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International Covenant on Civil and Political Rights

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

Replies of Luxembourg to the list of issues in relation to its second periodic report*

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Constitutional and legal framework within which the Covenant is implemented (art. 2)

Question 1

1. With regard to article 10 (3) of the Covenant, a preliminary bill is currently being drafted to establish a criminal justice system for minors as distinct from the youth protection system, which is focused on educational measures. As the persons concerned by the future law, namely, minors, require even greater protection and safeguards in respect of the rights enshrined in the Covenant than adults, such protection and safeguards will be foregrounded in the preliminary bill. If necessary, and depending on the final content of the future law as determined by the legislature, the Government's reservation in this regard could be reconsidered.

2. The Government of Luxembourg considers article 19 (2) of the Covenant to be compatible with the existing licensing requirements imposed on radio, television or cinema enterprises. However, a constitutional amendment process is currently under way (see the replies to question 20). The reservations entered in this regard could be reviewed once the legislative and constitutional changes have taken effect.

Question 2

3. The International Covenant on Civil and Political Rights is recognized by the Luxembourg courts as being directly applicable and having primacy over all national laws, including the Constitution.

4. The direct applicability of the Covenant has been upheld by:

- The Court of Appeal, in judgment No. 62/18 X of 7 February 2018 in the case against Etute and others:

  "The Court recalls that the International Covenant on Civil and Political Rights was approved in Luxembourg by the Act of 3 June 1983.

  By placing the International Covenant on Civil and Political Rights, which in fact creates obligations for signatory States only, on the same footing as the European Convention, the Court of Cassation has implicitly held that the Covenant may be invoked directly before the Luxembourg courts."

- The Court of Cassation, in the "Missenard" judgment No. 51/2006 (criminal) of 14 December 2006, which implicitly recognized the direct applicability of the Covenant.

5. In addition, the primacy of the Covenant has been upheld by:

- The Court of Appeal, in judgment No. 396/01 V of 13 November 2001 in the case of *Roemen v. Wolter*:

  "Given that, once the treaty has been approved and ratified in accordance with constitutional procedures and the rules of international law, the State is bound at the international level and, under the Vienna Convention on the Law of Treaties, may not invoke the provisions of its internal law as justification for its failure to perform a treaty, a directly applicable rule of international treaty law must prevail over a rule of national law, regardless of its legislative or constitutional nature."

- The High Court of Justice (general council), in judgment No. 337/02 of 5 December 2002 in the case of *Roemen v. Wolter*:

  "The provisions of articles 82 and 116 of the Constitution may be applied only if and insofar as they are compatible with the rules enshrined in international human rights treaties duly incorporated into national law and directly applicable in the national legal order.

  ... the principles proclaimed in the Declaration are set out and developed in the International Covenant on Civil and Political Rights, which was approved by the Act of 3 June 1983."

Question 3

6. Luxembourg relies on initial and in-service training for legal professionals, including lawyers, judicial officers, administrative magistrates, notaries, bailiffs and State officials and employees, to disseminate the Covenant and the Optional Protocol thereto.

7. For example, judicial assistants, who are the members of the judiciary of the future, take an afternoon course on human rights as part of their initial training. Members of the judiciary can also take in-service education courses on human rights. Although the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are not the sole focus of these training courses, they are likely to be included in the curriculum.

8. State officials and employees at an early stage of their careers are also required to take general initial training courses covering, among other topics, the history and relevance of human rights, including the two Covenants.

9. In addition, in order to ensure the quality of the training, the State organizes courses in Luxembourg, at the University of Luxembourg and the National Institute of Public Administration, and has partnerships with some specialized institutes abroad, such as the National School for the Judiciary in France and the Academy of European Law in Germany.

10. Trainee police officers take a course on human rights (between 6 and 10 hours) as part of their initial training. The International Covenant on Civil and Political Rights is covered as part of the course.

11. In consultation with civil society organizations and national human rights institutions, the Interministerial Human Rights Committee monitors the implementation of the recommendations made by the Human Rights Committee in its concluding observations.

12. The Interministerial Human Rights Committee was established in June 2015 by decision of the Government in council. It is responsible for the ongoing coordination of the Government's work of monitoring the implementation of international human rights law in Luxembourg, including by submitting regular reports to the treaty bodies of the United Nations system.

13. The Interministerial Human Rights Committee holds working sessions every six to eight weeks, bringing together representatives of all ministries and administrative authorities concerned with human rights. Each session is followed by a consultation meeting with civil society and national human rights institutions.

14. The work of the Interministerial Human Rights Committee is coordinated by the Ministry of Foreign and European Affairs. Its meetings are chaired by the Ambassador-at-Large for Human Rights.

Counter-terrorism measures (arts. 2, 7, 9–10, 14 and 17)

Question 4

15. In the case of terrorism offences, there are no exemptions from the procedural safeguards relating to the right to an effective remedy and the rights of the defence; these safeguards allow any person facing prosecution to assert his or her rights during the investigation phase, hearings and the enforcement of sentences.

16. However, the Code of Criminal Procedure does provide for certain exceptions to the ordinary law in the context of counter-terrorism. These interferences with individual rights are justified by the nature of the offences in question; they are provided for by law, pursue a legitimate objective and are necessary and proportionate to achieve the objective pursued.

17. Under article 39 of the Code of Criminal Procedure, the deprivation of liberty provided for in the context of an expedited investigation may be extended by 24 hours in the case of terrorist offences. The deprivation of liberty must end within 24 hours of the notification of the order. The order must include a statement of reasons and may not be renewed. A detained person who is not a national of Luxembourg has the right to notify and

communicate with the consular authorities of the State of which he or she is a national without undue delay.

