

## COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

36<sup>th</sup> session (Geneva, 1 to 19 May 2006)

Reports of States

Liechtenstein (initial periodic report)

### *Information submitted to the Committee*

Liechtenstein submitted its initial periodic report<sup>1</sup>, an annex<sup>2</sup> containing general information on the country, and written replies<sup>3</sup> to the list of questions<sup>4</sup> raised by the Committee on Economic, Social and Cultural Rights (the Committee). The annex provided information on the country and its people, the general political structure, economic and political integration, the economy, and the general legal framework for the protection of human rights. The initial periodic report provided detailed information on the provisions available in national law and institutions to implement the articles of the *International Covenant on Economic, Social and Cultural Rights* (the Covenant), as well as information on the general structures in place protecting economic, social and cultural rights. While the report provided ample information about the laws and structures in place, in particular regarding the social security and assistance framework and education, there was no extensive assessment of the impact of the Covenant, in terms of practical examples of its implementation, the existence of case law or provision of statistics.

The written replies to the list of 26 questions raised by the Committee were more useful in this regard as they provided some statistics on asylum-seekers, domestic violence, drug and alcohol consumption, and HIV/AIDS. Despite the inclusion of some statistics, the replies focused much more on the structures and laws protecting economic, social and cultural rights, such as the Office of Equal Opportunity and measures concerning non-discrimination, the equality of men and women, employment, as well as the social security framework, and did not provide a thorough assessment of the impact of these provisions, notably with regard to discrimination. Liechtenstein's report and replies pointed to a certain focus in national laws and structures on non-discrimination rather than the general protection and promotion of human rights, including economic, social and cultural rights.

There was almost no non-governmental organisations (NGOs) present and only one parallel report was produced<sup>5</sup>, on the subject of corporal punishment in the home in Liechtenstein, but this issue was only very briefly touched upon during the session.

### *Themes and issues*

#### **Implementation**

The Committee expressed concern about the implementation of the Covenant in light of the complete lack of domestic case law referring to it. Committee members did not accept the delegation's argument that this was a reflection of Liechtenstein's recent ratification of the Covenant in 1999 and argued that it could instead be a sign of inadequate training and information about the Covenant. The delegation explained that UN human rights treaty monitoring bodies tended to be less well-known since they do not publish rulings like the European Court of Human Rights, which was referred to more often in Liechtenstein. It however proceeded to stress that the Government's active involvement in the treaty body reform process was proof of the Covenant's importance in the country and would generate greater knowledge of the Covenant in the future, especially as a conference on the reform is planned in Liechtenstein in July 2006.

#### **Optional Protocol**

The Committee also inquired as to Liechtenstein's opinion on an Optional Protocol to the Covenant. In reply, the delegation highlighted that it had accepted all individual complaints procedures under other treaty bodies. The delegation however stressed that finding broad consensus on the Optional Protocol was the most important question at this stage and that the elaboration of this instrument could not be rushed.

#### **General framework of implementation**

The Committee focused its discussion of structures in place for the protection of human rights on the newly established Office of Equal Opportunity (the Office), mainly because it appeared that this was the only body

<sup>1</sup> <http://daccessdds.un.org/doc/UNDOC/GEN/G04/441/71/PDF/G0444171.pdf?OpenElement>.

<sup>2</sup> <http://www.ohchr.org/english/bodies/cescr/docs/E.1990.5.Add.66-annex1.pdf>.

<sup>3</sup> <http://www.ohchr.org/english/bodies/cescr/docs/HR.CESCR.NONE.liechtenstein.pdf>.

<sup>4</sup> [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/E.C.12.Q.LIE.1.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/E.C.12.Q.LIE.1.En?OpenDocument).

