

Luxembourg

Consultative Commission on Human Rights (CCDH)

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.

Impact of 2020 rule of law reporting

Impact on the Institution's work

There has been no direct impact on the institution's work. However, learning about the rule of law situation in other countries and obstacles encountered by other NHRIs has been interesting on an internal level.

Follow-up initiatives by the Institution

There have been no follow-up initiatives, due to work overload and a lack of capacity and resources. Since March 2020, most of the Commission's time and resources have been invested in the screening of the COVID-19 legislation and other priority issues.

Independence and effectiveness of NHRIs

Changes in the regulatory framework applicable to the Institution

There have been no changes in the national regulatory framework since the 2020 report.

Enabling space

There has so far been no interference in the CCDH's functioning that could have endangered its independence.

In general, the CCDH deplors that the government very rarely follows on its recommendations. For instance, very few of the Commission's recommendations regarding COVID-19 laws have been taken into account (10 opinions were issued in 2020, 4 in 2021). There is, for that matter, no obligation for the government to reply or follow on the CCDH's recommendations laid out in the law that established the Commission.

While the CCDH is occasionally consulted on a draft legislation by a parliamentary committee, this remains very rare. Moreover, the CCDH has deplored for years the fact that the government does not systematically make the draft Grand-Ducal regulations available for the Commission to review. In addition, apart from a few exceptions such as the COVID-19 laws, Grand-Ducal legislations and regulations are not systematically consolidated, which affects legal clarity and certainty.

Regarding the cooperation with other human rights bodies, the government occasionally conducts consultations (for example on the elaboration of future action plans or draft legislation) on a bilateral basis or within the framework of the interministerial human rights Committee. However, their inputs and recommendations are then rarely considered.

While the government accepted the CCDH's recommendation to establish an independent mechanism to monitor and analyse the situation of older persons or persons with disabilities living in care facilities, it entrusted this mission to the Commission without giving it the necessary resources to do so.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

In order to be able to better fulfil its mandate, the CCDH applied for additional (human) resources, and regularly raised concerning issues in its various opinions and publications.

Human rights defenders and civil society space

As highlighted above, and in the CCDH Report on the COVID-19 consequences on human rights, several journalists' associations (e.g., Association luxembourgeoise des journalistes professionnels and Conseil national de la presse) strongly criticized the government's communication and transparency, notably their limited access to information (no physical presence of journalists during press conferences and limited access to health facilities).

In that context, journalists recalled that "Luxembourg still [is] one of the only European countries to not guarantee a right to access to information for the press" and called the government to introduce this right without delay. The CCDH similarly calls the government to take this criticism into account and guarantee journalists access to information in all circumstances.

Besides, the CCDH was preoccupied by the reaction of the Minister of Education, Children and Youth to a parliamentary question on the situation in Luxembourgish schools (question n° 3200 of 15 November 2020), where he criticized the journalists' interrogations regarding public administrations' integrity during times of crisis, and regarding the high number of infections in schools. The Minister denied and condemned questions and allegations directed at a government report on the COVID-19 situation in schools and pointed out that questioning the integrity of public administration is dangerous and could lead to protest movements. The press plays a crucial role in the rule of law. Valuing the press' role and ensuring transparency are vital to a democratic society, and to trustworthy public institutions.

While no precise initiative has been recently taken by the CCDH with regard to civic space and human rights defenders, the Commission has met with a representative of the press in order to discuss issues exposed above and potential steps to strengthen the right to access to information.

Moreover, the CCDH has been asked by the government to participate in the development of the project "shelter cities" for human rights defenders. The aim of this project is to set up a procedure for the reception of individual human rights defenders in Luxembourg for a predetermined rest period, via the protectdefenders.eu website.

References

- https://ccdhdh.public.lu/dam-assets/dossiers_th%C3%A9matiques/bilan_covid19/rapports/Covid-EffetsDroitsHumains-DocReflexion-20210225.pdf
- Réponse du Ministre de l'Éducation nationale, de l'Enfance et de la Jeunesse à question N°3200 de Madame Martine Hansen et de Monsieur Claude Wiseler concernant Communiqué du Ministère de l'Éducation nationale, de l'Enfance et de la Jeunesse sur l'état de la situation dans les écoles luxembourgeoises au 15.11.2020.
- Richard Graf, Crise sanitaire et droit à l'information: La vérité est la première victime, WOXX, 10 April 2020

Checks and balances

The CCDH addresses recommendations to the government through opinions on draft laws or through its reports on the general state of human rights in Luxembourg. In 2020, it addressed 14 opinions and one report to the government and parliament.

Functioning of justice systems

Apart from cooperating with other national human rights structures (e.g., Centre pour l'égalité de traitement, Ombudsman pour enfants et jeunes), the CCDH did not take any initiatives related to the functioning of the justice system.

