice

116. All judges have received human rights training as part of their studies.

117. Furthermore, judicial assistants receive human rights education when they enter the judiciary, through courses organized by the National College of Magistrates in Paris.

118. It must be added that the issue of human rights forms part of the daily life of lawyers and it is a fact that a week does not go by without one of these rights being invoked before the courts in the Grand Duchy of Luxembourg.

2. The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution

119. It was mentioned with regard to article 4 that the penalties handed down to persons entrusted with public authority in cases of unlawful discrimination (article 456 of the Criminal Code) are more severe.

120. By the Act of 24 April 2000, Luxembourg brought its legislation into line with the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Further to the visits to Luxembourg by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and its reports to the Luxembourg Government of 11 November 1993 and 27 June 1997, the legislature gave effect to certain recommendations.

121. Thus, criminal legislation was adapted to reinforce the prevention and punishment of this type of behaviour, and the specific crime of torture was introduced into the Criminal Code in articles 260-1 to 260-4.

122. In fact, prior to the introduction of this law, the only acts that were specifically characterized as acts of torture by the Criminal Code were those committed by individuals against other individuals (article 438 of the Criminal Code).

123. This provision did not, however, make it possible to impose adequately harsh penalties on persons entrusted with public authority who, in the exercise of their functions, wilfully committed acts of torture.

124. As a result of the introduction of the new article 260-1, the Criminal Code now also explicitly punishes acts of torture committed by persons working in the public sector.

125. Just as acts of torture are qualified as crimes, so are attempt and complicity (book I, chapter IV: "Attempted crimes and offences", articles 51 and 52; and book I, chapter VII: "Participation by several persons in the same crime or offence", articles 66 to 69 of the Criminal Code).

126. Articles 260-2, 260-3 and 260-4 provide for a penalty that is commensurate with the injury resulting from acts of torture.

127. It should be noted that these provisions relate not only to physical torture but also mental torture, which is more subtle and more a reflection of modern times.

128. Finally, it is worth referring to the comments made above, in the fifth paragraph of this report relating to article 2, with regard to the authority given to the public prosecutor to prosecute ex officio any offences that amount to racial discrimination against a natural person, legal entity, group or community.

129. Raising awareness of human rights and providing human rights training to law enforcement officials and judicial officers are taken very seriously in Luxembourg.

130. The meaning of the human rights instruments is taught as part of the basic training at the police training college, under the subject heading “police and society”.

131. Police sergeants attend 64 hours of police and society classes over a one-year training period, which includes 10 hours of training on the rights and duties of civil servants, 12 hours on police ethics and 8 hours on human rights.

132. Police inspectors attend 98 hours of police and society classes over a two-year training period, which includes 30 hours of training on the rights and duties of civil servants, 14 hours on police ethics and 8 hours on human rights and constitutional freedoms.

133. This basic training is supplemented by career-long training in the form of seminars and several hours of continuing education classes every year for each civil servant.

134. In the practical training courses that form part of their professional training, police personnel and criminal investigation police officers are taught how to deal with situations involving foreigners in general and asylum-seekers in particular.

3. Political rights

135. Article 9 of the Constitution guarantees the exercise of political rights and specifies that the law may confer the exercise of political rights on persons who are not nationals of Luxembourg.

136. This applies to the right to vote in communal elections and the right to vote in European elections.

137. The Act of 28 December 1995 extended the right to vote in communal elections to European Union nationals.

138. A preliminary bill amending the electoral law proposes inter alia to extend the active right to vote in communal elections to foreign nationals from outside the European Union and reduces the length of residency that is required to participate in elections, for both European Union citizens and citizens of other countries.

4. Other civil rights

139. The majority of these rights are incorporated into the Luxembourg Constitution.

140. Article 11 of the Constitution provides that the State guarantees the natural rights of the individual and the family.

The right to freedom of movement and residence within the border of the State

141. Article 12 of the Constitution: individual freedom is guaranteed.

Article 15 of the Constitution: the home is inviolable.

The home is governed by the Civil Code.

The right to leave any country, including one's own, and to return to one's country

142. Article 12 of the Constitution.

The right to nationality

143. The right to nationality was extended by the Luxembourg Nationality Act of 24 July 2001 to children born in the Grand Duchy that do not have a nationality because their parent or parents are stateless.