<sup>5</sup> The Global Initiative to End All Corporal Punishment of Children

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in Liechtenstein currently devoted to the subject. In view of its recent creation as a result of the expansion of the Office of Gender Equality, Committee members inquired into the scope of the Office's mandate, particularly with regard to gender issues, with many members expressing concern that gender issues would have a lesser profile as a result of the expansion. The delegation stressed the small size of the Office and the continuity in staff between the two entities, arguing that this would ensure continuity in the Office's policy on gender issues. The delegation explained that the expansion had aimed to make the Office a contact point for civil society on a broader range of issues, with losing its focus on issues such as gender equality.

Another issue raised by the Committee was the question of Liechtenstein's adherence to the International Labour Organisation (ILO) and the United Nations Educational, Scientific and Cultural Organisation (UNESCO), in light of their relevance to the Covenant. The delegation invoked Liechtenstein's size and resources in replying to these questions, arguing that these simply did not allow for adherence to all relevant intergovernmental bodies. This argument was also used to defend the absence of an independent National Human Rights Institution in Liechtenstein, with the delegation arguing that the Office of Equal Opportunity and the planned independent Ombudsperson for children and young persons provided enough protection, notably through their high accessibility by the public.

The Committee also explored the absence of a comprehensive national plan of action on human rights in Liechtenstein, emphasising that simply following the recommendations of treaty bodies, as indicated by the delegation in their written replies, was no substitute for such a plan. The delegation argued that its two national action plans, concerned with the implementation of the Durban Programme of Action and the Beijing Platform for Action, were devised broadly enough to ensure the protection and promotion of all human rights, reiterating the Government's belief that a general focus on discrimination was the most appropriate approach to human rights in Liechtenstein.

Another major focus of the Committee was the independence of the judiciary, a topic that was brought up both in its written list of issues and during the dialogue with the delegation, with the experts expressing concern about the selection system for judges and the role played by the Reigning Prince in this process. In reply, the delegation provided a more detailed description of the process of selection and appointment of judges, which delineated the role of the Reigning Prince, emphasising that the independence of the judiciary was clearly provided for in the Constitution.

### **Non-discrimination**

Discrimination was one of the main issues discussed during the session, both by the Committee and the delegation, particularly in view of Liechtenstein's focus on discrimination in its approach to human rights. The Committee referred to discrimination against Muslims and the phenomena of rising racism and xenophobia found more generally in Europe and inquired into the measures undertaken in this regard, particularly in terms of awareness-raising. The delegation argued that the phenomenon of racism and xenophobia should be put in context in Liechtenstein, stressing that the high influx of immigrants from countries other than from the European Economic Area (EEA) and of Muslim origin is a very recent trend in Liechtenstein, with the first foreigner of Muslim origin immigrating in 1968. Liechtenstein was therefore very suddenly confronted with a whole range of new questions relating to integration, and the perception of rapidly rising racism and xenophobia should be understood in that context. The delegation referred to a number of measures undertaken in this respect, such as the establishment of a Working Group on the Integration of Muslims studying practical issues like the need for Imams to speak German, inter-cultural projects in school to promote understanding between cultures, and the work of the Commission on Integration, notably planned integration guidelines.

The Committee looked at discrimination in many fields, but focused on education and employment. With regard to the former, the Committee inquired about the reasons for an observed tendency for children of immigrant origin to fare less well than Liechtenstein students. The delegation showed strong interest in this issue and the presence of an expert on education facilitated dialogue in this respect. Language skills, social and economic origin, and the Liechtenstein educational system with its early separation into three levels of secondary education were identified as the main factors influencing the success of immigrant children. The delegation explained that most immigration was drawn from remote areas or for low-skilled jobs and that this had an impact on second generations, but they also acknowledged the need to reform the educational system to allow all children equal opportunities and in this respect indicated that the Government was already working to improve this system and that a proposition for reform would be produced in 2 years time. With regard to employment, the Committee expressed concern at the vagueness of provisions concerning discrimination in the field of employment, as well as in the laws governing the rights of migrant workers, but

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the delegation argued that the way that these laws were formulated was meant to strengthen protection, not limit it.

