



International Covenant on Civil and Political Rights

Distr.: General
6 July 2022

Original: English

Human Rights Committee 135th session

Summary record of the 3880th meeting*

Held at the Palais Wilson, Geneva, on Wednesday, 29 June 2022, at 3 p.m.

Chair: Ms. Pazartzis

Contents

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

Fourth periodic report of Luxembourg

* No summary records were issued for the 3878th and 3879th meetings.

This record is subject to correction. Corrections should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of the present record to the Documents Management Section (DMS-DCM@un.org).

Any corrected records of the public meetings of the Committee at this session will be reissued for technical reasons after the end of the session.



The meeting was called to order at 3 p.m.

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

Fourth periodic report of Luxembourg (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. Tanson** (Luxembourg), speaking via video link, said that she wished to reaffirm her country's commitment to promoting and protecting the rights enshrined in the Covenant, particularly in the face of rising nationalism and other challenges. Her Government looked forward to engaging in dialogue and to receiving the Committee's recommendations. It had taken a number of legislative and other measures to step up the protection of human rights in recent years. At the international level, its actions had been focused on four priorities – support for the rule of law, civic space and human rights defenders; sustainable development and climate action; gender equality and non-discrimination; and the rights of the child – and the 2018–2023 Coalition Agreement set out clear political commitments in those areas. At the national level, a constitutional amendment process was under way and the proposed amendments to chapter II of the Constitution, on fundamental rights, had been approved by the Chamber of Deputies in March 2022. Several bills that would increase access to justice and the independence of the judiciary had been drafted, and three major bills relating to juvenile justice and child protection, drafted in accordance with the recommendations of the Committee on the Rights of the Child, had been submitted to parliament in March 2022.
3. A Government-commissioned study on racism and ethnic and racial discrimination in Luxembourg that contained recommendations as to how the situation could be improved had recently been published, and a bill that would amend criminal law to establish discrimination as an aggravating circumstance had been presented in June 2022. Other recent legislative initiatives included a bill on the protection of whistle-blowers and two bills relating to data protection in the criminal justice system. In addition, several campaigns to raise awareness of the rights of women and girls in situations of domestic violence or exploitation were being conducted.
4. Despite the progress made in strengthening the rule of law and safeguarding human rights, the Government was aware of the need to remain vigilant, particularly in the face of international crises such as the coronavirus disease (COVID-19) pandemic and the unjustifiable war of aggression waged by the Russian Federation on Ukraine. During the pandemic, it had been required to make some difficult decisions that had inevitably affected the fundamental rights of Luxembourg residents. However, it had sought to strike a balance between safeguarding individual and collective rights and preserving public health, taking into account the provisions of article 4 of the Covenant on the right of derogation. A state of emergency had been proclaimed in accordance with the Constitution for a period of three months, and the law on measures to combat the pandemic had been repeatedly amended in the light of expert assessments of its impact on the rights and freedoms of Luxembourg residents. The lessons learned from the pandemic would be used to better prepare for future crises. In the context of the war in Ukraine, the Government was working hard to meet the needs and protect the rights of Ukrainians who had requested temporary protection in Luxembourg.
5. To conclude, she reaffirmed her country's attachment to its monist legal tradition and to the principle that international treaties ratified by Luxembourg took precedence over national law. Her Government would continue its efforts to protect and promote human rights and would strive to implement the Committee's recommendations as a matter of priority.
6. **Mr. Ben Achour** said that he wished to commend the State party on the quality of its report and the gender-balanced composition of its delegation. He would be grateful if the State party could further clarify its reservation to article 10 (3) of the Covenant and explain why the withdrawal of that reservation depended on the adoption of the bill to establish a criminal justice system for minors. It would also be helpful if the State party could explain and justify its reservation to article 14 (5) of the Covenant and clarify how the constitutional amendment process was related to its reservation to article 19 (2). Lastly, he wished to know more about the constitutional procedures for incorporating the provisions of international

treaties into national law and the approach taken in the event that the provisions of a treaty ratified by Luxembourg were incompatible with its Constitution.

