

## Luxembourg

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*Consultative Commission on Human Rights (CCDH)*

### Independence and effectiveness of the NHRI

#### International accreditation status and SCA recommendations

The Luxembourgish NHRI was reaccredited with A status in November 2015. The SCA encouraged the NHRI to advocate for an independent and sufficient funding that allows for remunerated full-time members in the NHRI's decision-making body. Moreover, the SCA encouraged initiatives to result in the NHRI's annual report being tabled and debated by Parliament. The SCA commended the CCDH for continuing to produce reports and recommendations, despite the fact that consultation of the NHRI on draft legislation was not systematic.

#### Developments relevant for the independent and effective fulfilment of the NHRI's mandate

The mission of the National Rapporteur on trafficking in human beings (appointment in April 2014) takes up a large part of work of the CCDH. Nonetheless, the increase in secretariat staff from 3 to 5 (in 2017 and 2020) has allowed the CCDH to carry out all of its tasks and to address new issues on its own initiative.

### Human rights defenders and civil society space

As regards the enabling framework for civil society organisations, various NGOs have raised concerns about **respect of privacy standards with regards to existing rules on registration** of non-profit organisations. All non-profit organisations have to be registered and listed in the Luxembourgish Trade and Companies Register. A law from 1928 lists the documents that have to be submitted upon registration, including inter alia a list with the names, addresses and nationalities of the members of the association and specifically foresees that any person interested can have access to this information. This poses a problem in terms of the right to the protection of the private life and personal data of individuals as well as their safety, as anyone can access the aforementioned document on the Luxembourg Business Register website. A legislative proposal amending the law from

1928 has been introduced in 2009 and then again in 2018, but so far, no changes have been voted by Parliament.

Furthermore, in a recently published opinion, the CCDH found that **freedom of expression and access to information** was negatively impacted by a legislative proposal on the national security authority. While this proposal aimed at adapting the national legislation to European and international confidentiality standards, inter alia by introducing criminal sanctions, it did not provide any exceptions for press and whistle blowers (see further below on media pluralism). The CCDH issued an opinion and recommendations to the government in order to ensure a human rights compliant revision of the draft legislation on the national security authority.

Issues concerning the **right to participation** can be reported in particular in the area of business and human rights (BHR), on which the Ministry for Foreign Affairs put in place a working group composed of government, civil society, private sector and national human rights defender representatives. While the CCDH welcomes the creation of this group, it found that the position of civil society and the CCDH is often disregarded or silenced. At the same time, the government is publicly claiming that the decisions of the group are based on a consensus. The CCDH issued a position paper on this matter in order to address the disregard by the working group of civil society's positions. Moreover, it attended the meetings of the BHR working group and issued recommendations. The President of the CCDH also voiced his concerns in numerous press interviews.

Cases of **harassment of activists and human rights defenders** have also been reported. These include the case of a young musician who was sued by right-wing politicians, because of critical views he expressed towards them in a song. While he was acquitted in first instance as well as in the appeal trial, the public prosecution office has been criticised for supporting the claims in the court of first instance and for launching an appeal against the first acquittal, even though it then abandoned its initial stance.

There have also been reports that a company located in Luxembourg has sued human rights defenders because of their claims of alleged human rights violations committed by such company in third countries. There are no mechanisms under Luxembourgish law or in the existing national action plan which protect human rights defenders from strategic lawsuits against public participation.

## References

- CCDH opinion on the national security authority from 2019: <https://ccdh.public.lu/dam-assets/fr/avis/2019/Avis-PL-Autorite-nationale-Securite.pdf>
- CCDH position paper on business and human rights :
- <https://ccdh.public.lu/dam-assets/fr/avis/2019/Prise-de-position-Entreprises-et-droits-de-l-Homme-version-finale.pdf>
- Information on NGO from Luxembourg being used for their denunciations of HR violations: <https://www.sosfaim.lu/en/onnesetairapas/>
- Drafts to amend the 1928 law on registration of non-profit organisations:
  - <https://chd.lu/wps/portal/public/Accueil/TravailALaChambre/Recherche/RoleDesAffaires?action=doDocpaDetails&backto=/wps/portal/public/Accueil/Actualite&id=7392>
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## Checks and balances

The CCDH has identified some instances and issues which may potentially threaten the separation of powers, limit the participation of rights holders and the accountability of State authorities.

