

## Luxembourg 2024

### Information from: Consultative Human Rights Commission of Luxembourg

## Follow-up to last year's rule of law recommendations

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### State authorities' follow-up to regional actors' recommendations on rule of law

The European Commission's 2023 Rule of Law Report has been [discussed in Parliament](#) in the presence of Commissioner Didier Reynders. However, the Consultative Human Rights Commission of Luxembourg (CCDH) has not received any information regarding measures specifically taken to follow-up on the recommendations issued by regional actors, including the [European Commission](#). The CCDH is not aware of any follow-up measures related to the evaluation of the new legislation on lobbying, the access to official documents or the improvement of the legislative decision-making process by making it more inclusive.

Concerning the reform of the legal aid system, the [law of 7 August 2023 on the organisation of legal aid](#) was adopted by Parliament, and entered into force on the 1st of February 2024. The CCDH has not conducted an in-depth assessment of the legislation so it cannot evaluate whether it is sufficient to guarantee everyone's access to justice. However, a civil society organisation reported to the CCDH that it welcomed the fact that the scope of the legal aid system has been widened but also found that the reform did not address other obstacles. It still requires filling out long and complex questionnaires, as well as gathering documents certifying for example the non-existence of ownership if the applicant is not of Luxembourgish nationality. These bureaucratic requirements might discourage some people from introducing a request for legal aid.

### NHRI's follow-up actions supporting implementation of regional actors' recommendations

The CCDH supported the implementation of regional actors' recommendations by publishing the rule of law reports ([ENNHRI](#) and [EU](#)) on its website and by addressing these issues in its various opinions, reports (also to UN, EU or Council of Europe bodies), letters, public interventions as well as during its meeting with the European Commission on rule of law. Due to its limited resources, the CCDH was not able to engage in more specific actions in supporting the implementation of regional actors' recommendations.

However, since January 2023, when publishing an opinion on a legislative proposal, the CCDH systematically asks the government for an exchange of views on it in order to foster a more participative and evidence-based approach in the legislative process.

## **State authorities' follow-up to NHRI's recommendations regarding rule of law**

Last year, the CCDH was on very few occasions invited by Ministries to discuss its opinions on legislative proposals tabled by Government. These discussions are nonetheless quite rare and seem to depend on the Minister involved. So far, only the Minister of Internal Security (Greens) and the Minister of Justice (Greens) of the previous government proactively reached out to the CCDH to discuss a preliminary draft law on restricting the right to assembly or the reform of the juvenile justice and the draft grand-ducal regulation on the organisation of prison regimes respectively. It remains to be seen if the new government will continue this path.

The CCDH has not noticed any other follow-up measures.

## **Luxembourg 2024**

### **Information from: Consultative Human Rights Commission of Luxembourg**

## **Independence, effectiveness and establishment of NHRIs**

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### **International accreditation status and SCA recommendations**

The Luxembourgish NHRI was [last reaccredited with A-status](#) by the Sub-Committee on Accreditation (SCA) in March 2022. In its latest review, the SCA recommended that the NHRI advocate for amendments to relevant legislation to limit the number of times that members of the Commission may be reappointed and the President may be re-elected. Moreover, the SCA encouraged the NHRI to advocate for changes to its enabling law to provide for remunerated full-time members in its decision-making body.

Further, the SCA encouraged the NHRI to advocate for relevant changes to provide the explicit power to table reports directly in the legislature, rather than through the Executive, and in doing so to promote action on them. It also

recommended the institution to advocate for its reports to be discussed by Parliament. Additionally, the SCA called on the institution to continue to conduct systematic follow-up activities to ensure that its recommendations are implemented by the relevant authorities, in order to fulfil its protection mandate.

While acknowledging that the Luxembourgish NHRI has received increases in its budget in recent years, the SCA also encouraged the institution to continue to advocate for an appropriate level of funding to carry out its mandate effectively and independently.

