



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

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-sixth session

SUMMARY RECORD OF THE 1677th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 23 February 2005, at 3 p.m.

Chairman: Mr. YUTZIS

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Tenth to thirteenth periodic reports of Luxembourg (CERD/C/449/Add.1; HRI/CORE/1/Add.10/Rev.1)

1. At the invitation of the Chairman, the members of the delegation of Luxembourg took places at the Committee table.
2. Mr. BERNES (Luxembourg), introducing the combined tenth to thirteenth periodic reports submitted by his Government (CERD/C/449/Add.1), said that owing to the country's high levels of immigration and emigration, discrimination based on nationality and origin had always been a pertinent issue. Of Luxembourg's total labour force, two thirds were resident in neighbouring countries. His country had a tradition of multilingualism, which was considered a necessity but also posed a challenge. The Government did not have a tradition of collecting statistics on the ethnic composition of the population, but efforts to rectify that had recently begun; the Committee would receive more comprehensive data when they became available.
3. Mr. de GOUTTES (Country Rapporteur), thanking the delegation for its presentation of the periodic reports, acknowledged the Government's efforts over recent years to strengthen its fight against racism and intolerance by amending legislation and establishing relevant institutions. Steps must however be taken to ensure that legislation was implemented effectively, and particular attention must be paid to the imposition of sanctions against the perpetrators of racial offences. Despite the Government's efforts there was still evidence of prejudice and xenophobic stereotypes within public opinion, which could lead to discrimination.
4. He asked how many successful asylum applications had been made during the reporting period, what percentage of the total number of applications that figure represented, and how many illegal immigrants were resident in Luxembourg. He further asked whether the relevant legislative measures had been taken to ensure the transposition of the European Union (EU) Directive 2000/43 on implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, and whether a body had been established for the promotion of equal treatment.
5. The Committee welcomed Luxembourg's declaration under article 14 of the Convention and its ratification, without reservation, of the amendment to article 8. He wished to know whether the Government intended to ratify the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the 1961 Convention on the Reduction of Statelessness.
6. The delegation should provide an overview of the work performed by the Advisory Commission on Human Rights, the Permanent Special Commission against Racial Discrimination and its Complaints Office, the Office of the Ombudsman, the regional advisory commissions for foreigners and the intercultural mediators who assisted in the integration process for foreign children, asylum-seekers and refugees. He wished to know what initiatives had been taken to ensure effective implementation and follow-up to the Durban Declaration and Programme of Action.

7. He asked whether there were any specific groups of immigrants who had formed communities in Luxembourg and, if so, how many people were involved, what were the causes of that phenomenon, and what measures were being taken to prevent de facto segregation. Although the amendments to the Criminal Code for the most part satisfied the requirements of article 4 of the Convention, the Committee wished to know whether the Government intended to strengthen legislation further by applying a general principle of aggravating circumstances to offences committed with racist motives, making it an offence to establish, participate in or encourage participation in organizations that incited racial discrimination, and limiting derogations to the prohibition of discrimination to those cases currently provided for under the Criminal Code. There would seem to be room for improvement in the implementation of existing anti-discrimination legislation in practice. Updated statistics and information on measures to improve awareness-raising and training for police officers and court officials would be appreciated.

8. The Committee wished to know: what efforts had been made to prevent and punish discriminatory behaviour and mistreatment of immigrants and foreigners by members of the police force, civil service and judiciary; what steps had been taken to combat prostitution and trafficking in persons, particularly women from Eastern Europe; and what stage discussions had reached on the draft amended electoral law that proposed a reduction in the period of residence required for foreigners to obtain the right to vote. He asked whether there had been a response to the request for Islam to become an officially recognized religion and whether the public controversy on the prohibition of the ritualized slaughter of animals had been resolved.

9. Turning to the issue of the right to work, he asked what measures had been taken to address the problem of foreigners who were illegally employed in Luxembourg and who were often mistreated by their employers, and whether efforts had been made to ensure that employers of illegal workers were sanctioned, rather than the workers themselves. He wished to know what assistance foreigners and immigrants received in finding housing, whether there were awareness-raising programmes relating to racial discrimination for landlords and estate agents, how foreign children were integrated into schools, and how “intercultural mediators” for teachers, families and pupils were appointed. Further information should be provided on integration classes in primary and secondary schools for new immigrant children, and on measures to assist the children of immigrants (often French or Portuguese-speaking), who were obliged to attend schools in which classes were in German or Luxemburgish.