One issue concerns the **relations between the judiciary and the public prosecution service** and can be illustrated by the following occurrence. In 2019, members of the Parliament addressed several parliamentary questions to the Police and public prosecution because of serious criticism over the lack of transparency and sufficient legal basis of their databases collecting personal data. In that occasion, the Procureur Général d'État and the President of the Cour supérieure de justice (Highest court of the judicial order in Luxembourg) addressed a common letter to the President of the Parliament criticising its members for the high number of questions asked on this matter. This was criticised among others by the Parliament as an attempt to limit its power.

Concerning **participation and consultation of rights holders** in decision making, the way the constitutional reform launched in 2009 to fundamentally reform and modernise the constitutional text from 1868 raises some concerns. This reform was supposed to culminate in a public referendum, allowing the Luxembourgish citizens to vote for or against the new

text of the constitution. However, in November 2019, it was announced that the fundamental reform, and therefore also the referendum, would be abandoned and the text of the constitution would be amended incrementally over the next years, depriving the citizens of this extraordinary chance for political participation.

Other systemic problems related to participation are worth mentioning.

One is that, as the CCDH has pointed out for some years, the drafts of grand-ducal **regulations, contrary to legislative proposals, are not published**. While in theory, the CCDH can elaborate its opinions on its own initiative or at the Government's request on any regulatory act, it has never been asked by the government for advice on draft regulatory acts and has no access to those until the State Council publishes its opinion, together with the draft, on its website. The CCDH addressed this issue in a recent opinion. Furthermore, the president of the CCDH sent a letter to the Prime Minister in which he asked for the drafts to be made available to the public or at least for the CCDH to receive those directly or indirectly affecting human rights.

Another systemic problem concerns **participation in elections** and is related to the fact that national elections are only open to Luxembourgish nationals, thereby excluding almost half the population residing in Luxembourg from the exercise of the right to vote, thus severely limiting their political participation.

### *References*

- Common letter by the Procureur Général d'État and the President of the Cour supérieure de justice can be found here : <https://www.woxx.lu/justice-la-lettre-integrale-au-president-de-la-chambre-des-depute-e-s/>
- Criticism of that approach :<https://www.wort.lu/fr/luxembourg/ca-chauffe-entre-les-parlementaires-et-la-justice-5da6e62fda2cc1784e34dbe2>
- Press article about fundamental reform of the constitution being abandoned:
- <https://www.wort.lu/fr/luxembourg/la-grande-reforme-de-la-constitution-abandonnee-5dde28ebda2cc1784e350b1c>
- Recent opinion of the CCDH addressing the issue of the non-publication of draft regulatory acts: <https://ccdhdh.public.lu/dam-assets/fr/avis/2020/CCDH-Avis-PRGGD-CommconsinteretsupMNA-final.pdf>

## Functioning of justice systems

Existing rules on **legal aid** limit in the CCDH's opinion the ability of certain categories of people to access justice. Currently, the financial eligibility for free legal aid is limited to a fixed threshold, which does not take into account for example debts or other expenses a person or family might have. This means that any person, whose income is above that threshold, even by 1 euro, loses entirely the right to free legal aid. This rigid model hinders the access to justice of all the persons whose income exceeds the current threshold, but who still do not have the sufficient financial resources to initiate a legal action or to defend themselves in court proceedings. The government is aware of this problem and has announced a reform of the current legal aid system, which would introduce a new model permitting one to benefit from partial legal aid and the amount would progressively decrease based on the financial resources.

In this context, the CCDH draws attention to the fact that the 2015 law on the reception of applicants for international protection provides for a right to free legal aid for asylum seekers only in relation to disputes concerning the reduction or withdrawal of reception conditions, which the CCDH considers to be a discrimination of asylum seekers and a limitation of their fundamental right of access to justice. The CCDH has raised this issue in various opinions and reports over the years.

Another issue impacting on the quality of the justice system is that for many years, there has been no comprehensive system in place when it comes to the **publication of judgments** by national courts. While the decisions by the administrative courts and the constitutional court have been regularly published, this has not been the case for the judicial courts. While this is slowly changing, all court decisions are still not widely available as the judicial authorities make a pre-selection of important decisions and/or publish summaries of decisions by the court of appeal, the court of cassation and the constitutional court.

