



International Covenant on Civil and Political Rights

Distr.: General

6 July 2022

Original: English

Human Rights Committee 135th session

Summary record of the 3881st meeting

Held at the Palais Wilson, Geneva, on Thursday, 30 June 2022, at 10 a.m.

Chair: Ms. Pazartzis

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant
(continued)

*Fourth periodic report of Luxembourg (continued) (CCPR/C/LUX/4;
CCPR/C/LUX/Q/4; CCPR/C/LUX/RQ/4)*

1. *At the invitation of the Chair, the delegation of Luxembourg joined the meeting.*
2. **Ms. Kpatcha Tchamdja** said that she would be grateful for more information about bill No. 7691 of November 2020, including details of any provisions related to the “certificates of good character” that the State party’s authorities continued to issue. She would also like to know whether the international protection online portal being developed by the National Reception Office with a view to ensuring access to information for asylum-seekers was already operational, and whether the legal assistance available to asylum-seekers covered all reception proceedings.
3. **Mr. Quezada Cabrera**, speaking via video link, said that, while the State party’s decision to extend the time frame for family reunification applications from three to six months was a positive step, he would like to know whether any further changes to simplify and improve the system were envisaged, such as the introduction of a swifter, expedited procedure or a more flexible interpretation of “family” that recognized the concept of “extended family” and the differing family realities in refugees’ countries of origin. He would also like to know whether any steps to prevent child asylum-seekers from being placed in detention centres were likely to be taken in the near future. Clarification as to why the State party deemed it unnecessary to adopt legislation to regulate the special administrative procedure for determining statelessness and why persons whose stateless status had been recognized were not automatically granted a special residence permit would likewise be appreciated.
4. **Ms. Bassim**, noting that female genital mutilation had become a matter of some concern in Luxembourg in recent years, asked what percentage of the country’s women were subjected to or at risk of being subjected to the practice, and whether awareness-raising campaigns were periodically conducted among the affected communities. Since the issue had been omitted from the National Action Plan for Gender Equality of July 2020, she would like to know how the State party planned to ensure effective implementation of existing legislation outlawing female genital mutilation. She would also welcome information about the mechanism through which the judicial authorities might exercise extraterritorial jurisdiction to bring perpetrators of female genital mutilation committed outside Luxembourg to justice.
5. **Mr. Soh** said that, while the legislative and administrative measures described by the delegation at the previous meeting (CCPR/C/SR.3880) would certainly enhance the rights of intersex persons, the Government urgently needed to address the grave physical and psychological suffering endured by intersex persons who had been subjected to irreversible, non-consensual surgical and medical procedures. Accordingly, he would appreciate an update on the status of the bill banning non-consensual sex reassignment surgery on intersex persons that had been in the drafting stages since 2018.
6. Turning to the right to privacy, specifically in the context of the coronavirus disease (COVID-19) pandemic, he asked how many privacy violations had been investigated and punished in application of the Act of 17 July 2020, which had introduced a series of measures in response to the pandemic; whether persons whose data had been processed for test and tracing purposes had been informed that their data had been accessed; and how often the right to object to the collection, transmission and storage of personal data in relation to the mass testing and vaccination programmes had been invoked. With regard to data protection more generally, he wondered whether the delegation could share the list of processing operations deemed high-risk that the National Data Protection Commission had drawn up in accordance with the European Union General Data Protection Regulation; and how frequently the Commission engaged in prior consultation with data controllers regarding planned processing operations and risk management. Statistical information on complaints received by the Commission and corrective action taken would be helpful.

7. He would welcome an update on progress towards the establishment of a comprehensive and coherent legal framework for the protection of whistle-blowers, in line with the relevant European Union directive, as well as details of any plans to incorporate provisions to protect persons who disclosed information of legitimate public interest into the 2014 Act on Freedom of Expression in the Media. He remained troubled by the State party's assertion that articles 144 and 145 of its Criminal Code, concerning the free exercise of religion, and articles 443 and 444, concerning attacks on honour or reputation, were compatible with article 19 of the Covenant. Thus, recalling the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression, he invited the delegation to clarify the Government's stance on the decriminalization of defamation and to provide details of the content and current status of the bill that would ensure appropriate penalties for defamation that was apparently in the drafting stages.

