



**International Covenant on
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**Fourth periodic report submitted by Luxembourg
under article 40 of the Covenant, due in 2008***

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Introduction

1. The Grand Duchy of Luxembourg hereby submits to the Human Rights Committee (hereinafter “the Committee”) its fourth report under article 40 of the International Covenant on Civil and Political Rights.
2. The present report was prepared in accordance with the Committee’s guidelines on the form and content of periodic reports (CCPR/C/2009/1). It was drafted, in consultation with civil society organizations and national human rights institutions, by the Interministerial Human Rights Committee, which was established in May 2015.
3. In June 2015, the Government decided to establish the Interministerial Human Rights Committee with responsibility for the ongoing coordination of its 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.
4. The Interministerial 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.
5. The work of the Interministerial Committee is coordinated by the Ministry of Foreign and European Affairs, and its meetings are chaired by the Ambassador-at-Large for Human Rights.

Article 1

6. Luxembourg respects the right of peoples to self-determination in accordance with the Charter of the United Nations.

Articles 2, 3 and 26

Equality of citizens before the law and the administration of justice

7. 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.¹
8. Since the constitutional amendment of 13 July 2006, equality before the law has been enshrined in article 10 bis of the Constitution in the following terms:
Art. 10bis.
 - (1) Citizens of Luxembourg are equal before the law.
 - (2) They are eligible for all public, civil and military employment; the law determines the eligibility of non-nationals for such employment.
9. It is recognized in case law that foreign nationals in the Grand Duchy enjoy all the rights that are not specifically denied to them. In the absence of any legal provision to the contrary, foreign nationals are treated as nationals and may not be denied any right unless otherwise decided by law.
10. Article 111 of the Constitution provides that all foreign nationals in the Grand Duchy enjoy protection of their persons and property unless otherwise provided for by law. Article 11 (2) of the Constitution establishes the principle that men and women have equal rights and duties and requires the State to actively promote the elimination of any potential obstacles to equality between women and men.
11. Luxembourg is a party to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), which was signed in

¹ <http://legilux.public.lu/eli/etat/leg/recueil/constitution/20171020>.

Rome on 4 November 1950, and to its Protocols.² It is therefore subject to the supervision of the European Court of Human Rights, including with regard to all allegations of violations of the rights of individuals.

12. Luxembourg is also bound by the Charter of Fundamental Rights of the European Union, which was proclaimed in Strasbourg on 12 December 2007.³

13. Under article F of the Treaty on European Union, the fundamental rights that are guaranteed by the European Convention on Human Rights and that result from the constitutional traditions common to the member States form part of European Union law as general principles.

14. Article 83 bis of the Constitution provides that the Council of State of Luxembourg is responsible for ensuring, a priori, that bills and draft regulations comply with higher legal texts (the Constitution, international conventions and treaties, and general legal principles) while article 95 ter of the Constitution provides that the Constitutional Court is responsible for a posteriori monitoring of the constitutionality of laws, except those concerning the adoption of treaties. The administrative and ordinary courts may therefore apply to the Constitutional Court for a ruling on the conformity of a law and are required to comply with the Court's ruling.

15. The State relies on initial and continuous training as a means of ensuring that legal professionals, including lawyers, ordinary court judges, administrative court judges, notaries and bailiffs, are aware of the enforceability of the Covenant. 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.

16. In recent years, every major policy change has been accompanied by specific training for the professionals concerned and, in many cases, by a public awareness campaign. These are two key ways to ensure the success of social reforms in Luxembourg, as part of a change management strategy.

Combating discrimination

17. With a view to emphasizing the importance attached to the principle of equality and non-discrimination, many laws in Luxembourg contain provisions that reiterate the prohibition of all forms of discrimination.

18. The main legal provision on combating discrimination is article 454 of the Criminal Code, which contains an exhaustive list of all forms of discrimination.

19. The concept of "gender identity" was added to article 454 of the Criminal Code by the Act of 20 July 2018 approving the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).⁴

20. Article 455 of the Criminal Code sets out the applicable penalties.

21. Pursuant to the Act of 18 July 2014, Luxembourg adopted the Council of Europe Convention on Cybercrime and the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.⁵

22. In addition to the provisions in the Criminal Code, the Act of 28 November 2006 on equal treatment, which transposes European Council Directive 2000/43/EC of 29 June 2000⁶ into national law, defines and promotes the principle of equality by prohibiting, in the private

² Luxembourg has also signed the most recent Protocol – Protocol No. 16, which authorizes the highest courts of a Contracting Party to address requests for advisory opinions to the European Court of Human Rights. A bill of enactment has been registered with the Chamber of Deputies under No. 7396.

³ Pursuant to the first subparagraph of article 6 (1) of the Treaty on European Union, the Charter proclaimed in 2007 has the same legal value as the treaties.

⁴ Act of 20 July 2018: http://data.legilux.public.lu/eli/etat/leg/loi/2018/07/20/a_631/jo.

⁵ Act of 18 July 2014: <http://data.legilux.public.lu/eli/etat/leg/trep/2014/08/12/n1/jo>.

⁶ Act of 28 November 2006: <http://data.legilux.public.lu/eli/etat/leg/loi/2006/11/28/n1/jo>.

sector, any direct or indirect discrimination based on religion or belief, disability, age, sexual orientation or actual or assumed affiliation with a specific ethnic group or race. Any direct or indirect discrimination based on sex or marital or family status is also prohibited. Harassment is considered in law to be a form of discrimination when it has the purpose or effect of violating the dignity of a person and creating an intimidating, hostile, degrading, humiliating or offensive environment.

23. The Act of 28 November 2006 also contains clauses aimed at protecting persons who are victims or witnesses of discriminatory acts or behaviour and provides for remedies that are available to persons claiming a violation of the principle of equal treatment and also by non-profit associations approved by the Minister of Justice. In order for such an association to take legal action, the facts on which its claim is based must be directly or indirectly prejudicial to the interests that the association was established to defend, even if the association does not have a material or legal interest. Moreover, in the event of discrimination against one person, or several persons considered individually, the association must obtain the victims' prior written consent.

24. The Act breaks new ground by providing that the burden of proof may be shared between the petitioner, who must provide the initial evidence substantiating the discriminatory act or behaviour, and the defendant, who must prove that there has been no breach of the principle of equal treatment.

25. The Act also provides for the amendment of Book II of the Labour Code to include a new Title V, which establishes the principle of non-discrimination in employment and the workplace. The Inspectorate of Labour and Mines has been made responsible for overseeing the implementation of these new provisions of the Labour Code.

26. Also in the area of equal treatment, the Act of 29 November 2006,⁷ which transposed European Council Directives 2000/43/EC and 2000/78/EC into the State civil service regulations, prohibits, subject to certain exemptions and positive actions (for example, to promote the employment and training of persons with disabilities), any discrimination based on religion or belief, disability, age, sexual orientation, or actual or assumed affiliation with a specific race or ethnic group.

27. The Act in question covers both direct and indirect discrimination and prohibits harassment as a form of discrimination.

28. The Act of 17 July 2007⁸ supplemented the State civil service regulations by establishing a special commission under the Minister for the Civil Service that is responsible for enforcing the ban on sexual or psychological harassment in the public sector.

29. The Centre for Equal Treatment, established pursuant to the Act of 28 November 2006,⁹ has been tasked with promoting, analysing and monitoring equal treatment for all persons without discrimination on grounds of race, ethnic origin, sex, sexual orientation, religion or belief, disability or age (see the common core document).

30. The fact that a person is acting in an official capacity does not exempt him or her from being subject to ordinary proceedings if his or her action entails a violation or infringement of a Covenant right.

31. Under article 30 of the Constitution, no authorization is required to prosecute public officials for carrying out an act that forms part of their duties.

32. The Criminal Code generally provides for heavier penalties for offences committed by civil servants in the performance of their duties. Abuse of authority is punishable in a number of cases.

33. Article 456 of the Criminal Code provides for penalties for any person vested with public authority or responsibility for providing a public service who, in the performance of his or her duties, commits a discriminatory act within the meaning of article 454 of the Criminal Code by denying a legally conferred right or hindering the normal pursuit of any economic activity.

⁷ Act of 29 November 2006: <http://data.legilux.public.lu/eli/etat/leg/loi/2006/11/29/n1/jo>.

⁸ Act of 17 July 2007: <http://data.legilux.public.lu/eli/etat/leg/loi/2007/07/17/n2/jo>.

⁹ Act of 28 November 2006: <http://data.legilux.public.lu/eli/etat/leg/loi/2006/11/28/n1/jo>.

34. Under article 3-1 of the Code of Criminal Procedure, any association of national importance, with legal status and approved by the Minister of Justice, may exercise the rights of the plaintiff in cases concerning the offences of racism, revisionism and other forms of discrimination covered by articles 454, 455, 456, 457, 457-1, 457-2, 457-3 and 457-4 of the Criminal Code, provided that such offences are directly or indirectly prejudicial to the collective interests which the association was established to defend, even if the association does not have a material or legal interest and even if the collective interest it seeks to defend is identical with the social interest defended by the public prosecutor's office. However, where the offence is committed against persons considered individually, the association may not exercise the rights of a civil party as the principal victim unless the persons concerned state explicitly in writing that they have no objection.

35. Pursuant to the Act of 22 August 2003,¹⁰ Luxembourg established the Office of the Ombudsman as an independent institution, attached to the Chamber of Deputies, whose mission is to receive, subject to conditions established in law, complaints formulated in a matter concerning them and having to do with the performance of State and municipal administrative offices, as well as of public institutions run by the State or by a municipality (see the common core document).

36. Pursuant to article 4 of the Civil Code, any court to which a dispute is referred is required to issue a ruling or be held responsible for committing a denial of justice.

37. If the administrative office does not issue its decision within three months, the petitioner may consider his or her application to have been rejected and submit an appeal to the administrative court against the failure of the administrative office to respond.

38. Court decisions are enforced in the manner determined by their content and may contain instructions for bailiffs to take action, public prosecutors to provide support and members of the security services to provide assistance when legally required to do so.

39. The administrative office must ensure that its own decisions are implemented.

40. The Luxembourg Reception and Integration Agency was established pursuant to the Reception and Integration Act of 16 December 2008. The Act provides that the Agency is responsible for the reception of asylum seekers and the establishment of an integration policy and gives the Agency legal powers to combat all forms of discrimination. In particular, the Act provides for the establishment of a National Integration and Anti-Discrimination Action Plan. A range of anti-discrimination projects were launched under the first Action Plan, which was published in November 2010 and focused on four areas of action, namely reception, integration, action against discrimination and migration monitoring. In the new National Integration Action Plan adopted in July 2018, the fight against discrimination, the promotion of diversity and equal opportunities have been integrated into all the areas of action. Since its creation, the Agency has represented the Grand Duchy of Luxembourg in the Governmental Expert Group on Non-Discrimination.

41. The Agency has also been granted explicit competence to combat discrimination. Its role is complementary to that of the Centre for Equal Treatment.

42. Between 2002 and 2013, the Luxembourg Reception and Integration Agency operated an annual programme of information and awareness-raising activities to combat discrimination. These activities are supported by the PROGRESS community programme and were designed to combat discrimination within the meaning of article 19 of the Treaty of Lisbon, namely discrimination based on religion or belief, disability, age, sexual orientation, race or ethnic origin.

43. In order to encourage associations and public and private companies in Luxembourg to promote diversity, a Luxembourg Charter for Diversity was launched in 2012. The Charter operates at the national level and is supported by employers' associations and networks of companies, as well as by the European Commission, the Ministry of Family Affairs, Integration and the Greater Region, the Ministry of Equality between Women and Men and the Centre for Equal Treatment.

¹⁰ Act of 22 August 2003 establishing the Office of the Ombudsman (<http://data.legilux.public.lu/eli/etat/leg/loi/2003/08/22/n2/jo>).

44. In addition to its direct anti-discrimination efforts, the Government is implementing an equal opportunities policy through its integration programmes. In order to place the integration of applicants for international protection at the heart of its reception policy, the Government has developed the Supported Integration Programme. This Programme lays the groundwork for the integration of persons who are applying for or who have been granted international protection, beginning in the first weeks after they arrive in Luxembourg. The Programme is based on the principle that there are two prerequisites for well-planned integration: learning the country's national and administrative language and understanding how everyday life works in Luxembourg. In order to promote the social and professional integration of all persons seeking international protection, it is imperative that all adults in that category are able to attend information and training sessions, irrespective of their age and level of education.