## **Follow-up to SCA Recommendations and relevant developments**

While the follow-up of its opinions remains very limited, the CCDH is aiming to improve its own assessment of this follow-up. It is for example planning on sending questionnaires to the government asking for explanations on the extent to which its recommendations have been or are going to be taken into account in the legislative process. The CCDH is also considering requesting lawmakers to introduce an obligation for the authorities to respond to its recommendations in a timely manner, as recommended by GANHRI's Sub-Committee on Accreditation (SCA).

The CCDH is also, whenever possible, asking for more funding.

Currently, the CCDH is administratively attached to the Government. In 2023, the CCDH had internal discussions on the possible attachment to Parliament. It concluded that, in order to strengthen its independence, improve the resources at its disposal and be even more consistent with the spirit of the UN Paris Principles, an administrative link with the Parliament instead of the Government would be preferable. It is also considering the possibility to institute a professional full-time human rights defender presiding the CCDH. In 2023, the CCDH met with the then Prime Minister and the then president of Parliament to discuss these topics. Moreover, the CCDH is currently working together with Parliament to include the CCDH in a draft legislative proposal aimed at reforming the institutions already attached to Parliament (Centre for Equal Treatment, Ombudsman and Ombudsman for children and youngsters). So far, the CCDH has received positive feedback regarding this planned institutional reform. However, since this project is at a very early stage, it is still unclear to what extent the mission, functioning, role, and competences of the CCDH will change. The CCDH has established an internal working group in order to discuss these changes and put forward concrete solutions to be included in the above-mentioned draft legislative proposal.

## Regulatory framework

The national regulatory framework has not changed.

## NHRI enabling and safe environment

Compared to 2022, the situation remained largely unchanged in 2023. While there have not been any flagrant obstacles, the enabling environment is still in need of improvement.

Access to disaggregated data remains particularly problematic and has in some cases even worsened. For example, the existing tools of the judiciary are still inadequate for data and statistics collection purposes. The prosecution services are unable to gather disaggregated data and establish statistics because of the inadequacy of the tools at their disposal. Due to [legislative changes](#) related to data protection, which entered into force in 2023, the public prosecution services informed the CCDH, which is also the National Rapporteur on human trafficking under the EU Directive 2011/36 on preventing and combating trafficking in human beings and protecting its victims, that they are no longer able to communicate important information related to human trafficking cases, which would allow the CCDH to verify and establish statistics on its own. As a result, it is quite difficult, sometimes even impossible, for the CCDH to carry out its missions. This is a structural problem in Luxembourg which is not limited to the judiciary. An overhaul of the resources and tools at the disposal of all relevant authorities is necessary to allow for adequate data collection. Otherwise, evidence-based decision making will also remain quite difficult.

Moreover, it might be worth noting that in June 2023, the CCDH sent a letter to the Minister of Public Service regarding the current requirement of Luxembourgish nationality for all the employees of the CCDH's Secretariat. According to the Ministry of State, this requirement originates from the [grand-ducal regulation of 12 May 2010](#) which indicates which jobs/positions involve direct or indirect participation in the exercise of public authority, and are therefore reserved exclusively to persons of Luxembourgish nationality. In its letter, the CCDH underlined the principle of free movement of workers inside the EU ([also see the report of the CET and the University of Luxembourg, p. 34](#)) and argued that the provisions were in any case inapplicable to the CCDH, especially since it has a particular status as an NHRI which cannot be compared to a public administration. So far, the CCDH has not received any answer from Government.

While the CCDH has not had any significant negative experiences regarding its resources, more ample resources would of course help improve its monitoring abilities. The CCDH is still occasionally forced to decide not to issue an opinion on draft legislation due to a lack of resources. It is worth noting that because it is attached to the government, it has fewer resources at its disposal and less freedom regarding the allocation of these compared to the institutions

attached to the Parliament (CET, OKAJU, Ombudsperson).