10. The Committee would be interested to know whether asylum-seekers whose applications had been rejected but who refused to leave Luxembourg were left without legal status and access to social aid. Information should be provided on conditions in asylum centres, which often did not meet hygiene and safety standards, on support for NGOs assisting in vocational training for asylum-seekers who did not have the right to work while their asylum applications were being processed, and on conditions in provisional accommodation facilities for illegal immigrants who could not be returned to their countries of origin. He asked whether NGOs had the right to visit such facilities and what regularization procedures existed for immigrants who did not have the necessary official documents.

11. Further information should be provided on the view expressed by the media that the integration of foreign Muslims in Luxembourg was impossible owing to the cultural gap between Islam and the beliefs of the rest of the population, and on the allegations of links between terrorism and the Islamic Cultural Centre in Mamer, which had prompted considerable debate in the press.

12. Turning to article 6, he said that according to the statistics contained in paragraphs 241 to 247 of the report, there had been few prosecutions and serious convictions for acts of racism. Up-to-date statistics from the police and the courts on the outcome of complaints relating to racist acts should be provided in the next periodic report. He asked whether the bill shifting the burden of proof in favour of the victim had been enacted. Was any information available on the number of cases in which associations had brought legal proceedings in the criminal and civil courts on behalf of the victims of racial discrimination? It was alleged that persons involved in offences who did not speak one of Luxembourg's official languages had difficulty making a statement to the police without interpreters. Had any specific measures been adopted to remedy the situation? He asked for further information on the success of criminal mediation, legal aid and the legal information service referred to in paragraphs 224 et seq.

13. With regard to article 7, he would welcome more information on projects under way to promote interculturalism in Luxembourg schools and awareness-raising activities to curb racist, anti-Semitic or anti-Muslim propaganda in the media. To what extent was the code of professional ethics adopted in 1995 by the Press Council applied?

14. In conclusion, he asked the delegation to elaborate on the following issues: subsidies given to cultural associations dealing with migrants; specific measures to publicize the complaints procedure under the Permanent Special Commission against Racial Discrimination; training for police officers, judges and lawyers on racial tolerance and human rights; steps taken to publicize the Convention; the role played by NGOs in drafting the report.

15. Mr. AVTONOMOV said that by and large Luxembourg had complied with the requirements concerning the form and content of periodic reports. In particular, he welcomed the fact that account had been taken of several of the Committee's general recommendations as well as its concluding observations relating to previous periodic reports. Among recent activities to raise awareness of racism, he singled out as worthy of note the refurbishment of the National Museum of the Resistance and the setting-up of a Second World War documentation centre.

16. Turning to legislation, he said that paragraphs 64 to 67, 143 and 144 provided details of amendments to the Luxembourg Nationality Act of 22 February 1968. He asked whether there were any other significant amendments to the Act the Committee should know of, and what the consequences of such amendments were. For example, had there been any increase in the number of applications for nationality?

17. He asked whether the Ombudsman has already been appointed and, if so, whether any complaints had been submitted to him relating to the Convention. In conclusion, he stressed the importance of the Committee's general recommendation XXVII on discrimination against Roma, enquiring why the report contained no information on the Roma people.

18. Mr. VALENCIA RODRÍGUEZ asked whether the Ombudsman could deal with complaints of racial discrimination against individuals and not merely the State, and what procedures were involved. He welcomed the establishment of the Permanent Special Commission against Racial Discrimination in keeping with article 14, paragraph 2, of the Convention and asked to be kept informed of its activities.

19. The information and awareness campaign against discrimination quite rightly laid emphasis on discrimination in employment, where acts of racial discrimination were most likely to occur given the large number of foreign workers in the country. He would welcome information on the success of the campaign.

20. The Act of 19 July 1997 amending the Criminal Code and increasing prosecutable forms of discrimination was an important step forward in the fight against racism and he would welcome information on its practical implementation.

21. He enquired about the status of 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. The broad definition of discrimination in the Directive embracing direct and indirect forms was in line with article 1 of the Convention.

22. Paragraph 75 of the report listed five cases in which discrimination should be deemed justifiable. Some explanation was required of discrimination in recruitment. He understood that a person could be excluded on grounds of nationality from posts in the civil service, but not from other professions. Furthermore, he would welcome clarification of discrimination based on nationality with respect to entry, residence and the right to vote. Lastly, he expressed concern that differential treatment established by or resulting from any other provision of law would be discretionary and not objective and thus run counter to the provisions of the Convention.

23. He welcomed the steps being taken to shift the burden of proof in favour of the victim of discrimination and hoped that they would yield positive results. Another significant development was the possibility for an association to exercise a victim's rights in criminal courts. From the information provided it was clear that Luxembourg's criminal legislation complied with the provisions of article 4 (a) of the Convention, but that was not the case with article 4 (b).