Finally, the CCDH was informed of a practice by which national judges verify the identity, and thus also the address, of anyone appearing before the court. This leads to situations in which victims of domestic violence or trafficking of human beings have had to divulge their new address, or the address of the shelter they have been placed in, in front of the defendant, which can pose a great threat to their safety and disregard **victims' rights**. In its 2nd report on trafficking of human beings (THB) in Luxembourg, the CCDH, in its mandate as national rapporteur, addressed the issue of the safety of THB victims and the protection

of their personal data by the judicial authorities and insisted on the importance of raising the awareness of judges.

### *References*

- Link to parliamentary question and statements made by former Minister of Justice on the reform of the law on free legal aid : <https://5minutes.rtl.lu/grande-region/laune/a/1153899.html>
- Report by the CCDH on reception conditions of asylum seekers in Luxembourg, addressing inter alia the issue of limited free legal aid :
- <https://ccdh.public.lu/dam-assets/fr/avis/2018/Rapport-Conditions-accueil-DPI-version-26112018-Version-finale.pdf>
- Opinion of the CCDH on the draft legislation on reception conditions of asylum seekers where we addressed the same issue :
- <https://ccdh.public.lu/dam-assets/fr/avis/2015/projet-avis-PL-6775-Accueil-final.pdf>
- Law on receptions of applicants of international protection from 2015 : <http://legilux.public.lu/eli/etat/leg/loi/2015/12/18/n16/jo>
- CCDH 2nd report on trafficking of human beings in Luxembourg : <https://ccdh.public.lu/dam-assets/fr/avis/2019/CCDH-2e-Rapport-sur-la-traite-des-etres-humains-FINAL-.pdf>

## **Media pluralism**

In its opinion on the draft legislation on the national security authority, the CCDH found that freedom of expression and access to information was negatively impacted. While this draft legislation aimed at adapting the national confidentiality legislation to European and international confidentiality standards, inter alia by introducing criminal sanctions for illegal leaks, it did not provide any exceptions for press and whistle-blowers. Journalists of the public service radio station (Radio 100,7), who discovered and informed Parliament of a detected vulnerability in their public database, were prosecuted and the offices of the Radio station were raided by the Police. In the end, public prosecution decided to stop the proceedings due to a lack of evidence. These proceedings however were criticised as they sent a strong negative signal to potential whistle-blowers/journalists to come forward with information relevant for the general public. The CCDH recommended amending the draft legislation on the National Security Authority and providing for sufficient protection for whistle-blowers, informants and journalists (see the section on human rights defenders and civil society space above).

There have also been discussions on pluralism and the independence of public service media (PSM) in Luxembourg. A peer-to-peer review on PSM assessed the management practices of the Établissement de Radiodiffusion Socioculturelle du Grand-Duché de Luxembourg (ERSL). It found for instance that the fact that the Luxembourg government appoints the President and the eight members of ERSB Board of Directors, approves ERSB's annual accounts and activity reports and sets the budget on a five-year basis, automatically makes ERSB politically dependent, with a risk of politicisation within its Board, even though the spirit of the governance rules is to represent the interests of the community in its broader sense. The Prime Minister responded and vowed to launch a broader debate, among others in Parliament. In February/March 2020, Radio 100,7 adopted a position with several recommendations. It must be noted that there is a draft legislation (avant-projet de loi) on revising the public financial aid for the press/media, which has been welcomed by the President of the Press Council of Luxembourg.

The CCDH found that the recent draft legislation on video surveillance may also have negative impacts on freedom of expression. In its opinion on this draft law, the CCDH voiced particular concerns about the lack of precision of certain provisions and highlighted the risk of a negative impact on journalists, whistle-blowers and informants associated to camera surveillance. The CCDH recommended that these risks should be taken into account by the authorities in charge of performing or supervising video surveillance and of authorising such systems, as well as the introduction of sufficient safeguards in the law.