144. This Act amended existing legislation, notably by reducing to five years the length of residency required for submitting an application.

145. Some additional provisions are set out in this report under article 2.

146. Furthermore, the Government has appointed a legal expert to carry out a study on private international law relating to dual nationality.

The right to marriage and choice of spouse

147. In Luxembourg, citizens have the right to marry and to choose their spouse.

148. Marriage is governed by the Civil Code.

149. Accordingly, men must be over 18 years old and women must be over 16 years old in order to enter into marriage.

150. There are certain restrictions on marriage: in the direct line, it is prohibited between ascendants and descendants and persons related by marriage in the same line; in the collateral line, it is prohibited between brothers and sisters and their relatives by marriage in the same degree of relationship, and between uncles and nieces and aunts and nephews.

The right to own property alone as well as in association with others

151. Article 16 of the Constitution.

The right to inherit

152. The Civil Code governs inheritance laws.

153. Inheritance rights are conferred on the children and descendants of the deceased person and on his or her spouse, ascendants and collateral relatives, in order and in accordance with the rules established by the Civil Code (art. 731).

The right to freedom of thought, conscience and religion

154. Article 19 of the Constitution.

The right to freedom of opinion and expression

155. Article 24 of the Constitution.

156. It should be noted that the aim is to ensure respect for the rights and reputation of individuals while guaranteeing freedom of expression. It is important, therefore, to find a balance between the exercise of the right of expression and the right to be protected against racial discrimination.

157. It should be underscored at this point that, by the Act of 19 July 1997, a specific provision was added to article 444 of the Criminal Code increasing the penalties prescribed for slander or defamation when the charges have been made public in the circumstances described in the same article and are based on the racist or discriminatory considerations set out in article 454 of the Criminal Code.

The right to freedom of peaceful assembly and association

158. Article 25 of the Constitution.

5. Economic, social and cultural rights

The right to work

159. Article 11 of the Luxembourg Constitution of 17 October 1869 establishes that the law guarantees the right to work and ensures that every citizen enjoys this right.

160. In Luxembourg legislation, the right to work is a fundamental freedom, which includes the freedom of choice of employment, freedom of access to employment and the absence of discrimination.

161. With regard to employment, the amended Act of 20 June 1976 on the establishment of an employment fund and the regulation of benefits awarded to the wholly unemployed guarantees adequate protection against unemployment without any distinction based on race.

162. The Employment Service has an important role to play in implementing the employment policy, in accordance with the amended Act of 21 February 1976 relating to the organization and functioning of employment and the establishment of a National Employment Commission.

The right to form and join trade unions

163. The employment situation, by branch of industry and by sector, may be summed up in two sets of tables.

164. The first set (annex I) sets out the sectors of activity in which foreign residents in the Grand Duchy are employed and provides details of their respective nationalities.

165. The second set of tables (annex II) provides information about paid employment by sector of activity, indicating how many employees in each sector are nationals and how many are foreign residents and German, Belgian and French cross-border workers.

166. A breakdown of job-seekers by origin is set out in the tables taken from the Employment Service's activity reports for the years 1997 to 2001 (annex III).

167. As the 2003 activity report is not yet available, the table for 2003 is missing at the present time.

168. In general terms, it must be pointed out that there are no data on the ethnic origins of the individuals covered in the tables in question, because in a legal system that respects the principle of non-discrimination on grounds of race, it would be contradictory to make such a distinction.

169. Furthermore, it should be noted that the Luxembourg Government has just approved a bill on the incorporation into domestic legislation of Council Directive 2000/78/CE of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

170. The text in question has, inter alia, been submitted for consideration by the Council of State, which should indicate its position prior to the parliamentary vote on the law.

171. The next stages of the bill incorporating Council Directive 2000/78/CE into domestic legislation will involve: the issuance of an opinion by the professional chambers and the transmission of that opinion to the Government, Chamber of Deputies and the Council of State; the issuance of an opinion by the Council of State and the transmission thereof to the Government and the Chamber of Deputies; the report of the competent parliamentary commission to the plenary; the vote on the law by the Chamber of Deputies and its signature by the Grand Duke; and finally its publication in the *Mémorial*, the Official Journal of Luxembourg.