## NHRI's recommendations to national and regional authorities

- Attach the CCDH to the Parliament, while making sure that it remains in line with the Paris Principles. An overhaul of the CCDH's resources and functioning could further improve its ability to carry out its mandate effectively and independently.
- Legally oblige the Government and the Parliament to respond to the CCDH's recommendations or requests and justify their (in)actions (at the very least give a timely and reasoned response).
- Improve data collection and access to information requested by the CCDH.

## Luxembourg 2024

### Information from: Consultative Human Rights Commission of Luxembourg

## Checks and balances

### Separation of powers

Judicial oversight is generally rather rare in Luxembourg. This could be due to multiple obstacles which render access to justice difficult. The issues raised by the CCDH in ENNHRI's 2023 rule of law report have not been addressed yet.

NGOs who try to hold state authorities accountable are confronted with major difficulties when it comes to proving legal standing ("intérêt à agir") before administrative courts. For instance, in 2023, four Luxembourgish associations active in the defence of human rights lodged an action for annulment in their own names together with a request for a safeguard measure before the administrative tribunal (the case was about the refusal to house single men falling under the Dublin procedure). By order [no. 49692 of 24 November 2023](#), the President of the administrative tribunal rejected the request for suspension of the contested act because the judges considered that the associations had no interest in bringing an action against an administrative decision unless they could show that their members themselves were affected by the contested measure. This reasoning is in line with the usual practice of Luxembourg courts, which have a very restrictive interpretation of the right to bring an action.

Moreover, judges might not always sufficiently consider relevant international, EU and European human rights law as they seem to be reluctant to refer preliminary questions to the Court of Justice of the European Union ('CJEU', 'the Court'). The NGO Passerell did an [in-depth study](#) of the number of preliminary questions addressed to the Court. Their research shows that for the 1.176 cases of administrative and tax litigation from a one-year period (2 May 2022 to 2 May 2023), the Administrative Tribunal and the Administrative Court received 29 requests for preliminary rulings for the Constitutional Court and 27 for the CJEU. Of these 27 requests for preliminary rulings, none was accepted by the national courts. This result may indicate that Luxembourg's administrative judges make little use of the legal mechanisms established by EU law. The result is hardly more satisfactory as far as the Constitutional Court is concerned, since only three questions were submitted in total, specifically in areas relating to environmental protection, wealth tax and the promotion of officials in the Directorate-General for Internal Security.

The recent developments regarding the introduction of a begging ban in the capital of Luxembourg are straining the separation of powers and the rule of law. This issue is further explained in the subchapter on 'the process for preparing and enacting laws' below.

It might be worth noting, that in Luxembourg, members of Parliament vote along their political party's line, with only few exceptions reported in the past decades. The members of the governing parties therefore rarely question, let alone oppose, decisions made by their political colleagues in the Government. While this is a widespread practice in democracies, it does not necessarily encourage a rule of law culture and parliamentary oversight.

## **The process for preparing and enacting laws**

There have not been any notable improvements since the CCDH's contribution to last year's ENNHRI's rule of law report.

On the contrary, recent developments show a lack of evidence-based policy making by the new government. In March 2023, the municipal council of Luxembourg City decided to introduce a new article 42 in its [local police regulation](#) to prohibit any form of begging in the city centre, from Monday to Sunday from 7 a.m. to 10 p.m. Some forms of "aggressive" or "organised" begging were already prohibited before, either on national or local level. In May 2023, the then Minister of Home Affairs refused to approve the regulation because of concerns related, among others, to human rights violations. The municipality decided to lodge an appeal which was still pending in December 2023, when the new Minister of Home Affairs, barely two months in office, overturned the previous decision without waiting for the ruling of the administrative tribunal and, according to information available to the CCDH, without any prior consultation of stakeholders (such as NGOs, streetworkers,



human rights institutions, Police, prosecution services, officials of other relevant Ministries). On the Minister's orders, the Police began enforcing the measure in January 2024.