45. Lastly, the staff of the Agency have taken numerous training courses on the prevention of all forms of discrimination.

46. The Act of 23 September 2018, amending the Act of 24 February 1984 on Language Policy, provides for the recognition of German Sign Language as a language in its own right. The Act provides that persons who are deaf or hard of hearing are entitled to use the services of a sign-language interpreter in their dealings with State authorities. It establishes the right of the parents, grandparents, siblings and partner of the deaf or hard-of-hearing person to receive basic instruction in sign language. The Act establishes the right of all deaf and hard-of-hearing children to learn German Sign Language and to receive primary and secondary education in sign language.

Equality between women and men

47. Equality between men and women is enshrined in article 11 of the Constitution, paragraph 2 of which provides that:

Women and men are equal under the law. The State shall actively promote the elimination of any potential obstacles to equality between women and men.

48. The Ministry of Equality between Women and Men adopted its first National Action Plan for Gender Equality in 2006 and renews it every three years.

49. The Children's Names Act of 23 December 2005,¹¹ which enshrines the equality of men and women, established a new system of rules governing the attribution of surnames and forenames. Henceforth, the transmission of surnames and the choice of forenames follow the same principles irrespective of whether a child is born in wedlock (Civil Code, art. 57), born out of wedlock (Civil Code, arts. 334-2 and 334-3) or adopted (Civil Code, arts. 359 and 368-1).

50. Parents may choose to give their child either the father's surname or the mother's surname or both surnames in any order. All parents, including those who are not married, are free to choose their child's surname, provided that they can agree on the name to be given.

51. The surname chosen for a couple's first child will be valid for all their other children.

Acquisition of nationality

52. The rules for the acquisition of Luxembourg nationality are set out in the Act of 8 March 2017 and are the same for men and women.

53. Since 2017, any married person may opt for Luxembourg nationality on the sole basis of his or her marriage to a national of Luxembourg (art. 25). In the past, the legislation on Luxembourg nationality provided this option only for a foreign woman marrying a male national of Luxembourg. That provision was considered discriminatory and was abolished in 2009.

Equality in divorce proceedings

54. In Luxembourg, married couples are allowed to divorce. Only the divorce decree dissolves the bonds of marriage. Divorce law has undergone a wide-ranging reform under

¹¹ Act of 23 December 2005: <http://data.legilux.public.lu/eli/etat/leg/loi/2005/12/23/n9/jo>.

the new Act of 27 June 2018 establishing the family court and amending the law on divorce and parental authority.¹² There are now two types of divorce: divorce by mutual consent and divorce on the grounds of irretrievable breakdown in marital relations. Divorce on the grounds of unjustifiable behaviour, ill-treatment or grievous insults, commonly known as divorce on the grounds of just cause, was repealed by the above-mentioned Act.

55. However, a number of criminal offences committed during marriage (such as rape or physical assault) affect the right to maintenance payments and the right to retain the standard of living enjoyed during the marriage.

56. Divorce by mutual consent is defined by the fact that both spouses wish to divorce. Divorce is requested jointly by the spouses when they agree on the breakdown of the marriage and its consequences.

57. Divorce on the grounds of irretrievable breakdown in marital relations may be requested by either spouse or by both spouses (if they agree to divorce but do not agree about all its consequences).

58. In divorce proceedings before the family court, either spouse may apply to the judge for interim measures relating to the person, maintenance and property of both the spouses and the children. The spouses may apply to live separately during the divorce proceedings.

59. Where a spouse opposes the divorce because he or she believes that there has been no irretrievable breakdown of the marital relationship, the judge may grant the spouses a period of time in which to reconcile with each other. This period may not exceed three months, and is renewable once. If, at the end of this period, the spouse who has applied for divorce persists in his or her application, the divorce will be granted.

60. The divorce decree dissolves the marriage on the date on which the decree takes effect.

61. In principle, the divorce of a child's parents does not change the conditions under which parental authority is exercised: it continues to be exercised jointly by both parents.

62. The court entrusts the exercise of parental authority to one of the two parents only when this would be in the interest of the child. In such cases, the parent designated to exercise authority has sole responsibility for decisions concerning the child. Nevertheless, the other parent retains the right to be informed of, and kept up to date with, the child's maintenance and education. Unless there are serious reasons that dictate otherwise, he or she also has visiting and accommodation rights. When parents separate, each parent must maintain a personal relationship with the child and respect the child's relationship with the other parent.

63. Establishment of a child's parentage allows the attribution of parental authority.

64. The above-mentioned Act of 27 June 2018 introduces the principle that parents, whether married or not, exercise parental authority jointly. All provisions relating to parental authority are based on the concept of co-parenting, which must continue even after a couple breaks up.

65. All parents are equal, whether they are married, unmarried, in a civil partnership, separated or divorced, and whether they are of the opposite or the same sex.

Equality in the workplace and employment

66. Under the Equal Pay Act of 15 December 2016, any gender-based wage discrimination is considered to be a criminal offence in Luxembourg. Whenever a difference in pay cannot be justified on objective grounds and is based on gender considerations, the employer is fined between €251 and €25,000.

67. If the employer reoffends within two years, the penalties may be doubled.

68. In order to be considered of equal value, the jobs performed by employees must require a comparable body of professional knowledge represented by a qualification or practical work experience and comparable skills acquired through experience. They must also involve comparable responsibilities and make similar physical and mental demands.

¹² Act of 27 June 2018: <http://legilux.public.lu/eli/etat/leg/loi/2018/06/27/a589/jo>.

69. It is therefore prohibited for an employer to use any other criteria to determine an employee's remuneration. Any provision contained in a contract, an individual or collective agreement or internal company regulations that violates the principle of equal pay for men and women is to be considered null and void.

70. Moreover, in such a situation of unfair treatment, the highest wage automatically replaces that specified in the provision that has been declared null and void.

71. On the occasion of this change in the law, the Government produced a brochure on equal pay.

72. In 2018, the Inspectorate of Labour and Mines set up an information line and new reception facilities to address the subject of equal pay for men and women.

73. Software for monitoring the status of equal pay is made available to companies by the Government. Such software also forms part of the positive action programme that helps companies to implement equal work regulations within their organization in order to address the treatment of staff in general, work-life balance and decision-making.

Equal access to goods and services

74. In 2007, with a view to implementing the principle of equality between women and men, a law was adopted to combat gender-based discrimination affecting access to and the provision of goods and services outside the area of labour and employment.

75. Thus, any direct or indirect gender-based discrimination is prohibited, including less favourable treatment of women on grounds of pregnancy or maternity, harassment in general, sexual harassment in particular and the issuance of an instruction to discriminate against someone directly or indirectly.

76. Pursuant to the Act, section 455 of the Criminal Code has been amended to cover refusal of access to goods in addition to refusal of the provision or enjoyment of goods.

77. This Act also amended legislation on insurance contracts by incorporating an article 15-1, which provides that the criterion of sex may not be used as a differentiating factor in the calculation of insurance premiums and benefits and that costs related to pregnancy and maternity may not, under any circumstances, give rise to any differences in insurance premiums and benefits.

Combating violence

78. Under the Act of 8 September 2003, a system was established to provide legal protection to women and girl victims of violence, particularly domestic violence. The Act of 30 July 2013 introduced a number of improvements that benefit adult and child victims, as well as perpetrators of domestic violence.

79. The concept of "close relative" has been replaced with the broader concept of "family setting". The circle of alleged victims whom an eviction order may be issued to protect has been expanded to include any alleged victim who lives with the alleged perpetrator in a family setting, a concept that covers not only the traditional family in a broad sense but also blended families.

80. Children who have witnessed domestic violence and are recognized as indirect victims may be looked after, assisted, guided and given advice by the support service for victims of domestic violence, which, under the Act, is granted legal standing.

81. The duration of the eviction has been extended from 10 to 14 days and the evicted person is now also subject to two new bans: a ban on approaching the victim and a ban on making contact with the victim orally, in writing or through an intermediary.

82. A new ban has been added to those that may be imposed under article 1017-8 of the New Code of Civil Procedure, namely a ban on approaching the shelter where the victim is staying, including adjoining buildings, the childcare facilities and the school.

83. The aforementioned Act of 30 July 2013 also significantly strengthens the extent to which perpetrators of domestic violence are held accountable for their acts.

84. To this end, the service that deals with the perpetrators of domestic violence is granted legal standing equivalent to that of the support service for victims of domestic violence.

85. On the day on which the eviction order enters into force, the police notify both a service working with perpetrators of domestic violence and a support service for victims of domestic violence.

86. The evicted person must report to a service working with perpetrators of violence within the first seven days of the eviction order. Otherwise, the service will make contact and summon him or her for an interview.

87. On 7 August 2018, Luxembourg ratified the Istanbul Convention. Long before it did so, it had implemented effective legislation to support victims of violence, including domestic violence. In addition, the Ministry of Equality between Women and Men regularly organizes information-sharing, prevention and awareness-raising campaigns on violence against women, often in cooperation with non-governmental organizations (NGOs). The State has also established an extensive network of support facilities and counselling services throughout the country for both victims and perpetrators of violence.

88. In the coming years, the implementation of the Istanbul Convention will be a good way of raising awareness among professionals and the general public of all aspects of violence against women and girls, providing information on the support and assistance network and improving its accessibility and quality, bringing together and involving all State and non-State actors in combating violence against women and girls and expanding the provision of support and assistance to victims.

89. While the Convention is specifically focused on all forms of violence against women, it explicitly recognizes that men may also be victims of domestic and other forms of violence. For this reason, States are encouraged also to apply the Convention to male victims. As its legislation is generally gender-neutral, the approach taken by Luxembourg is to apply the Convention to both sexes.

90. Luxembourg also has a network of assistance and support services developed for victims, especially female victims, of violence.

Information, awareness-raising and prevention

91. Combating violence against girls and women is a central concern of the gender equality policy of Luxembourg. This prioritization has been reflected in the various awareness-raising campaigns carried out in recent years, which include a campaign on the ratification of the Istanbul Convention, the White Ribbon Campaign and Orange Week in Luxembourg. The Government has also funded scientific studies, including a major study by the Luxembourg Health Institute in 2013–2014. The recommendations arising from this study have guided the Government in its efforts to improve the protection of victims, namely by setting up a forensic unit for documenting acts of violence, improving care for child victims of violence, and introducing more targeted prevention that takes into account the multilingual and multicultural context of Luxembourg.

92. In recent years, there has been a decline in evictions and police intervention in cases of domestic violence. While evictions were at a record high of 375 in 2012, the committee for cooperation among professionals combating violence registered 217 evictions in 2017, a remarkable decrease of 42.2 per cent. There has also been a drop in police interventions, which numbered 876 in 2014 and 789 in 2016. The efforts undertaken in the areas of information, awareness-raising and prevention have contributed to this downward trend. The annual reports that the committee for cooperation among professionals combating violence submits to the Government contain more extensive data.

Equal participation of women and men in positions of political and economic responsibility

93. In 2014, on the basis of the government programme for 2013, the Luxembourg Government presented its strategy for the equal representation of women and men in economic and political decision-making processes. Women remain broadly underrepresented among decision makers in both the public and private sectors, despite the fact that they are as qualified as men and are increasingly active in the labour market. In view of this situation, the Government undertook to ensure that, through 2019, at least 40 per cent of decision-making positions in the public sector would be occupied by women.

94. In order to achieve this objective, new appointment procedures were implemented that yielded convincing results within three years. The total percentage of women on the boards of directors of public institutions increased from 27.41 per cent to 34.58 per cent between January 2015 and December 2017. The percentage of women representing the State increased from 30.34 per cent to 38.87 per cent between January 2015 and December 2017. In undertakings governed by private law, the percentage of women representing the State has risen from 24.69 per cent in January 2015 to 30.54 per cent currently.

95. In order to promote the equal representation of women and men in politics, legislation on the funding of political parties has been amended to ensure that, in future, political parties will receive full public funding only if candidates of each sex make up at least 40 per cent of candidates for national parliamentary elections and 50 per cent of candidates for European elections.

Combating gender stereotypes

96. Legislation on the funding of political parties is central to the mandate of the Ministry of Equality between Women and Men. The Ministry seeks actively to raise awareness among young persons from an early age.

97. In 2018, the Ministry organized a multidisciplinary conference that brought to a close a project on the role of men in the non-formal education of children.

98. In February 2018, the Government unveiled its strategy for countering the stereotypes about the roles associated with men and women in our society and launched the #changeyourperspective campaign to challenge these gender stereotypes.

