

LUXEMBOURG

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1. National court system

Luxembourg's judicial system consists of judicial and administrative divisions. They are both overseen by the Constitutional Court which reviews Luxembourg's laws for their conformity with its constitution at the request of the judicial and administrative divisions. The only exceptions to the Constitutional Court's power to review Luxembourg legislation's conformity with its constitution are laws ratifying international treaties. While not expressly provided for in the Luxembourg Constitution, treaties have supremacy over all existing legislation, whether enacted prior or subsequent to a treaty ratified by Luxembourg.¹

¹ Luxembourg/ Constitution 2009, Art. 95ter, updated as at 1 April 2009, available at : http://www.legilux.public.lu/leg/textescoordonnes/recueils/Constitution/Page_de_garde.pdf (10.09.2009), and Luxembourg/Loi du 27 juillet 1997 portant organisation de la Cour constitutionnelle, *Mémorial A-N° 58*, 13.08.1997, at p. 1724. See F. Moyse (2009) *Echec à la discrimination*, Brussels: Bruylant, pp. 13-15, for discussion on Luxembourg jurisprudence placing treaties above existing legislation. See also Luxembourg's Ministry of Justice website at <http://www.mj.public.lu/> (07.08.2009).

The judicial division is composed of:

- 1) One Supreme Court (*Cour supérieure de justice*), a *Cour de cassation*, a Court of Appeals (*Cour d'appel*) and a general prosecutor's office;
- 2) Two District Courts, dealing in both civil, commercial (claims above EUR 10.000) and criminal (crimes and misdemeanors) matters;
- 3) Three magistrates courts (*Justices de paix*), dealing in civil commercial (claims up to EUR 10.000) and criminal (petty offences) matters;
- 4) Three labour tribunals (at the same level as the small claims court); and
- 5) Two social security courts (one High Social Security Council and one Social Security Arbitration Tribunal).²

The administrative division is composed of:

- 1) One Administrative Court, dealing in administrative and tax appeals, and
- 2) One Administrative Tribunal, tribunal of first instance for administrative (individual administrative decisions and regulatory acts) and tax (basically direct taxation) matters.³

The *Cour de cassation*, is composed of a single chamber of five judges which rule on the reversal or quashing of judgements from the different chambers of the Court of Appeals and judgments issued by courts of last resort. The services of an attorney-at-law (*ministère d'avocat à la Cour*) are required. The Court of Appeals has nine chambers of three members each, and rules on civil, commercial, misdemeanor and criminal matters, as well as cases decided by the two labour tribunals. The services of an attorney-at-law (*ministère d'avocat à la Cour*) are required for all cases except for criminal matters and interim injunctive proceedings. The Court of Appeals' criminal chamber has jurisdiction over appeals on decisions of the criminal chambers of the District Courts, and has five members.⁴

² Luxembourg/Constitution 2009, Arts. 87-95, updated as at 01.04.2009, available at: <http://www.legilux.public.lu/leg/textescoordonnes/recueils/Constitution/Constitution.pdf> (10.09.2009), and Luxembourg/*Loi du 7 mars 1980 sur l'organisation judiciaire*, *Mémorial A-* N° 12, 14.03.1980, at p. 143, as amended.

³ Luxembourg/Constitution 2009, Art. 95bis, updated as at 01.04.2009, available at: <http://www.legilux.public.lu/leg/textescoordonnes/recueils/Constitution/Constitution.pdf> (10.09.2009), and Luxembourg/*Loi du 7 novembre 1996 portant organisation des juridictions de l'ordre administrative*, *Mémorial A-* No 79, 19.11.1996, at p. 2262, as amended.

⁴ Luxembourg/*Loi du 7 mars 1980 sur l'organisation judiciaire*, *Mémorial A-* N° 12, 14.03.1980, at p. 143, as amended, and Luxembourg's Ministry of Justice website at <http://www.mj.public.lu/> (07.08.2009).