### *References*

- Link to the CCDH's opinion on video surveillance :<https://ccdh.public.lu/dam-assets/fr/avis/2020/CCDH-Avis-PL-7498-Videosurveillance-Version-finale.pdf>
- For our opinion on the draft law on the national security authority, see above.
- Discussions on pluralism and independence of public service media :  
<https://www.100komma7.lu/article/aktualiteit/eng-gefor-fir-onofhaengegkeet>
- Peer to peer review on PSM values :  
[https://img.100komma7.lu/uploads/media/default/0001/85/2018-report-p2p-ersl-4web\\_1e3c47.pdf](https://img.100komma7.lu/uploads/media/default/0001/85/2018-report-p2p-ersl-4web_1e3c47.pdf)
- 100,7 position with recommendations :  
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- Reaction by President of the Press Council of Luxembourg :  
<https://www.100komma7.lu/article/aktualiteit/qualiteit-an-d-redaktioun-brengen>

## Corruption

Apart from some recent cases of public officials or employees who have been accused of embezzlement of public funds, there have been no major reports on corruption. In general, the CCDH hasn't found any particular evidence of state measures or practices relating to corruption, or significant inaction in response to alleged corruption.

### In-focus section on COVID-19 measures

#### Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

The government has declared a state of crisis during which it can take regulatory acts in all matters. This state, prolonged by the Parliament, cannot exceed 3 months. The Constitution requires that the measures taken must remain in line with the principles of proportionality, necessity and adequacy, and must not infringe upon the Constitution or international obligations. These regulatory acts will automatically cease to exist after the state of crisis ended.

According to the CCDH, the most significant impacts of measures adopted in response to the COVID-19 outbreak are the following.

Free movement of persons is largely restricted and pecuniary sanctions have been put in place. However, they lack precision and are open to interpretation. Authorities invite the population to denounce their neighbours and the persons infringing the law, which may fuel hostility among the population.

There have been reports indicating a rise in domestic violence. According to these reports, it is too early to say whether or not this rise is directly linked to the confinement measures. On 14th April 2020, a new helpline (7 days a week, from 12h00 to 20h00) has been put in place by NGOs supported by the government. It is also possible to contact the helpline by sending a text message.

According to some sources, freedom of expression, media freedom and access to information has been limited and is criticised by press associations. The government tends to control and restrict access to information (access of the press to hospitals, access to statistics, etc).

Moreover, these measures have a severe impact on asylum seekers and refugees. The CCDH has received reports that detention centres for asylum seekers have been emptied. Half of the centres' population has been set free, without authorities having put in place adequate measures to provide for basic services such as housing. Moreover, there have been reports of residents being removed from reception centres because of alleged misbehaviour conflicting with internal rules (for example not respecting midnight curfew). Following criticism of civil society and the refusal of the Police to carry out these evictions, the public administration's policy changed. In some refugee centres, residents do not have access to internet because WIFI is limited to common areas which have been closed to prevent the spread of the virus. This also severely impacts the right to education of children since the education system currently exclusively relies on digital education.

Access to justice is also limited as a result of the fact that numerous court hearings and deadlines have been postponed. Lockdown is also having an impact on lawyers who voiced concerns about their subsistence - the Minister of Labour considers however they do not need further financial assistance.

There are rising data protection concerns regarding mobile applications or the tracking of mobile phones. The Prime Minister seems to be currently opposed to such methods.

The President of the CCDH addressed an open letter to the Prime minister regarding the potential impact on human rights of measures taken to face the COVID-19 pandemic. The CCDH is also collecting information on a daily basis regarding the measures taken and the potential risks for human rights.

### **Most important challenges due to COVID-19 for the NHRI's functioning**

The CCDH is subject to teleworking requirements which impact on its power to carry out investigations and receive individual complaints. This makes fulfilling its monitoring functions more difficult. Since most measures adopted in connection with the state of crisis are regulatory acts and draft regulatory acts are not published (see above under checks and balances), it is not possible to assess the justification/proportionality of these acts. Most external meetings have been postponed. The CCDH thus heavily relies on the information available from its own members, the press, civil society and the government. It remains in close contact with its own members, civil society and ENNHRI, and regularly holds videoconferences with its members.

### *References*

- First regulatory act declaring measures during state of crisis :  
<http://legilux.public.lu/eli/etat/leg/rgd/2020/03/18/a165/consolide/20200320>
- Criticism by President of the Press Council (<https://www.rtl.lu/news/national/a/1497780.html>)  
and by the association of journalists (<https://www.woxx.lu/crise-sanitaire-et-droit-a-linformation-la-verite-est-la-premiere-victime/>)