99. Any discussion of gender stereotypes should address the question of how far men should be included as agents and beneficiaries of gender equality policies. We are of the view that the term gender equality must apply to both sexes as men can also be subject to inequality and even discrimination.

Article 4

100. No situation falling within the scope of article 4 (1) of the Covenant exists at present in Luxembourg.

101. The article in question is directly binding on all the competent authorities in Luxembourg.

102. Moreover, article 32 (4) of the Constitution, which governs national emergencies, provides that measures taken in such contexts must be consistent with the Constitution and international treaties.

- In the event of an international crisis, genuine threats to the vital interests of all or part of the population or an imminent danger resulting from a serious breach of public safety, the Grand Duke may, upon establishing that the Chamber of Deputies is unable to pass legislation within an appropriate time frame, enact regulatory measures in all areas. While these measures may derogate from existing laws and could therefore expand the powers of the police and military, they must be consistent with the Constitution and international treaties so as to ensure continued respect for fundamental rights.
- In addition, legislative action requiring a special majority is needed to extend a state of emergency beyond 10 days, and such an extension may not exceed three months.
- The Chamber of Deputies may not be dissolved during a state of emergency.
- To date, this article has been put into effect only in the context of the financial crisis. It has never been invoked in a counter-terrorism context.
- Terrorism is defined in article 135-1 of the Criminal Code.
- Under the Code of Criminal Procedure, derogations from ordinary law are allowed in connection with counter-terrorism efforts. The derogations may relate to:

- The competence of prosecuting authorities (Code of Criminal Procedure, arts. 5-1, 7-4, 26 and 29)
 - Periods of detention (Code of Criminal Procedure, art. 39)
 - The collection of human cells for use in DNA profiling (Code of Criminal Procedure, art. 48-7)
 - Vehicle searches (Code of Criminal Procedure, art. 48-11)
 - Electronic investigations conducted under a pseudonym (Code of Criminal Procedure, art. 48-26,)
 - Searches (Code of Criminal Procedure, art. 65)
 - The collection of telecommunications data (Code of Criminal Procedure, art. 67-1)
 - Special surveillance measures (Code of Criminal Procedure, art. 88-2)
 - Prohibitions on leaving the country (Code of Criminal Procedure, art. 112-1)
103. To prevent their abuse, these provisions are subject to very strict procedural rules.

Article 5

104. Nothing to report.

Article 6

105. The death penalty was abolished for all offences by the Act of 20 June 1979.¹³

106. The right to life is also protected under article 2 of the European Convention on Human Rights and under Protocol No. 13 to that Convention, which was ratified by Luxembourg in 2006.¹⁴

107. With regard to the requisite protection of the right to life, attacks on life (homicide, murder, assassination) are punished under the Criminal Code.

108. A 2007 law introduced a procedure to be followed when minors or protected adults go missing or when adults go missing in situations of concern or under suspicious circumstances.¹⁵

109. The Government has put a bill before Parliament to ratify the International Convention for the Protection of All Persons from Enforced Disappearance, adopted in New York on 20 December 2006.¹⁶ In connection with this, it was proposed that adoptions or placements of children originating in an enforced disappearance be made subject to review and, where appropriate, annulment.

110. To date, there have been no known cases of enforced disappearance in Luxembourg.

111. Cases of missing persons are dealt with only once they have been reported to the police. A distinction is made between cases involving missing minors and those involving missing adults. When a minor goes missing, the situation is considered “of concern” and will be investigated by the judicial authorities.

112. When an adult goes missing, it is first ascertained whether circumstances or conditions such as a criminal offence, a suicide risk or dementia are involved. If they are, the situation is also considered “of concern”.

113. Luxembourg has adopted the necessary measures to facilitate cooperation with the Tribunals established by the Security Council under resolutions 827 of 25 May 1993 and 955

¹³ Act of 20 June 1979: <http://data.legilux.public.lu/eli/etat/leg/loi/1979/06/20/n1/jo>.

¹⁴ Act of 6 March 2006: <http://data.legilux.public.lu/eli/etat/leg/loi/2006/03/06/n4/jo>.

¹⁵ Act of 18 May 2007: <http://data.legilux.public.lu/eli/etat/leg/loi/2007/05/18/n1/jo>.

¹⁶ Bill No. 7374: <http://legilux.public.lu/eli/etat/proj/pl/20180337>.

of 8 November 1994;¹⁷ has approved the Rome Statute of the International Criminal Court¹⁸ and the amendments thereto;¹⁹ and has amended its domestic laws in line with the Statute.²⁰

114. Luxembourg has also acceded to the Convention on the Prevention and Punishment of the Crime of Genocide.²¹

115. Genocide, defined in article 136 bis of the Criminal Code, is punishable by life imprisonment. Disputing, minimizing, justifying or denying the existence of one or more genocides as defined in article 136 bis, crimes against humanity or war crimes is punishable by imprisonment and a fine under article 457-3 of the Code and forfeiture of rights under article 457-4.

116. With regard to firearms, under article 43 (5) of the Prison Service Reform Act of 20 July 2018,²² prison officers may use penetrating ammunition only in self-defence, to prevent individuals from breaking in or out of Luxembourg or Uerschterhaff Prisons at their exterior security fences. Prison officers must receive prior authorization from the prison director, with approval from the director of the prison service, to bear arms using such ammunition. Under article 44 of the same Act, the prior authorization of the Minister of Justice is required for the purchase of firearms as well as of all types of weapons and restraints carried by prison service staff. The weapons must be stored in a location with specially secured access within the prison compound. The prison must keep a record of its inventory of weapons and restraints that allows those items to be identified individually. The prison must also keep a daily record enabling it to track the weapons brought in and taken out and the identity of the prison officers to whom they were given for use in performing their duties.

117. The circumstances in which members of the Grand-Ducal police force may use weapons are set forth in detail in the Act of 28 July 1973,²³ as amended in 2007.²⁴

118. Infanticide is a criminal offence in Luxembourg (Criminal Code, art. 396).

Article 7

119. Various government initiatives aim to improve the situation of drug users. A special medical unit has been put in place at Luxembourg Prison for drug-addicted detainees and detainees with mental illness or persons institutionalized in accordance with the law.

120. Article 26 of the Prison Service Reform Act of 20 July 2018 states that “every detainee has to right to adequate and appropriate levels of the care best suited to his or her state of health”. Furthermore, “the prison service shall organize their access to health care and assume the related costs and fees”.

121. In a more international context, articles 136 ter and 136 quater, introduced by an Act of 27 February 2012, establish the penalties for the crimes against humanity set out in the Geneva Conventions of 1949 and all inhuman acts.

122. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was approved by an Act of 11 April 2010. The Act served to define the role of the ombudsman and to assign significant powers to the position, with a view to ensuring compliance with the criminal provisions applicable in the area.

¹⁷ Act of 18 May 1999: <http://data.legilux.public.lu/eli/etat/leg/loi/1999/05/18/n6/jo>.

¹⁸ Act of 14 August 2000: <http://data.legilux.public.lu/eli/etat/leg/loi/2000/08/14/n1/jo>.

¹⁹ Act of 26 December 2012: <http://data.legilux.public.lu/eli/etat/leg/loi/2012/12/26/n4/jo>; and Act of 29 March 2019: <http://data.legilux.public.lu/eli/etat/leg/loi/2019/03/29/a207/jo>.

²⁰ Act of 27 February 2012: <http://data.legilux.public.lu/eli/etat/leg/loi/2012/02/27/n1/jo>; and Act of 27 February 2012: <http://data.legilux.public.lu/eli/etat/leg/loi/2012/02/27/n2/jo>.

²¹ Act of 6 June 1981: <http://data.legilux.public.lu/eli/etat/leg/loi/1981/06/06/n2/jo>.

²² Act of 20 July 2018: <http://data.legilux.public.lu/eli/etat/leg/loi/2018/07/20/a626/jo>.

²³ Act of 28 July 1973: <http://data.legilux.public.lu/eli/etat/leg/loi/1973/07/28/n3/jo>.

²⁴ Act of 21 December 2007: <http://data.legilux.public.lu/eli/etat/leg/loi/2007/12/21/n2/jo>.

Article 8

123. The rights referred to in article 8 of the Covenant are also guaranteed in Luxembourg by virtue of article 4 of the European Convention on Human Rights.

124. At the national level, Luxembourg passed a law on 8 May 2009 on assisting, protecting and ensuring the safety of victims of trafficking in persons.²⁵ The law sets out various measures geared towards victims' physical, psychological and social recovery.

125. The law created a monitoring committee for combating trafficking in persons with the primary goal of preventing trafficking and assessing the situation with respect to it.

126. This was followed by other measures:

- The launch of the "stoptraite.lu" ("stop trafficking") website, where victims can report physical or psychological assaults
- A national action plan against trafficking in persons, developed under the guidance of the committee against trafficking in persons

127. At the European level, the country's Advisory Commission on Human Rights has been designated national rapporteur within the meaning of article 19 of European Union Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings.

128. The offence of slavery is punishable under articles 382-1 ff. of the Criminal Code, as was set forth in an Act of 9 April 2014 that bolstered the rights of trafficking victims.²⁶ In certain cases, keeping a person in slavery can also give rise to criminal penalties under the Criminal Code provisions dealing with the unlawful detention of persons (Criminal Code, arts. 434 ff.).

129. The concept of "hard labour" was abolished under the laws of Luxembourg by an Act of 13 June 1994.²⁷

130. The country's policy on trafficking, like the action plan put forward by the European Union and the Council of Europe, focuses on the following four areas: prevention, protection and promotion of victims' rights, prosecution of principals and joint principals and partnership.

131. The purpose of the national action plan developed by the Monitoring Committee on Combating Trafficking in Persons is to provide the public with detailed information on the strategy for eradicating this crime and the efforts made in that regard.

132. In the context of legal proceedings against the alleged perpetrators of trafficking in human beings and in order to increase the likelihood that an in-depth judicial investigation will be conducted, article 93 of the amended Act of 29 August 2008 on the Free Movement of Persons and Immigration provides that victims of trafficking in persons may be granted a period of reflection, followed, where appropriate, by a residence permit in accordance with article 95.

133. Both nationals of third countries and citizens of the European Union can be granted the status of a victim of trafficking in persons.

134. Victims are granted assistance and protection measures with a view to promoting their physical, psychological and social recovery.

Training of police officers

135. "Trafficking in persons" is covered as part of the criminal law course for police trainees in job groups B1, C1 and C2.

136. NGOs that are active in areas such as immigration and that work with different cultures regularly give lectures about their work and train police officers in intercultural sensitivity.

²⁵ Act of 8 May 2009: <http://data.legilux.public.lu/eli/etat/leg/loi/2009/05/08/n1/jo>.

²⁶ Act of 9 April 2014: <http://data.legilux.public.lu/eli/etat/leg/loi/2014/04/09/n1/jo>.

²⁷ Act of 13 June 1994: <http://data.legilux.public.lu/eli/etat/leg/loi/1994/06/13/n2/jo>.

137. Police personnel specializing in trafficking are required to attend training courses focused on the identification of victims, human rights and the protection of victims from traffickers.

138. Specific efforts are being made to train professionals, including members of the police, the judiciary, NGOs and State agencies. For example, State agencies have organized courses on the subject of trafficking for all civil servants, with assistance from recognized entities that provide support services for victims of trafficking.

Prostitution

139. The legal framework on trafficking in persons and sexual exploitation has been strengthened in the context of the national action plan on prostitution adopted in June 2016 by the Government of Luxembourg, making it necessary to amend the Criminal Code and the Code of Criminal Procedure. These amendments are codified by the Act of 28 February 2018 Strengthening Measures to Combat the Exploitation of Prostitution, Procuring and Trafficking in Persons for Sexual Purposes²⁸ and provide for, inter alia:

- The institutionalization of the “prostitution platform” as a standing committee and the creation of synergies with the Monitoring Committee on Combating Trafficking in Persons.
- Legislative measures recommended by the Chief Public Prosecutor’s Office, the Grand-Ducal police and the Monitoring Committee on Combating Trafficking in Persons with a view to better detecting and identifying victims.
- The criminalization of clients if the prostitute is found to be “a minor, a particularly vulnerable person or a victim of sexual exploitation relating to the exploitation of prostitution, procuring or trafficking in persons for sexual purposes, with the possibility that criminal proceedings might not be brought against the client under certain conditions (client’s testimony)”.

