



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

Distr.: General
26 June 2020
English
Original: French
English, French and Spanish only

Committee on the Elimination of Racial Discrimination

**Combined eighteenth to twentieth periodic reports
submitted by Luxembourg under article 9 of the
Convention, due in 2017***

[Date received: 13 February 2020]

* The present document is being issued without formal editing.



Contents

	<i>Page</i>
I. Introduction	3
Article 1.....	3
Article 2.....	5
A. Legal framework and general policies to eliminate racial discrimination	5
B. Specific information on the legislative, judicial, administrative or other measures taken	7
Article 3.....	10
Article 4.....	11
A. Legislation giving effect to article 4 of the Convention	11
B. Complaints and remedies relating to racial discrimination	12
C. Aggravating circumstances for racially motivated crimes	13
D. Dissolution of organizations promoting racial discrimination	13
Article 5 – Information on particular rights	14
A. Right to equal treatment before the tribunals and all other organs administering justice	14
B. Right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution	14
C. Political rights	16
D. Other civil rights.....	19
E. Economic, social and cultural rights	22
Article 6.....	29
A. The practice and decisions of the courts.....	29
B. Measures taken.....	30
C. Ombudsman	31
D. Reparation	31
E. Burden of proof	32
Article 7.....	32
A. Education and teaching	32
B. Culture.....	32
C. Information.....	33
II. Conclusions: the application of the Convention.....	34

I. Introduction

1. The Grand Duchy of Luxembourg has the honour to submit its combined eighteenth to twentieth periodic reports under article 9 (1) of the International Convention on the Elimination of All Forms of Racial Discrimination to the Committee on the Elimination of All Forms of Racial Discrimination.
2. The present report was prepared in accordance with the guidelines on the form and content of periodic reports issued by the Committee (CERD/C/2007/1). It was drafted by the Interministerial Human Rights Committee, established in May 2015, in consultation with civil society organizations and national human rights institutions.
3. The Centre for Equal Treatment submitted statistics on complaints received by its services from groups of victims or potential victims of racial discrimination. Non-governmental human rights organizations and national human rights institutions were kept informed of the drafting process at a series of consultation meetings held with the Interministerial Human Rights Committee.
4. In June 2015, the Government Council decided to establish an Interministerial Human Rights Committee, whose responsibilities include continuously coordinating the Government's work of monitoring the application of international human rights law in Luxembourg, inter alia, by submitting regular reports to the United Nations treaty bodies.
5. Each Interministerial Committee working session, which takes place once every six to eight weeks and is attended by representatives of all the ministries and administrations covering human rights, is followed by a consultation meeting with civil society and international human rights institutions.
6. The Interministerial Committee's work is coordinated by the Ministry of Foreign and European Affairs; its meetings are chaired by the Ambassador-at-Large for Human Rights.

Article 1

7. Article 111 of the Constitution¹ is aimed at preventing any form of discrimination against foreign nationals.
8. The principle of non-discrimination is further defined in a large number of legal instruments.
9. Firstly, article 454 of the Criminal Code, a provision which has been updated regularly over the past few years, defines discrimination as follows:

“Article 454. Any form of distinction made between natural persons based on their origin, skin colour, sex, sexual orientation, sex reassignment, gender identity, family situation, age, health, disability, morals, political or philosophical opinions, trade union activities, or membership or non-membership, actual or assumed, of a particular ethnic group, nation, race or religion, shall constitute discrimination.

Likewise, any form of distinction made between legal entities, groups or communities of persons based on the origin, skin colour, sex, sexual orientation, sex reassignment, gender identity, family situation, age, health, disability, morals, political or philosophical opinions, trade union activities, or membership or non-membership, actual or assumed, of a particular ethnic group, nation, race or religion, of the members or some of the members of these legal entities, groups or communities shall also constitute discrimination.”
10. Article 1 of the Act of 28 November 2006, transposing Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or

¹ The Constitution is available at <http://legilux.public.lu/eli/etat/leg/recueil/constitution/20171020>.

ethnic origin,² amended by an Act of 7 November 2017,³ prohibits any “direct or indirect discrimination based on religion or belief, sexual orientation, ... nationality, race or ethnic group”.