Media pluralism and freedom of expression

The CCDH raised issues related to the access to information during the sanitary crisis (see below).

The draft legislation on video surveillance already mentioned in the ENNHRI 2020 Rule of Law Report is still being developed. As a result of the opinion of CCDH and its recommendations issued therein, the Commission had follow-up meetings with the Minister of Internal Security and the General Police Inspectorate in charge of a recently published study on the effectiveness of video surveillance. The draft legislation is still undergoing some changes and some of our recommendations seem to have been taken into account.

Corruption

Related issues are not a current priority in the CCDH's work and therefore have not yet been considered.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

Democracy and rule of law have suffered from the impacts of the health crisis. In the face of many unknowns and the urgency put forward to stop the spread of the virus, the democratic process, participatory and transparent, could not always take place in due form.

For instance, the suspension of the right to protest during the first months of the state of crisis and the voting of controversial laws (in the political world as well as for the population) does not correspond to a democratic and pluralistic process. Besides, apart from a few exceptions, laws and regulations are not all systematically consolidated, which makes it difficult for the population to be aware of the applicable rules. This is even more problematic considering that some measures are attached to sanctions.

Considering the permanent evolution of COVID-19 and related scientific research, there must be a thorough and repeated analysis of the merits, proportionality and necessity of measures taken in response to the pandemic.

The CCDH published on 25 February 2021 a report on the health crisis and its consequences on human rights. As the COVID-19 crisis is still ongoing, it is difficult and premature to provide a complete analysis, however the CCDH can already note important impacts of the crisis and measures taken in response on several human rights, notably: rights to life, to health, to information, to education, to asylum, to private and family life, to culture, freedoms of movement, of assembly, of expression, socio-economic rights, children's rights, gender equality, non-discrimination on the basis of gender identity and sexual orientation, as well as the principles of the rule of law.

The government consulted the CCDH on all its draft legislation aimed at responding to the COVID-19 pandemic, however always within extremely short timelines. This considerably limits the possibility for external actors to participate to the public debate and perform a thorough analysis of the new measures.

Moreover, the CCDH noted a general lack of transparency and insufficient access to information throughout the sanitary crisis. For instance, press conferences were not made fully available online after their live broadcast, excluding the question-and-answer sessions with journalists. This was eventually remedied upon the intervention of the CCDH and journalists' associations.

Although the government adopted a laudable inclusive approach in guaranteeing access to COVID-19 testing for residents as well as for cross-border workers, the CCDH deplored its decision to exclude these workers from the national statistics, for fear of other countries' reaction (those imposing restrictions to Luxembourgish citizens). Yet, ignoring such a significative part of the daily population in Luxembourg in the relevant data represents a flagrant lack of transparency.

Other than the answers already given above, the CCDH highlights that the pressure exerted by members of the government on certain institutions, such as the Council of State (Conseil d'Etat),

in the legislative process is attaining unprecedented and dangerous levels. Under Luxembourgish law, the Council of State is required to advise laws. If they formally oppose to a law, it cannot be passed unless a period of 6 months passes. Since Luxembourg is amending its legislation related to COVID-19 measures and restrictions on a monthly or even on a two-week basis (most of the restrictions and measures are reviewed, amended and prolonged on a monthly basis, lately more frequently due to the fast changing epidemiological situation) under a considerable amount of pressure (there is often only a couple of days between the publication of the draft and the vote on the law in Parliament), members of government have made public statements hinting at the fact that if the Council of State opposes certain amendments, there will be no rules at all.

Moreover, certain areas (such as education/schools) and the restrictions applicable are currently not regulated by laws, although this should be the case under the Luxembourgish Constitution and international human rights law. The Ministry of Education issues “recommendations” that can have considerable impact on the fundamental rights of the children and other persons affected by the measures. The same goes for the restrictions applicable in institutions for people with a disability or older persons. The CCDH has criticised this approach in its recent report on the impact of COVID-19 on human rights and reminded the government to make sure that rules in place guarantee the rights of the child and the rights of persons with disabilities. Indeed, this current use of recommendations led and is still leading to a wide array of incoherent measures. The human rights of those involved are thus not equally protected and the level of protection afforded depends largely on the institutions (and in case of children, on their teachers and parents).

References

- https://ccdh.public.lu/dam-assets/dossiers_th%C3%A9matiques/bilan_covid19/rapports/Covid-EffetsDroitsHumains-DocReflexion-20210225.pdf

Most important challenges due to COVID-19 for the NHRI’s functioning

Considering the sanitary crisis and CCDH related work (opinions on COVID-19 laws, report on human rights implications of the crisis), the Commission has not been able to thoroughly address other issues in the past year.