24. The human rights training for law enforcement officers described in paragraphs 130 to 134 should be continued and should emphasize the importance of combating racial discrimination. The mandate of the Advisory Commission on Human Rights should be expanded to include mediation functions in cases of racial discrimination with a view to lightening the workload of the courts.

25. In conclusion, he asked for more detailed information on the cases of racial discrimination referred to in paragraphs 241 and 242 of the report.

26. Mr. SICILIANOS welcomed the establishment of new bodies to protect human rights, such as the Ombudsman and the Advisory Commission on Human Rights, and enquired about their respective mandates.

27. He wondered whether Luxembourg might follow the example of France by adopting legislation that imposed restrictions on service-providers with a view to tackling the problem of racist messages posted on the Internet. Also, had it considered ratifying the Cybercrime Convention in line with EU practice?

28. The provisions described in paragraphs 89 to 94 of the report whereby associations could exercise a victim's rights in criminal courts were very broad in scope. However, according to paragraph 93, such associations must have the prior approval of the Ministry of Justice, and he enquired what the conditions for that were. He asked whether the bill referred to in paragraph 97 would effectively allow for the introduction of affirmative action to combat racial discrimination.

29. Mr. TANG Chengyuan observed that paragraph 72 contained a very detailed description of the various forms of discrimination, far more detailed than that provided by other States parties in their reports. Referring to the information contained in paragraphs 105 to 109, he enquired whether an individual member of an association could be held criminally responsible for racist acts committed by the association as a whole. He also asked what was meant by the phrase "disrupts public law and order" in paragraph 105. How could the victims of racist acts committed by associations seek redress? Were there many racist associations in Luxembourg? He would welcome information on any judicial decisions relating to them.

30. Mr. ABOUL-NASR asked whether individuals could apply to the Ombudsman for assistance in the first instance, or only once they had been through the courts. He asked whether the definition of "the public" (para. 18) included resident foreigners or visitors to the country, or only nationals. With reference to paragraph 21, he asked to whom the Ombudsman was required to report on his or her activities, and whether the Ombudsman was answerable to parliament. Noting that an eight-year term of appointment (para. 23) might be considered long, he sought clarification as to whether the Ombudsman was elected or appointed.

31. He asked why Islam did not enjoy the same status as other religions in Luxembourg. He further asked whether there were any mosques in Luxembourg, and whether there were any differences in the procedures involved in building a mosque and building a church.

32. Referring to the case mentioned in paragraph 39, he disagreed with the conclusion that the use of the term "niggers" was not insulting.

33. Ms. DAH, said that Luxembourg's commitment to human rights was evidenced by its good record of ratifying international instruments; in that context, she asked why Luxembourg had not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. She welcomed steps taken at the national level, such as the creation of new institutions.

34. The statement in paragraph 99 of the report that, as racial segregation and apartheid were unknown in Luxembourg, there was no need to take measures to prohibit them should be reconsidered in the light of the Government's own recognition, in paragraphs 32 and 257, of the advisability of a precautionary approach in order to prevent racial discrimination and xenophobia from emerging in future. She wished to know what steps Luxembourg had taken to implement the Durban Declaration and Programme of Action. Did Luxembourg have any plans to reconsider its decision not to prohibit racist organizations?

35. Given the recent expansion of the EU, she asked for clarification of exactly which countries fell under the categories of “Other EU” and “Others” in the table showing the number of foreigners living in Luxembourg (para. 45).

36. Mr. CALITZAY asked whether it was feasible for individuals to ask a member of the Chamber of Deputies to submit a complaint to the Ombudsman on their behalf (para. 19). With respect to the harsher penalty that had been introduced for slander and defamation where the defamatory allegations were motivated by unlawful discrimination (para. 55), he asked what the situation would be if the defamatory allegations were motivated by lawful discrimination. He enquired whether there had been any cases of racist associations being disbanded for disrupting law and order (para. 105) or of individuals being sentenced for membership of a racist organization (para. 110). Had the harsher penalties imposed on persons entrusted with public authority in cases of unlawful discrimination been prompted by an increase in the number of such cases?