The Committee also focused on discrimination against women, explaining that while the legislative provisions in place appeared comprehensive, more information was needed to determine the extent to which these were reflected in practice, especially in light of Liechtenstein's close links to traditionally patriarchal countries like Switzerland. The Committee particularly focused on participation of women in politics and in the labour force and sought to establish what measures had been taken to encourage such participation. The delegation enumerated many projects undertaken by the Office of Gender Equality and the Office of Equal Opportunity in this respect and described the legal apparatus in place to prevent discrimination against women, such as the *Gender Equality Act*. Again, the Committee expressed concern about the lack of laws providing specific protection, such as a law on equal pay for equal work.

### **Welfare**

On the issue of the welfare State, the Committee advocated a rights-based approach throughout its discussions, notably with regard to the need for a minimum wage. While the delegation stressed that the lack of an official system of minimum wage did not limit the scope for the Government to ensure that everybody received a wage allowing for an adequate standard of living, the Committee stressed the need to move away from a needs-based approach to welfare. The delegation explained that there were discussions underway to produce a draft bill making collective employment agreements universally binding, but the Committee emphasised that this was no substitute for a minimum wage framework. With regard to the right to strike, which is currently restricted by law for civil servants, the delegation emphasised the fact that Liechtenstein has no history or culture of striking and that the current legislative framework was therefore adequate. The Committee on the other hand pointed out the benefits of establishing a preventive framework.

### **Other Issues**

The Committee also examined a whole range of other issues including limitations on the rights guaranteed under the Covenant, the right to health and domestic violence. The Committee found the Government's stance on the issue of derogation from fundamental rights concerning, since it did not follow the criteria set out notably in the *International Covenant on Civil and Political Rights* (ICCPR) and it is not clear which rights are affected. With regard to the right to health and domestic violence, the Committee explained that the information submitted, notably on alcohol and drug consumption, was interesting but did not allow for an assessment of the impact of Government measures in this respect.

### *Conclusions and next steps*

The main positive steps announced by the State included the establishment of an Ombudsperson for children and young persons, the preparation of a reform of the educational system to promote the equality of chances of children of immigrant origin, the development of a comprehensive strategy on integration, including national guidelines on integration, a draft bill to make collective employment agreements universally binding, and plans to reduce the burden of proof in cases of sexual harassment.

The Committee addressed the key human rights issues with regard to Liechtenstein and while there did not appear to be major problems, there were many subjects on which Liechtenstein appeared rather inflexible. What emerged from the dialogue was that Liechtenstein already had in place most of the provisions necessary to ensure protection of economic, social and cultural rights, but that some of these provisions were too general or sometimes too specific to ensure the comprehensive protection advocated by the Committee. Furthermore, it appeared that the Government was not ready to change its stance on some important issues, and the delegation defended its position either by claiming that the current general framework afforded enough protection, or by arguing that the Covenant could always be invoked to claim particular rights. The latter argument in particular appeared insufficient in light of the complete lack of domestic case law on the Covenant. Some of the areas on which the Government appeared somewhat inflexible were adherence to the ILO and UNESCO, the establishment of a national human rights institution, legislation protecting the right to strike, establishing a minimum wage framework and generally adopting a rights-based approach to welfare.

The Committee acknowledged the absence of any difficulties preventing the effective implementation of the Covenant in Liechtenstein, but outlined some issues of concern in its conclusions<sup>6</sup>, notably regarding the

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<sup>6</sup> <http://www.ohchr.org/english/bodies/cescr/docs/E.C.12.CO.LIE.1.pdf>

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prevalence of racism and xenophobia in Liechtenstein and discrimination against women and foreigners in employment. The Committee therefore recommended a number of measures including the establishment of a national human rights institution, the adoption of a national plan of action for the promotion and protection of human rights, ensuring prohibition of gender, racial and ethnic discrimination in all aspects of employment, and the introduction of a national minimum wage mechanism.

The Committee made many references to other Committees' conclusions and discussions, notably the Human Rights Committee in the context of the independence of the judiciary, non-discrimination and the issue of limitations on rights, and the European Commission against Racism and Intolerance with regard to discrimination against immigrants in the field of education and employment.