



ACAT Luxembourg¹'s and FIACAT's concerns regarding the human rights situation in Luxembourg

Submitted to the Human Rights Council with a view to the examination of Luxembourg within the second cycle of the Universal Periodic Review, 15th session, January-February 2013

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When Luxembourg was examined within the first cycle of the Universal Periodic Review in December 2008, the Luxembourg Government provided responses and set out commitments. ACAT Luxembourg and FIACAT have been monitoring the implementation of the recommendations endorsed by Luxembourg and wish to bring to the Working Group's attention a number of concerns regarding developments in the human rights situation in Luxembourg since the previous examination.

I. Follow-up to the recommendations of the first Universal Periodic Review

1. The state of ratifications and consultations with national associations regarding the follow-up to the recommendations of the first cycle of the UPR.
2. Treatment of asylum-seekers.
3. Conditions of detention.

II. Other human rights concerns.

1. The situation of rejected asylum-seekers.
2. Protracted immigration detention periods.
3. From prison to immigration detention.
4. Forced return of people in need of medical care to their country of origin.

III. Summary of ACAT Luxembourg's and FIACAT's recommendations

¹ ACAT Luxembourg is a human rights organisation, set up in 1985 to fight for the abolition of capital punishment, intervene for victims of torture and uphold human rights, in the world at large as well as in Luxembourg, including by being particularly attentive to the situation of refugees and detainees. ACAT Luxembourg is affiliated to FIACAT (International Federation of Action by Christians for the Abolition of Torture).

FIACAT is an international non-governmental human rights organisation working to abolish torture and the death penalty

I. Follow-up to the recommendations of the first Universal Periodic Review

1. The state of ratifications and consultations with national associations regarding the follow-up to the recommendations of the first cycle of the UPR.

a. Ratification of the International Convention for the Protection of All Persons from Enforced Disappearance (Recommendation 1)

1. ACAT Luxembourg has repeatedly urged the relevant Luxembourg authorities to ratify the International Convention for the Protection of All Persons from Enforced Disappearance. Even though a draft law was already in preparation in March 2009 with a view to this ratification, the process is still not completed to this day. ACAT Luxembourg also recommends that Luxembourg recognize the competence of the Committee on Enforced Disappearances.

b. National consultation of civil society organisations engaged in the promotion of human rights (Recommendation 2)

2. ACAT Luxembourg regrets that no follow-up consultations were held with civil society associations after the first Universal Periodic Review of Luxembourg. The only encounter with these associations, held with a view to the drafting of Luxembourg's second national report, took place on 22 May in the form of a general meeting lasting about one hour, where several key ministries, such as the Ministry of Immigration, were not represented. No particular effort was made to publicize the conclusions and recommendations from the previous examination, and these were not even notified to the participants prior to the aforementioned consultation meeting.

2. Treatment of asylum-seekers

a. Immigration detention of people with psychological disorders (Recommendation 3)

3. ACAT Luxembourg is concerned by the frequent practice of placing people with psychiatric disorders in the new holding centre for illegal immigrants. Such people require specialized attention, which cannot be adequately provided by the staff at the Centre. For instance, on 7 November 2011, an Algerian national whose psychological troubles were known to the personnel committed an act of self-mutilation as a reaction to the decision to place him in solitary confinement, which had been taken without prior consultation with a psychiatrist. Only people with mental disorders whose behaviour affects the good order and security of the holding centre are occasionally and temporarily transferred to hospital.

b. Administrative detention of migrants (Recommendation 4)

4. ACAT Luxembourg regrets that people under an expulsion order are routinely placed in immigration detention, even if they do not in any way jeopardise national security or public order. No alternative to administrative detention has been put in place and administrative detainees often stay in this enclosed facility for prolonged periods of up to six months, or even a whole year in one particular case, even when it is clear from the outset that the person's expulsion will not be possible.

5. Since the new holding centre came into service in September 2011, the living conditions and psycho-social accompaniment of detained immigrants have greatly improved. However, ACAT is concerned by the lengthening of detention periods and by the new possibility, used at least on three occasions, to detain families with children, although it is forbidden under the relevant legislation to hold them in the Centre for more than 72 hours.

c. Reception conditions for foreigners (Recommendation 15)

6. As regards reception and integration of foreigners in the Grand-Duchy of Luxembourg, ACAT Luxembourg wishes to point out that the Office for the Reception of Asylum-Seekers, in charge of registering applications for international protection, was temporarily closed between 30 September and the end of the first week of October 2011, making it impossible for a period of several days to lodge any application for international protection in Luxembourg, thus effectively denying newly arrived immigrants access to minimal reception conditions. This closure was decided in response to an influx of asylum-seekers that Luxembourg had not anticipated.

7. In addition, and for the same reasons, during several weeks, the newcomers were accommodated in very precarious conditions in camp sites and other inadequate facilities.

8. ACAT Luxembourg is also concerned by the new provisions included in the Grand-Ducal Regulation of 8 June 2012, which drastically reduce the amount allocated to asylum-seekers as social benefits, thereby inevitably causing a substantial deterioration in their living conditions.

9. ACAT Luxembourg recommends that the Ministries in charge of assessing applications for international protection and of dealing with the reception of newcomers take preventive measures to avoid being caught unprepared, and make provision for emergency situations in case of unusual numbers of arrivals. ACAT Luxembourg recommends that the Luxembourg authorities provide asylum-seekers with sufficient means to ensure that they do not become destitute.

d. Victims of human trafficking (Recommendation 8)

10. Illegal workers exploited by criminal networks are arrested by the police and placed in immigration detention for periods of up to several months. In most cases, these people fear reprisals from the people they work for if they disclose information that might lead to the identification and charging of these unscrupulous employers. This explains why they often refuse to collaborate with the authorities and to provide any information, thus prolonging their detention while those responsible for such human trafficking enjoy impunity. Once released, the victims of human trafficking usually go back to their initial condition. Some of them have been placed in immigration detention several times at intervals of a few months or years.