37. Mr. PILLAI expressed satisfaction that the Government had made the amendments to the Criminal Code that had been recommended by the Committee following its consideration of Luxembourg’s ninth periodic report. However, it had been reported that the new criminal provisions had been applied only rarely: most cases had involved racist insults or graffiti, and in the most serious cases offenders had not been identified. No cases of physical violence had been reported. He asked whether those outcomes reflected the quality of the investigation and, if not, what they did reflect. He noted that there were reports of non-citizens from outside the country being employed in unskilled jobs, including asylum-seekers who were forbidden from working and persons without proper papers. He urged the Government to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

38. Mr. HERNDL commended the State party for establishing the Permanent Special Commission against Racial Discrimination, pursuant to article 14, paragraph 2, of the Convention. However, he wondered whether the low number of complaints filed since its establishment was not an indication that not enough had been done to publicize its existence. He expressed astonishment at the decision regarding the use of the term “niggers” by a speaker on a radio programme (para. 39), but welcomed the fact that such matters were at least being given consideration.

39. Mr. LINDGREN ALVES said that his first impression on reading the report had been that the country seemed perfect. Although the issues raised by Mr. de Gouttes had made it clear that not even Luxembourg was perfect, his only questions concerned the quotas for asylum-seekers and the political representation of resident foreigners. The explanation given for Luxembourg’s failure to prohibit racist organizations would not have held water if it had been a bigger country; however, provided that offending individuals were punished, it was difficult to conclude that the Government was not abiding by the Convention.

40. Mr. THORNBERRY asked who benefited from the “various projects” to promote interculturalism in the Luxembourg school system (para. 198), and whether there was an intercultural dimension to the school system as a whole. What did the delegation understand by the philosophy and ethos of interculturalism, and how did it relate interculturalism to the country’s multicultural reality?

41. With regard to the use of a certain offensive term that had been deemed at variance with the Convention, he referred the delegation to the Committee's discussions of the same term when it had considered communication No. 26/2002, *Hagan v. Australia* (CERD/C/62/D/26/2002). It had concluded that use and maintenance of the term could be considered offensive and insulting, even if for an extended period it might not have necessarily been so regarded, and that the Convention, as a living instrument, must be interpreted and applied taking into account the circumstances of contemporary society.

42. Mr. BERNS (Luxembourg) said he thought the conclusion that "the country seemed perfect" was dangerous, as countries should never lower their guard against the threat of racism or intolerance.

43. Statistics on asylum applications would be circulated to the Committee members. There were no statistics on persons in the country illegally. As Luxembourg's borders were only with other States parties to the Schengen Agreement, the compilation of such data was difficult.

44. Ms. SCHAAK (Luxembourg) said that the bill on the incorporation of Council Directive 2000/43/CE had been submitted to parliament in November 2003, but had not yet entered into force, as the opinion of the Council of State had not been received until December 2004. That bill had been examined together with another bill relating to Council Directive 2000/78/CE, submitted by the Minister of Employment, on equal treatment in employment not only on the basis of race or ethnic origin, but also on the basis of religion, sexual orientation, disability or age. The Council of State had asked the Government to combine the two bills, as they contained a number of common provisions, such as definitions. The concepts of "direct" and "indirect" discrimination would be introduced into national legislation, and harassment would be included as a form of discrimination. The recently-elected coalition Government had prioritized the issue, so it was expected that the directives would be incorporated within a few months. Both directives were applicable in the public and private sectors, although the field of application of Directive 2000/43/CE was broader, as it applied to education, social security and other services in addition to employment.

45. Many other EU countries had, like Luxembourg, set up a body for the promotion of equal treatment, as prescribed by article 13 of the Directive. Some had set up one body to receive complaints on various grounds, while others had set up several bodies, each to deal with a separate type of complaint. Luxembourg's Government Council had agreed to establish a single body to deal with discrimination on grounds of race, ethnic origin and sex. As the Advisory Commission on Human Rights dealt primarily with complaints of racism, and the Government wished to extend competence to complaints on other grounds, it seemed simpler to establish a new institution.

46. Mr. BERNS (Luxembourg), referring to the question whether Luxembourg envisaged ratifying ILO Convention No. 169, said that, as far as possible, Luxembourg harmonized its legal framework with those of other EU countries. As only 17 countries, and only 2 EU countries, had ratified that Convention to date, Luxembourg did not envisage ratifying it as yet.

47. Ms. SCHAAK (Luxembourg) said that her country had ratified the 1954 Convention relating to the Status of Stateless Persons, and the 1973 Convention to reduce the number of cases of statelessness; decisions concerning statelessness were based on those two conventions.

Luxembourg had included the principles of article 1 of the 1961 Convention on the Reduction of Statelessness in the Luxembourg Nationality Act, which provided that such nationality was granted to children born in the Grand Duchy who did not have a nationality because their parent or parents were stateless.