Luxembourg's two judicial Districts, Luxembourg and Diekirch, each have their own District Court. The two District Courts are divided into sections with three members each. Each District Court has a prosecutors office composed of a State Public Prosecutor and Assistant Public Prosecutors. The investigating magistrates with each District Court are charged with investigating criminal matters and, as necessary, misdemeanors. In civil and commercial matters, the District Court is the ordinary court (*juge de droit commun*) and has jurisdiction over all matters for which other jurisdictions are not expressly given competence, for reasons of the nature or amount of the claim. Their competence is for claims in excess of EUR 10.000. The District Courts have sole jurisdiction over matters that are expressly attributed to them by law. They have exclusive jurisdiction on actions to register and enforce foreign judgments as well as deeds received by foreign public officers. And District Courts also exercise discretionary jurisdiction on matters relating to adoption, guardianship/warship and emancipation of minors.⁵

In appeals, the District Courts have jurisdiction over judgments issued by a magistrate's court in the first instance, where the magistrate's court has its seat in the District Court's district. The District Courts exercise criminal jurisdiction over crimes and misdemeanor cases remanded to them by the lower court and appeals court pre-trial chambers (*chambre du conseil*). The accused must appear in person unless the infraction is punishable only by a fine, in which case their attorney may appear before the Court in their place.⁶

The District Court president, or the magistrates appointed to replace him or her, have jurisdiction over interlocutory proceedings or summary judgment proceedings in urgent civil and commercial matters. In principle, an action before the District Court is served on the opposing party by the bailiff/process server (*huissier de justice*). And an attorney-at-law's services (*ministère d'avocat à la Cour*) are required before the District Court, unless the law provides for an exception such as in commercial and summary judgment matters where the parties can themselves plead.⁷

The three magistrate's courts, consisting of two in the Luxembourg judicial district (Esch-sur-Alzette and Luxembourg), and one in the Diekirch judicial district (Diekirch), have jurisdiction over the civil and commercial matters for which they are declared competent by the New Civil

⁵ Luxembourg/*Loi du 7 mars 1980 sur l'organisation judiciaire*, *Mémorial A*- N° 12, 14.03.1980, at p. 143, as amended; Luxembourg/*Nouveau Code de Procédure Civile*, updated as at 01.10.2009; and, Luxembourg's Ministry of Justice website at <http://www.mj.public.lu/> (07.08.2009).

⁶ Luxembourg/*Loi du 7 mars 1980 sur l'organisation judiciaire*, *Mémorial A*- N° 12, 14.03.1980, at p. 143, as amended ; Luxembourg/*Nouveau Code de Procédure Civile*, updated as at 01.10.2009; and, Luxembourg's Ministry of Justice website at <http://www.mj.public.lu/> (07.08.2009).

⁷ Luxembourg/*Loi du 7 mars 1980 sur l'organisation judiciaire*, *Mémorial A*- N° 12, 14.03.1980, at p. 143, as amended; Luxembourg/*Nouveau Code de Procédure Civile*, updated as at 01.10.2009; and, Luxembourg's Ministry of Justice website at <http://www.mj.public.lu/> (07.08.2009).

Procedure Code or other legal provisions. They are competent as courts of final resort in matters having a value of up to EUR 2,000, and matters subject to appeal having a value of up to EUR 10,000. The magistrate's court also has jurisdiction over matters concerning garnishment of wages and pensions, as well as the apportionment of sums attached to the value of the debt.⁸

Actions are generally brought before the magistrate's court through the service of a summons by a bailiff. Certain actions are brought by the filing of a petition with the court office. The parties go before the magistrate either in person or through a representative. The representative can be an attorney (*avocat*), the spouse, the parents or persons related in direct or collateral line, as well as persons working exclusively on the staff of one of the parties or their enterprise. In criminal matters the magistrate's court assumes the function of a police court. As such, the magistrate's court adjudicates petty crimes or infractions of the law punishable by a fine of EUR 25 to EUR 250, as well as those infractions classified as misdemeanours by the law that the pre-trial chamber remands to the police court.⁹

The magistrate's court also adjudicates infractions for which the penalties are greater than one to five days (*peines de police*) and over which the law gives confers it jurisdiction. Police court decisions can always be appealed. The time limit for filing the appeal is forty days after the issuance of the judgment, or if a default judgment, from the date of service or notification to the person or their domicile. The appeal must be brought before the criminal court. The magistrate's court also has a labour tribunal, competent to hear disputes related to employment and apprenticeship contracts. Appeal is filed with the Supreme Court.¹⁰

Most social security disputes between Luxembourg's social security organisms and the individuals it insures concerning membership, taxation, contributions, ordered fines and services are adjudicated by the Arbitration Board, and on appeal by the *Conseil supérieur des assurances sociales* [Social Insurance High Council] (CSAS). In certain instances, the CSAS is competent to adjudicate disputes between healthcare providers. The CSAS adjudicates matters over a value of