18. Article 48-11 of the Code of Criminal Procedure provides that, if so requested in writing by the State prosecutor and for the purpose of investigating and prosecuting terrorist offences, criminal investigation officers and detectives may, in specific areas and for a specific period of time, which may not exceed 24 hours and may be renewed if accompanied an explicit, reasoned decision in accordance with the same procedure, search vehicles travelling, stopped or parked on the public highway or in places accessible to the public.

19. Undercover investigations, as provided for in article 48-26 of the Code of Criminal Procedure and introduced by the Act of 27 June 2018 adapting Criminal Procedure to Counter-Terrorism Efforts, may be launched only with the specific aim of uncovering terrorist offences or offences against State security. Such investigations are carried out by criminal investigation officers who have been specially authorized by the Attorney General for this purpose, in accordance with the recommendation made by the Advisory Commission on Human Rights. Incitement to commit these offences is prohibited. Only in urgent cases may the decision to carry out an undercover investigation be communicated orally. To be valid, the decision must be confirmed within 24 hours, in writing and with a statement of reasons.

20. The tracking of traffic and location data, as provided for in article 67-1 of the Code of Criminal Procedure, and special measures for the surveillance and monitoring of electronic communications data, as provided for in article 88-2, are strictly regulated.

21. The recommendations of the Advisory Commission on Human Rights concerning bill No. 6921 are understandably aimed at maximizing the protection of the rights of persons under criminal investigation. However, the legislature must strike a balance between, on the one hand, articulating the principles of the protection of the rights of individuals and, on the other, ensuring the effectiveness and efficiency of criminal investigations, in particular so that such investigations can be carried out within a reasonable time.

22. In trying to strike this balance, the legislature must also consider international and European legal texts that have primacy over national law, which sometimes hampers its room for manoeuvre in taking such recommendations into account.

23. In addition, the recommendations issued by the Advisory Commission on Human Rights are focused on bill No. 6921; they do not take into account other legal provisions protecting the rights of persons under criminal investigation that are already included in the Code of Criminal Procedure and were therefore not restated in bill No. 6921.

24. Lastly, some of the recommendations of the Advisory Commission on Human Rights, such as those concerning training for police officers and the security of the software used by the police, have been appropriately dealt with in the context of the training provided at the Police Academy or the drafting of public contract specifications for the acquisition of new software by the police. The Commission’s recommendations have thus been taken into account, albeit not necessarily in the context of the bill in respect of which they were made.

Non-discrimination (arts. 2 and 14)

Question 5

Access to justice for victims of discrimination

25. All citizens are equal before the law. Nevertheless, persons with disabilities might experience difficulties in asserting their rights. In Luxembourg, appropriate steps have been taken to ensure that persons with disabilities have access to the support that they might need to fully exercise their legal capacity.

26. Thus, like all citizens, persons with disabilities may consult legal information and advice bodies and mediation bodies.

27. In accordance with the Act of 28 January 2011 approving the United Nations Convention on the Rights of Persons with Disabilities,[1] the Advisory Commission on Human Rights and the Centre for Equal Treatment were designated as independent national promotion and monitoring mechanisms, and the Ombudsman was designated as the independent national mechanism to protect the human rights of persons with disabilities.

28. The Centre for Equal Treatment is also responsible for providing assistance to persons, including those with disabilities, who consider themselves to be victims of discrimination. It offers advice and guidance to inform them about their individual rights, legislation, case law and available remedies.

29. In addition, and to facilitate access to these information and advice services for persons with disabilities, the Ministry of Family, Integration and the Greater Region has signed an agreement with the National Disability Information and Meeting Centre (Info-Handicap) to support the legal information service run by Info-Handicap. Founded in 1993, Info-Handicap supports persons with disabilities, their families, professionals and, in general, anyone looking for specific information. Its legal information service covers all matters concerning the rights of persons with disabilities and gives victims of disability-based discrimination the opportunity to consult a lawyer.

30. The following non-profit associations constituted for the purpose of combating discrimination have been authorized by the Minister of Justice to defend victims of disability-based discrimination in court and guarantee their access to justice:

1. Confédération luxembourgeoise d'œuvres catholiques de charité et de solidarité, Confédération Caritas Luxembourg (Luxembourg Confederation of Catholic Works of Charity and Solidarity, Caritas Luxembourg Confederation)

2. Action Luxembourg Ouvert et Solidaire – Ligue des Droits de l'Homme (Luxembourg Action for Openness and Solidarity – Human Rights League)

3. Chiens Guides d'Aveugles au Luxembourg (Guide Dogs for the Blind Luxembourg)

4. Info-Handicap – Conseil National des Personnes Handicapées (Info-Handicap – National Disability Information and Meeting Centre)

5. Association de Soutien aux Travailleurs Immigrés (Support Association for Migrant Workers)

31. Anyone without sufficient income is also entitled to legal assistance. A lawyer is appointed to provide legal advice or representation in court. Any costs incurred are borne by the State.

32. At the end of 2020, the Ministry of Family Affairs, Integration and the Greater Region launched a study of ethnic and racial discrimination in Luxembourg, in order to involve citizens in tackling these issues. One section of the questionnaire sent to a representative sample of the resident population will shed light on the obstacles that victims face in accessing justice and will gather feedback from citizens on the priority measures to be implemented in the Luxembourg context.

33. There is some degree of discrimination in the context of maternity and paternity suits. Bill No. 6568 reforming parentage, which was submitted by the Government in 2013, was aimed at enshrining the principle of the equality of all relationships of descent and ending all existing discrimination based on the distinction between legitimate and natural descent. The proposed amendments include a measure relating to legal action: maternity and paternity suits will both now be governed by the same time limits. The bill is currently before parliament. The Council of State is expected to provide an opinion.