48. Ms. MARTIN (Luxembourg) said that, following a policy debate in the Chamber of Deputies in 2000, the Minister of Education had implemented a number of measures, subject to continuous follow-up, aimed at the integration of foreign children in schools, intercultural education and teacher training. When designing school curricula and structures, the Luxembourg authorities aimed to guarantee the best opportunities to all students. Any measure taken to eliminate an obstacle to a student achieving the level of qualification corresponding to his ability must apply to all children.

49. More general measures had been adopted within the context of the European Community Action Programme to combat discrimination, which had a large budget to finance projects at the local, national and international levels.

50. Within the framework of the Programme of Action adopted in Durban, Luxembourg had undertaken annual awareness-raising projects since 2002. The national campaign had started with the distribution of pamphlets and posters on the five motives for discrimination, including race or ethnic origin. Given the high number of foreign workers, it had seemed important to primarily target workplaces, in close collaboration with the voluntary sector. The objectives of the 2004 campaign had been to launch public debate, follow up the public awareness campaign, and organize specific activities aimed at working people. There had also been television and cinema advertising and nationwide events to celebrate the International Day for the Elimination of Racial Discrimination. The 2005 campaign would follow the same lines. A conference on that theme was planned, and a study on discrimination in the workplace would be conducted.

51. Mr. BERNIS (Luxembourg), referring to initiatives to follow up the Durban Declaration, said that training was provided to both students and teachers. The school curriculum had a multicultural focus, which had been introduced into a large proportion of textbooks, with the objective of preventing intolerance, racism and sexism and allowing all students to identify with the content of what was being taught.

52. Teachers were trained both during their basic studies and through further education. In their basic training, two modules made reference to requirements in terms of education on human rights and citizenship. Further training of teachers focused on using texts on human rights and children's rights in the classroom. There were also projects focusing on inter-religious dialogue and encouraging young people to become involved in humanitarian causes.

53. Ms. MARTIN (Luxembourg), referring to the percentage of non-nationals living in his country, said that the figures varied from region to region. For example, the southern region had needed foreign workers for industry in the past, and so continued to have a higher number than other regions. The fact that more than 50 per cent of the capital's population was made up of foreigners was due primarily to the availability of work there, and was not the result of State planning.

54. Ms. SCHAACK (Luxembourg) said that, as only the first two years of a law degree course could be studied in Luxembourg, all lawyers were trained abroad, generally in France or Belgium, where strong emphasis was placed on human rights. In practice, human rights were invoked in the Luxembourg courts on a daily basis, especially in connection with EU legislation; consequently, judges must have in-depth knowledge of that domain. Judicial assistants, who went on to become judges, received their basic training at the National College of Magistrates in Paris. All judges, in both administrative and judicial courts, received further training through courses organized by the National College of Magistrates, the Academy of European Law, the Academy of German Law, the European Institute of Public Administration or the European Judicial Network.

55. The police training college provided training based on racial tolerance, so as to optimize contacts with all sectors of society, irrespective of nationality, religion or ethnic origin. The objective was the integration of foreigners and the observance of human rights principles in police investigations. Basic training included modules on victim assistance and conflict management, often given by foreign experts, and courses were also run by Amnesty International. Officers were also trained in areas such as the policing of foreigners, asylum and treatment of detainees, and received ongoing training. As part of recruitment policy, unsuitable candidates could be eliminated on the basis of psychometric tests. Prison staff were given basic training, organized by the Institute of Public Administration.

56. Mr. BERNS (Luxembourg) said that immigration officials, who had direct contact with immigrants and foreigners, received training on EU directives under which Luxembourg was obliged to conform to minimum norms for the treatment of asylum-seekers. In addition, the Office of the United Nations High Commissioner for Refugees provided training to all officials who came into contact with asylum-seekers.

57. Regarding the question on combating prostitution and trafficking, the EU directives on that matter were in the process of being incorporated into national law. A Council of Europe convention was also being drafted. In the meantime, Luxembourg had concentrated on the area of issuing visas. Since 1920, Luxembourg had had a consular agreement with Belgium, whereby in countries where Luxembourg had no representation, the Belgian consulate could issue visas on its behalf. When the Government had noticed that the number of visas requested in Ukraine had increased abnormally, a fact which it suspected was linked with prostitution, the Belgian consulate in Kiev had been asked not to issue any more Luxembourg visas. That had led to a rapid decrease in the demand for visas. Despite much criticism from the groups involved, the Government had remained firm on that matter. In April 2004, the Government had terminated the visa system which had been agreed for “cabaret artists”, as it was strongly suspected that the artists were involved in prostitution.

58. Ms. MARTIN (Luxembourg) said that the amendment to the electoral law had come into force in February 2003, and a copy would be made available to the Committee.

The meeting rose at 6 p.m.