⁸ Luxembourg/*Loi du 7 mars 1980 sur l'organisation judiciaire*, *Mémorial A- N° 12*, 14.03.1980, at p. 143, as amended; Luxembourg/*Loi du 13 mars 2009 relative aux procédures européenne d'injonction de payer et de règlement des petits litiges*, *Mémorial A-N° 50*, 20.03.2009, at p. 668; Luxembourg/*Nouveau Code de Procédure Civile*, updated as at 01.10.2009; and, Luxembourg's Ministry of Justice website at <http://www.mj.public.lu/> (07.08.2009).

⁹ Luxembourg/*Loi du 7 mars 1980 sur l'organisation judiciaire*, *Mémorial A- N° 12*, 14.03.1980, at p. 143, as amended; Luxembourg/*Nouveau Code de Procédure Civile*, updated as at 01.10.2009; and, Luxembourg's Ministry of Justice website at <http://www.mj.public.lu/> (07.08.2009).

¹⁰ Luxembourg/*Loi du 7 mars 1980 sur l'organisation judiciaire*, *Mémorial A- N° 12*, 14.03.1980, at p. 143, as amended; Luxembourg/*Nouveau Code de Procédure Civile*, updated as at 01.10.2009; and, Luxembourg's Ministry of Justice website at <http://www.mj.public.lu/> (07.08.2009).

EUR 750, and on appeal. The CSAS is made up of a president, two examiners (*assesseurs*) who are magistrates appointed for three years by the Grand Duke; and two delegates elected by the sickness funds.¹¹

Appeal to the CSAS is free and does not require the services of an attorney (*avocat*). It is done by an appeal letter filed with the CSAS within 40 days of the Arbitration Board. CSAS decisions are final. Decisions by the Arbitration Board and CSAS as instances of last resort can be brought before the Supreme Court's *Cour de cassation*, but are only admissible when there is an infraction of the law and for infringement of an essential procedural requirement.¹²

The Administrative division of Luxembourg's legal system consists of an Administrative Tribunal and an Administrative Court. The Administrative Tribunal adjudicates appeals on grounds of incompetence, abuse and misuse of power or violations of the law or formalities designed to protect private interests. It also adjudicates all administrative decisions for which applicable laws and regulations provide no other recourse and regulatory administrative acts, regardless of which authority issued the acts. And finally, the Administrative Tribunal in principle hears claims related to direct taxes and local taxes and charges. And, when the applicable laws so provide, the Administrative Tribunal hears on the merits appeals against decisions of the direct taxation administration (*Administration des contributions directs*) director. Appeal of the Administrative Tribunal's decisions is filed with the Administrative Court.¹³

A party can appeal a decision when it deems it was harmed by the decision. The New Civil Procedure Code (NCPC) provides that lower court (Small Claims Court, Juvenile Court, Labour Court) decisions are appealed to the Court of Appeals, which reviews questions of fact and law.

¹¹ Luxembourg/Règlement grand-ducal du 24 décembre 1993 déterminant en application de l'article 455 du Code de la sécurité sociale la procédure à suivre devant le Conseil arbitral des assurances sociales et le Conseil supérieur des assurances sociales, ainsi que les délais et frais de justice, *Mémorial A- N° 107*, 31.12.1993, at p. 2320, as amended, and Luxembourg/Code de la Sécurité sociale, updated as at 01.2009, available at : http://www.legilux.public.lu/leg/textescoordonnes/codes/code_securite_sociale/index.html (10.11.2009). See also Luxembourg's Ministry of Justice website at <http://www.mj.public.lu/> (07.08.2009), and CSAS website at <http://www.sante.public.lu/fr/systeme-sante/acteurs/juridictions/conseil-superieur/index.html> (10.08.2009).

¹² Luxembourg/Règlement grand-ducal du 24 décembre 1993 déterminant en application de l'article 455 du Code de la sécurité sociale la procédure à suivre devant le Conseil arbitral des assurances sociales et le Conseil supérieur des assurances sociales, ainsi que les délais et frais de justice, *Memorial A- N° 107*, 31.12.1993, at p. 2320, as amended, and Luxembourg/Code de la Sécurité sociale, updated as at 01.2009, available at : http://www.legilux.public.lu/leg/textescoordonnes/codes/code_securite_sociale/index.html (10.11.2009). See also Luxembourg's Ministry of Justice website at <http://www.mj.public.lu/> (07.08.2009), and CSAS website at <http://www.sante.public.lu/fr/systeme-sante/acteurs/juridictions/conseil-superieur/index.html> (10.08.2009).