7. **Ms. Kpatcha Tchamdja** asked whether all of the Committee's previous recommendations had been implemented. In the event that they had not, she would appreciate an explanation of the reasons. With reference to the resolution on the Centre for Equal Treatment adopted by the Chamber of Deputies on 1 July 2020, she wondered what impact the resolution had had on the fight against discrimination, whether the resolution could be considered sufficient and what powers the Centre had been granted. She would also like to know whether the implementation of the National Action Plan for Gender Equality had been evaluated in 2022 as planned, and, if so, what the results of the evaluation had been. In the light of concerns raised by civil society, she enquired whether the constitutional amendment process would lead to the principle of equality before the law being applied differently to nationals and non-nationals.

8. **Ms. Bassim** said that she wished to know whether the State party had any measures in place to limit the risk of terrorist activity on the part of persons returning from areas known to be under the control of terrorist groups and/or sympathizing with those groups, and whether Luxembourg cooperated with States outside the European Union in combating terrorism. She would appreciate an explanation of the steps taken to achieve a balance between protecting the rights of individuals and ensuring the effectiveness of criminal investigations, and to safeguard the rights of victims of terrorism.

9. She would welcome an update on the status of bill No. 7346 on the accessibility of public places, public roads and multi-dwelling buildings for all. It would be particularly helpful to hear the delegation's comments about the apparent contradiction between programmes that promoted the social inclusion of persons with disabilities and the continued existence and, in some cases, expansion of institutions, especially within the education system, that excluded persons with disabilities.

10. **Mr. Soh** said that he would be interested to hear how many non-urgent and irreversible surgical procedures had been carried out on intersex children. Detailed statistics on sterilizing, feminizing and masculinizing procedures and hormone treatments would be useful. He wondered how many of the cases of sexual discrimination given in the annual reports of the Centre for Equal Treatment – 12 in 2020 and 9 in 2021 – had involved intersex persons and what role the Centre played in helping intersex persons who had been victims of discriminatory and harmful practices to seek redress and receive rehabilitation services.

11. He would also like to know whether the requirement for gay and bisexual men to abstain from sexual activity for 12 months before donating blood was still in place. Lastly, he would be grateful for an update on the status of the midterm review of the National Plan of Action to Promote the Rights of Lesbian, Gay, Bisexual, Transgender and Intersex Persons and for details of any preliminary findings that might be available.

12. **Mr. Quezada Cabrera**, speaking via video link, said that he would like an update on progress towards the enactment of the amendments to chapter II of the Constitution concerning the right to life. He wished to know whether the absence of constitutional provisions expressly protecting the right to life had ever prompted debate or given rise to practical problems in judicial proceedings in the past, and, if so, how it had affected the case law of the courts.

13. Given that the Act of 28 July 1973 gave the police broad powers to use firearms, he would be interested to know how frequently such weapons were employed in fighting crime. Statistics on the number of instances in which they had been used and the number of deaths and injuries that had resulted would be helpful. He also wished to know the status of the preliminary bill on the use of weapons referred to in the State party's replies to the list of issues (CCPR/C/LUX/RQ/4, para. 72).

The meeting was suspended at 3.45 p.m. and resumed at 4.10 p.m.

14. **A representative of Luxembourg** said that her country's reservation concerning article 10 (3) of the Covenant had been based on a 1992 law on the protection of minors that fell short of international standards. The process of repealing and replacing that law had taken an inordinate amount of time. In April 2022, two major bills reforming the juvenile justice

system had been presented. One covered deprivation of liberty, conditions of detention and the human dignity of minors in the juvenile justice system, while the other contained provisions on the rights of minors who had been victims of crime. Under the former, the State Socioeducational Centre would be replaced by a specialized prison system for juveniles, a special juvenile court would be established and the age of criminal responsibility would be set at 14 years. The central aim was to educate and rehabilitate juveniles in conflict with the law and to ensure that deprivation of liberty was used only as a last resort and was governed by a strict legal framework.