11. The insertion of the concept of “nationality” before “race or ethnic group” ensures conformity with article 1 of the Convention.

12. The provision most relevant to discrimination is article 454 of the Criminal Code, which includes an exhaustive list of the possible grounds for discrimination, and which goes beyond the objectives set forth in article 1 of the Convention.

13. A number of other laws also include provisions that prohibit all discrimination; they include, for example, the Act of 1 August 2018 on the Protection of Natural Persons with Regard to the Processing of Personal Data in Criminal and National Security Matters,⁴ the Act of 18 July 2018 on the National Police Personnel Disciplinary Regulations,⁵ the Act of 27 June 2018 on the Organization of the University of Luxembourg,⁶ the Act of 15 December 2017 on the Regulation of Parental Assistance Activity⁷ and the Act of 24 July 2014 on Patient Rights and Obligations.⁸

14. A further set of instruments on immigration policy, both national (the Act of 8 March 2017 on Luxembourg Nationality,⁹ the Act of 18 December 2015 on International Protection and Temporary Protection¹⁰ and the amended Act of 29 August 2008 on the Free Movement of Persons and Immigration),¹¹ and European or international (for example, the Act of 8 March 2017 approving the Convention on the Reduction of Statelessness),¹² prohibit discrimination against applicants for international protection and temporary protection.

15. Moreover, many European instruments to which Luxembourg has acceded call for an end to discrimination:

- The Charter of Fundamental Rights of the European Union
- Regulation (EU) No. 514/2014 of the European Parliament and of the Council of 16 April 2014 laying down general provisions on the Asylum, Migration and Integration Fund
- Regulation (EU) No. 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund
- The Decision of 14 May 2008 establishing a European Migration Network
- Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin
- Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

16. The principle of non-discrimination also underlies humanitarian development instruments (for example, the Act of 15 December 2017¹³ and the Act of 8 April 2018).¹⁴

² Act of 28 November 2006: <http://data.legilux.public.lu/eli/etat/leg/loi/2006/11/28/n1/jo>.

³ Act of 7 November 2017, amending the Act of 28 November 2006: <http://data.legilux.public.lu/eli/etat/leg/loi/2017/11/07/a964/jo>.

⁴ Act of 1 August 2018: <http://data.legilux.public.lu/eli/etat/leg/loi/2018/08/01/a689/jo>.

⁵ Act of 18 July 2018: <http://data.legilux.public.lu/eli/etat/leg/loi/2018/07/18/a622/jo>.

⁶ Act of 27 June 2018: <http://data.legilux.public.lu/eli/etat/leg/loi/2018/06/27/a587/jo>.

⁷ Act of 15 December 2017: <http://data.legilux.public.lu/eli/etat/leg/loi/2017/12/15/a1079/jo>.

⁸ Act of 24 July 2014: <http://data.legilux.public.lu/eli/etat/leg/loi/2014/07/24/n2/jo>.

⁹ Act of 8 March 2017: <http://data.legilux.public.lu/eli/etat/leg/loi/2017/03/08/a289/jo>.

¹⁰ Act of 18 December 2015: <http://data.legilux.public.lu/eli/etat/leg/loi/2015/12/18/n15/jo>.

¹¹ Act of 1 August 2018: <http://data.legilux.public.lu/eli/etat/leg/loi/2018/08/01/a689/jo>.

¹² Act of 8 March 2017: <http://data.legilux.public.lu/eli/etat/leg/loi/2017/03/08/a288/jo>.

¹³ Act of 15 December 2017 amending the amended Act of 6 January 1996 on Cooperation for Development and Humanitarian Action: <http://data.legilux.public.lu/eli/etat/leg/loi/2017/12/15/a1068/jo>.