¹³ Luxembourg/Loi du 7 novembre 1996 portant organisation des juridictions de l'ordre administrative, *Mémorial A- No 79*, 19.11.1996, at p. 2262, as amended. See also Luxembourg's Ministry of Justice website at <http://www.mj.public.lu/> (07.08.2009).

The law on the organization of the judiciary provides for appeals to the Court of Cassation which decides questions of law.

A right to appeals may also be stated in a notification of a decision from a government administration. Unless otherwise provided by law, appeal can be filed with the Administrative Court against decisions by the Administrative Tribunal that annul decisions for which it is competent, and against regulatory administrative decisions. The Administrative Court also adjudicates, both on appeal and on the merits, appeals against decisions of other administrations (*juridictions administratives*) when the law provides that such administrations can hear appeals for reversal of their decisions (*recours en réformation*).¹⁴

The law on the Constitutional Court provides for appeals from the judiciary and administrative division solely on questions of compatibility of a law with the Constitution. Once a case reaches finality with either the Court of Cassation (or, possibly after being remanded to the Court of Appeals after cassation) or the Constitutional Court (for the administration branch), all domestic resources have been exhausted.¹⁵

2. Restrictions regarding access to justice

Luxembourg's Equal Treatment Law¹⁶ does not specify the period for which a discrimination action must be brought. Luxembourg's Labour Code provides that actions for unfair employment contract termination must be brought within 3 months, unless the employee has requested a written explanation from the employer within 1 month or receipt of the termination notice, in which case the action must be brought within 12 months. For all other matters, unless another law is applicable, the common law statute of limitations of 30 years would apply.¹⁷

¹⁴ Luxembourg/*Loi du 7 novembre 1996 portant organisation des juridictions de l'ordre administrative, Mémorial A-No 79, 19.11.1996, at p. 2262, as amended, and Luxembourg/Loi du 21 juin 1999 portant règlement de procédure devant les juridictions administratives, Mémorial A-N° 98, 26.07.1999, at p. 1892. Luxembourg's Ministry of Justice website at <http://www.mj.public.lu/> (07.08.2009).*

¹⁵ Luxembourg/*Nouvel code de procédure civile, (01.10.2009); Luxembourg/Loi du 7 mars 1980 sur l'organisation judiciaire, Mémorial A- N° 12, 14.03.1980, at p. 143, as amended; Luxembourg/Loi du 7 novembre 1996 portant organisation des juridictions de l'ordre administrative, Mémorial A-No 79, 19.11.1996, at p. 2262, as amended; and, Luxembourg/Loi du 27 juillet 1997 portant organisation de la Cour constitutionnelle, Mémorial A-N° 58, 13.08.1997, at p. 1724.*

¹⁶ Luxembourg/*Loi du 28 novembre 2006 sur l'égalité de traitement, Mémorial A-N° 207, 6.12.2006.*

¹⁷ Luxembourg/*Loi du 28 novembre 2006 sur l'égalité de traitement (28.11.2006), Mémorial A-N° 207 (6.12.2006), and Luxembourg/Code du Travail – 2008, Art. L- 124-11(2) (20.10.2008).*

3. Length of judicial proceedings

Non-discrimination cases examined took from 13 days to approximately 11 years and 12 months to resolve disputes. Proceedings varied in length depending upon the number of appeals made. Where applicable, the appeal stages lasted between 2 months and 12 days and 2 years and almost 11 months. The bulk of the length of proceedings lay at the first instance. Information relating to the time taken to assess reparation or execute the decision was not generally available.

4. Are procedures concluded within a reasonable time?

Generally, there did not appear to be excessive delays in non-discrimination cases. This was particularly true with the administrative cases which took less time, while the judiciary cases had more appeals. Where there were excessive delays, the delays were quite excessive, resulting in the cases taking years to arrive at finality.