[1] The Act of 28 July 2011 approving the Convention on the Rights of Persons with Disabilities adopted in New York on 13 December 2006, approving the Optional Protocol to the Convention on the Rights of Persons with Disabilities adopted in New York on 13 December 2006 and designating independent mechanisms to promote, protect and monitor the implementation of the Convention on the Rights of Persons with Disabilities.

Strengthening the Centre for Equal Treatment

34. In a resolution adopted on 1 July 2020,[2] the Chamber of Deputies undertook:

- To give the Centre for Equal Treatment a more prominent role in the adoption of decisions related to combating all forms of discrimination and promoting harmonious coexistence in Luxembourg
- To grant it further powers
- To increase its budget and staffing levels

Implementation of the National Action Plan for Equality between Women and Men

35. In July 2020, the Ministry of Equality between Women and Men presented the National Action Plan for Equality between Women and Men, which is aimed at ensuring equality at all levels and in all areas of daily life. It is a road map with targeted measures and actions for the coming years. Equality between women and men concerns all areas of life: education, employment, private life and coexistence in the public sphere. The National Action Plan brings together priorities and challenges relating to gender equality.

36. In terms of content, the National Action Plan is structured around seven thematic priorities and includes 48 measures and commitments. The main areas of action are:

- Encouraging and supporting civic and political engagement
- Combating stereotypes and sexism
- Promoting equality in education
- Advancing equality at work
- Promoting equality at the local level
- Combating domestic violence
- Fostering the development of a more egalitarian society

37. During the preparation of the National Action Plan, the Ministry sought feedback from public institutions, professional bodies, associations and social sector managers. Citizens also shared their views through a public consultation, with some 1,800 responses received over three weeks.

38. The National Action Plan takes the form of a dynamic and evolving document. It could be adapted on a regular basis. It will be evaluated every three years.

39. The Ministry of Equality between Women and Men will coordinate and oversee the implementation of the National Action Plan. The Ministry's leadership team will use the seven thematic priorities and the list of 48 measures to carry out regular monitoring of the progress made in implementing the Plan. Phased implementation of the various measures provided for in the Plan will be carried out by those responsible for the different areas dealt with by the Ministry of Equality between Women and Men, namely:

- Equality and society
- Communication
- Equality and employment
- Equality in the municipalities
- Equality and education

40. The Ministry is endeavouring to have carried out the vast majority of the measures by the end of the 2018–2023 legislative term. As the National Action Plan is a "living" document and can always be adapted or supplemented as required by the gender equality issues of the day, implementation may stretch beyond 2023.

[2] https://chd.lu/wps/portal/public/Accueil/TravailALaChambre/Recherche/RoleDesAffaires?action=doMotionDetails&id=3232.

41. Lastly, implementation of the National Action Plan depends on many other actors, including ministries, administrative authorities, social sector managers and civil society organizations, who have a duty to help the Ministry of Equality between Women and Men achieve the goal of equality between women and men.

Discrimination against persons with disabilities (arts. 2 and 26)

Question 6

42. In Luxembourg, all persons with disabilities enjoy the same rights. However, under the amended Disability Act of 12 September 2003, persons whose working capacity has been reduced by at least 30 per cent as a result of:

- an accident at work with a company legally established in Luxembourg;
- war or measures taken by an occupying Power, or
- a physical, mental, sensory or psychiatric disability and/or psychosocial difficulties aggravating the disability

and who are recognized as being capable of salaried employment in the regular labour market or in a sheltered workshop have the status of employees with disabilities.

43. Employees with disabilities and employees who have been found a new position in the regular labour market through external reclassification may apply, with their employer, for inclusion assistance from the Agency for the Development of Employment.

44. The assistant assigned will be responsible for supporting the employee's inclusion in the company. Such assistance is based on the needs of the employee concerned and those of his or her employer and other employees at the company.

45. In Luxembourg, it is assumed in law that a person whose working capacity has not been reduced by at least 30 per cent is able to enter the labour market without special assistance that is directly, or even exclusively, related to the disability. He or she thus enjoys all the rights, and the same rights, as persons without disabilities.

Bill No. 7346 on the accessibility of public places, public roads and multi-dwelling buildings for all

46. Bill No. 7346, which sets out accessibility requirements for public places, public roads and multi-dwelling buildings for all, will likely be passed in 2021. Additional amendments are currently before the Council of State.

Legislative calendar

Date	*Description*
27 July 2018	Bill No. 7346 submitted
17 October 2018	Opinion of the Civil Servants Association
29 October 2018	Opinion of the National Data Protection Commission
13 December 2018	Referred to committee(s): Committee on Family and Integration
11 February 2019	Opinion of the Trades Association
6 March 2019	Opinion of the Chamber of Commerce
13 March 2019	Opinion of the Council of State
25 March 2019	Opinion of the Association of Luxembourg Cities and Municipalities
29 March 2019	Advisory Commission on Human Rights (3/2019)
11 June 2019	Opinion of the Association of Architects and Consulting Engineers

Date	*Description*
2 July 2019	Opinion of the Higher Council for Persons with Disabilities
13 November 2019	Rapporteur(s) appointed
11 December 2019	Opinion of the Council of the Luxembourg Bar Association
20 December 2019	Amendments adopted by the Committee on Family and Integration
17 November 2020	Additional opinion of the Council of State
19 May 2021	Amendments adopted by the Committee on Family and Integration

47. Concerning the accessibility of other facilities and services open or provided to the public, the Government of Luxembourg is currently in the process of transposing Directive 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services.

48. The amended Disability Act of 12 September 2003 provides for measures to adapt workstations and ensure access to work for persons with disabilities.

Bill No. 7351 on the accessibility of websites and mobile applications of public sector organizations

49. The Act of 28 May 2019 on the Accessibility of the Websites and Mobile Applications of Public Sector Bodies has been in force since 4 June 2019. It is a transposition of Directive 2016/2102 of the European Parliament and of the Council.