17. Moreover, as stated on its awareness-raising website, the Centre for Equal Treatment intervenes when discrimination is based on one of the following seven grounds:

- Nationality
- Membership or non-membership, actual or assumed, of a race or ethnic group
- Sex
- Sexual orientation
- Religion or belief
- Disability
- Age

18. Lastly, the Intercultural and Social Research and Training Centre has published a national manual on discrimination and diversity data, which can be consulted online.¹⁵

19. Every year, the National Institute of Statistics and Economic Research (STATEC), an administration under the authority of the Ministry of Economic Affairs, publishes a document called *Luxembourg in Figures*.

20. The latest document, containing the statistical data from 2018, gives the following breakdown for the population of Luxembourg:

- 313,800 Luxembourg nationals
- 96,500 Portuguese nationals
- 45,800 French nationals
- 22,000 Italian nationals
- 20,200 Belgian nationals
- 13,100 German nationals
- 46,700 nationals of other European Union countries
- 43,800 nationals of non-European Union countries

21. For indicators on immigration and refugees, please refer to the overviews of asylum and immigration for 2017¹⁶ and 2018,¹⁷ both of which are available online.

Article 2

A. Legal framework and general policies to eliminate racial discrimination

22. In respect of the legal framework and general policies to eliminate racial discrimination, in addition to the laws mentioned above, the following instruments, which concern the issue of racism and discrimination in its widest possible sense, are relevant:

- Three Acts of 6 March 2006, approving Protocols Nos. 12, 13 and 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the principle of non-discrimination¹⁸ and the abolition of the death

¹⁴ Act of 8 April 2018 ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization, signed in Geneva on 27 June 1989:
<http://data.legilux.public.lu/eli/etat/leg/loi/2018/04/08/a248/jo>.

¹⁵ National manual on discrimination and diversity data:
<http://www.cefis.lu/resources/RED16.pdf>.

¹⁶ <http://www.statistiques.public.lu/fr/actualites/population/population/2018/01/20180117/20180117.pdf>.

¹⁷ <https://maee.gouvernement.lu/dam-assets/directions/d8/publications/statistiques-en-mati%C3%A8re-d-asyle/20190131-Bilan-2018-Asile-Immigr-Accueil-presse.pdf>.

¹⁸ Act of 6 March approving Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, done at Rome on 4 November 2000:

penalty in all circumstances¹⁹ and amending the control system of the Convention,²⁰ respectively. Protocol No. 15 was adopted by a law of 1 December 2017.²¹ A bill to approve Protocol No. 16 was submitted to the Chamber of Deputies on 21 January 2019.

- The aforementioned Equal Treatment Act of 28 November 2006, whose objectives are defined in article 9 et seq., and which provides for the establishment of the Centre for Equal Treatment. The aim of the Centre is to promote, analyse and monitor equality of treatment for all persons without discrimination on grounds of race, ethnic origin, sex, religion or belief. The Act prohibits any direct or indirect discrimination in the private sector, based on religion or belief, disability, age, sexual orientation or actual or assumed membership of a specific ethnic group or race. It also prohibits any direct or indirect discrimination on the ground of sex or in respect of marital or family status. Harassment has been added to the legal framework as a form of discrimination, insofar as its purpose or effect is to violate the dignity of a person and to create an intimidating, hostile, degrading, humiliating or offensive environment. In accordance with Directives 2000/43/CE and 2000/78/CE, the implementing law also includes provisions on the protection of victims or witnesses of discriminatory acts or behaviour and remedies that may be exercised by anyone who believes that the principle of equal treatment has been violated in respect of him or her and also by non-profit organizations approved by the Ministry of Justice. For such an organization to take legal action, the circumstances on which the action is based must directly or indirectly harm the interests which the organization was established to protect, although it is not necessary for the organization to prove material or moral interest. Moreover, in the case of discrimination against one or more persons considered as individuals, the organization must obtain the prior written consent of the victims. The law contains an innovation as regards the burden of proof, in that this burden may now be shared between the plaintiff, who must provide the initial evidence suggesting discrimination, and the defendant, who must counter with proof that the principle of equal treatment has not been violated. The Act also introduced a new Part V to Book II of the Labour Code, thereby enshrining the principle of non-discrimination in employment and occupation. The Inspectorate of Labour and Mines was tasked with ensuring the application of these new Labour Code provisions.
- The Act of 29 November 2006,²² by which Directive 2000/43/EC²³ and Directive 2000/78/EC²⁴ were transposed into the General Civil Service Regulations, and which prohibits any discrimination on the basis of religion or belief, disability, age, sexual orientation or membership or non-membership, actual or assumed, of a race or ethnic group, subject to some exceptions and affirmative actions (for example, to promote employment and training for persons with disabilities). The Act covers both direct and indirect discrimination, with discrimination considered direct when one person is treated less favourably than another is, has been or would be treated, on one of the above-mentioned grounds. Discrimination is considered indirect when an apparently neutral provision, criterion or practice would put persons at a particular