172. A copy of the bill in question is annexed to this report (annex IV). [The annexes may be consulted in the files of the secretariat.]

The right to housing

Description of the housing market

(a) Public sector

173. With regard to the supply of subsidized rental housing, reference should be made to one public contractor, namely the Housing Fund for low-cost housing, given that this public body manages the majority of the country's rental stock.

174. In 2000, 58 per cent of all applications to the Housing Fund for rental accommodation were filed by non-Luxembourg citizens.

175. In view of the high concentration of applications for the country's central and southern regions, almost three-quarters of the Housing Fund's rental stock is concentrated in the capital and in the three large communes in the south of the country. In all, this public contractor has housing in the territories of 21 communes throughout the country.

176. In addition to its houses and apartments, the Fund also has rooms and collective accommodation in hostels, reserved for political refugees and immigrant workers.

177. Most of the housing sold by the Fund is located in the capital (53 per cent) and in the communes in the south of the country (28.5 per cent).

(b) Private sector

178. As regards the private sector, there are no statistics available that can be used to distinguish between the number of tenants and the number of owners occupying a particular type of accommodation in a particular region of the country.

179. With regard to the two kinds of housing combined, the level of concentration of non-Luxembourg citizens varies from region to region, with a much higher concentration in the capital and in the south of the country.

Measures taken by the authorities to prevent racial discrimination by those who rent or sell houses or apartments

180. In the public sector, the Minister for Housing provides financial support for any building projects by public contractors aimed at social mixing in future housing.

181. As a country that has experienced, particularly in the last 20 years, a rate of immigration that is way above the average in European Union countries, Luxembourg is trying to promote the integration of non-Luxembourg citizens through construction projects that, inter alia, set an example for the private market.

182. With regard to the private sector, it is worth mentioning the Act of 19 July 1997 supplementing the Criminal Code by amending the offence of racism and criminalizing revisionist and other acts based on illegal discrimination, which aims in particular to prevent racial discrimination by those who sell or rent houses or apartments.

The right to housing and the extent to which it is enjoyed in practice without racial discrimination

183. At the outset, it should be pointed out that the right to housing as such is not recognized by the Luxembourg Constitution. It is, however, explicitly recognized by law (cf. article 31 of the amended Act of 14 February 1955 on housing leases), under which communes are obliged to ensure as far as possible housing for all persons residing in the commune, as well as for public service employees discharging their functions within the territory of the commune.

The right to health, social security and social services

184. Article 11 of the Constitution.

185. Just as the Act of 31 July 1995 on childbirth and maternity benefits abolished the duration of residency condition for European Union nationals, a bill with like effect amending the Act of 29 April 1999 on guaranteed minimum income was submitted to the Chamber of Deputies on 13 December 2001. The law was passed on 21 December 2001.

186. More than 60 per cent of workers in the Grand Duchy of Luxembourg are foreign (foreign residents and non-resident cross-border workers). The laws relating to the health and safety of workers apply to all salaried workers in Luxembourg, regardless of where they are from.

187. The training and information relating to health and safety at work that are required by law are provided in the languages commonly used in Luxembourg (Luxemburgish, German, French and English). The above-mentioned training can therefore be understood by the majority of employees in Luxembourg.

188. The new Act of 1 August 2001 on the protection of pregnant workers and workers who have recently given birth or are breastfeeding extended coverage to all women, regardless of their age or nationality, who are covered by a work or training contract or are engaged in activities as pupils or students. This is an improvement on the coverage provided in the past by the Act on the protection of pregnant women, which applied only to women from Luxembourg or abroad who were contributors to a Luxembourg social security scheme (this interpretation was deemed discriminatory by the European Commission).

The right to education and professional training

189. Article 23 of the Constitution.

190. Almost 40 per cent of the school population are children and young people of foreign origin. The use of languages in the country (Luxemburgish as the language of oral communication and French and German for written communication) and traditional literacy methods (German as a starting point for learning to write) pose a real challenge. At school, German and French are used as the languages of instruction, depending on the subject area and level of study.