140. With respect to the training component, the Monitoring Committee for Combating Trafficking follows up on and coordinates the actions taken to prevent trafficking and to assess the situation with respect to it. It has developed awareness-raising and informational tools featuring the “stoptraite”²⁹ (“stop trafficking”) logo for the general public and professionals in the field. It also launched a training programme at the National Public Administration Institute for State and local officials, as well as for social workers from NGOs. This training is provided by the Ministry of Justice, the Ministry of Equal Opportunity, the criminal police and the entities providing support services for victims of trafficking, the Ozanam Centre and the Support Service for Victims of Trafficking in Persons.

141. A training course on identifying and assisting victims of trafficking in persons was attended by the entire socioeducational team of the Luxembourg Reception and Integration Agency and by its management partners, the Red Cross and Caritas. The Agency is also part of the Monitoring Committee for Combating Trafficking in Persons.

Article 9

142. Under the monist approach applicable in Luxembourg, conventions and other international texts with legal force form part of the domestic legal order and are incorporated into domestic law. International law, including the provisions of article 6 of the European Convention on Human Rights, on the right to a fair trial, takes precedence over national law.

143. With respect to immigration, decisions regarding individuals in an irregular situation are taken on a case-by-case basis in the light of the specific circumstances of each case, in accordance with articles 111, 116 to 118, 120 and 125 of the amended Act of 29 August 2008 on the Free Movement of Persons and Immigration,³⁰ under which foreigners may be placed in detention in a closed facility pursuant to a decision of the competent minister, unless the application of less coercive measures is feasible.

²⁸ Act of 28 February 2015: <http://data.legilux.public.lu/eli/etat/leg/loi/2018/02/28/a170/jo>.

²⁹ www.stoptraite.lu.

³⁰ Act of 29 August 2008: <http://data.legilux.public.lu/eli/etat/leg/tc/2013/07/03/n2/jo>.

144. The period of detention is set at one month. It may continue only as long as the removal procedure is ongoing and being carried out with all due diligence. The minister may extend the period of detention three times, each time for a period of one month, if the relevant conditions are still in place and such an extension is necessary to complete the removal. If, despite the efforts made, it is likely that more time will be required to carry out the removal because the foreigner has not cooperated or the receipt of required documents from a third country has been delayed, the period of detention may be extended twice, each time for one additional month. Article 123 of the above-mentioned Act provides that an appeal may be lodged before the Administrative Tribunal in its capacity as a court of first instance within one month from the date on which notice of the detention order was served, and that the Tribunal must rule on the request as a matter of priority within 10 days of its submission. An appeal may be lodged with the Administrative Court within three days from the date on which notice of the decision of the court of first instance was served. The Court must rule on the appeal as a matter of priority within 10 days of its submission.

145. The legal assistance provided for under the amended Act of 10 August 1991 on the Legal Profession is accessible to all foreign persons staying in Luxembourg, even if their stay is irregular, in matters relating to the right of asylum, residence, access or removal from Luxembourg if their resources are insufficient to meet the costs of their defence. Such assistance will, however, be refused to any person whose case appears manifestly inadmissible, unfounded or disproportionate with respect to the costs to be incurred.

146. A ministerial order of detention must state the grounds for the detention. The order is notified to the person concerned by an officer of the Grand-Ducal police, criminal police of Luxembourg. The notification is given in writing, against a receipt, in a language that the foreigner can reasonably be expected to understand, through a translator if necessary, except in duly recorded cases when this is physically impossible (articles 121 and 122 of the amended Act of 29 August 2008 mentioned above).

147. It should be noted that the minister responsible for immigration and asylum matters may only order that migrants in an irregular situation and applicants for international protection be placed in detention, not in custody.

148. Article 22 of the Act of 18 December 2015 on International Protection and Temporary Protection³¹ sets forth the provisions applicable to the detention of applicants for international protection. Detention is defined as “any measure isolating an applicant in a specific location where he or she is deprived of his or her freedom of movement”. In the light of the best interests of the child, minors may be detained only as a measure of last resort and for the shortest period of time possible.

149. Under paragraph 2 of the Act mentioned above, an applicant may be detained only:

- (a) In order to determine or verify his or her identity or nationality;
- (b) In order to ascertain elements on which the application for international protection is based and that cannot be established without detaining the applicant, particularly when there is a risk of the applicant’s absconding;
- (c) When required to protect national security or public order (*ordre public*);
- (d) In accordance with article 28 of Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and when there is a risk of absconding ...;
- (e) When, in connection with a return procedure under article 120 of the amended Act of 29 August 2008 on the Free Movement of Persons and Immigration, the applicant has been detained in order to prepare for the return and carry out the removal process and there are reasonable grounds to believe that he or she has submitted an application for international protection for the sole purpose of delaying or preventing the enforcement of the return decision despite already having had the opportunity to avail himself or herself of the asylum procedure.

³¹ Act of 18 December 2018: <http://data.legilux.public.lu/eli/etat/leg/loi/2015/12/18/n15/jo>.

150. The minister issues orders to detain individuals in writing, on the basis of case-by-case assessments, when it proves necessary and other, less coercive measures (such as being required to report to a government office at regular intervals or to post a guarantee or being confined at home) cannot be effectively applied.

151. The detention order must set out the factual and legal basis for the detention. The detention must be for the shortest period of time possible and may not exceed three months. The period of detention may be extended by the minister for 3 months at a time but the total period of detention may not exceed 12 months.

152. Applicants placed in detention are informed immediately in writing, in a language that they understand, of the grounds for the detention and of the procedures for appealing against the detention order.

153. With respect to appeals, article 22 (6) provides that “an appeal may be lodged before the Administrative Tribunal in its capacity as a court of first instance against the detention order or an order to apply one of the less coercive measures provided for under article 22 (3). The appeal must be lodged within three months from the date on which notice of the order was given.”

154. Paragraphs (4) and (5) of articles 123 of the Act of 29 August 2008 provide that “an appeal against a decision of the Administrative Tribunal may be lodged with the Administrative Court. On pain of being time-barred, the appeal must be entered within three days of notification of the decision of the Administrative Tribunal. The Administrative Court shall rule promptly and in any case within 10 days of the entry of the appeal.”

155. With regard to the legal aid to which applicants for international protection are entitled, article 17 of the 2015 Act mentioned above provides that:

The applicant has the right to be assisted on request, and to be represented free of charge in appeal proceedings by a lawyer appointed by the president of the bar association ... unless the applicant’s appeal is considered to have no tangible prospects of success.

(2) Free legal assistance and representation shall be provided only in the proceedings referred to in paragraph (1), to the exclusion of all other judicial or administrative remedies.

Pursuant to article 9 (2) (b) and (c), free legal assistance and representation shall not be provided to applicants who are no longer present in Luxembourg.

Article 10

156. Article 3 (3) of the Prison Service Reform Act of 20 July 2018 provides that “the prison service shall ensure with regard to all detainees that the inherent dignity of the human person is respected”.

157. Beyond this provision, the Luxembourg Code of Criminal Procedure also applies to persons deprived of liberty.

158. In addition, article 119 of the Act of 29 August 2008 on the Free Movement of Persons and Immigration³² sets out the conditions of detention for foreigners kept in holding areas.

159. The following are the provisions applicable to minors: the Civil Code, the Act of 10 August 1992 on the Protection of Young People³³ and the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, approved under the Act of 16 June 2010.³⁴

160. Minors who commit certain offences are placed in the Security Unit, a closed unit for minors established on 1 November 2017 that can accommodate up to 12 young inmates, on the site of the State Socioeducational Centre.

³² Act of 29 August 2008: <http://data.legilux.public.lu/eli/etat/leg/loi/2008/08/29/n1/j.o>.

³³ Act of 10 August 1992: <http://data.legilux.public.lu/eli/etat/leg/loi/1992/08/10/n3/jo>.

³⁴ Act of 16 June 2010: <http://data.legilux.public.lu/eli/etat/leg/loi/2010/06/16/n1/jo>.

161. The minors housed in this unit are placed there for three-month periods that may be renewed by order of the judicial authorities under the protection regime for young people. The concept of care includes intensive psychoeducational guidance, intended to remotivate young people and give them a renewed sense of responsibility.

162. The Security Unit was set up by the authorities so as to avoid placing minors in Luxembourg Prison and to ensure that accused juvenile persons are separated from adults.

163. The segregation of accused persons from convicted persons was established under article 7 of the Prison Service Reform Act of 20 July 2018. The article expressly states that “Luxembourg and Givenich Prisons shall be reserved for convicted persons and accused persons shall be incarcerated at Uerschterhaff Prison”.

Article 11

164. Article 14 of the Constitution of Luxembourg states that “penalties may be established or applied only in accordance with the law.”

165. Under article 1 of the Criminal Code, certain penalties may be imposed only with regard to criminal offences. Breach of a contractual obligation does not constitute a criminal offence.

Article 12

166. Liberty of movement is guaranteed under the European Convention on Human Rights. The rights set out in article 12 of the Covenant are reflected in articles 2 and 3 of Protocol No. 4 to the Convention, as amended by Protocol No. 11. Measures affecting these rights are therefore subject to judicial review by the European Court of Human Rights.

167. Article 12 of the Covenant can also be directly invoked before domestic courts.

168. In certain cases, the law allows restrictions on the liberty of movement that meet the requirements of article 12 (3).

169. Thus, on the basis of articles 106 ff. of the Code of Criminal Procedure, a person charged with a criminal offence may, owing to the needs of the investigation or as a preventive measure, be subjected to one or more of the judicial supervision measures set out in article 107 of the Code of Criminal Procedure.

170. In connection with this judicial supervision, the investigating judge may also place a person under electronic surveillance within the meaning of article 690 of the Criminal Procedure Code.

171. Article 111 of the Criminal Code sets forth the relief available with respect to decisions imposing judicial supervision. A request to have the measures partially or totally lifted may be made at any stage.

172. The electronic surveillance referred to in article 690 of the Code of Criminal Procedure also constitutes a method of enforcing custodial sentences, a decision as to which may be made by the public prosecutor under the Act of 20 July 2018.³⁵ This Act reformed the sentencing system and established the Sentence Enforcement Chamber, governed by articles 696 ff. of the Criminal Code. Detainees may appeal decisions taken relating to their sentences by the public prosecutor or the prison service before the Sentence Enforcement Chamber.

173. For the convicted person, being placed under electronic surveillance means that he or she may not leave his or her residence or any other location designated in the decision ordering the electronic surveillance outside the time periods indicated therein and must leave those locations during certain other time periods.

³⁵ Act of 20 July 2018: <http://data.legilux.public.lu/eli/etat/leg/loi/2018/07/20/a627/jo>.

174. The Act of 8 September 2003 on Domestic Violence,³⁶ the provisions of which were reinforced by the Acts of 30 July 2013³⁷ and 20 July 2018,³⁸ authorizes persons to be removed from their homes if there is evidence indicating that they are preparing to commit any offence against an individual they live with in a family setting. The person who is removed must be informed of his or her right to appeal the removal order. Such appeals are brought before the family court in accordance with the terms of articles 1017-1 and 1017-2 of the New Code of Civil Procedure.

175. As set forth in articles 1017-1 to 1017-14 of the New Code of Civil Procedure, injunctions and prohibitions affecting the liberty of movement and the freedom to establish a residence may also, in certain cases, be issued by a family court judge or the president of the district court.

176. Finally, under article 409 of the Criminal Code, in the event of an assault against an individual with whom the convicted person lives, the court may prohibit the convicted person from:

- Coming within a certain distance of the victim's residence
- Contacting the victim
- Coming within a certain distance of the victim
- These decisions are subject to appeal.

177. With regard to counter-terrorism efforts, a section on prohibitions on leaving the country was added to the Code of Criminal Procedure under a 2015 law,³⁹ with article 112-1 of the Code authorizing investigating judges to prohibit from leaving the country any citizen of Luxembourg with respect to whom a preliminary investigation into one of the offences set out in articles 135-12 to 135-15 of the Criminal Code is under way. Such a prohibition entails, as an interim measure, the invalidation of the passport or passports and identity card of the person concerned. The person concerned is required to surrender his or her passports and identity card to the clerk of the office of the investigation judge and in exchange will be given a receipt that constitutes proof of identity. He or she may file an application to have the prohibition on leaving the country lifted in the same way as provided for in respect of measures of judicial supervision, except that such an application will not be accepted within one month of the person being notified of the prohibition.

178. If a citizen of Luxembourg is sentenced to a penalty other than imprisonment for recruitment or training for terrorism or for certain acts related to the preparation or commission of a terrorism offence, article 135-17 of the Code of Criminal Procedure authorizes the court ruling on the matter to order the individual not to leave the country for a period of up to one year.