50. The Act guarantees the right of access to the websites and mobile applications of public sector bodies (art. 1).

51. To our knowledge, there is no definition of reasonable accommodation in the context of digital accessibility in Luxembourg. Reasonable accommodation is defined in the Act of 28 July 2011 approving the Convention on the Rights of Persons with Disabilities as follows:

> "'Reasonable accommodation' means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms."

52. The definition of reasonable accommodation therefore depends on that of disproportionate burden. The concept of disproportionate burden is mentioned in article 4 of the Act of 28 May 2019:

> "(1) Public sector bodies shall apply the accessibility requirements set out in article 3 to the extent that those requirements do not impose a disproportionate burden on the public sector bodies.
>
> (2) In order to assess, as part of an obligatory initial assessment, the extent to which compliance with the accessibility requirements set out in article 3 imposes a disproportionate burden, the public sector body concerned shall take account of relevant circumstances, including the following:
>
> 1. The size, resources and nature of the public sector body concerned; and
>
> 2. The estimated costs and benefits for the public sector body concerned in relation to the estimated benefits for persons with disabilities, taking into account the frequency and duration of use of the specific website or mobile application.
>
> (3) Where a public sector body avails itself of the derogation provided for in paragraph 1 for a specific website or mobile application after conducting an assessment as referred to in paragraph 2, it shall explain, in the statement referred to in article 5 (1), the parts of the accessibility requirements that could not be complied with and shall, where appropriate, provide accessible alternatives."

Discrimination against lesbian, gay, bisexual, transgender and intersex persons (arts. 2 and 26)

Question 7

53. On 13 July 2018, the Government of Luxembourg adopted the first National Plan of Action to Promote the Rights of Lesbian, Gay, Bisexual, Transgender and Intersex Persons, the outcome of a partnership involving 10 ministries and civil society. The Plan is being implemented over multiple years and is structured around eight thematic chapters. An interministerial committee for lesbian, gay, bisexual, transgender and intersex issues has been set up to ensure its proper implementation. The committee is chaired by the Ministry of Family, Integration and the Greater Region and is responsible for monitoring the implementation of the Plan, regularly evaluating its objectives and actions and proposing new priorities, objectives and actions. The committee receives assistance from experts, including human rights institutions, civil society representatives and experts by experience.

54. An external midterm review of the National Plan of Action is planned to take place after three years, to be followed by an external evaluation after five years. Preparations for the midterm review are currently under way.

55. Luxembourg does not currently have a law to stop non-consensual sex-change surgery and to enable survivors of such surgery to obtain redress. However, thanks to a partnership among several ministries, an awareness-raising campaign launched by the Ministry of Family, Integration and the Greater Region in late 2018 reached an audience of over 2,000, including general practitioners, occupational health physicians, gynaecologists, paediatricians, midwives, clinics, maternity wards, formal and non-formal education and childcare professionals, administrative authorities and associations approved for work with the Ministry.

56. The National Plan of Action and the coalition agreement for the period 2018–2023 provide for the introduction of a legal ban on non-emergency “sex normalizing” medical treatment without the free and informed consent of the intersex person, and a motion passed by the Chamber of Deputies on 25 July 2018 calls for the objectives and actions set out for the benefit of intersex persons in chapter 8 of the National Plan of Action to be considered as a matter of priority so that relevant legislation can be passed as soon as possible. To this end, an interministerial working group bringing together the Ministry of Justice, the Ministry of Health and the Ministry of Family, Integration and the Greater Region is currently drafting a preliminary bill.

57. While the Government’s overall position and that of the Ministry of Health in particular are sufficiently clear from the 2018 coalition agreement, the Ministry of Health has not issued specific recommendations for medical professionals on, for example, how best to guide and inform the parents of intersex children. However, medical professionals rely on the recommendations of various specialized medical associations, which are aimed at providing guidelines on diagnosis and treatment in cases where treatment is desired by an intersex person who has given free and informed consent.

58. The National Plan of Action also provides for the development of a protocol, together with intersex persons, their representative organizations and representatives of the various health professionals involved, for explaining that a child is intersex and a protocol for providing information prior to any requested medical treatment. Both protocols are based on the fundamental rights of intersex children and will be implemented by a multidisciplinary team.

59. As medical circumstances differ greatly from one person to the next, the means of rehabilitation and redress for intersex children who have undergone unnecessary and irreversible medical or surgical treatment should be dealt with on a case-by-case basis.

60. The chapter on health of the National Plan of Action provides for the removal of any restriction of the right to donate blood on the basis of sexual orientation alone (action 11). The 2018–2023 coalition accord states that “the criteria for blood and platelet donation will be amended. In this context, emphasis will be placed on the principle of an individualized

risk assessment for each donor.” An analysis is currently under way to determine how this measure can be implemented in practice.

States of emergency (art. 4)

Question 8

61. Since the adoption of the constitutional amendments of 13 October 2017, the state of emergency regime provided for in article 32 (4) of the Constitution has been invoked only once, on 18 March 2020, in the context of efforts to combat the coronavirus disease (COVID-19) pandemic. The state of emergency was declared for a period of 10 days by the Grand-Ducal regulation of 18 March 2020 introducing a series of measures in response to the COVID-19 pandemic. In accordance with a law of 24 March 2020, the duration of the state of emergency was extended to three months, the maximum period provided for under the Constitution. Once the state of emergency had expired, all the emergency measures taken on the basis of article 32 (4) came to an automatic end.