191. In November 2000, a major policy debate on integration at school took place in the Chamber of Deputies. A 24-point motion inviting the Government to take measures was adopted. Consequently, the Ministry of Education established a structured action plan and concrete measures are being taken. It is necessary to preserve the unity of the Luxembourg school system and its diplomas and certificates, given that attendance at the same school by foreign children and children of Luxembourg nationality is an increasingly critical factor in the preservation of social cohesion in Luxembourg in the medium and long terms.

192. An in-depth appraisal of the language teaching methods used in primary and technical secondary education is under way, focusing inter alia on:

Improving the teaching of the basic elements of language;

Training programmes as needed;

Adapting to developments; and

Allowing adequate time for practice and differentiation.

Pre-school and primary education

193. Pre-school education is compulsory in Luxembourg. Since 1998, early education classes have been arranged in the majority of communes, at which foreign children learn the Luxemburgish language as a language of communication. Thus, the country's language plays its role as a factor of social integration in Luxembourg.

194. In primary education, a new approach to literacy combines learning to read with structured learning of the German language. The new alphabet primer is based on the didactic principles of differentiation, learning by discovery and learning by doing. It combines various literacy methods and offers activities for all children.

195. In general, children who have already been taught to read and write but are from a country that is neither German- nor French-speaking are placed in the reception class.

196. Children who are learning to read and write but who have learning difficulties may be placed in waiting classes (*classes d'attente*) in which the lower school curriculum is spread over three years.

197. In a large number of communes, parents of Italian or Portuguese origin are able to enrol their children in integrated mother tongue lessons as part of the primary school timetable in Luxembourg. These lessons allow those children to maintain and develop as far as possible their skills in their mother tongue.

198. Various projects promote interculturalism in the Luxembourg school system. They are aimed at children of different ages. In a very natural way, the cultural diversity in the everyday reality of children and young people is represented. Texts describe situations relating to their day-to-day lives, adventures and experiences. Emphasis is placed on the things that are common to all children: their joys, fears, activities and concerns.

199. To facilitate the schooling of children of asylum-seekers and refugees, the Ministry of Education has, for a fixed term, employed intercultural mediators from the countries of origin of asylum-seekers who speak Serbo-Croat, Albanian and Russian. They act as a link between their communities and the Luxembourg community in matters relating to the insertion of children both in and outside school. Interested schools and communes may call on their services free of charge.

Post-primary education

(a) Technical secondary education

200. The percentage of foreign children is the highest in technical secondary education.

201. The number of places for newly arrived pupils has been increased. Integration classes provide intensive classes in French or German. These classes are open to students in accordance with their basic knowledge. A Grand Ducal regulation will soon confirm the legal basis of the integration classes for newly arrived pupils.

202. In order to distinguish between active or passive and oral or written knowledge and to define the aptitudes required for each subject, the possibility of introducing a flexible concept of first and second language is being examined. This concept advocates the principle of meeting very high requirements in one dominant language and lower requirements in several other languages.

203. The amount of vocational training provided in French has been increased since the academic year 2001-2002. This measure was necessary in view of the considerable number of foreign teenagers arriving in the country without sufficient knowledge of German to allow them to enrol on any courses in the middle and higher cycles of technical secondary education that use German as the language of instruction. It falls within the scope of the Act of 4 September 1990, which provided for the possibility of introducing specific operational models and model curricula for certain classes, in order to meet the particular needs of migrant children.

(b) General secondary education

204. This level of education prepares students for university. The main objective of the distribution requirement is to maintain a balance between sciences, mathematics, economics and arts as chosen fields of study. It does not, therefore, address the specific nature of the linguistic problems of pupils.

205. Portuguese as a fourth language has been taught for several years in one high school, as part of general secondary education.

Human rights education

206. A reading commission is responsible for reviewing school textbooks with the aim of incorporating into them human rights considerations and verifying their content with regard to respect for such rights. Human rights education is promoted in a transdisciplinary way.

Adult education

207. The Luxembourg Language Centre offers intensive courses throughout the day and also in the evenings. This type of linguistic training facilitates the economic, social and cultural integration of foreigners.