179. With respect to any immigration matters involved, investigators with the criminal police are specially trained to carry out the necessary procedures and take account of all the regulations currently in force regarding the protection of asylum seekers (detention).

Article 13

180. The right enshrined in article 13 of the International Covenant on Civil and Political Rights is also referred to in article 1 of Protocol No. 7 to the European Convention on Human Rights, as amended by Protocol No. 11 to that Convention.

181. Under the Act of 25 April 2003 on the Transfer of Sentenced Persons,⁴⁰ when a person is convicted in Luxembourg and that conviction or an administrative decision taken following that conviction includes a final expulsion or refoulement order, the Luxembourg authorities may request another State to accept the transfer of the convicted person.

³⁶ Act of 8 September 2003: <http://data.legilux.public.lu/eli/etat/leg/loi/2003/09/08/n1/jo>.

³⁷ Act of 30 July 2013: <http://data.legilux.public.lu/eli/etat/leg/loi/2013/07/30/n1/jo>.

³⁸ Act of 20 July 2018: <http://data.legilux.public.lu/eli/etat/leg/loi/2018/07/20/a631/jo>.

³⁹ Act of 18 December 2015: <http://data.legilux.public.lu/eli/etat/leg/loi/2015/12/18/n9/jo>.

⁴⁰ Act of 25 August 2003: <http://data.legilux.public.lu/eli/etat/leg/loi/2003/04/25/n6/jo>.

182. Article 7 of the Extradition Act⁴¹ provides that:

- (1) Extradition shall not be granted if the requested person is a Luxembourg national.
- (2) Extradition may be refused if the requested person is a foreign national who resides permanently in Luxembourg and if extradition is considered inappropriate because of his or her integration or the ties he or she has established in Luxembourg, provided, however, that he or she can be prosecuted in Luxembourg for the offence for which extradition is requested.

183. Similarly, the Act of 17 March 2004 on the European Arrest Warrant and Surrender Procedures between States members of the European Union⁴² states that the implementation of the European arrest warrant may be refused if the arrest warrant has been issued for the purpose of enforcing a sentence or a security measure, when the requested person is a foreign national who resides in Luxembourg and whose stay in Luxembourg may be considered expedient because of his or her integration or the ties he or she has established in Luxembourg, and the Luxembourg authorities undertake to enforce that penalty or detention order in accordance with Luxembourg law.

Application for international protection

184. Any person who is legally or illegally present in Luxembourg may apply for international protection.

185. Article 34 (2) of the aforementioned Act of 2015 provides that “decisions of the minister shall be equivalent to a return decision, with the exception of decisions taken pursuant to article 28 (1) and (2) (d).” The order to leave the national territory indicates the deadline for leaving the territory and the country to which the applicant will be returned in the event of automatic enforcement. The applicant will be given 30 days to comply with the order to leave the territory.

186. The minister may grant a period of voluntary departure of more than 30 days, taking into account the circumstances of each case, such as the length of stay, the existence of children in school and other family and social ties.

187. With regard to unaccompanied minors, article 103 of the Act of 29 August 2008 on the Free Movement of Persons and Immigration provides that “removal decisions may not be taken in respect of minors who are not accompanied by a legal representative, with the exception of decisions based on serious grounds of public security, unless the removal is in his or her interests”.

188. In matters of international protection, any negative decision is equivalent to a return decision (Act of 2015, art. 34), with the exception of decisions taken under article 28 (1) and (2) (d).

189. With regard to appeals, article 35 provides that “(1) appeals against decisions to deny or withdraw international protection and orders to leave the national territory are subject to appeal for correction before the Administrative Tribunal.” The appeal must be lodged within one month from the date on which notice of the decision was served. The decision of the Administrative Tribunal may be appealed before the Administrative Court within one month from the date on which the notice was served by the registry.

190. The same article 35 provides that: “(2) The minister’s decision to rule on the merits of the application for international protection through a summary procedure and his or her decision to reject the application for international protection within the framework of that procedure, as well as his or her decision to issue an order to leave the national territory, are subject to appeal for correction before the Administrative Tribunal”. The appeal must be lodged within 15 days from the date on which the notice was served. The divisional president or his or her substitute must rule on the appeal within one month of its submission. That ruling may not be appealed. If the president considers the appeal to be manifestly unfounded, he or she may reject the application for international protection. If, on the other hand, he or she does not consider the appeal to be manifestly unfounded, the case is referred back to the Administrative Tribunal for a ruling.

⁴¹ Act of 20 June 2001: <http://data.legilux.public.lu/eli/etat/leg/loi/2001/06/20/n5/jo>.

⁴² Act of 17 March 2004: <http://data.legilux.public.lu/eli/etat/leg/loi/2004/03/17/n1/jo>.

191. Finally, “(3) a decision of inadmissibility taken under article 28 (2) against the transfer decision referred to in article 28 (1) may be appealed before the Administrative Tribunal.” The appeal must be lodged within 15 days from the date on which notice was served. The Administrative Tribunal must rule on the appeal within two months of its submission.

192. With regard to the suspensive effect of the various types of appeals, article 36 of the Act of 2015 states that:

The appeals provided for in article 35 (1) and (2) shall have suspensive effect. The competent minister must grant the applicant authorization to remain in the country until the period for appeal has expired or, if the applicant has exercised his or her right to appeal within this time limit, until the appeal has been resolved.

(2) The appeals provided for in article 35 (3), with the exception of appeals against a decision of inadmissibility taken under article 28 (2) (c), shall not have suspensive effect.

193. European Union citizens who hold a valid identity card or passport have the right to enter the territory of the Grand Duchy of Luxembourg and to reside there for a period of three months, or longer if they are either employed or self-employed, have sufficient resources to provide for themselves and their family members, or are enrolled in an approved public or private institution for the purpose of studying or obtaining vocational training, provided that they have sufficient resources at their disposal.

194. To enter the territory of the Grand Duchy, third-country nationals must be in possession of a valid travel document and, if necessary, a visa. They have the right to enter and stay in the territory for up to three months over a six-month period if they fulfil the conditions set out in article 34 of the aforementioned amended Act of 29 August 2008.

195. A third-country national in respect of whom a return order has been issued and who is present in the territory of Luxembourg is considered to be in an illegal situation if he or she:

- Does not or no longer meets the conditions laid down in article 34 of the aforementioned Act
- Overstays his or her visa or, if he or she is not subject to the visa requirement, stays more than three months from the date of his or her entry into the national territory
- Does not have a residence permit that is valid for more than three months or a work permit, if the latter is required

196. Ministerial decisions declaring a person in an irregular situation must be accompanied by a statement of reasons, require the person in question to leave the national territory and provide a deadline for voluntary departure from the territory.

197. Notice of return or expulsion decisions is served through administrative channels. Such notices indicate the means of redress and the deadlines by which the person concerned must take action.

198. The person concerned may request a deferral of his or her expulsion in the two cases set out below:

199. 1° If the foreign national proves unable to leave the national territory for reasons beyond his or her control or if he or she can neither return to his or her country of origin nor travel to any other country.

200. 2° If the foreign national can prove that his or her life or freedom would be in serious danger in a country, or that he or she would be at risk of treatment that would constitute a violation of article 3 of the European Convention on Human Rights, or articles 1 and 3 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, he or she may not be removed or expelled there.

201. For statistics on returns, reference is made to the statistics provided in the report submitted to the Committee against Torture.

202. With regard to expulsion statistics, there were seven expulsions in 2017 and one expulsion in 2018. There are no statistical data for previous years.

Article 14

Article 14 (1)

203. The right to a fair trial is also enshrined in article 6 of the European Convention on Human Rights and article 47 of the Charter of Fundamental Rights of the European Union. Article 14 of the Covenant is directly applicable.

204. In addition, the rights set out in the International Covenant on Civil and Political Rights are reflected in articles 2, 3 and 4 of Protocol No. 7 to the European Convention on Human Rights.

205. With regard to the organization of the judiciary and the appointment of judges, members of the judiciary may be recruited through different channels, either by a competitive examination or an application process, the procedure for which is defined in the Act of 7 June 2012 on judicial assistants.⁴³

206. At the end of the recruitment process, candidates selected by a committee receive a provisional appointment as judicial assistant for a period of 12 months.

207. The committee organizes and supervises the professional training of judicial assistants, comprising two parts: the first part includes courses, written and oral tests and study visits, and the second part involves practicums with a court or a public prosecutor's office.

208. The final appointment is made by Grand-Ducal decree and on the basis of a reasoned proposal by a committee, in accordance with articles 13 and 15 of the aforementioned Act of 7 June 2012.

209. As for the representation of women in the judiciary, 60 per cent of judges are women.⁴⁴

210. However, equal application of justice is indeed understood as being covered by the principle of equality before the law guaranteed by article 10 bis of the Constitution.

Article 14 (2)

211. Under article 8 of the Code of Criminal Procedure, the Attorney General and the State prosecutor who disclose information on the status of proceedings must respect the presumption of innocence. This is a fundamental principle of criminal procedure.

212. Respect for the presumption of innocence is also guaranteed through the direct implementation in domestic law of the International Covenant on Civil and Political Rights, the Charter of Fundamental Rights of the European Union (art. 48) and the European Convention on Human Rights (art. 6).

213. National case law frequently refers to the right to be presumed innocent as a general principle of law.

214. Finally, there is also a European directive on the subject (Directive (EU) 2016/343), which Luxembourg transposed into national law by the Act of 10 August 2018.⁴⁵

Article 14 (3)

215. The rights recognized in article 14 (3) of the Covenant are enshrined in the European Convention on Human Rights and are directly applicable in Luxembourg and, therefore, binding on the courts. In addition, some of these rights are expressly referred to in the Code of Criminal Procedure.

(a)

216. Articles 3-2 and 3-3 of the Code of Criminal Procedure establish the right of any person who does not speak or understand the language of the proceedings and who is questioned as a suspect in the course of the investigation or pretrial proceedings or summoned as an accused person before a court of first instance to free assistance by an interpreter. It

⁴³ Act of 7 June 2012: <http://data.legilux.public.lu/eli/etat/leg/loi/2012/06/07/n1/fo>.

⁴⁴ "La justice en chiffres": <https://statistiques.public.lu/fr/publications/thematique/conditions-sociales/justice-chiffres/justicechiffres2017.pdf>.

⁴⁵ Act of 10 August 2018: http://data.legilux.public.lu/eli/etat/leg/loi/2018/08/10/a_795/fo.

also establishes the right of such persons to free translation, into a language that they understand, of all documents served on them and to which they are entitled to have access that are essential to enable them to exercise their right to a defence and to ensure due process until the conclusion of the criminal proceedings.

217. On the basis of article 39 (2), all persons taken into custody by a criminal investigation officer are informed, upon their arrest, of their rights, of the remedies available to them and of the fact that they may be deprived of their liberty for a maximum period of 24 hours before being brought before an investigating judge, of their right to make statements and answer questions put to them or to remain silent, of their right not to incriminate themselves, and of the presumed nature and date of the offence for which they were taken into custody.

218. Furthermore, if a person is questioned in the course of a preliminary investigation into a criminal offence and there is reasonable evidence that he or she may have participated in that offence, article 46 of the Code of Criminal Procedure provides that the person questioned must be informed of the nature and presumed date of the offence to which the questioning relates, of his or her right to make statements and answer questions put to him or her, or to remain silent, of his or her right not to incriminate himself or herself and of the rights conferred by articles 3-2, 3-3 and 3-6 of the Code of Criminal Procedure.

219. If the questioning takes place on the basis of a written summons, the person to be questioned is notified of this information together with the summons. If the questioning takes place without a written summons, the information is provided, orally or in writing, before the questioning begins. The fact that it was provided must be indicated in the official record of the questioning.

220. For all persons, other than witnesses, who are detained on the execution of a warrant for their arrest, article 52-1 of the Code of Criminal Procedure requires that they be informed, from the moment they are deprived of their liberty, that they have the right to be examined without delay by a doctor, the right to notify a person of their choice without undue delay and to communicate without undue delay with the consular authorities of the State of which they are nationals, as well as their rights under articles 3-2 and 3-3 (above-mentioned), as well as 3-6 (see below), the remedies of articles 116 and 126, of the fact that they may be deprived of their liberty for a maximum period of 24 hours before being brought before an investigating judge, that they have the right to make statements and answer questions put to them, or to remain silent, the right not to incriminate themselves and of the presumed nature and date of the offence for which they are being detained.