5. Does provision exist for speedy resolution of particular cases?

The New Civil Procedure Code (NCPC) provides that expedited proceedings (*référé*) shall be allowed generally in any urgent matters and specifically for child custody and visitation right matters, domestic violence and seizure matters. The labour tribunal can also order summary proceedings when the situation so warrants and to prevent imminent harm as a form of interim/emergency measures.¹⁸ Of the cases examined, one, a domestic violence case, involved an expedited procedure. The duration of proceedings here was 13 days, the lower end of the range indicated in C.i.¹⁹

¹⁸ Luxembourg/*Nouvel code de procédure civil*, Arts. 15, 797, 932 *et seq*, 984 *et seq*, 991, 1110, 1012 and 1168 (01.10.2009).

¹⁹ Luxembourg/*Nouvel code de procédure civil*, Arts. 15, 797, 932 *et seq*, 984 *et seq*, 991, 1110, 1012 and 1168 (01.10.2009).

The administrative procedure regulations provide for the shortening the deadlines in urgent matters. The Administrative Tribunal or Administrative Court President hears the parties on the expedition request and issues a final, decision that may not be appealed.²⁰

6. Is it possible to waive the right of access to a judicial body?

In Luxembourg, it is generally not permitted to waive by private contract a right established by public order (*ordre public*) or good customs (*bonnes moeurs*), such as access to a judicial body. But, case law provides that if a person does waive a right, the person asserting the waiver to his or her benefit must prove that the party who waived the right did so after the right was available to the waiving party.²¹

7. Access to non-judicial procedures

There is little access to non-judicial procedures to obtain redress. A national equality body, the *Centre pour l'égalité de traitement* (Centre for Equal Treatment, CET), exists since 2008, but its purpose is to provide general advice and orientation, not to get directly involved on behalf of discrimination victims.

The CET's mission is to promote, analyse and supervise equal treatment of all persons without discrimination on the basis of the following six grounds: race or ethnic origin, sex, sexual orientation, religion or beliefs, disability and age. The CET is empowered to publish reports, opinions, recommendations and carry out studies regarding discrimination issues, as well as any other form of information and documentation useful to its mission. The CET can also assist persons who consider themselves victims of discrimination as defined in the amended Labour Code, and provide those individuals with counselling and information services on their individual rights, the applicable legislation and case law as well as the means available to enforce their rights. The CET's members (they are five members) can request any information or documentation necessary to accomplish their mission with the exception of that subject to medical or other professional obligations of confidentiality. The CET's members are themselves

²⁰ Luxembourg/*Loi du 21 juin 1999 portant règlement de procédure devant les juridictions administratives, Mémorial A-N° 98, 26.07.1999, Arts. 5(8) and 46(5).*

²¹ Luxembourg/*Code Civil, Art. 6 (01.10.2009).*

subject to a confidentiality obligation, but that obligation does not prohibit communication with legal authorities that would allow the CET to assist an individual in building a case for discrimination.²²

The CET exercises its functions without actually intervening in legal proceedings, as, despite Article 7(2) of the Racial Equality Directive (RED), it is not empowered to do so. The Equal Treatment Law does not provide for the CET to intervene directly in legal proceedings against discriminatory action, or unfair treatment, based on race and ethnic origin.

The CET has the powers corresponding to the minimum RED powers. However, these powers are insufficient because the CET cannot bring legal proceedings. The CET is not empowered to take discrimination claims before a court.²³

Other institutions that address discrimination on the ground of race or ethnic origin in Luxembourg include, but henceforth to a lesser extent, the *Médiateur* (Ombudsman) who is charged with receiving and proposing recommendations for resolution of disputes between either natural or legal persons and either a public administration, or with respect to a court's handling of a case that would include excessive delays in or non-implementation of a court decision. The Ombudsman publishes activity reports, its most recent being for the period from 1 October 2007 to 30 September 2008.²⁴ Also, the *Commission consultative des droits de l'Homme* (Consultative Commission for Human Rights) has published opinions on discrimination, particularly with respect to immigrants, and has a discrimination sub-commission.

Mediation remains relatively theoretical, and is not often used. The Luxembourg institutions engaging in mediation are mainly the Ombudsman and the *Centre de Médiation* (Mediation Centre), but their mediation in the area of discrimination on grounds of race or ethnicity remains rather undeveloped.

8. Legal aid

According to the law on the legal profession, applicants are entitled to legal aid for representation in civil and administrative cases, which would include non-discrimination cases. Applicants'

²² Luxembourg/*Loi du 28 novembre 2006 sur l'égalité de traitement* (28.11.2006), *Mémorial A-N° 207* (6.12.2006), Articles 8-12, and E-mail of 11 March 2009 from CET.