This decision has been widely criticised over the last months (see for example the [statement of the CCDH](#)). Apart from major human rights concerns, the decision-making process as well as the lack of a legal basis are particularly worrying. According to article 37 of the Luxembourgish Constitution, only a "law" (legislative act adopted by parliament) may limit "public freedoms" ("libertés publiques"). The begging ban introduced by the municipality is a municipal regulatory act, which cannot be qualified as a "law". The Minister for Home Affairs first referred to a [decree](#) from 1789 which generally states that the municipality needs to guarantee "cleanliness, salubrity and tranquillity in streets, public places and buildings". As this approach was criticised for being in violation with the ECtHR's and the Constitution's criteria of legality, the Minister invoked article 563 point 6 of the Criminal Code, dating back to 1879, which explicitly punished "vagrants and people found begging". However, this anachronistic article has been interpreted by the courts and the public prosecution as having been abolished since 2008. Some members of the government, the parliament and the capital's local council (belonging to the same governing political parties) subsequently publicly questioned the judiciary's role in interpreting the laws voted by parliament and refused to accept the judicial decisions adopted by the Court of appeal which clearly stated that the article in question was abolished. Numerous actors from many different sectors and backgrounds ([Human rights experts](#), [Police](#), [Public Prosecution](#), [President of the Constitutional Court](#), [streetworkers and civil society organisations](#), [academia](#) and the CCDH) have voiced their concerns about the political discourse, the policy-making process, the lack of a legal basis and, to various degrees, about the inadequacy of the measure itself. Neither the municipality, nor the government, have accepted to review their approach. The [Prime Minister supported](#) the inaccurate view that there "is a divergence of interpretation that must be clarified by judges" and that "it is part of the rule of law that the Supreme Court should be respected when it makes a judgment in this matter" – thus disregarding the fact that judges have already clarified the issue [in multiple rulings](#) (of first and second instance) and implying that rulings of lower courts do not need to be respected. In an [interview](#), the president of the constitutional court subsequently condemned this political discourse and reminded that "a jurisprudence (...) must be respected, regardless of the court instance that pronounced the judgment". Nonetheless, the measure remains in place and is still being executed, which seriously weakens the rule of law and undermines the public's trust in the justice system.

## Access to information

In the context of the recent begging ban in Luxembourg's capital, a journalist [was not allowed](#) to interview a streetworker by herself – representatives of the city of Luxembourg were present at all times. The journalist was also not allowed to accompany the streetworkers because of “concerns related to the respect for private life”. This line of reasoning has in the past also been used to prevent CCDH members from talking to refugees who might have been able to share their experiences and potential complaints against the administration with the CCDH. It must be noted however that the municipal council of Luxembourg [recently announced](#) that their representatives will, from now on, only be present during press interviews if this was explicitly requested by journalists.

Access to judgments online is still insufficient as the [online database](#) remains incomplete – a preselection is done by state authorities. All judgments should be made public (albeit anonymised), otherwise it is impossible to analyse the case law. In the words of the Luxembourgish judge of the European Court of Human Rights, Georges Ravarani, « it's up to those who analyse the case law to decide what they find interesting in it » (see the [interview](#) in Lëtzebuerger Land, 22.12.2023).

Access to legislation online has slightly improved. However, some pieces of legislation, which have been modified numerous times, are still not consolidated. This makes it difficult for legal practitioners, judges, and the public to have access to and apply the law. It would also be useful to link relevant case law to the legislation (e.g. on Legilux; Legifrance could serve as a good practice).

There is still no legal right to access to information for journalists. During the 2024 new year's reception, the prime minister [announced](#) his intention to finally propose a draft legislation (before summer 2024) introducing the right to access to information for journalists. It remains to be seen if and to what extent this announcement will be followed-up upon.