15. Her delegation had nothing to add regarding the country's reservation to article 14 (5) of the Covenant, which it had amply explained previously. The reservation to article 19 (2) had been intended to forestall any conflict between the Covenant and the licensing system for radio and television broadcasting in terms of guarantees of freedom of expression. That reservation had been in place since 1983 and could not be withdrawn or re-examined at present, but measures to protect the media and journalists and safeguard their right to freedom of expression had been reinforced. The Government was also considering criminalizing the publication of the name, address and other personal details of journalists in cases where such disclosure might place them or their families at risk. In January 2022, an alert documenting serious threats to media freedom and the safety of journalists had been posted on the Council of Europe Platform for the Safety of Journalists and the Government had taken immediate measures to reaffirm the freedom of journalists in the context of the COVID-19 pandemic.

16. **A representative of Luxembourg** said that, since her country recognized the primacy of international and European treaties over national law, including the Constitution, in the event of a conflict between its provisions and those of a ratified treaty, the Constitution would have to be amended. Procedures for the adoption of international treaties were set out in article 37 of the current Constitution, and article 114 established the process for amending the Constitution itself.

17. **A representative of Luxembourg** said that judges were able to apply international standards directly in their judgments under the country's monist approach. The case law of the European Court of Human Rights was extensive and its judgments were often cited by judges in Luxembourg.

18. **Mr. Bichler** (Luxembourg), speaking as head of the delegation, said that responsibility for coordinating government actions in the field of human rights, including interaction with the treaty bodies, lay with the Interministerial Human Rights Committee. It held two types of meetings: closed meetings for discussions between its members, and open meetings attended by representatives of civil society organizations and national human rights institutions. It considered all recommendations received and assigned one or more of its members to respond to and follow up on each of them. Not all of the recommendations that the country had received following its last review before the Human Rights Committee had been fully implemented thus far but work to that end was ongoing.

19. **A representative of Luxembourg** said that the Interministerial Human Rights Committee was composed of representatives of ministries and public services, including the police force, that had a specific role in upholding human rights pursuant to national law. It was responsible for raising awareness of international human rights standards among the general public, independent human rights institutions and civil society, and for preparing government reports and replies for human rights treaty bodies and other international mechanisms. The Committee provided a forum for the exchange of information on the human rights situation in Luxembourg and worldwide, and it was thanks to the efforts of its staff that Luxembourg was now up to date with its reporting obligations.

20. **A representative of Luxembourg** said that the Centre for Equal Treatment could issue recommendations, publish reports, disseminate information on equality and discrimination and support victims of discrimination but that it was not empowered to participate directly in court proceedings and represent victims, receive and process complaints or requests or issue binding decisions. However, following a recommendation from the European Commission against Racism and Intolerance, a bill to empower the Centre to receive complaints and requests, carry out investigations and take legal action was currently being drafted.

21. **A representative of Luxembourg** said that a three-year assessment of the National Action Plan for Gender Equality was currently being carried out under the auspices of the Ministry for Equality between Women and Men.

22. **A representative of Luxembourg** said that the provisions on the rights of nationals and non-nationals contained in the new Constitution did not differ from those of the previous Constitution. All nationals were equal before the law, and any exceptions to that rule that had the effect of reducing the protections enjoyed by non-nationals were expressly established by law. The Government accepted the criticism levied at its decision to differentiate between nationals and non-nationals in the new Constitution, which had been a political decision rather than a legislative one. The new Constitution would not change the reality that, according to the jurisprudence of the Constitutional Court, nationals and non-nationals were equal before the law in practice.

23. **A representative of Luxembourg** said that the decree on counter-terrorism measures of July 2021 remained in force, and that, in criminal proceedings, the aim was to maintain a balance between the rights of individuals, the efficacy of criminal investigations and the need for public security. Measures to combat terrorism included the extension of maximum permitted periods of detention and the use of geolocation. The repatriation of non-nationals involved in terrorist activities to their countries of origin was regulated in the Criminal Code. In addition, the www.respect.lu portal provided information on radicalization and efforts to combat and prevent it. Legislation strengthening procedural guarantees for victims' rights was aligned with all relevant European directives and included provisions on, inter alia, the information to be provided to victims. A dedicated unit for victim protection had been established within the police force.