8. **Mr. El Haiba** said that he would welcome more information about the Interministerial Human Rights Committee, including details of the extent and scope of its authority, the ministry to which it was attached and its specific role in protecting human rights. Clarification as to whether it met the criteria for being considered a national mechanism for implementation, reporting and follow-up would also be useful.

9. **Mr. Zyberi**, referring to paragraphs 145 to 148 of the report, said that it was unclear which body decided whether legal assistance should be provided in the context of asylum applications and similar proceedings and whether such decisions could be appealed or reviewed. He would like to know whether minors had ever been detained, in the asylum context, "in their best interests", and, if so, how long the "shortest period of time possible" mentioned in the report might be in reality.

The meeting was suspended at 10.30 a.m. and resumed at 10.50 a.m.

10. **A representative of Luxembourg** said that bill No. 7691 of November 2020 established procedures for checking "good repute"; it did not address the issue of "certificates of good character", which was not a legally established practice in Luxembourg. The procedures that the bill would establish would apply to the recruitment process in certain professions, notably the judiciary, to the process for obtaining firearms licences, and to criminal record checks, inter alia. The bill had already been referred for comment to the High Court of Justice and the National Data Protection Commission, among other bodies, so the legislative process was well under way.

11. **A representative of Luxembourg** said that the international protection online portal was already accessible but was not yet fully operational; much of the required translation work remained to be done, and the COVID-19 pandemic had delayed progress. Article 17 of the Act of 18 December 2015 on International Protection and Temporary Protection provided that any person seeking international protection was entitled to legal assistance from the time of application until the process was concluded. With regard to family reunification applications, the Government viewed the doubling of the time frame for such applications as significant progress. Given the complexities involved in such applications, such as the need to process documentation in a foreign language, it would be difficult to expedite the process any further. The Act of 29 August 2008 on the Free Movement of Persons and Immigration, as amended, did not recognize the concept of extended family.

12. Responsibility for determining whether or not a minor was unaccompanied, and for the care of those thus found to be unaccompanied, lay with the National Reception Office. She was unaware of any unaccompanied minors having been placed in holding centres, but, if ever they were, the period involved would be strictly limited to a few hours. There was no specific legislation regulating the special administrative procedure for determining statelessness because the 1954 Convention relating to the Status of Stateless Persons was in force in Luxembourg and provided an adequate legal framework. Moreover, since cases of statelessness were rare, with a total of three applications for stateless status in 2020 and 2021 combined, the Immigration Directorate did not see any need for specific legislation.

13. According to a study by the European Institute for Gender Equality, an estimated 12 to 17 per cent of girls living in Luxembourg who originated from a female genital mutilation-practising country were at risk of being subjected to the practice. The Government carried out awareness-raising campaigns to highlight the grave consequences of the practice and

reduce the risk to women and girls, and it had marked the occasion of International Day of Zero Tolerance for Female Genital Mutilation on 6 February 2022. Through other efforts, it aimed to provide professionals and communities with the tools to prevent and combat the practice. For example, it had entered into an agreement with the Groupe pour l'Abolition des Mutilations Sexuelles (Group for the Abolition of Sexual Mutilation), a Belgian non-governmental organization (NGO), under which the latter provided compulsory training for staff of the National Reception Office who worked directly with female asylum-seekers, with more than 100 officials having received the training since 2017. In addition, Femmes en détresse (Women in Distress), another NGO, was working on a toolbox that would enable professionals to identify and respond to harmful practices. Female genital mutilation was addressed under the National Plan on Emotional and Sexual Health rather than the National Action Plan for Gender Equality, although the Ministry for Equality between Women and Men was proposing to develop a national strategy to combat the practice that would have three components focused on, respectively, prevention, empowerment of professionals and victims, and support for adult and child victims. As part of that process, a working group would hold consultations with civil society, community representatives and health, education and social work professionals in the second half of 2022.