62. All subsequent measures were taken on the basis of laws applied under the ordinary legislative procedure.

63. The measures decreed to combat COVID-19 during the state of emergency included restrictions on the movement of individuals on the highway, exceptions for certain activities notwithstanding; the suspension of cultural, social, celebratory, sporting and recreational activities; and restrictions on commercial and trade activities other than those essential for maintaining the vital interests of the population and the country.

64. To ensure that all the measures adopted were indispensable and strictly necessary, adequate and proportionate to the objective pursued, as required by article 32 (4) of the Constitution, they were regularly re-evaluated and adapted as the health situation changed. The Government monitored the strict necessity and proportionality of the measures on the basis of the recommendations issued by the Health Directorate of the Ministry of Health and the COVID-19 Task Force specially established in this context. The health recommendations issued by the World Health Organization provided a further point of reference for the Government. Accordingly, until 24 June 2020, the day on which the state of emergency expired, the Grand-Ducal regulation of 18 March 2020 introducing a series of measures to combat COVID-19 was amended 13 times. To ensure that the public justice system was capable of functioning during the state of emergency while containing the COVID-19 virus and protecting members of the judiciary, a number of Grand-Ducal regulations were adopted to adapt the existing texts. As a result, in the context of efforts to combat COVID-19, some of the measures adopted by Grand-Ducal regulation as exemptions from existing laws during the state of emergency could be maintained for a temporary period after its expiration and have been adapted as the pandemic has progressed.

65. These measures suspended the time limits prescribed for proceedings before the constitutional, ordinary, administrative and military courts, adjusted hearings before the constitutional, administrative, civil and commercial courts, waived the requirement for public hearings before the courts in certain cases and temporarily adapted the urgent procedure for exceptional proceedings before the family court. Some of these measures have been extended and remain in force (see the Act of 20 June 2020).[3]

66. Before any new measures were adopted during the state of emergency, the Government held a meeting with the political parties represented in the Chamber of Deputies to provide them with information on the course of the pandemic and the new measures

[3] The Act of 20 June 2020 provided for an extension of measures concerning the holding, during the state of emergency, of public hearings before the courts in cases subject to the written procedure, certain adaptations to the urgent procedure for conducting exceptional summary proceedings before the family court, the suspension of time limits in judicial matters, and other procedural arrangements; provided for a temporary derogation from articles 74, 75, 76 and 83 of the amended Solicitors Act of 9 December 1976; provided for a temporary derogation from articles 15 and 16 of the amended Legal Profession Act of 10 August 1991; and amended article 89 of the amended Luxembourg Nationality Act of 8 March 2017.

necessitated by the situation. Thanks to these regular interactions with political parties, the parliament was able to monitor the Government continuously in this exceptional situation. Only after these interactions with the parliament did the Government decree and make public the measures that had been decided.

67. Like any other Grand-Ducal regulation, the exceptional regulations issued under article 32 (4) may be appealed directly to the administrative courts, which monitor legality in respect of incompetence, abuse or misuse of authority, or legal or procedural violations for the purpose of protecting personal interests, with a view to having them set aside.

68. A regulation can also be reviewed through secondary proceedings before the ordinary courts by means of the objection of illegality procedure established in article 95 of the Constitution. The review involves the judicial officer or administrative magistrate verifying the compliance of the regulation with the rules of higher law, namely, the Constitution and international treaties, in particular article 32 (4) of the Constitution (correct assessment of the crisis and its urgency, and compatibility of the exceptional regulatory measures with the criteria of necessity, adequacy and proportionality) and international treaties.

Right to life and prohibition of torture and other cruel, inhuman or degrading treatment (arts. 6–7)

Question 9

69. The question of an express reference to the right to life is being dealt with as part of the proposed constitutional amendments that are being prepared. The proposed amendments to chapter II of the Constitution (proposal No. 7755), which were submitted on 29 April 2021, contain a section 2, entitled “Fundamental rights”, which includes the following articles:

> “Article 10. Human dignity is inviolable.
>
> Article 10 bis. (1) Every person has the right to physical and mental integrity.
>
> (2) No one shall be subjected to torture or to inhuman or degrading treatment or punishment.
>
> The death penalty may not be introduced.
>
> Art. 10 ter. Everyone has the right to freedom of thought, conscience and religion.”

70. The Chamber of Deputies has yet to vote on this section, and the Government’s position on the matter will be discussed.

71. Moreover, this right is enshrined in European and international instruments ratified by Luxembourg, which take precedence over national law, including constitutional law.

Question 10

72. A preliminary bill on the use of weapons is being drafted. It is not yet available to the public and has not yet been submitted.

Access to justice (arts. 2 and 14)

Question 11

73. In Luxembourg, there are no legal provisions referring to a “certificate of good character”. There are procedures for checking “good repute” in certain situations set out in law. In this connection, a bill (No. 7691)[4] was submitted in November 2020 with the aim of ensuring greater transparency and respect for fundamental rights and the principle of

[4] Chamber of Deputies of Luxembourg (chd.lu).

proportionality, in accordance with national and European legislation, including in the area of data protection.[5]

Refugees and asylum seekers (arts. 7, 9–10, 12–14 and 24)

Question 12

74. Article 9 of the Act of 16 June 2021 amending the Act of 29 August 2008 on the Free Movement of Persons and Immigration provides for the replacement of the word "three" in article 69 (3) of the original Act with "six". Accordingly, the time frame within which a beneficiary may submit an application for family reunification without having to meet the conditions set out in article 69 (1) of the Act of 29 August 2008 has been increased from three to six months after the granting of international protection.

75. This amending Act, which was published in the Official Gazette on 1 July 2021, entered into force on 5 July 2021.

Question 13

76. Every applicant for international protection receives an information booklet upon submission of his or her application. A brochure containing information on the Dublin Regulation is also provided. Since 2019, a specialized brochure for unaccompanied minors has been provided upon submission of an application for international protection. These brochures are all provided in the applicant's own language. In addition, information on the international protection procedure can be found under the section entitled "Immigration" on guichet.lu.