24. **A representative of Luxembourg** said that bill No. 7346, on the accessibility of public places, public roads, and multi-dwelling buildings for all, had been adopted in December 2021 and would enter into force in 2023. It was based on article 2 of the Convention on the Rights of Persons with Disabilities and was aimed at eliminating barriers that caused inaccessibility. The Council of State was awaiting an advisory opinion on three related bills that would also enter into force in 2023. That legislation contained the definitions of persons with disabilities and reasonable accommodations used in the Convention on the Rights of Persons with Disabilities and provided that a refusal to provide reasonable accommodations constituted discrimination on the grounds of disability and was punishable by up to 2 years' imprisonment and a fine of up to €25,000.

25. Some persons with disabilities continued to live in institutions owing to a lack of housing adapted to their needs. However, the Government had commissioned a study on the living conditions of persons with disabilities with a view to taking action to ensure compliance with the autonomy and social inclusion provisions of the Convention on the Rights of Persons with Disabilities. The study would also provide reliable data, disaggregated by disability. The Ministry of Family Affairs, Integration and the Greater Region had commissioned the Luxembourg Institute of Socio-Economic Research to examine the existing funding system for support for persons with disabilities. The Ministry, which was working with representatives of persons with disabilities, proposed introducing a new personal support allowance that would enable persons with disabilities to maintain their autonomy while taking their individual needs into account. Work on the proposal had been scheduled to be completed by 2024, but had been delayed by the COVID-19 pandemic.

26. The census conducted in November 2021 had, for the first time, included a section on the situation of persons with disabilities, the aim being to gather the information and statistics needed to comply with article 31 of the Convention on the Rights of Persons with Disabilities and implement other policies benefiting persons with disabilities. The results of the census should be available in 2023 at the latest.

27. **A representative of Luxembourg** said that an interministerial working group was drafting a bill to guarantee the health and right to self-determination of minors. Another interministerial working group had issued preliminary views on the possibility of including a third gender option in the civil register, and the Government was drafting a bill that would incorporate that option. In the meantime, a law already in force allowed individuals, regardless of their age or nationality, to have their gender amended in the civil register. That

law strengthened the rights of intersex and transgender persons and had been identified as an example of best practice by the European Commission. Government statistics relating to medical treatment for intersex persons were collated from data on care provided to intersex patients gathered by hospitals. A new data-collection system was currently being rolled out and, when its implementation was complete, data on the number of medical procedures carried out on intersex persons would be available.

28. There were no legislative provisions that had the effect of restricting the right to give blood based on sexual orientation. Blood donation centres were responsible for vetting donors, who, since 2021, had been asked about their sexual activity during the 12 months prior to donation rather than their sexual orientation. Men who had sex with men were able to donate plasma but were asked to wait 12 months before donating blood. The University of Luxembourg was studying practices in that area and would publish its findings in 2023.

29. **A representative of Luxembourg** said that the first vote on the revision of the constitutional provisions on the right to life had taken place in March 2022 and that a second vote was planned for late 2022. A number of organizations had asked for the second vote to be replaced with a referendum but the request had been rejected. Parliament had opted to delay the second vote until draft versions of the laws that would need to enter into force at the same time as the revised Constitution had been finalized. The revised Constitution would take effect six months after the second vote, to allow time for all of the related laws to be adopted.

30. **A representative of Luxembourg** said that police and other law enforcement officers operated in accordance with all relevant international guidelines relating to the use of firearms, and instances of the use of firearms were rare.

31. **A representative of Luxembourg** said that a new law on the use of firearms and munitions had entered into force in February 2022. It was consistent with all relevant European Union directives and provided clearer definitions and provisions on the prohibition and permitted uses of weapons, which included professional hunting, besides strengthening arms control measures.

32. **Ms. Bassim** said that it would be useful to hear more about the State party's cooperation with countries outside the European Union in counter-terrorism activities, such as information exchanges and the extraterritorial treatment of suspects.

33. **Mr. Muhumuza** said that he would appreciate further information on the implementation of measures to combat racial discrimination, in particular discrimination against persons of African descent and recent immigrants, and would like the delegation's views on how their effectiveness might be improved.

34. **Ms. Sancin** said that it would be interesting to know what weight Luxembourg gave to the Committee's Views on individual complaints and whether specific mechanisms existed for implementing them.