221. Records of police questioning must indicate the day and time at which the person questioned was informed of his or her rights, the duration of the questioning to which he or she was subjected and the interruptions between periods of questioning, the day and time on which the deprivation of liberty began, and the day and time on which he or she was brought before the investigating judge.

(b)

222. Article 3-6 of the Code of Criminal Procedure covers the right to a lawyer, which includes the right of any person referred to in that article to meet privately and communicate with the lawyer representing him or her, including before he or she is questioned, and the right of the lawyer to assist the person during questioning.

223. Under article 52 of the Code of Criminal Procedure, if criminal investigation officers question a person in pretrial detention who has been charged by the investigating judge, they must, before proceeding with the questioning, inform the person to be questioned in writing and against a receipt, in a language that he or she understands, except in duly recorded cases when this is physically impossible, of the right to be assisted by a lawyer. Moreover, in the case of a negotiated plea agreement, article 564 of the Code of Criminal Procedure requires that the person being prosecuted be assisted by a lawyer for all acts relating to the negotiated proceedings.

224. As provided for in article 84 of the Code of Criminal Procedure, the investigating judge may, for the purposes of the investigation, prohibit communication for a maximum of 20 days, but in no case may the prohibition apply to communication with the counsel of the accused.

225. Articles 85 and 182-1 of the Code of Criminal Procedure provide for the right to consult the criminal record and to obtain a copy of it. Moreover:

- After an investigating judge has completed an investigation, strict time limits are set out in article 127 of the Code of Criminal Procedure for the procedure before the council chamber and referral to the trial court.
- The right or the obligation of the person to appear in person before the trial court is provided for in articles 152 and 185 of the Code of Criminal Procedure.

226. On the basis of the Act of 18 August 1995 on legal assistance,⁴⁶ any person charged with a criminal offence who meets the conditions for legal assistance is assigned a lawyer. An Act of 21 June 2007⁴⁷ extended the provision of legal assistance to persons detained by the police and broadened the options for appealing against decisions of the President of the Bar refusing or withdrawing legal assistance by making it possible to file an appeal of second instance with the Disciplinary and Administrative Appeals Board.

227. The right to legal aid is also reflected in article 47 of the Charter of Fundamental Rights of the European Union.

228. The Organization of Justice Act⁴⁸ established, within the Office of the Attorney General, a legal information and support service tasked with providing individuals, regardless of their nationality, with general information on the scope of their rights and on the ways and means of safeguarding them.

- The right of the accused and his or her counsel to question witnesses called before the investigating judge and to request the questioning of the witnesses that they wish to have heard is provided for in articles 69 and 82 of the Code of Criminal Procedure. The questioning of witnesses for the defence before the trial courts is governed by articles 153 and 190-1 of the Code of Criminal Procedure. According to the case law of the Court of Cassation, judges are required to order the questioning of a witness for the prosecution or the defence who has never been confronted by the accused person. Such a request for confrontation by the accused person may be rejected only if the questioning of the witness is manifestly unnecessary or impossible and if the judges provide a full explanation of this impossibility or non-requirement.
- The right of any person being questioned as a suspect to free assistance by an interpreter in the course of the investigation or pre-trial proceedings or when summoned as an accused person before a court of first instance and until the end of the proceedings is enshrined in article 3-2 of the Code of Criminal Procedure.
- The right of a presumed offender to remain silent and not to incriminate himself or herself during questioning before the police or the investigating judge is reflected in articles 39 (2), 39-1, 46 (3), 52-1 and 81 of the Code of Criminal Procedure.

Article 14 (4)

229. In submitting bill No. 7276 in 2018, the Government sought to amend legislation aimed at protecting young people, while maintaining its choice not to establish juvenile criminal law. The bill sets forth the Government's approach to protecting young people, including some important innovations:

- The maintenance of parental authority in the event of judicial placement
- A new temporary custody regime
- Stricter conditions for the placement of a minor in a remand centre

⁴⁶ Act of 18 August 1995: <http://data.legilux.public.lu/eli/etat/leg/loi/1995/08/18/n4/jo>.

⁴⁷ Act of 21 June 2007: <http://data.legilux.public.lu/eli/etat/leg/loi/2007/06/21/n2/jo>.

⁴⁸ See "Cours et Tribunaux" compendium, pp. 5 ff.: http://legilux.public.lu/eli/etat/leg/recueil/cours_tribunaux/20190101.

- A strengthening of procedural safeguards inspired by a European Union directive of 11 May 2016⁴⁹

Article 14 (5)

230. The right to appeal is also provided for in article 2 of Protocol No. 7 to the European Convention on Human Rights, adopted by law on 27 February 1989.⁵⁰

Article 14 (6)

231. This right is also provided for in Protocol No. 7 to the European Convention on Human Rights.

232. The principle of compensation for damages suffered as a result of a miscarriage of justice is reflected in article 447 of the Code of Criminal Procedure.

Article 14 (7)

233. The principle of “*Ne bis in idem*” is also enshrined in article 50 of the Charter of Fundamental Rights of the European Union and in article 4 of Protocol No. 7 to the European Convention on Human Rights.

234. Article 136 of the Code of Criminal Procedure states that “no person may be tried for an offence for which he or she has already been acquitted, even if the act in question is classified as a different offence”.

Article 15

235. The rights recognized in article 15 of the Covenant are also enshrined in the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union.

Article 16

236. There are no developments to report under this article.

Article 17

237. The right enshrined in article 17 of the Covenant is reflected in article 8 of the European Convention on Human Rights and article 7 of the Charter of Fundamental Rights of the European Union.

238. Article 11 of the Constitution provides that “the State guarantees the natural rights of the individual and the family”.

239. For issues relating to domestic violence, please refer to the aforementioned articles 3 and 12.

240. Under articles 39 (7) and 52-1 (5) of the Code of Criminal Procedure, persons may be subjected to a body search, by persons of the same sex, if detained by the police for a crime committed in flagrante delicto or, in the case of a person other than a witness, in the execution of a warrant for that person’s arrest, where the person is suspected of concealing objects that are dangerous to himself or herself or others.

⁴⁹ Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or defendants in criminal proceedings. (<http://data.europa.eu/eli/dir/2016/800/oj>).

⁵⁰ Act of 27 February 1989: <http://data.legilux.public.lu/eli/etat/leg/loi/1989/02/27/n4/jo>.

241. Body searches are provided for by special laws in well-defined cases, in particular in prisons,⁵¹ State socioeducational centres⁵² and holding centres,⁵³ and in matters of international protection.⁵⁴

242. Under article 148 of the Code of Criminal Procedure: “Any administrative or court official, any court or police officer and any commander or law enforcement officer who, acting in this capacity, has entered the home of an inhabitant against the latter’s will, except in the cases provided for and without the formalities prescribed by law, will be sentenced to imprisonment for a period of 8 days to 6 months and a fine of €251 to €2,000.”

243. Vehicle searches are governed by sections 48-10 and 48-11 of the Code of Criminal Procedure.

244. Home searches are governed by articles 24-1, 33, 34, 47 and 65 of the Code of Criminal Procedure. In the context of a preliminary investigation, article 47 of the Code of Criminal Procedure requires that searches, home visits and seizure of material evidence be carried out with the express consent of the person in whose home the operation takes place.

245. Any communication or disclosure without the permission of the accused person or his or her beneficiaries or of the signatory or addressee of a document obtained by a search to anyone not legally authorized to peruse it may constitute an offence punishable under article 35 of the Code of Criminal Procedure.

246. With regard to data protection, Luxembourg is subject to the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.⁵⁵

247. In order to transpose Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 into national law, a specific law was adopted on 1 August 2018, on the processing of personal data in criminal matters and in matters of national security.⁵⁶

248. The National Commission for Data Protection,⁵⁷ according to another Act of 1 August 2018,⁵⁸ has the authority to monitor and verify compliance with Regulation (EU) 2016/679 and with the Act of 1 August 2018 on the processing of personal data in criminal matters and in matters of national security, except for personal data processing operations carried out by the ordinary and administrative courts in the exercise of their judicial functions. These operations are subject to the supervision of the judicial oversight authority established in article 40 of the Act of 1 August 2018 on the processing of personal data in criminal matters and in matters of national security.

249. The seizure by the criminal police, the State prosecutor or the investigating judge of data stored, processed or transmitted in an automated data processing or transmission system is governed in articles 31, 33, 48-25 and 66 of the Code of Criminal Procedure.

250. Under article 48-13 (3) of the Code of Criminal Procedure, where there is considerable evidence of acts constituting an offence punishable by a term of imprisonment of up to 4 years, the investigating judge alone may order surveillance by technical means for the purpose of observing, from outside a home, from a home annex or from an area used for professional purposes, the inside of such premises, provided that the investigation or pre-trial proceedings so require and that the ordinary means of investigation prove inadequate owing to the nature of the acts in question and the special circumstances of the case.

251. Article 149 of the Criminal Code provides for penalties against civil servants and public officials who have opened or destroyed letters or telegrams entrusted to the postal

⁵¹ See articles 37 and 38 of the Act of 20 July 2018: <http://data.legilux.public.lu/eli/etat/leg/loi/2018/07/20/a626/jo>.

⁵² See article 1 (8) and (9) of the Act of 29 August 2017: <http://data.legilux.public.lu/eli/etat/leg/loi/2017/08/29/a816/jo>.

⁵³ See article 8 of the Act of 28 May 2009: <http://data.legilux.public.lu/eli/etat/leg/loi/2009/05/28/n1/jo>.

⁵⁴ See articles 12 (5) and 70 of the Act of 18 December 2015: <http://data.legilux.public.lu/eli/etat/leg/loi/2015/12/18/n15/jo>.

⁵⁵ Directive (EU) 2016/680 of 27 April 2016: (<http://data.europa.eu/eli/dir/2016/680/oj>).

⁵⁶ Act of 1 August 2018: <http://data.legilux.public.lu/eli/etat/leg/loi/2018/08/01/a689/jo>.

⁵⁷ <https://cnpd.public.lu/fr.html>.

⁵⁸ Act of 1 August 2018: <http://data.legilux.public.lu/eli/etat/leg/loi/2018/08/01/a686/jo>.

service, and article 460 of the Criminal Code provides for penalties against private individuals who have destroyed or opened a letter entrusted to the postal service.

252. In cases of flagrante delicto, the seizure by the criminal investigation officer of papers, documents or data stored, processed or transmitted in an automated data processing or transmission system or other articles in the possession of persons who appear to have been involved in the commission of the offence or to be in possession of documents, data or articles relating to the offence, is governed by articles 31 and 33 of the Criminal Code. The seizure of these by the investigating judge is governed by articles 65 and 66 of the Code of Criminal Procedure.

253. The seizure of data that are stored, processed or transmitted in an automated data processing or transmission system may be carried out either by seizing the physical unit on which such data is found or by copying such data in the presence of the persons present at the search. If a copy is made, the investigating judge may order the permanent deletion from the physical unit, when it is in the Grand Duchy of Luxembourg and has not been placed under judicial control, of the data stored, processed or transmitted in an automated data processing or transmission system, the possession or use of which is illegal or dangerous to the safety of persons or property.

254. The tracing of telecommunications or the location of the origin or destination of telecommunications necessary to establish the facts in a case may be ordered by an investigating judge in accordance with the provisions of article 67-1 of the Code of Criminal Procedure.

255. In addition, as part of the fight against terrorism, an Act of 27 June 2018⁵⁹ provided for the insertion, in Book 1, Title II, of the Code of Criminal Procedure, of a chapter XII governing the identification of the user of a means of telecommunication.

256. The same Act also redefined the special surveillance measures governed by articles 88-1 to 88-4 of the Code of Criminal Procedure.

257. Attacks on a person's honour or on the reputation of others are punishable under articles 443 to 452 of the Criminal Code.

258. For any criminal offence, the victim may lodge a complaint with the police (see article 11 of the Code of Criminal Procedure) or the State prosecutor (see article 23 of the Code of Criminal Procedure), under the conditions set out in article 4-1 of the Code of Criminal Procedure.

259. The courts' website⁶⁰ provides information for victims on seeking remedy.

260. In addition, the Victim Support Service,⁶¹ a service operating under the authority of the Office of the Public Prosecutor, was set up for victims who have suffered psychological and/or physical harm as a result of a criminal offence; for persons (relatives) who, because of their relationship with the victim(s), have shared in their suffering; and for witnesses of criminal offences. The Victim Support Service informs victims of their rights and can provide them with support during court proceedings. The team offers psychological help and counselling, and has set up a therapy group for victims of domestic violence.