14. **A representative of Luxembourg** said that those who perpetrated female genital mutilation abroad could be prosecuted in Luxembourg. Articles 5-1 to 7 of the Code of Criminal Procedure set forth the conditions under which nationals or habitual residents of Luxembourg who committed certain offences abroad – including female genital mutilation under article 409 bis of the Criminal Code – could be tried in the courts of the Grand Duchy. In the event of a complaint, the judge would determine whether the court had jurisdiction to hear the case, taking several factors into account.

15. **A representative of Luxembourg** said that the drafting of the bill that would ban non-emergency “sex normalizing” medical treatment without the free and informed consent of the intersex person concerned had been delayed by the COVID-19 pandemic. The interministerial working group responsible for the bill was aiming to establish a human rights-based legislative framework that afforded effective protection and guaranteed minors’ right to self-determination. The Government recognized that prohibiting such medical treatment was essential to prevent the suffering of intersex persons. It was also working on other measures benefiting intersex persons that were envisaged in the National Plan of Action to Promote the Rights of Lesbian, Gay, Bisexual, Transgender and Intersex Persons, including awareness-raising and support for the delivery of training by NGOs. The introduction of a third gender option in civil registration was not an alternative to the proposed legal ban on medical treatment: the two measures were complementary and formed part of a comprehensive approach to protection of the rights of intersex persons.

16. **A representative of Luxembourg** said that general information on the processing of personal data collected in the context of COVID-19 testing, tracing and vaccination campaigns was published online. More specific information was included in invitations to get vaccinated and in the prescriptions issued to those who had tested positive and were required to self-isolate. The Health Directorate of the Ministry of Health, as the data controller, had established a mechanism through which data subjects could object to the collection, transmission and storage of personal data; they could also file complaints directly with the data protection authority. The delegation would provide the Committee with figures on the number of objections, requests for access and requests for deletion, together with information on complaints received and investigations conducted by the National Data Protection Commission under article 10 of the Act of 17 July 2020, subsequently in writing.

17. **A representative of Luxembourg** said that bill No. 7945 transposing European Union Directive No. 2019/1937 on the protection of persons who report breaches of Union law had been submitted to the Chamber of Deputies in January 2022. The Directive provided minimum guarantees for whistle-blowers, who were accorded a high level of protection in Luxembourg. Further information on the legislative framework for the protection of whistle-blowers and journalists would be transmitted to the Committee subsequently in writing. The Government had not repealed articles 144 and 145 of the Criminal Code, but it was reflecting on whether the penalties provided for offences against the free exercise of religion were appropriate. Similarly, it was considering reducing the penalties laid down in articles 443 and

444. In such cases, judges already took into account the specific circumstances of the offence when determining the sentence.

18. **A representative of Luxembourg** said that the Interministerial Human Rights Committee was a permanent body with a formal mandate. Its establishment in 2015 had helped the Government to improve its reporting to the human rights treaty bodies and had contributed to the submission of a number of overdue reports. The Interministerial Committee also raised awareness and disseminated knowledge of international human rights treaties and provided a forum for discussion and consultation with national human rights institutions and civil society organizations. The Government was studying the recommendations contained in the report of the Office of the United Nations High Commissioner for Human Rights on regional consultations on experiences and good practices relating to the establishment and development of national mechanisms for implementation, reporting and follow-up (A/HRC/50/64).

19. **A representative of Luxembourg** said that decisions on whether requests for legal assistance were manifestly inadmissible, unfounded or disproportionate were taken jointly by the Luxembourg Bar Association and the Ministry of Justice. Asylum-seekers could file appeals against such decisions with the Disciplinary and Administrative Appeals Board of the Bar Association.

20. **Mr. Ben Achour**, noting that the State party allocated funding to religious communities because it wished to support the exercise of freedom of worship, asked which communities received State funding; whether that funding was contrary to the principle that the State should be neutral in religious affairs; and whether it undermined the independence of the communities in question. While the replacement of religious education and moral and social education in schools with a course entitled “Life and Society” was an encouraging development, he wondered whether the State party had assessed the positive and negative impacts of the new course, whether it had been welcomed by families, teachers and civil society actors, and whether there had been any hostile reactions.