208. A considerable number of courses in the Luxembourgish language are organized throughout the country under the authority of the communes.

209. Reception classes aimed at young people under the age of 21 are designed to provide education based exclusively on one of the languages commonly used in Luxembourg, in order to make social and professional insertion less difficult. Special classes are organized in close cooperation with the Employment Service, giving job-seekers the opportunity to acquire or improve their language skills.

The right to equal participation in cultural activities

210. The cultural policy of the Ministry of Culture, Higher Education and Research is based largely on the policy defined in 1982 by the United Nations Educational, Scientific and Cultural Organization (UNESCO);² this naturally includes art in all its forms, but also an attitude of respect for other people's values. The practice of culture that is open to all thus becomes a bulwark against all kinds of fanaticism and a safeguard for the democratic values of Luxembourg's multicultural society. Today, it is widely recognized that the principle of equality must be applied in every cultural sector and in every institution.

211. Consequently, the Ministry of Culture is endeavouring to promote access to culture for all. No distinctions are made in terms of support measures; cultural institutions are open to everyone. In order to promote artistic creation, the Government endorsed the adoption of an act recognizing the status of the independent professional artist. Notably, this status may be granted to persons of any nationality, provided that they have been resident in the Grand Duchy of Luxembourg for two years. Every year, the Ministry of Culture lends its support to numerous activities and cultural events through subsidies, which are given to all artists, of any nationality and any ethnic group.

212. By way of example of the awareness-raising activities supported by the Ministry, it is worth mentioning Luxembourg's participation, since 2000, in the European Music Fest, which is based on the democratic dynamic of a musical culture that is accessible to all. This celebration of live music underscores the scope and diversity of musical practices in all the musical genres.

213. The Support Association for Immigrant Workers (ASTI) is an intercultural agency that aims to encourage the foreigners residing in Luxembourg and Luxembourg nationals to develop an interest in each other and in their respective cultures and thus reduce any reservations they might have about mutual contact. The intercultural agency, which is an important contact point for immigrants, has a file available that contains the addresses of artists, musicians and, primarily, associations that are active in the social and cultural fields (both relating to Luxembourg and other countries) and a file on the cultural infrastructure of the Grand Duchy of Luxembourg, which is managed jointly with the Ministry of Culture.

214. The Foreigners' Action and Liaison Committee (CLAE) is a platform of associations representing many of the cultures present in the Grand Duchy. CLAE campaigns for equal rights for all citizens residing in the country, the recognition of cultures resulting from immigration and the enrichment of Luxembourg's cultural diversity. For almost 20 years, CLAE has been organizing the Festival of Migration, Cultures and Citizenship. A cross-border partnership for the Saar-Lor-Lux region led to the creation, in 2000, of the Ouni Grenzen - Sans frontières - Grenzenlos Festival. CLAE, which is primarily involved in the promotion and creation of cultural events, operates on the ground through information activities, training, support for voluntary activities, reflection and also intercultural projects.

215. A considerable number of foreign cultural centres (French, German, Portuguese, Italian, Russian, etc.) have been established in the Grand Duchy, enabling various people to maintain contact with the culture of their country of origin and giving them access to culture in their mother tongue.

216. Furthermore, the Government is keen to create a cultural balance at the regional level. Just because the capital occupies a dominant position, as a result of the presence there of quality facilities, there is no reason to believe that the other urban centres in Luxembourg are totally deprived of culture. The Government has helped to decentralize activities with a view to promoting public awareness and access to art and culture. In fact, the Ministry of Culture helps cultural associations to maintain a balance between public and private initiatives. High-level cultural events are organized every year in the different geographical regions of the country. Furthermore, the Ministry has provided - and continues to provide - financial and logistical support to the regional cultural centres. The Ministry supports three regional centres for cultural activities that work with local, regional and even cross-border organizers.

6. The right of access to any place or service intended for use by the general public.

217. Article 455 of the Criminal Code punishes the refusal to allow benefit from or provide a good or a service on the basis of one of the grounds set out in article 454 of the Criminal Code.

218. Such discrimination is prohibited, whether it is committed against a natural person, a legal entity or a group, and is punishable by a prison term of from eight days to two years and a fine of between 251 to 25,000 euros, or one of those penalties alone.