11. ACAT regrets that male and female victims of human trafficking are placed in immigration detention for lengthy periods instead of receiving the protection and social support that they would need, and as a result return to their previous condition after being released.

3. Conditions of detention.

a. Insufficient training of surveillance personnel (Recommendation 5)

12. ACAT believes that training on human rights and discrimination issues provided to members of the security forces and state agents who are in contact with minority groups could be improved by substantially increasing the number of hours dedicated to these subjects in their initial training and by giving prison staff, among others, more opportunity to attend continuous training on these matters.

b. Placement of minors in an adults' prison (Recommendation 13)

13. ACAT Luxembourg regrets the delays in the construction, scheduled for 2010 and still not completed, of a security unit for minors within the Socio-Educational Centre, which should definitively put an end to the placement, as a disciplinary measure, of people under 18 years of age in the Prison Centre for adults,

in contravention of international standards on the rights of the child. This practice has been repeatedly criticized by the Committee Against Torture (CAT)².

14. ACAT Luxembourg also calls for the situation of the female juvenile population currently held at the Prison Centre for adults to be given due consideration and for their conditions of detention to be reviewed, as a matter of urgency, in accordance with international standards.

II. Other human rights concerns

15. ACAT Luxembourg's main human rights concerns regarding the situation in the Grand-Duchy of Luxembourg, as observed since the first examination of Luxembourg within the Universal Periodic Review, include the following:

1. The situation of rejected asylum-seekers

16. People whose application for international protection has been definitively rejected are not systematically expelled, in particular when return to the country of origin is problematic for administrative, logistical or security reasons. In such cases, rejected asylum-seekers are often pressurized, through eviction from their lodging for example, into leaving the country. Without a legal status and deprived of social protection, rejected asylum-seekers are left in an administrative vacuum that can have tragic consequences should they be faced with medical problems, for example. Some of these people have been held in immigration detention and released after several months for lack of any realistic means of expelling them. When they leave the holding centre, they return to their previous condition, with neither status nor social assistance, and no possibility of obtaining protection in another EU country.

17. ACAT Luxembourg recommends that rejected asylum-seekers whose return to their country of origin is impossible for reasons beyond their control be granted a legal status, in order to allow them to gain their own sustenance and to have access at least to basic support services.

2. Protracted immigration detention periods

18. ACAT Luxembourg is concerned about the length of immigration detention which is often prolonged for up to six months even, as is often the case, when it is clear from the outset that the detained person cannot be expelled from the country.

19. In these cases, continued detention amounts to a punishment, and is perceived as such by the detainees, even though, by law, this administrative measure is only designed to allow the authorities to prepare and organize transfers to another country.

3. From prison to immigration detention

20. ACAT Luxembourg is concerned about the routine placement in immigration detention of condemned prisoners who have finished serving their sentence and whose repatriation was not organised in due time. If the return to their country of origin is feasible, ACAT Luxembourg believes that the necessary steps must be undertaken during their prison sentence. If such a return is found to be impossible, their placement in immigration detention serves no purpose.

21. ACAT Luxembourg recommends to strictly limit immigration detention to the time necessary to organise people's transfer to their set destination country, and to avoid as much as possible any additional detention for people who have just finished serving a prison sentence.

² in 1999, 2002 and 2007

4. Forced return of people in need of medical care to their country of origin

22. ACAT Luxembourg is aware of the case of an Angolan woman who was forcibly repatriated in April 2012, even though she was due to be operated on to remove a pin placed in her arm following an accident in Luxembourg. The doctor at the holding centre had refused to deliver a certificate about her serious medical condition, despite the statement by the surgeon who had placed the pin emphasising that it needed to be removed as soon as possible.

23. ACAT Luxembourg is concerned at the fact that people with a medical condition requiring specialized treatment that is either not available in the country of origin or too expensive to be accessible to them are nevertheless being expelled to their country of origin. Although efforts are made to provide a certain amount of medicine to sick people prior to their departure, some chronic diseases requiring long-term treatment should be taken into consideration at the time of deciding whether to return a person to a country where such treatment is difficult to access.

III. Summary of ACAT Luxembourg's and FIACAT's recommendations

- ⤴ Ratify the International Convention for the Protection of All Persons from Enforced Disappearance and recognize the competence of the International Committee on Enforced Disappearances.
- ⤴ Ensure adequate follow-up to the recommendations arising from the Universal Periodic Review, by consulting civil society organisations on a regular basis.
- ⤴ Refrain from placing people with psychiatric disorders in need of specialized medical attention in immigration detention.
- ⤴ Restrict the use of immigration detention to cases of people who represent a danger for national security or public order, and prohibit in all circumstances the immigration detention of minors and victims of human trafficking.
- ⤴ Introduce alternatives to immigration detention.
- ⤴ Strictly limit the length of immigration detention to the time necessary to organise a person's transfer, and avoid any additional detention for prisoners who have just finished serving a prison sentence.
- ⤴ Improve training on human rights issues for prison warders and members of the security forces.
- ⤴ Ensure that the security unit for minors comes swiftly into service so that children are no longer detained in the prison centre for adults.
- ⤴ Take all the necessary steps to ensure adequate reception of asylum-seekers, even in the event of an unusual influx of newcomers.
- ⤴ Grant a legal status to rejected asylum-seekers who cannot return to their country of origin for reasons beyond their control.
- ⤴ Take into consideration difficulties in accessing adequate medical treatment before deciding to forcibly repatriate seriously ill people.