21. Further information on the content and implementation of the National Strategy to Combat Antisemitism would be appreciated. It would be particularly interesting to know what the impact of the www.respect.lu portal launched in 2017 by the association SOS Radicalisation had been, and whether the Government had detected any reduction in cases of radicalization. He would also like to know whether article 25 of the Constitution, which required prior authorization to be sought for open-air political, religious and other gatherings, unduly restricted the right of peaceful assembly and was therefore incompatible with article 21 of the Covenant. He would be grateful if the delegation could describe the procedure for giving notification of and obtaining authorization for gatherings and demonstrations.

22. **Ms. Kpatcha Tchamdja** said she was concerned that legal assistance might be withheld or withdrawn from persons in need of international protection based on certain aspects of their material situation. She would appreciate information on the eligibility criteria currently applied.

23. **Mr. Zyberi**, recalling that Luxembourg had invoked a state of emergency in the context of its efforts to combat the COVID-19 pandemic, said that he was curious to know why it had not availed itself of the right to derogate from its obligations under article 4 of the Covenant. He wondered whether the judiciary continued to experience any negative effects of the pandemic, given that prescribed time limits for court proceedings had been suspended and the requirement for public hearings had been waived in certain cases. Information on specific measures taken in the context of the pandemic to protect the rights of vulnerable persons, including older persons, persons with disabilities, and persons on low incomes, would be welcome.

24. **Mr. Quezada Cabrera** said that he would be grateful for clarification as to whether the detention of minors in need of international protection was permitted under national law; his understanding was that in 2017 the Government had extended the maximum time for which families with children could be held in holding facilities from 72 hours to 7 days. It would be particularly useful to know whether article 22 of the Act of 18 December 2015 on International Protection and Temporary Protection, article 120 of the Act of 29 August 2008 on the Free Movement of Persons and Immigration and article 6 of the Act of 28 May 2009

on the Establishment and Organization of the Holding Facility remained in force, and what their scope of application was.

25. **A representative of Luxembourg** said that the State adhered to the principle of non-interference in the internal affairs of religious communities, which had the right to choose their own representatives. Agreements had been concluded to regulate the financial relationships between the State and the Muslim, Catholic, Protestant, Orthodox, Anglican and Jewish communities, all of which were well established in the country. The Government did not consider the funding of religious communities to be contrary to the principle of neutrality. Religious communities were not dependent on the State, which provided only part of their income. They were free to seek other sources of revenue, such as donations, and they were committed to financial transparency. Communities that had decided not to accept State funding were still able to engage with the Government on matters of worship.

26. The Government had recently appointed an interministerial delegate for the coordination of policies to combat racism, antisemitism and anti-LGBTIQ+ hatred. The person in question had a broad mandate to combat all forms of discrimination, including through the development of the national strategy to combat antisemitism.

27. **A representative of Luxembourg** said that, through its www.respect.lu portal, SOS Radicalisation provided support to persons affected by extremism and radicalization and organized consultations, training and awareness-raising events. In 2021 its activities had included numerous networking events and training courses and it had provided information on the prevention of radicalization to 277 persons.

28. **Mr. Bichler** (Luxembourg), speaking as head of the delegation, said that he was not aware of any negative reactions to the introduction of the Life and Society course, which had been extremely well received as a replacement for traditional religious education.

29. **A representative of Luxembourg** said that the Constitution guaranteed the right to peaceful, unarmed assembly in compliance with the law, without any requirement for prior authorization. However, that provision did not apply to open-air political, religious or other gatherings, which were regulated by the police. The right to peaceful assembly was therefore relative rather than absolute. There were well-defined procedures for requesting authorization and local authorities and the police worked together to ensure public order and safety. Those procedures did not constitute a restriction on peaceful assembly but might involve limitations, determined on a case-by-case basis, to prevent violence. For example, limits had been imposed on protests against the measures adopted during the COVID-19 pandemic because some of the demonstrations had blocked routes to hospitals.

30. **A representative of Luxembourg** said that local authorities were responsible for maintaining public order during large gatherings. While the regulations that determined which events required authorization differed from one area of the country to another, in general any individual or organization that wished to organize an event in a public area that might undermine public order must request prior authorization. In the city of Luxembourg, such requests could be made online.