219. The above-mentioned bill incorporating into domestic legislation Council Directive 2000/43/CE of 19 June 2000 prohibits any discrimination, in the public or the private sectors, with regard to access to goods and services and the provision of goods and services available to the public.

Article 6

1. Information on the legislative, judicial, administrative or other measures which give effect to the provisions of article 6 of the Convention, in particular, measures taken to assure to everyone within the jurisdiction of the reporting State effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms

220. It is important to note that the Public Prosecutor's Office has the power to prosecute ex officio any act of discrimination on the basis of one of the grounds set out in article 454 of the Criminal Code.

221. In addition to prosecution ex officio by the Public Prosecutor's Office or in response to a complaint by the victim, associations with legal personality that have been accredited by the Minister for Justice may exercise the rights accorded to a civil party, if the case involves an offence that qualifies as racial discrimination and injury to the collective interests defended by these associations.

222. Furthermore, the above-mentioned Council Directive 2000/43/CE extends this right as indicated under article 2, paragraph 5 of this report.

223. When this Directive is incorporated into domestic law, a body designated to promote equal treatment will be given the task of providing victims of discrimination with impartial assistance in instigating discrimination proceedings. It will be responsible for conducting independent studies into cases of discrimination, publishing independent reports and issuing recommendations on all discrimination-related issues.

2. Measures taken to assure to everyone the right to seek from such tribunals just and adequate reparation or satisfaction for any damage as a result of such discrimination

224. Reference should be made to the Act of 6 May 1999, which introduced the concept of criminal mediation into article 24 of the Code of Criminal Procedure.

225. Under the Act, the State prosecutor is authorized to make use of mediation if to do so appears likely to ensure reparation for the injury caused to the victim, end the distress resulting from the offence or help in the rehabilitation of the offender.

226. Nowadays, unfortunately, judicial proceedings are often the only way of asserting one's rights. Some people, however, may find themselves unable to pursue their rights in the courts because they are disadvantaged from the outset as a result of their social, cultural or economic status.

227. Since well before the Legal Aid Act of 18 August 1995, it has been the practice in Luxembourg to provide legal aid not only to Luxembourg nationals but also to any foreigner, provided that he or she is resident in Luxembourg.

228. This de facto situation was formalized in the Act of 18 August 1995, and any person fulfilling the requirements for legal aid will automatically be assigned a lawyer or other Ministry official if the case so requires.

229. Legal aid may also be provided in proceedings relating to asylum, access to the country, residence, settlement and exit by foreigners.

230. It is granted in judicial or extrajudicial cases, in non-contentious or contentious cases, and to the plaintiff or the defence. It may be requested during the proceedings for which it is required and even for protective acts or enforcement proceedings in respect of judicial decisions or any other enforceable instrument. In criminal cases, it naturally does not cover any costs or fines that may be imposed on a guilty party.

231. Also under the Legal Aid Act, a reception and legal information service has been set up in the Government Procurator General's Department, which is responsible for providing private individuals, regardless of nationality, with general information on the extent of their rights and on ways and means of safeguarding them.

232. To date, three reception and legal information services have been established - in Luxembourg City (centre), Esch-sur-Alzette (south) and Diekirch (north) - covering the whole territory of the Grand Duchy.

233. The Advisory Commission on Human Rights was established in Luxembourg by Government regulation of 26 May 2000.

234. This Commission nominates its own members, which are chosen on the basis of their qualifications in the field of human rights or social issues. Lawyers and members of the associations and non-governmental organizations working specifically in these fields are also involved.

235. The Commission may call on the assistance of experts, whom it appoints to carry out ad hoc assignments for information and consultation purposes.

236. It issues its opinions and prepares its reports on its own initiative or at the request of the Government.

237. It is primarily an advisory body to the Government and is responsible for assisting it by issuing opinions and studies on all general issues relating to human rights in the territory of the Grand Duchy of Luxembourg.

238. It can make proposals regarding measures and programmes of action that it considers conducive to the protection and promotion of human rights, particularly in academic, university and professional circles.

239. Its activities are made public (they are circulated to members of the Chamber of Deputies and Council of State and to press organs).