77. Any applicant for international protection may access information relating to his or her application when visiting the counter of the Refugee Service. At any stage in the proceedings, he or she may send a letter to enquire as to the status of his or her file and, six months after the submission of an application, may enquire as to the reasons for the delay in the processing of the file, in accordance with article 26 of the amended Act of 18 December 2015 on International Protection and Temporary Protection.

78. Lastly, a project to develop an international protection online portal is being developed with the National Reception Office, to provide access to information on reception proceedings.

79. Legal assistance is provided free of charge in accordance with article 17 of the amended Act of 18 December 2015, and the applicant is informed of this right as soon as his or her application is submitted, both through an information brochure and, with the help of an interpreter, by the ministerial official responsible for the initial processing of the application.

Female genital mutilation (arts. 3, 7 and 26)

Question 14

80. In accordance with the Act of 20 July 2018 approving the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, signed in Istanbul on 11 May 2011, and amending the Criminal Code, the Code of Criminal Procedure, the amended Domestic Violence Act of 8 September 2003 and the amended Act of 29 August 2008 on the Free Movement of Persons and Immigration, an article 409 bis was added to the Criminal Code to establish the specific offence of female genital mutilation.[6]

"Art. 409 bis

[5] Sam Tanson (Ministry of Justice, Government of Luxembourg) presented the bill on procedures for checking good repute.

[6] http://legilux.public.lu/eli/etat/leg/loi/2018/07/20/a631/jo. See parliamentary paper No. 7167 for more details.

(1) Anyone who performs, facilitates or promotes the excision, infibulation or any other mutilation of the whole or any part of a woman's labia majora, labia minora or clitoris, with or without her consent, shall be sentenced to imprisonment for a term of 3 to 5 years and a fine of €500 to €10,000.

(2) An attempt to commit the offence referred to in paragraph 1 shall be punishable by imprisonment for a term of 8 days to 1 year and a fine of €251 to €5,000.

(3) If the mutilation of a woman's genital organs has resulted in a seemingly incurable disease or her permanent incapacity for work, the penalties shall be imprisonment for a term of 5 to 7 years and a fine of €1,000 to €25,000.

If the mutilation of a woman's genital organs is committed by a legitimate, natural or adoptive ascendant of the victim or by a person who has authority over her or takes advantage of a position of authority or if it has caused death, even unintentionally, the penalties shall be imprisonment for a term of 7 to 10 years and a fine of €2,500 to €30,000.

(4) The offence established in paragraph 1 shall be punishable by a term of imprisonment of 10 to 15 years and a fine of €1,000 to €25,000 euros in the following circumstances:

if the offence was committed against a minor;

if the offence was committed against a person who is particularly vulnerable, by reason of an irregular or precarious administrative situation, a precarious social situation, age, illness, disability, a physical or mental impairment or pregnancy, and this vulnerability is visible or known to the perpetrator; or

if the offence was committed with the threat or use of force or with any other form of coercion, abduction, deception or deceit.

(5) The offences referred to in paragraph 4 shall be punishable by imprisonment for a term of 15 to 20 years and a fine of €3,000 to €50,000 if they have resulted in a seemingly incurable disease or the person's permanent incapacity for work. They are punishable by life imprisonment and a fine of €5,000 to €75,000 if the offence was committed by a legitimate, natural or adoptive ascendant of the victim, by a person who has authority over her or takes advantage of a position of authority, or if the offence has caused death, even unintentionally."

81. In accordance with the Act of 20 July 2018, article 5-1 of the Code of Criminal Procedure was amended to provide for an extension of the extraterritorial jurisdiction of Luxembourg to include article 409 bis of the Criminal Code, as the offence is most likely to be committed outside Luxembourg.

82. In addition, the interministerial committee of the Ministry of Health is working on female genital mutilation as part of its efforts to combat sexual violence. The ideas developed within this interministerial committee form the basis for a national strategy to combat female genital mutilation.

83. Through the Ministry of Equality between Women and Men, Luxembourg agreed to take part in the fourth study of the European Institute for Gender Equality on the estimation of girls at risk of female genital mutilation in the European Union in late 2019, alongside Denmark, Austria and Spain. Initial summary data from the study are available on the Institute's website. The full study has been available on Institute's website since 26 May 2021.

Statelessness (arts. 16, 24 and 26)

Question 15

84. In November 2016, Luxembourg introduced a special administrative procedure for determining statelessness, under which any foreigner in the country who cannot lay claim to a nationality must submit a specific application form and provide personal information and a

detailed explanation of his or her reasons for not having a nationality. The burden of proof falls on the applicant, who must provide sufficient and solid evidence to support his or her claims. The applicant is not allowed to stay in Luxembourg while his or her application for statelessness status is under consideration, and a removal order may be issued if the applicant is in an irregular situation. In practice, however, the application for statelessness status is considered before any removal.

85. If a person is granted statelessness status, he or she receives a travel document for a stateless person, which is valid for a period of five years. Being recognized as a stateless person does not entail an automatic right to a residence permit; the person must meet the requirements for one of the categories of residence permit set out in article 38 of the amended Act of 29 August 2008 on the Free Movement of Persons and Immigration. Moreover, in accordance with the New York Convention relating to the Status of Stateless Persons of 28 September 1954, a range of rights is granted to recognized stateless persons. For example, depending on the residence card issued, they have access to the labour market, education and training, health care and social assistance on an equal footing with third-country nationals in a regular situation.