## **Independence and effectiveness of independent institutions (other than NHRIs)**

The situation remains largely unchanged. Both the Ombudsperson and the equality body still need more competences and resources.

The recent national [study on racism](#) (pp. 101-103) and some civil society organisations have underlined that associations and victims of discrimination might hesitate to contact the Centre for Equal Treatment (CET) because of a perceived lack of representativity concerning its board and employees, limited resources and field of competences (e.g. limited number of grounds of discrimination they can react upon ; lack of legal standing) and doubts about the effectiveness of its work in finding an appropriate response to a concrete



situation.

A first draft of a legislative proposal concerning the Ombudsman, the Ombudsman for children and youngsters (OKAJU) and the CET is currently being elaborated. These three institutions are administratively attached to the Parliament. The future law would, among others, widen the scope of competences of the CET, in line with the Proposal for an EU Council Directive on standards for equality bodies, as well as [ECRI's recommendations](#) and those of numerous national stakeholders.

## Enabling environment for civil society and human rights defenders

The situation remains largely unchanged since ENNHRI's previous rule of law report. There have been a couple of isolated incidents, however.

Recently, the Minister of Home Affairs, in the context of the begging ban in the capital, [suggested](#) that one of his critics, an artist, had incited an act of vandalism against his private property by [publishing a text and an AI generated picture](#) criticising the Minister's decision to authorise the begging ban. The Minister of Culture on the other hand, without taking sides, [reminded](#) that the mission of culture, in all its forms, is to be critical of society and societal issues.

A member of parliament published a post on social media threatening a caricaturist who criticised the Minister of Home Affairs' above-mentioned insinuations. The member of parliament later explained that his post was "[intentionally being misinterpreted](#)". The president and one of the vice-presidents of parliament informally [met with the member](#), but since the acts happened outside of the premises of the parliament, the parliament does not seem to have any means at its disposal to reprimand its member. However, the political parties appear to have agreed to consider developing a deontology code for the members of parliament.

The president of the CCDH recently publicly denounced remarks made by another member of parliament (of one of the governing political parties) who made discriminatory remarks about Roma and criticised the CCDH's work in a video. Subsequently, a member of the far-right political party published [a post](#) telling the president of the CCDH and "woke leftgreen Hysterics" to remain silent.

When developing National Action Plans (NAP), Luxembourg's ministries remain very reluctant to adopt a truly participatory approach. Often, there are only meetings prior to the development of the NAP, but no follow-up. Civil society and human rights defenders rarely have the possibility to access, let alone comment, on draft NAPs, or to receive feedback on why some of their

recommendations were not included in the NAPs. This has been the case, among others, in the context of the NAP on [gender equality](#), the NAP [on the rights of persons with disabilities](#), the NAP on [children's rights](#) and, most recently, the NAP on combating racism which is currently being developed.

## NHRI's recommendations to national and regional authorities

- Review and improve access to justice for victims of human rights violations and their representatives, such as NGOs;
- Improve access to information (such as the consolidated version of laws, case-law, etc);
- Improve the resources and tools at the disposal of the judiciary and offer qualitative and continuous human rights training.

## Luxembourg 2024

### Information from: Consultative Human Rights Commission of Luxembourg

## Securitisation's impact on the rule of law and human rights

The begging ban in Luxembourg's capital can be seen as the result of a securitisation narrative. The ban further fragilizes people in need and potentially punishes victims of human trafficking instead of protecting and supporting them, thus violating the principle of non-punishment of victims of coerced crimes.

The government announced in its [coalition agreement](#) (p. 109) the introduction of a measure that expedites proceedings ("comparution immédiate") potentially at the price of the rights of the defendants, in particular if it reduces their ability to prepare their defence. Experts (such as the [Procureure Générale d'État](#) or [human rights experts](#)) have voiced concerns about this measure and pointed at the situation in Belgium where in 2002 the constitutional court found that a similar legislation ("snelrecht") was discriminatory and infringed upon the rights of the defendants (article 6 of the ECHR). It remains to be seen if and how the government intends to introduce this measure.