240. The Commission also acts as national correspondent for the European Monitoring Centre for Racism and Xenophobia.

3. Information on the practice and decisions of the courts and other judicial and administrative organs relating to cases of racial discrimination as defined under article 1 of the Convention

241. Nineteen complaints, reports and statements relating to discrimination were referred to the Luxembourg Public Prosecutor's Office:

One case resulted in a decision by the correctional court;

In four cases, there was a district court decision;

One case was transferred to the juvenile court;

One case is in the process of being settled;

In another case, the offender has been called for questioning;

In three cases, the investigation is not yet considered complete;

In two cases, criminal mediation was used;

Six cases have been closed, any further action having been deemed inappropriate largely because of the minor disturbance caused to public order or because of the lack of evidence of an offence, or because of the particular circumstances of the case. It should be noted, however, that two of these cases have been closed subject to certain conditions, of which the offenders have been informed in writing.

242. Forty-six complaints, reports and statements relating to racism were referred to the Luxembourg Public Prosecutor's Office:

Two cases resulted in a decision by the correctional court;

In three cases, there was a district court decision;

One case was transferred to the juvenile court;

Three cases are in the process of being settled;

In three cases, criminal mediation was used;

Twenty-eight cases have been closed, any further action having been deemed inappropriate largely because of the minor disturbance caused to public order or because of the lack of evidence of an offence, or because of the particular circumstances of the case.

It should be noted, however, that five of these cases have been closed subject to certain conditions, of which the offenders have been informed in writing.

243. In 2002, three statements relating to acts amounting to racism according to the definition used in each statement were referred to the Diekirch Prosecutor's Office. Two of these cases involved verbal remarks (*faux pas*).

The cases have been closed (lack of proof, unconfirmed circumstances).

244. In 2003, eight statements relating to acts of racism (racist remarks or behaviour) were referred to the Diekirch Prosecutor's Office. It should be noted that these statements related to other offences (for instance, insults, slander, assault and battery and nocturnal disturbances). With the exception of one case, which is being investigated for more general racist behaviour and which has not yet been proved (refusal of service), the racism-related offences are not "pure cases". Of the eight cases:

One involves an unknown offender;

One was brought before the district court (together with other prejudicial matters);

One is being examined with other offences;

One resulted in criminal mediation;

Two are pending a decision; and

Two are being investigated.

4. Information in connection with general recommendation XXVI on article 6 of the Convention (2000)

245. As indicated above, the Criminal Code provides that, in addition to a prison term, the perpetrator of discrimination should pay a fine to compensate the victim for any injury caused.

246. Likewise, the above-mentioned bill incorporating Council Directive 2000/43/CE into domestic legislation provides, in addition to a prison term, for a fine intended to compensate the victim for any material or moral injury caused.

247. If the action is brought before the civil courts on the grounds of fault, compensation may be claimed in the form of damages.

Article 7

Information on the legislative, judicial, administrative or other measures which give effect to the provisions of article 7 of the Convention

At the institutional level

248. It is useful to recall the existence of the Permanent Special Commission against Racial Discrimination (CSP-RAC), established in May 1996 as one of the three sub-bodies of the National Council for Foreigners and which, pursuant to the Act of 27 July 1993 on the integration of foreigners, is assigned the task of “preparing, either at the request of the Government or of the National Council for Foreigners (which is an advisory body to the Government), or on its own initiative, opinions and proposals relating to measures against all forms of racial discrimination, and of devising projects and programmes, particularly in the area of education, and cultural and social activities, aimed at enhancing mutual understanding among the various communities living in Luxembourg”.

249. In accordance with this mandate, CSP-RAC has carried out a great deal of work since its establishment in 1996, including during the European Year against Racism in 1997.

250. Moreover, reference should be made to the Advisory Commission on Human Rights, which was established by Government regulation of 26 May 2000 and whose mission is to assist the Government by providing opinions and studies on all general issues relating to human rights in the territory of the Grand Duchy of Luxembourg.

251. It issues its opinions and prepares its studies either on its own initiative or at the request of the Government.

252. The Commission may make proposals to the Government regarding measures and programmes of action that it considers to be conducive to the protection and promotion of human rights, particularly in academic, university and professional circles.