²³ Information on the CET is available in Luxembourgish, English, German, French and Portuguese at: www.cet.lu.

²⁴ Luxembourg/*Loi du 22 août 2003 instituant un Médiateur* (03.09.2003), Arts. 2-4, and Ombudsman website at http://www.ombudsman.lu/frameset_f/index.htm (25.03.2009).

eligibility is generally assessed according to the individual's gross household income and the value of any assets.²⁵

The Equal Treatment Law gives nationally-recognized non-profit associations the object of which is to combat discrimination as defined by the Equal Treatment Law the power to exercise the rights of a victim of discrimination. In order to do so, the association must have obtained its status as a legal entity at least five (5) years prior to the date of the facts giving rise to the discrimination allegation, and have received Ministry of Justice accreditation.²⁶ This includes the exercise of victims' rights with respect to the facts constituting a direct or indirect violation of the collective rights the association is statutorily empowered to defend, even when that association has no material or moral interest in those rights. However, if the violation is committed against persons the rights of whom are to be considered individually (e.g., not under a collective bargaining agreement), the non-profit association can only exercise those rights through the main legal channels when the affected persons expressly and in writing declare their non-opposition to that exercise of their rights.

9. Forms of satisfaction available to a vindicated party

In non-discrimination cases examined, compensation ranged from simple court costs and fees (amount unknown) to EUR 21,999.14 amount, plus court costs and fees. In between there were a few cases where the court ordered a party to pay between EUR 3000-4000 in cases of serious harm.

There are no special compensation payments available to victims of discrimination The Equal Treatment Law provides for no special compensation mechanisms or forms of satisfaction. However, a claimant could request reinstatement to his or her position if in a dismissal case, request nullification of a discriminatory contractual clause or file an action for damages and interest. A claimant can also request compensation for proceeding expenses, and the court can order compensation of its own accord.

²⁵ Luxembourg/*Loi du 10 août 1991 sur la profession de l'avocat, Mémorial A-N° 58, 27.08.1991*, at p. 1110, as amended.

²⁶ Once obtained, this accreditation is valid for all legitimate interventions the association undertakes.

The Administrative Tribunal has the discretion to issue injunctions; ban publications or declare them slanderous; and, order that its judgments be printed and posted.²⁷

10. Adequacy of compensation

It would appear that compensation is not set to have a deterrent effect. Neither does it appear completely adequate, particularly in light of the cost of living and expense of legal representation in Luxembourg.

It would seem that remedies may not be effective given that the Equal Treatment Law provides no special compensation mechanisms or remedies for victims of discrimination.

11. Rules relating to the payment of legal costs

Both civil and administrative judges have the discretion to apportion court costs as they deem fit. The losing party generally pays court costs, but not the opposing party's attorney's fees. However, if it appears unfair to make one party pay all sums that party paid which were not included in the proceeding expenses, the Administrative Tribunal judge has the discretion to apportion some of that amount to the other party.²⁸

In discrimination cases, it is usually the client or person discriminated against who bears the financial risk of legal procedures against discrimination in Luxembourg.

12. Rules on burden of proof

Both parties share the burden of proof in civil proceedings. When a person directly or indirectly through a duly competent non-profit association or union establishes facts permitting the presumption of an act of direct or indirect discrimination, thus establishing a *prima facie* case of

²⁷ Luxembourg/*Nouvel code de procédure civil*, Arts. 213, 238, 240 (01.10.2009), and Luxembourg/*Loi du 21 juin 1999 portant règlement de procédure devant les juridictions administratives*, *Mémorial A-N° 98*, 26.07.1999, Art. 31.

²⁸ Luxembourg/*Nouvel code de procédure civil*, Arts. 213, 238, 240 (01.10.2009), and Luxembourg/*Loi du 21 juin 1999 portant règlement de procédure devant les juridictions administratives*, *Mémorial A-N° 98*, 26.07.1999, Arts. 32-33.

discrimination, it is incumbent upon the defending party to prove that there has been no breach of the principle of equal treatment. This shifting of the burden of proof does not apply in criminal cases, or those in which it is for the court or competent body to investigate the facts of the case. While this may appear to provide an incentive for a party to chose to file a civil rather than a criminal suit, in a criminal suit the public prosecutor has more means at his or her disposal to introduce evidence and greater investigative powers than would an individual filing a civil suit.