## NHRI's actions to promote and protect human rights

## and rule of law in the context of national security and securitisation

The CCDH published [a statement](#) on the begging ban and its president intervened in [press interviews](#).

## NHRI's recommendations to national and regional authorities

- Evidence and human rights-based policy making is crucial to avoid laws, processes and practices which negatively impact human rights and/or the rule of law;
- Adopting a participatory approach involving key stake- and rightsholders before presenting legislative initiatives is key.

## Luxembourg 2024

### Information from: Consultative Human Rights Commission of Luxembourg

## Implementation of European Courts' judgments

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### NHRI's actions to support the implementation of European Courts' judgments

The CCDH systematically reminds policymakers of the relevant case-law in its opinions, reports, etc. Recent examples are the [CCDH's statement on the begging ban](#) put in place in the capital of Luxembourg or the CCDH's [report on human trafficking](#) where it highlighted relevant ECtHR case-law on the non-punishment principle for victims of human trafficking who are coerced into committing crimes.

## NHRI's recommendations to national and regional authorities

- Improve access to justice for victims of human rights violations and other relevant actors (such as the Equality body, NGOs) which in turn could improve the follow-up of European Courts' case-law by raising the possibilities for victims to hold Luxembourg's authorities accountable;

- Study the (non-)referral of preliminary questions to the ECtHR and the CJEU, and take measures to overcome potential obstacles in this regard (e.g. training for justice professionals).

## Luxembourg 2024

### Information from: Consultative Human Rights Commission of Luxembourg

## Other challenges to the rule of law and human rights

As already reported in the CCDH's contribution to last year's ENNHRI rule of law report, access to justice remains insufficient in Luxembourg. As a reminder, the CCDH, as well as regional ([GRETA](#), [GREVIO](#), [ECRI](#)) and international expert groups ([UN B&HR working group](#)) or treaty bodies ([CAT](#), [CERD](#), [CRC](#), [CEDAW](#)), repeatedly urged the government and parliament to assess and improve access to justice, including courts. No positive changes can be reported in this regard. There has been no progress regarding the development of a legal framework for an effective witness protection system. This is still seriously hampering access to courts and the work of the police. NGOs and other bodies are still not financially or legally empowered to support or act on behalf of the victims. Access to compensation for victims of crimes, such as victims of human trafficking, is still insufficient. Financial investigations, seizures and confiscations need to be improved in number and in thoroughness. The benefits gained by criminals and the damage suffered by victims are often inadequately assessed by the judges. The judgments generally do not sufficiently explain or justify their refusal to grant the damages claimed by the victims (see, for instance, [GRETA, §60](#)).

Moreover, judges sometimes use pejorative language and reasoning contrary to international and European human rights standards. For instance, in a [ruling](#) issued by the administrative tribunal in October 2023 rejecting an application for international protection, the judges shockingly took into account the behaviour of a victim of female genital mutilation and of forced marriage as a minor : „*The tribunal also noted that the threat brandished by the plaintiff's husband that she would have to undergo a second excision should be seen in the context of her attitude - perceived as problematic by her husband - of not getting involved in the household, not eating and refusing to have sexual relations with her husband (...)*". This unacceptable reasoning is particularly incompatible with EU law in the light of the [recent judgment](#) of the ECJ in case C-621/21. It must be noted that this is not an isolated case. Victims of gender-

based violence, for example, have only limited access to justice because of the authorities' lack of understanding of this phenomenon.

## **NHRI's recommendations to national and regional authorities**

Improve access to justice (e.g. create a legal framework for an effective witness protection programme, empower NGOs to support victims before the courts, invest human rights institutions such as the equality body with the power to go to courts, strengthen the training of justice professionals such as lawyers, judges and public prosecution).

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