261. Under article 3-7 of the Code of Criminal Procedure, victims are to be informed without delay, in a language that they understand, except in duly recorded cases when this is physically impossible, and with a view to enabling them to assert their rights, specifically:

- Of the type of support available to them and where they can obtain it, including, where appropriate, basic information on access to medical assistance, any specialized assistance, including psychological help, and housing options
- Procedures for lodging a complaint about a criminal offence and the role of the victim in these procedures

⁵⁹ Act of 27 June 2018: http://data.legilux.public.lu/eli/etat/leg/loi/2018/06/27/a_559/jo.

⁶⁰ <https://justice.public.lu/fr/organisation-justice.html> and <https://justice.public.lu/fr/aides-informations/aide-victime.html>.

⁶¹ <https://justice.public.lu/fr/aides-informations/assistance-sociale/scas-service-aide-victimes.html>.

262. The victim may also file a criminal complaint directly with the investigating judge (Code of Criminal Procedure, arts. 56 ff.).

263. If the State prosecutor brings a case before the investigating judge, he or she must inform the victim whose complaint is attached to the file and who has not yet filed a complaint, of the initiation of proceedings, of his or her right to sue for damages in criminal proceedings and of the procedures for exercising that right. If the victim is a minor, the information is given to his or her legal representatives or to the ad hoc administrator, if one has been assigned to the minor (Code of Criminal Procedure, art. 50-1).

264. Finally, the victim may also summon the offender to appear directly before the criminal court.

265. In the event of slander or defamation against natural persons on the basis of their origin, skin colour, sex, sexual orientation, sex change, gender identity, family status, age, state of health, disability, morals, political or philosophical opinions, union activities, membership or non-membership, actual or supposed, of a particular ethnic group, nation, race or religion, any association of national importance, with legal status and approved by the Minister of Justice, may exercise the rights of a plaintiff on condition that the victims of the slander or defamation state explicitly in writing that they have no objection (Code of Criminal Procedure, arts. 3-1 and 444 (2)).

266. Luxembourg adopted, on 1 August 2018, the Act on the Organization of the National Data Protection Commission and the General Data Protection Regime, which overhauled the general legal framework in this field, particularly in the light of the entry into force of Regulation (EU) 2016/679 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation).

267. The legal frameworks for specific areas of personal data protection have also been adapted. The Act of 1 August 2018 on the Protection of Natural Persons with regard to the Processing of Personal Data in Criminal Matters and in Matters of National Security transposes into national law Directive (EU) 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection, or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data. The Act of 30 May 2005 on the Protection of Privacy in Electronic Communications has been amended several times since the submission of the previous report to the Committee.

Article 18

268. Article 19 of the Constitution states that: “Freedom of religion and of public worship as well as freedom to express one’s religious opinions are guaranteed, except where offences are committed in the exercise of such freedoms.”

269. A course entitled “Life and Society” has been taught in secondary schools since the start of the 2016/17 school year and in primary schools since the 2017/18 school year. This course replaces religious education and moral and social education and its aims are to: promote tolerance based on knowledge; encourage learning through critical reflection; and explore major issues relating to life and society.

270. This 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.

271. The course is taught by the teachers who were previously responsible for religious education and moral and social education. Training sessions on the new course have been organized for these teachers.

Article 19

272. The Government of Luxembourg considers that article 19 (2) does not prevent the imposition of licensing requirements on radio, television or cinema enterprises.

Article 20

273. Article 135-11 of the Criminal Code penalizes, as an act of incitement to terrorism, any attempt to disseminate or otherwise make available to the public, including through electronic communication networks, a message intended to incite, directly or indirectly, the commission of one of the offences mentioned in that chapter of the Code. It also penalizes the dissemination of such a message to several individuals in a non-public place, or a virtual space created using means of telecommunication, that is open to a certain number of people who are entitled to gather there or spend time there.

274. Chapter VI of Title VIII of Book II of the Criminal Code establishes criminal penalties for discrimination, which is defined in article 454 of the Code (see the section on article 2 of the Covenant above).

275. Article 455 of the Criminal Code establishes penalties of imprisonment and/or a fine for any discrimination mentioned in article 454 of the Code, committed against a natural or legal person, a group or a community, and involving any of the following acts:

- Refusing to provide goods or to allow enjoyment of and/or access to goods
- Refusing to provide a service and/or to allow access to a service
- Making the provision of goods or services and/or access to goods or services subject to a condition based on one of the elements listed in article 454 or otherwise discriminating on the basis of one of those elements when providing goods or services
- Stating in an advertisement an intention to refuse to provide goods or services or to discriminate on the basis of one of the elements listed in article 454 when providing goods or services
- Hindering the normal exercise of an economic activity
- Refusing to hire, sanction or dismiss a person
- Making access to employment, any type of vocational training, working conditions, and membership of and involvement in a workers' or employers' organization subject to any of the elements listed in article 454

276. The same penalties are applicable under article 457-1 of the Criminal Code with respect to:

(a) Anyone who, through words, shouts or threats uttered in a public place or public meeting or through written material, printed matter, drawings, engravings, paintings, symbols, images or any other written, spoken or visual aid sold or distributed, offered for sale or displayed in a public place or public meeting, or through posters or notices displayed for public view or through any audiovisual medium, incites the acts described in article 455 of the Code or hatred or violence against a natural or legal person, a group or a community on the basis of any of the elements listed in article 454 of the Code;

(b) Anyone who belongs to an organization whose aims or activities consist of committing any of the acts described in article 457-1 (1) of the Code;

(c) Anyone who prints or has printed, manufactures, possesses, transports, imports, exports, has manufactured, imported, exported or transported, puts into circulation in national territory, sends from national territory, hands over to the post office or to a professional responsible for the delivery of mail on national territory, or sends through national territory, written material, printed matter, drawings, engravings, paintings, posters, photographs, films, symbols, images or any other written, spoken or visual aid that is likely to incite the acts described in article 455 of the Code or to incite hatred or violence against a natural or legal person, a group or a community, on the basis of any of the elements listed in article 454 of the Code.

Article 21

277. There are no developments to report.

Article 22

278. The right enshrined in article 22 of the Covenant is also enshrined in article 11 of the European Convention on Human Rights.

279. Luxembourg is a party to the International Labour Organization (ILO) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), both of which it ratified in 1958.

280. The right to strike is also enshrined in article 28 of the Charter of Fundamental Rights of the European Union.

281. Pursuant to a law passed on 31 March 2008,⁶² the importance of political parties is recognized in article 32 bis of the Constitution, which reads as follows: “Political parties contribute to the formation of the popular will and to the expression of universal suffrage. They embody democratic pluralism.”

Article 23

282. Article 11 of the Constitution provides that “the State guarantees the natural rights of the individual and the family”.

283. Provided that parents do not infringe the physical integrity or the moral and material interests of their children, the State cannot intervene directly. Any intervention must be in accordance with the law and must be subject to the approval of the judicial authority, which guarantees civil liberties.

284. It is now accepted that the concept of a family covers not only the relationship between a couple that is married, in a civil partnership or in a de facto union, or a couple and their children, but also the relationship between a single parent and his or her children.

285. The Act of 4 July 2014 amending the law on marriage⁶³ introduced preventive measures that strengthened the powers of the registrar and the State prosecutor (Civil Code, arts. 174–175-2). If the registrar has any doubts as to the intention of one or both of the future spouses, he or she informs the State prosecutor. The State prosecutor may file an objection to the marriage in cases where he or she could legally request the annulment of the marriage.

286. In addition, marriage by proxy is strictly prohibited (Civil Code, art. 144) and new grounds for annulment have been established. A marriage may now be annulled: (i) if no consent was given; (ii) if it is clear from a combination of circumstances that the intention of at least one of the spouses is not to commit to married life but only to derive a benefit in terms of residency, linked to the status of spouse; or (iii) if formal consent was given but the consent of both or at least one of the spouses was obtained by means of violence or threat.

287. In Luxembourg, marriage is the union between two persons of the opposite or same sex (Civil Code, art. 143). It is an authenticated legal act that makes the status of marriage applicable to both spouses and changes their civil status accordingly.

288. The above-mentioned Act of 4 July 2014 amending the law on marriage raised the minimum legal age for marriage for women from 16 to 18 years old, bringing it into line with the minimum age for men (Civil Code, art. 144). It now corresponds to the age of majority. Exceptionally, where justified by grave circumstances, persons under 18 years old may enter into marriage. It is now the family court judge, rather than the Grand Duke, who has the power to waive the minimum legal age for marriage in such cases.

289. Spouses have a duty to be faithful to each other and to help and assist each other (Civil Code, art. 212). They work together in the interests of the family to give moral and material support, provide for the family’s upkeep, bring up the children and prepare them to become independent (art. 213). They are required to live together. If the couple cannot agree on the choice of a shared residence, the decision is made by the family court judge, who decides after hearing the reasons given by each spouse. The family court judge may authorize the

⁶² Act of 31 March 2008: <http://data.legilux.public.lu/eli/etat/leg/loi/2008/03/31/n1/jo>.

⁶³ Act of 4 July 2014: <http://data.legilux.public.lu/eli/etat/leg/loi/2014/07/04/n1/jo>.

spouses to live separately, if there are legitimate grounds for doing so. In such cases, the judge also decides where the children are to live (Civil Code, art. 215).

290. The above-mentioned Act of 4 July 2014 amending the law on marriage also brought about the following changes:

- Marriage was opened up to same-sex couples, which also means that a married person no longer needs to divorce in the event of a gender change.
- Same-sex married couples enjoy all the legal effects of marriage (including provisions on the dissolution of marriage, the adoption of children, tax affairs, and donations and inheritance), with the exception of presumed paternity (Civil Code, arts. 143 and 132).
- Marriage formalities no longer include the need for a premarital certificate (Civil Code, art. 63).
- A widowed or divorced woman is no longer required to wait 300 days before entering into a new marriage.
- Since the major reform of the law on marriage in 2014, Luxembourg has used gender-neutral terminology. Throughout national legislation, the terms “husband” and “wife” have been replaced with “spouse” and the terms “father” and “mother” with “parent”.

291. Luxembourg ratified the Convention on the Rights of Persons with Disabilities on 26 September 2011. Article 23 of the Convention stipulates that States parties should ensure recognition of the right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of the free and full consent of the intending spouses.

292. In Luxembourg, various services have been set up and measures introduced to help parents, especially parents with disabilities and parents of children with disabilities, to achieve a better balance between work and family life:

- Parents are entitled to leave for family reasons to allow them to be with their child in cases where the child has a serious illness or has had an accident. The length of this leave depends on the age of the child. If the parents are recipients of the special supplementary allowance, the duration of this leave is doubled for all age groups. The special supplementary allowance is a benefit paid to parents of children with disabilities that is intended to compensate for the additional expenses arising from the child’s disability.
- Childcare centres provide care for children and adolescents outside school hours; they cater for children with disabilities in an inclusive manner.
- Daytime activity services provide day care for persons with moderate, severe or multiple disabilities. They also cater for school-age children with disabilities outside school time.

293. In addition, the Parenting Resource Centre, which is financed mainly by the State, provides regular support and ambulatory follow-up for mothers with disabilities in order to help them to develop the parenting skills that they need. The Centre ensures that quality support is provided on the ground, develops and runs awareness-raising and training activities for its network of professional partners, and coordinates its work with that of other bodies, particularly in the child protection sector.

294. Lastly, the managing bodies contracted by the Ministry of the Family in the field of disability offer a number of other parenting services.

Article 24

295. Although minors must obey the law, they are subject to rules that derogate from ordinary law when it comes to the prosecution of criminal offences.

296. In cases involving minors, the penalties established by criminal law are replaced by the care, education and protection measures provided for in the above-mentioned Act of 10 August 1992, and such cases fall within the jurisdiction of the juvenile court.

297. There are many services and organizations that work to protect child rights and to combat child trafficking. These include the youth protection section of the Grand-Ducal

police force, the BEE SECURE Stopline, the BEE SECURE Helpline, the Kanner-Jugendtelefon counselling service, the Ombuds-Comité fir d'Rechter vum Kand, a committee established by a law of 2002⁶⁴ to safeguard and promote the rights and interests of children, the National Children's Bureau, and the Central Social Assistance Service⁶⁵ and the Victim Support Service,⁶⁶ which are part of the judiciary.

Birth registration

298. Every birth in Luxembourg is registered, regardless of the nationality or status of the parents (Civil Code, art. 3) and a birth certificate is issued for every child born in Luxembourg.