86. There are currently no plans to pass legislation on statelessness.

Right to privacy (art. 17)

Question 16

Bill No. 6961

87. The competent parliamentary committee is continuing work on bill No. 6961. At the current stage, it is difficult to indicate exactly when the bill might be put to a vote, but the general outline of the text has been decided. The planned reform of the regime for the protection of classified documents is intended to reconcile the requirements in this area, particularly international requirements (those of the European Union and the North Atlantic Treaty Organization), with the imperative of protecting privacy by minimizing the invasiveness of the planned system.

Legislative provisions on the collection, storage and processing of data

88. With regard to the collection, storage and processing of personal data, recent legislation implements the rules of European Union law, among others. Also relevant in this context is the Act of 1 August 2018 on the Organization of the National Data Protection Commission and the General Data Protection Framework, in particular articles 62 to 71.

89. The following laws may also be mentioned:

- Act of 1 August 2018 on the Protection of Natural Persons with Regard to the Processing of Personal Data in Criminal and National Security Matters
- Act of 1 August 2018 on the Processing of Passenger Name Record Data in the Context of the Prevention and Repression of Terrorism and Serious Crime
- The amended Act of 30 May 2005 laying down Specific Provisions for the Protection of Persons with Regard to the Processing of Personal Data in the Electronic Communications Sector

90. Article 48-27 of the Code of Criminal Procedure states that, when investigating a criminal offence or conducting pretrial proceedings, the State prosecutor or the investigating judge may, in a written reasoned decision, and requesting if necessary the assistance of a telecommunications operator or a telecommunications service provider, identify the subscriber or the usual user of an electronic communication service or have him or her identified. Information concerning the person who consulted the information, the information consulted, the search terms used, the date and time of the consultation and the reason for the consultation is recorded.

The amended Act of 17 July 2020

91. The amended Act of 17 July 2020 introducing a Series of Measures in Response to the COVID-19 Pandemic and the Act of 1 August 2018 on the Obligation to Declare Certain Diseases for the Protection of Public Health were adopted in the interest of public health in order to maintain the smooth functioning of the health system.

92. To avoid double notification and facilitate the investigation of epidemics and alerts, the Act of 1 August 2018 provides that the notifications must include names but that the confidentiality and security of the processing of personal data must be strictly safeguarded by all involved. Consequently, the law specifies the notification procedures to be followed, the data to be included at a minimum and the means of communicating these notifications.

93. The Act of 17 July 2020 introducing a Series of Measures in Response to the COVID-19 Pandemic, in particular its chapter 4 on administrative and criminal penalties, was drafted with due regard to the protection of the rights enshrined in the Covenant. The legislature introduced only those measures that were necessary and indispensable to combat the pandemic, particularly in view of the extent to which such measures interfere with private life, and established specific and detailed provisions, including with regard to the tracing of infected persons and the processing of related personal data. Moreover, European Union Regulation No. 2016/679 (the General Data Protection Regulation), which includes provisions on the right to be informed about the use of data and to object to their collection, transmission or storage, is applicable to the processing of personal data under the Act of 17 July 2020. Accordingly, it would have been inappropriate and was unnecessary either to reproduce, in the Act, the various safeguards and protections set out in the Regulation or to exclude them from its implementation.

94. To improve the transparency of data-processing operations, the Act of 17 July 2020 lists the items of personal data that are processed, particularly in the context of the mass testing programme and vaccination. In addition, the Act states that the retention of personal data relating to a person’s first infection with COVID-19 is essential to identify cases of reinfection. The data collected are retained for a set period of time to ensure that the application of the limitation principle is proportionate. In addition, such retention makes it possible to refer back to a patient’s file to establish a link between side effects and the vaccine administered. The Act also states whether the data should be pseudonymized or anonymized.

95. In view of the above, the provisions contained in the two laws are compatible with the right to privacy, as enshrined in the Covenant, the right to be informed about the use of such data and the right to object to their collection, transmission and storage.

96. When the penalties provided for in chapter 4 of the Act of 17 July 2020 were being drawn up, special attention was paid to the principle that penalties should be necessary and proportionate, the principle of adversarial proceedings, the rights of the defence, the right to equality of arms and the right to judicial review of penalties imposed by the administrative and criminal prosecution authorities.

The Act of 27 June 2018

97. The Act of 27 June 2018 adapting Criminal Procedure to Counter-Terrorism Efforts was passed to take account of the new dimension of terrorism in the wake of the especially deadly attacks that took place in several European cities in 2015. The new technologies, in particular computer tools, used by terrorists to communicate, organize and, above all, prepare acts of terrorism aimed solely and consistently at targeting as many civilians as possible made it necessary to adapt the legal counter-terrorism framework, as was done in other member States of the European Union.

98. However, in strengthening counter-terrorism tools, the legislature must strike a balance between articulating the principles of protecting the rights of individuals, on the one hand, and ensuring effective and efficient of those tools, on the other.

99. During preparation of the Act of 27 June 2018, care was taken to respect all the fundamental principles already reflected and set out in the Code of Criminal Procedure by making adaptations only where necessary and building in appropriate safeguards such as precise and short time limits during which intrusive measures may be applied and after which

data must be deleted; safeguards governing the processing of the data collected, the provision of information to persons under criminal investigation and the conditions under which these measures may be applied, if so decided by a judge who monitors their application by the police; and restrictive lists of the criminal offences in respect of which these measures may be applied.

100. The investigative measures introduced by the Act of 27 June 2018 are governed by all the protective principles already provided for in the Code of Criminal Procedure. These protective principles include the remedies and actions for annulment provided for during the investigation and inquiry phase and the trial phase, the principle that the investigating judge must gather both inculpatory and exculpatory evidence, the principle that judges may not base their decisions on elements unknown to the defence, and the principle that hearings are held in public.