31. **A representative of Luxembourg** said that the Act of 18 December 2015 on International Protection and Temporary Protection provided for legal assistance in a range of circumstances for persons seeking protection, including during procedures envisaging their transfer to other countries of the European Union.

32. **Mr. Bichler** (Luxembourg) said that the Government had not notified regional or international bodies of the legal measures taken to declare a state of emergency during the COVID-19 pandemic because the measures had been limited in scope and in time, had been adopted with the appropriate involvement of parliament and had respected the principles of necessity, proportionality and legality.

33. **A representative of Luxembourg** said that the adjustments made within the judicial system during the COVID-19 pandemic, such as, for example, the suspension of time limits for processing cases and the transmission of documentation electronically, respected the Constitution and the Government's international obligations, as well as the principles of necessity and proportionality.

34. **A representative of Luxembourg** said that, in response to the closure of care facilities and activity centres for older adults and persons with disabilities during the pandemic, the Government had introduced a form of paid leave that enabled workers living with family members who were heavily dependent on those facilities to remain at home to care for them. The measure had been extended until late 2021 and had benefited around 60 persons. Users' return to care facilities had been managed in accordance with plans tailored to their individual needs. Information on measures to combat COVID-19 had been made accessible to persons with disabilities, including through sign language. Regular oversight ensured that sufficient COVID-19 tests were provided to care facilities, and the Government had commissioned an assessment of the impact of decisions and measures adopted during the pandemic on the fundamental rights of the facilities' staff, users and members of their families. Concrete recommendations would be issued as a result of the assessment.

35. **A representative of Luxembourg** said that government funding was allocated to organizations working to combat discrimination against lesbian, gay, bisexual, transgender and intersex persons, for example, by providing training and organizing events to mark Luxembourg Pride. The Government had recognized the need for effort at all levels to uphold the rights of members of the lesbian, gay, bisexual, transgender and intersex community, particularly in times of crisis, and they were offered counselling and online mediation services. A long-standing programme that provided accommodation, food and health care to homeless persons and persons with an irregular migration status in winter had been extended during the pandemic. Beneficiaries of the programme had also had access to vaccination and assistance while awaiting COVID-19 test results. All social services had remained available during the pandemic, either online, via telephone or, in the case of vulnerable persons, in-person, in line with the applicable health measures. Organizations working with the Government received free COVID-19 tests for their staff and beneficiaries and had access to a communication toolkit that brought together all government communications on COVID-19 measures and recommendations, in several languages. A number of measures had been taken to support persons with low incomes, who had been particularly severely affected by the pandemic.

36. **A representative of Luxembourg** said that under the Act of 18 December 2015 on International Protection and Temporary Protection, minors could be detained only in exceptional circumstances and when it was not possible to impose any other, less coercive, measure. Their detention must be for as short a period as possible, and every effort was made to ensure that they were placed in appropriate accommodation with their best interests taken into account. Families with minors could be placed in detention centres for no more than 72 hours. Under the amended Act of 29 August 2008 on the Free Movement of Persons and Immigration, minors could be held in detention centres adapted to their age.

37. **Mr. Zyberi** said that he wished to know whether there was a backlog of court cases, particularly criminal cases, and, if so, what steps had been taken to ensure that they were processed within a reasonable time frame.

38. **Mr. Ben Achour** said that the Committee would welcome a more detailed account of the impact of the pioneering Life and Society course. He also wished to know what criteria were used to determine the amount of funding allocated to religious communities and how the Government identified representatives of those communities, particularly when the appointment of a representative might prove contentious.

39. **A representative of Luxembourg** said that the criteria for the allocation of funding to religious communities were set out in each community's agreement with the Government.

40. **Mr. Bichler** (Luxembourg) said that the interactive dialogue with the Committee was indispensable to making the provisions of the Covenant a reality. The Government remained committed to its human rights obligations, particularly through its recent election, for the first time, to the Human Rights Council. Human rights remained a central pillar of all actions

undertaken by the Government of Luxembourg. The delegation would provide all information promised in writing within the required period.

The meeting rose at 12.20 p.m.