35. **Mr. Santos Pais** said that he wished to know whether data-sharing on terrorism suspects among European Union member States was subject to judicial or other oversight, especially in the light of recent rulings by the European Court of Justice regarding data retention.

36. **The Chair** said that she wished to know more about the legislation to combat COVID-19 that remained in place and its relation to the constitutional provisions on the state of emergency.

37. **A representative of Luxembourg** said that the primary framework for international cooperation on terrorism issues was that provided by the United Nations. The Government applied all relevant Security Council resolutions, including those on combating the financing of terrorism and preventing the return of foreign fighters, and procedures were in place for sharing data with ministries in other countries. It had recently participated in the High-Level International Conference on Human Rights, Civil Society and Counter-Terrorism and always endeavoured to implement lessons learned from such events. It cooperated with countries outside the European Union through an approach based on diplomacy, development and defence, in addition to participating in projects coordinated by international organizations including the European Union, the United Nations, the North Atlantic Treaty Organization

(NATO) and the Organization for Security and Cooperation in Europe, with a view to building counter-terrorism capacities in other countries. Throughout all such projects and in all aspects of the fight against terrorism, the importance of upholding human rights, in line with all relevant international instruments, was prioritized. He cautioned against creating a false dichotomy between human rights and security. The Government of Luxembourg was well aware that security should in fact serve human rights, the rule of law and democracy.

38. **A representative of Luxembourg** said that the Government was working to implement a general integration strategy that did not distinguish between different races or ethnic groups. Anti-discrimination efforts cut across all Government policies. Following the publication of the report *Being Black in the EU* in 2018, a study on racism and racial and ethnic discrimination in Luxembourg had been conducted at the request of the Minister of Family Affairs, Integration and the Greater Region with a view to developing a coherent anti-racism strategy. The quantitative findings of the study had been published in March 2022, and the qualitative findings would be published later in the year. The study had shown that racism in Luxembourg was based primarily on cultural stereotypes and ethno-racial prejudices. Individuals reported experiencing micro aggressions on a day-to-day basis. Since the publication of the first set of findings, measures had been introduced to educate the public, and in particular State employees, about non-discrimination and diversity, including in the form of training for municipal employees, public conferences, debates and workshops. Luxembourg also ran an annual call for proposals for civil society projects to combat racism.

39. **A representative of Luxembourg** said that legislative and penal measures were also being taken to combat racism. A bill to combat hate crime was under examination that, if adopted, would allow aggravated circumstances to be applied to all crimes motivated by characteristics specified in the Criminal Code such as racial origin, sexual orientation or skin colour. If the bill was passed, a campaign to raise awareness of the new provisions would be conducted with a view to reducing hate crimes and intolerance of all forms.

40. **A representative of Luxembourg** said that she was not aware of any legal proceedings having been hampered by the fact that the right to life was not expressly protected by the Constitution, noting that the right to life was in any case effectively protected in Luxembourg under international law.

41. **A representative of Luxembourg** said that the Government of Luxembourg highly valued the work and views of the Committee. When it came to implementing the Committee's Views on individual complaints, cases were examined on an individual basis. It was safe to assume that, where the Constitution and the Covenant clashed, the Constitution would be amended accordingly.

42. **Mr. Bichler** (Luxembourg) said that, since all provisions of the Covenant had been transposed into national law, the Committee's Views could potentially be given effect through domestic legal proceedings, depending on the specifics of the case.

43. **A representative of Luxembourg** said that a legal framework for data retention was being developed and existing legislation related to data retention was being reviewed in the light of the constantly changing nature of counter-terrorism, recent decisions of the European Court of Justice and the need to ensure judicial cooperation within the European Union. The topic was complicated, however, and required in-depth analysis of existing case law. As the European Commission was currently engaged in a review of the European Union directive on data retention, the implications of that review for domestic law would also need to be considered.

44. **A representative of Luxembourg** said that legislation introduced to combat COVID-19 had no connection to the constitutional provisions regarding states of emergency, which, pursuant to the Constitution, were subject to a three-month time limit. All necessary COVID-19 related measures had been incorporated into national law and had been adjusted as and when necessary throughout the pandemic.

The meeting rose at 5.25 p.m.