253. The Advisory Commission on Human Rights also acts as national correspondent for the European Monitoring Centre for Racism and Xenophobia in Vienna.

(a) Education and teaching

Languages in Luxembourg

254. It became apparent in the past that, under the system of education in Luxembourg, which is based on trilingualism and learning to read and write in German, certain pupils who were not Luxembourg nationals were at a disadvantage in the public school system in comparison with Luxembourg nationals.

255. Some efforts have been made to reduce these differences, notably by introducing early education for children from the age of 3 years, lessons where emphasis is placed above all on learning the Luxemburgish language and assistance for weaker pupils through support classes and homework aids.

(b) Culture

256. The Ministry of Culture implements national cultural policy in accordance with the principle of cultural freedom that also underlies the image of a country that is a melting pot of various nationalities and languages. Racial discrimination is practically non-existent.

257. Nevertheless, there is also a need to take precautions against the emergence of xenophobic trends. The Ministry financially supports the cultural organizations that are active in this field and in the field of relations between the native and foreign populations. Numerous cultural events are organized, which contribute to better intercultural understanding and, to a certain extent, to the elimination and prevention of racist trends. Furthermore, the Luxembourg Government celebrates International Human Rights Day and supports other campaigns aimed at eliminating racial discrimination.

258. On the whole, the activities supported by the Ministry and its cultural institutions are aimed at promoting intercommunity and intracommunity relations between national, racial and ethnic groups. At the international level, Luxembourg maintains dynamic cultural ties with its neighbouring countries. It is involved in close regional cooperation with France, Belgium and Germany, inter alia through the European Union's structural cross-border programmes (the European Regional Development Fund, INTERREG III, etc.). Regular participation at the working group on cultural affairs established within the Saar-Lor-Lux region makes it possible to strengthen contacts through this cross-border area. With regard to multilateral relations, the aim is to tighten the cultural links with international institutions or organizations such as the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Intellectual Property Organization (WIPO), the International Organization of la Francophonie and the Council of Europe.

259. The Ministry of Culture also invests in promoting bilateral relations with numerous countries. Within the framework of bilateral cultural agreements in particular, and its international relations in general, the Office for Foreign Students of the Ministry of Culture, Higher Education and Research helps, inter alia, to facilitate exchanges or visits for foreign students from European Union and other countries, long-term study visits, visits by experts conducting postgraduate research and advanced music courses, etc.

260. Among other activities specifically designed to warn against the dangers of racism, the Ministry made a financial contribution to the refurbishment of the National Museum of the Resistance and to the setting up of a Second World War documentation centre.

261. The Ministry of Culture also supports Culture Week, which is devoted to a target country that benefits from cooperation programmes and development assistance. Every two years, a series of cultural events is organized in collaboration with the Ministry of Cooperation, aimed at presenting the cultural traditions and the contemporary creative activities of a country from the South. Awareness-raising activities go hand-in-hand with the distribution of information packs and the organization of debates, contributing to conflict prevention and the recognition of diversity.

(c) Information

262. Paragraph 1 (c) of article 6 of the amended Act of 27 July 1991 on the electronic media provides that “*the programmes broadcast in Luxembourg must, in terms of their content, observe the following principles: (...) they may not contain any incitation to hatred on grounds of race, gender, opinion, religion and nationality*”.

263. Since the entry into force of the Act of 19 July 1997 amending and supplementing the Criminal Code by introducing articles 454 et seq., prohibiting and criminalizing actions based on unlawful discrimination, there has been very little case law on this issue despite the awareness campaign conducted by the Ministry of Justice in collaboration with the NGOs working in that field through the circulation to all households in Luxembourg of a leaflet entitled “All different - all equal”, which explained the provisions of the new legislation in a clear and comprehensive way.

264. Various radio and television channels are working in close collaboration with foreigners’ associations and associations working to help foreigners, in order to broaden the horizons of both Luxembourg and foreign residents and to raise awareness among them of cultural and social aspects in particular but also economic and political aspects that are little known or even unknown.

Notes

¹ Source: Internet site of the Luxembourg Government.

² World Conference on Cultural Policies, Mexico, organized by UNESCO in 1982.