The amended Act of 1 August 2018

101. The amended Act of 1 August 2018 on the Obligation to Declare Certain Diseases for the Protection of Public Health is aimed at the prevention, surveillance and control of infectious diseases in Luxembourg. To ensure the quality of the law, the applicable provisions specify the diseases that must be notified and the individual data that health-care professionals must provide to the competent health authority. The health authority must process the data provided in a confidential manner, solely for the public health and statistical purposes determined by law, without prejudice to any further compatible processing, and in compliance with the General Data Protection Regulation. Therefore, the health authority must not retain data for longer than is necessary for the purposes determined by law. In addition, it must inform the persons concerned that their data are being processed. Lastly, the legislature chose not to include specific provisions in the Act to limit the individual rights conferred by chapter III of the General Data Protection Regulation.

Freedom of expression (arts. 19–20)

Question 17

102. In Luxembourg, current legislation on whistle-blowers is largely limited to violations related to corruption offences under the Act of 13 February 2011, which was passed following the report of a working group of the Organisation for Economic Co-operation and Development of 20 March 2008 and the recommendations of GRECO.[7]

103. However, Luxembourg will soon create a general legal framework for the protection of whistle-blowers, through the transposition of Directive 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

104. Although the Directive concerns only some policy areas, the Government of Luxembourg has chosen to extend its material scope to encompass the entirety of national law, the aim being to ensure a comprehensive and coherent framework that is easily understandable and accessible.

105. Moreover, the personal scope of the Directive is defined very broadly in the Directive itself: it includes not only workers and civil servants but also shareholders, persons whose work-based relationship has ended or is yet to begin, subcontractors and many others.

106. In addition, it will be specified in the future law that these provisions are without prejudice to any specific national legislation establishing a system to protect freedom of expression and information, in this case the 2004 Act on Freedom of Expression in the Media. The right of journalists to protect their sources is therefore clearly established.

107. The future law will implement the recommendations of the Council of Europe and translate the criteria set out in the case law of the European Court of Human Rights into a legislative framework.

[7] Group of States against Corruption, Council of Europe.

Question 18

108. Articles 144 and 145 of the Criminal Code are aimed at protecting and safeguarding the exercise of freedom of worship and establish criminal penalties for the corresponding offences.[8] These articles have yet to be repealed.

109. Articles 443 and 444 of the Criminal Code are aimed at protecting the individual from attacks on his or her honour or reputation and establish criminal penalties for the corresponding offences.[9]

110. These articles are thus compatible with article 19 of the Covenant, since the offences that they establish do not infringe the fundamental right of freedom of expression and opinion; this right is relative rather than absolute in the sense that its exercise in a specific case should not amount to a punishable criminal act. In addition, the principles of legality, necessity and proportionality underpinning these criminal provisions are guaranteed, as are the restrictions set out in the Covenant and other fundamental human rights instruments recognized by Luxembourg.

111. Nonetheless, a preliminary bill is being drafted to ensure that offences have appropriate penalties, and the articles mentioned above are affected by this process.

Freedom of conscience, belief and religion (arts. 2, 18 and 26)

Question 19

112. The primary aim of the conventions in question was to redefine the nature of the financial relationship between the State and religious communities that signed them. The State is seeking to support the exercise of freedom of worship through a financial contribution from the State budget; in turn, the religious groups will be in a position to provide spiritual assistance to any person who requests it.

113. One of the purposes of these conventions was to grant greater financial autonomy to the signatory religious groups.

114. The aim of the "Life and Society" course is to explore the major questions of life and society. The course will enable young people to gradually come to view their experiences and their search for meaning in the light of the major questions of humanity and society. By learning about the ways in which the different schools of philosophical and ethical thought, the great religious and cultural traditions, science and literature answer these questions, the students will be offered ways of going about establishing their own points of reference while respecting others and developing their powers of critical thinking. The "Life and Society" course reflects a multidimensional approach that encompasses key issues and ideas relating to humanity, human rights, knowledge gained through science and reason, and the religious cultures that form the foundation of our societies and more distant societies. The course will be based on an innovative, student-centred approach. Its point of departure is students' questions, reflections and experiences in relation to their day-to-day surroundings. Students will learn to develop their reflective and critical thought processes in a self-directed manner so that they may become responsible citizens who are in control of their own lives.

115. In the context of the work carried out by the Council of the European Union and the European Union Strategy on Combating Antisemitism developed by the European Commission, the Government is developing a national strategy to combat antisemitism.

116. SOS Radicalisation is an association partnered with the Ministry of Family, Integration and the Greater Region. Through the www.respect.lu service, it provides counselling and support to people affected by extremism and violent radicalization in any way. The service organizes training and outreach activities. Its pilot phase began in January 2017, and it was officially launched on 3 July 2017.

[8] http://legilux.public.lu/eli/etat/leg/code/penal/20210430.
[9] http://legilux.public.lu/eli/etat/leg/code/penal/20210430.

117. In 2020, 48 networking events were organized, and 34 people contacted or were put in touch with the service. The service organized 1 round table and 14 in-service training courses, organized or co-organized 2 large-scale gatherings and participated in 2 events. As a result, its message of prevention reached an audience of 408, and employees participated in 10 in-service training courses.

118. As part of a new project launched to combat hate speech, which will last around six months, persons who post hate comments are given the opportunity to learn how to communicate in a considerate and respectful manner, explore the limits of freedom of expression and put themselves in the shoes of their victims.

Right of peaceful assembly (art. 21)

Question 20

119. The provisions of article 25 of the Constitution will be clarified through the ongoing constitutional amendment process. The Chamber of Deputies has yet to vote on this section, and the Government's position on the matter will be discussed.

120. For open-air gatherings, authorization is granted by the municipal authorities. The notification is generally made to the police, either by the municipal authorities or by the organizers themselves. Depending on the event, consultation meetings are held to ensure that it runs smoothly.