299. Births in Luxembourg are declared by one of the parents or, failing that, by a doctor, midwife or other person who was present at the birth. If the mother gives birth at another person's home, the declaration is made by that person (Civil Code, art. 56). Births must be declared to the registrar of the place of birth within five days.

300. Birth certificates must be drawn up immediately. Article 57 of the Civil Code stipulates that: "Birth certificates shall state the day, time and place of birth, the sex of the child, the full name of the child, the full name, sex and address of the parents and their place and date of birth, if known."

301. If a birth was not declared within the legal time limit, the registrar can no longer issue a birth certificate. In such cases, a judgment must be handed down by the court of the district in which the child was born and a brief entry is made in the margin of the birth register under the date of birth (Civil Code, art. 55 (2)).

302. If a child is born abroad to a person from Luxembourg, the birth does not necessarily have to be declared or reported to the Luxembourg authorities. However, the birth certificate issued abroad may be transcribed in the civil register of his or her place of residence in Luxembourg (Civil Code, art. 47).

303. If the certificate concerns a child born out of wedlock, the registrar must inform the family court that has jurisdiction over the place of birth (Civil Code, art. 57, last paragraph).

304. Anyone who finds a newborn baby must report the finding to the registrar of the place where the baby was found. A record detailing the date, time, place and circumstances of the discovery, the apparent age and sex of the child, any identifying features, and the authority or person to whom he or she has been entrusted, is drawn up. This record is entered in the civil register under the date on which it was drawn up. The registrar then issues a separate document that serves as a birth certificate (Civil Code, art. 58).

305. The rules governing the transmission of Luxembourg nationality to children are set out in the above-mentioned Act of 8 March 2017 on Luxembourg Nationality. The same conditions apply regardless of whether the child is a boy or a girl or was born in or out of wedlock. Luxembourg nationality can be acquired by descent, by adoption, by birth in Luxembourg or as a result of de facto enjoyment of this status.

306. As regards transmission by descent, any child born to a parent who is a Luxembourg national at the time of the birth or at the time when the parent-child relationship is established is a Luxembourg national.

307. Children also acquire Luxembourg nationality if: (i) their adult parent acquires Luxembourg nationality simply by operation of law, or through a naturalization, "option" or reclamation procedure; or (ii) their minor parent acquires Luxembourg nationality simply by operation of law, or through an option procedure.

308. As regards transmission by adoption, minor children acquire Luxembourg nationality if: (i) they are adopted by a Luxembourg national; or (ii) their adoptive parent acquires Luxembourg nationality through a naturalization, option or reclamation procedure; or (iii) they are adopted by a stateless person who is lawfully and habitually resident in Luxembourg;

⁶⁴ Act of 25 July 2002: <http://data.legilux.public.lu/eli/etat/leg/loi/2002/07/25/n5/jo>.

⁶⁵ <https://justice.public.lu/fr/organisation-justice/ministere-public/parquet-general/assistance-sociale.html>.

⁶⁶ <https://justice.public.lu/fr/aides-informations/assistance-sociale/scas-service-aide-victimes.html>.

or (iv) they are adopted by foreign nationals who are lawfully and habitually resident in Luxembourg.

309. As regards transmission by birth in Luxembourg, any child who is born in Luxembourg and has at least one parent or adoptive parent who was born in Luxembourg is a Luxembourg national.

310. Children who are born in Luxembourg to foreign nationals or who are adopted by foreign nationals may also acquire Luxembourg nationality on reaching the age of majority.

311. As regards transmission as a result of de facto enjoyment, Luxembourg nationality may be granted in cases where de facto enjoyment of the status of a Luxembourg national can be proven, that is, in situations where persons believe in good faith that they are Luxembourg nationals and act as such, even though they are not. De facto enjoyment of the status of a Luxembourg national is acquired through the exercise of the rights attached to this status.

312. The right to inherit is enshrined in articles 718 ff. of the Civil Code. In Luxembourg, inheritance law does not provide for primogeniture and does not distinguish between male and female heirs or between children born in or out of wedlock.

313. Inheritance is limited to those who exist at the time when the estate is passed to the heirs and who are worthy to inherit. Children who have not yet been conceived or who are stillborn are therefore excluded. Children who have received a criminal sentence relating to the death of the deceased parent are also excluded on the grounds that they are not worthy to inherit.

314. The estate of a deceased person is distributed in accordance with the rules governing the devolution of property upon death, taking into account the civil status of the deceased and, if he or she was married, the applicable marital property regime. The distribution will vary depending on whether the deceased made a will and whether he or she is survived by a spouse and/or children. In all cases, the deceased person's children, or their descendants, are entitled to a reserved portion of the estate. As such, they have priority and they each inherit an equal portion. The assets of the estate consist of the assets owned at the time of death minus any debts.

315. The Family Pact of 1783 – the internal regulations of the House of Luxembourg-Nassau – was amended in June 2011 in order to establish gender equality in relation to succession to the throne, in line with the recommendations made by the United Nations. The new order of succession will apply for the first time to the descendants of Grand Duke Henri.

Protection of minors against trafficking in persons

316. Article 3 of the Act of 8 May 2009, as amended by the Act of 9 April 2014, deals with the appointment of guardians to protect unaccompanied minor victims of trafficking in persons:

If a minor victim from another State member of the European Union, a State treated as such or a third country is not accompanied and in the care of an adult who is responsible for him or her under the national law of the country of origin and who is capable of ensuring his or her safety and protection, or if a conflict of interest between the victim and the holders of parental authority prevents the latter, under the national law of the country of origin, from defending the best interests of the child, the minor victim shall be represented by a guardian for as long as this situation lasts or until he or she is taken into the care of an authority in the country of origin that is responsible for acting in his or her best interests.

The same applies in situations where there is uncertainty as to the victim's age and there is reason to believe that the victim is a minor.

A person with authority over the victim cannot be designated as the responsible adult or guardian if he or she is suspected of having committed the offence.

317. The amended Act of 29 August 2008 provides that a minor victim who “entered Luxembourg territory without being accompanied by a legally responsible adult ... should, as soon as possible, be assigned an ad hoc administrator to assist him or her with the relevant proceedings, including any criminal proceedings.”

318. An unaccompanied foreign minor is defined as a person who appears or claims to be under 18 years of age and is not accompanied by a person with parental authority or a guardian.

319. If an unaccompanied minor who is applying for international protection claims to be, or is identified as, a victim of trafficking in persons, he or she must in all cases be transferred, as soon as possible and in his or her best interests, from the shelter for unaccompanied minors to a shelter for minors in distress.

320. The procedures relating to detection, identification, the provision of information, the reflection period and the granting of a residence permit, support and protection are the same as for adult victims of trafficking in persons, whether the country of origin is a State member of the European Union, a State treated as such, or a third country.

321. Minors who are identified as victims of trafficking in persons are referred to the youth protection section of the police force. They are identified by the organized crime department of the police force, which carries out the necessary examination in order to verify that they are minors. If there is uncertainty as to the victim's age, he or she is considered to be a minor.

322. When police officers identify an unaccompanied or accompanied foreign minor as a presumed victim, they take into account his or her specific vulnerability by performing the identity checks described above. They draw up a report for the public prosecutor's office, which refers the case to a youth protection prosecutor for action where necessary.

323. Minor victims of trafficking in persons are protected by the Act of 10 August 1992 on the Protection of Young People and, of course, the amended Act of 8 May 2009 on Supporting, Protecting and Ensuring the Safety of Victims of Trafficking.

Article 25

Participation of foreign residents in communal and European elections

324. The Reception and Integration Act of 16 December 2008 provides for two types of body that play a key role in enabling foreign nationals to participate in Luxembourg society: firstly, at the local level, the advisory commissions on integration that each commune is required to establish and secondly, at the national level, the National Council for Foreigners. These bodies are responsible, at their respective levels, for giving advice on and working on social cohesion and integration in Luxembourg. In this way, they help the State to encourage the participation of foreign nationals in decision-making and advisory bodies.

325. Foreign residents are entitled to take part in communal elections, provided they are at least 18 years old on the day of the election and have been living in Luxembourg for at least five years when they register to vote.

326. In January 2017, an information and awareness-raising campaign entitled "I can vote" was launched. The aim of this campaign was to inform foreign residents who are European Union nationals about the conditions governing their right to vote in European elections and to encourage them to register on the electoral roll.

327. As part of this campaign, the Luxembourg Reception and Integration Agency provided free and easily accessible promotional materials to communal authorities, associations, trade bodies, local and national sports and leisure organizations, and media outlets, and a website available in five languages was launched in 2017. In October 2016, training was provided to focal points who had been tasked with raising awareness of the importance of political participation among foreign residents.

328. Since October 2016, the Luxembourg Reception and Integration Agency has issued several calls for projects in order to encourage non-profit associations to organize additional activities or projects in support of this national awareness campaign.

329. The Luxembourg Reception and Integration Agency makes sure that sociopolitical participation is a central focus of its integration programmes, including the welcome and integration contract scheme. Foreign nationals who sign such a contract are invited to attend workshops on political participation.

Access to the civil service

330. In order to be eligible to work as a civil servant or a State employee, a person must:

- Be a national of a State member of the European Union
- Enjoy civil and political rights
- Be able to produce the appropriate character reference
- Be physically and mentally fit to perform the role in question
- Satisfy the relevant education and professional training requirements
- Have demonstrated, before entering the trial period, “career level-appropriate” knowledge of the three administrative languages, as defined by the Act of 24 February 1984 on Language Policy

331. However, only Luxembourg nationals may occupy posts that involve direct or indirect participation in the exercise of public authority or whose purpose is to safeguard the general interests of the State or of other legal persons governed by public law. These posts are determined by Grand-Ducal regulation.

332. Civil servants are recruited through a competitive examination, while State employees are hired under a fixed-term or open-ended contract, on a full-time or part-time basis.

333. The amended Act of 16 April 1979 establishing State civil service regulations sets out the conditions governing access to public service positions.⁶⁷ The appointment procedure is described in article 3 of the Act.

334. Civil servants who breach the duties set out in the State civil service regulations are subject to disciplinary measures, which may include delayed promotion, demotion, suspension from duty, compulsory retirement or removal from post. Civil servants who are removed from their post lose their job, their title and their entitlement to a pension. Disciplinary measures cannot be applied unless a disciplinary investigation has been carried out. In the event of a breach of duty, the competent minister refers the matter to the Government Commissioner for Disciplinary Investigation, who follows the procedure set out in articles 56 to 73 of the Act mentioned above.

335. In line with articles 74 to 79 of the Act, a review of the disciplinary proceedings may be requested if, after the disciplinary measure has been imposed, one of the witnesses heard during the proceedings is convicted of giving false evidence against the civil servant in question, or an event occurs or comes to light or new evidence is submitted, and this event or evidence indicates that the civil servant did not fail in his or her duties or was punished more severely than was appropriate.

336. Anyone who meets the general criteria for entering public service listed above is eligible for a position in the Luxembourg civil service.

337. Article 1 bis of the State civil service regulations stipulates that access to a public service position cannot be prohibited on the basis of religion, belief, disability, age, sexual orientation, or actual or supposed membership of a particular race or ethnic group. Similarly, there cannot be any direct or indirect discrimination on the basis of nationality.

338. In addition, according to article 1 ter of the State civil service regulations, access to a public service position cannot be prohibited on the basis of sex or on the basis of marital or family status. Discrimination on the basis of gender reassignment is considered equivalent to discrimination on the basis of sex.

339. Any behaviour that consists of instructing someone not to hire a person on any of the grounds mentioned above is considered discrimination and is therefore prohibited. Moreover, article 44 bis (1) and (3) of the State civil service regulations provides that a civil servant cannot be punished for opposing an act that would be contrary to the principles of equal treatment set out above.

340. As regards access to public service positions for persons with disabilities, the annual Budget Act provides for the hiring of workers with disabilities to full-time or part-time

⁶⁷ <http://data.legilux.public.lu/eli/etat/leg/tc/2008/09/01/n1/jo>.

positions in the various departments of the Government. For the 2019 financial year, for example, the State was authorized to recruit persons with the status of workers with disabilities to perform a maximum of 2,200 person-hours per week.

Article 27

341. Article 19 of the Constitution guarantees freedom of religion and worship, as well as freedom to express one's religious opinions.

342. An agreement signed in January 2015⁶⁸ between the Government and the religious communities in Luxembourg reshaped the relations between the State and these communities, in order to adapt them to the current social situation.

⁶⁸ https://gouvernement.lu/fr/actualites/toutes_actualites/articles/2015/01-janvier/20-cdp-accord.html.