<http://data.legilux.public.lu/eli/etat/leg/loi/2006/03/06/n3/jo>.

¹⁹ Act of 6 March approving Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances, opened for signature at Vilnius on 3 May 2002: <http://data.legilux.public.lu/eli/etat/leg/loi/2006/03/06/n4/jo>.

²⁰ Act of 6 March approving Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention, signed at Strasbourg on 13 May 2004: <http://data.legilux.public.lu/eli/etat/leg/loi/2006/03/06/n5/jo>.

²¹ Act of 1 December 2017 approving Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms, done at Strasbourg on 24 June 2013: <http://data.legilux.public.lu/eli/etat/leg/loi/2017/12/01/a1028/jo>.

²² Act of 29 November 2006: <http://data.legilux.public.lu/eli/etat/leg/loi/2006/11/29/n1/jo>.

²³ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

²⁴ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

disadvantage compared with others on the same aforementioned grounds, unless that criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. The Act also bans harassment as a form of discrimination, taken to include unwanted conduct based on religion or belief, disability, age, sexual orientation, race or ethnicity as well as sexual harassment, and which has the purpose or effect of violating the dignity or physical integrity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

- Article 456 of the Criminal Code, which provides for the punishment of any person vested with public authority or responsibility for providing a public service who discriminates within the sense of article 454 of the Criminal Code, when in his or her official capacity, by denying a legally conferred right or hindering the normal pursuit of any economic activity.
- The Act of 17 July 2007,²⁵ which supplemented the provisions of the General Civil Service Regulations through the establishment under the Minister for the Civil Service of a special commission to monitor compliance with provisions prohibiting sexual harassment and bullying in the public sector.
- The Act of 13 May 2008, transposing Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, as amended by Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002.²⁶
- The Act of 21 November 2008 on the establishment of the Advisory Commission on Human Rights in Luxembourg.²⁷
- The Act of 18 July 2014,²⁸ by which Luxembourg ratified the Council of Europe Convention on Cybercrime and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.
- The Act of 18 December 2015,²⁹ which provides a definition of the reception of applicants' international protection and temporary protection; its purpose is also to combat discrimination.
- The Luxembourg Nationality Act of 8 March 2017,³⁰ amended by the Act of 20 July 2018,³¹ which facilitates access to Luxembourg nationality in order to strengthen social cohesion and combat discrimination against non-nationals.
- The Act of 20 July 2018,³² ratifying the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), which supplemented article 454 of the Criminal Code with the addition of the concept of "gender identity".

B. Specific information on the legislative, judicial, administrative or other measures taken

1. Multi-Year National Plan of Action on Integration 2018

23. Implementation of the Multi-Year National Plan of Action on Integration 2018, which follows on from the Multi-Year National Plan of Action to Achieve Integration and

²⁵ Act of 17 July 2007: <http://data.legilux.public.lu/eli/etat/leg/loi/2007/07/17/n2/jo>.

²⁶ Act of 13 May 2008: <http://data.legilux.public.lu/eli/etat/leg/loi/2008/05/13/n3/jo>.

²⁷ Act of 21 November: <http://data.legilux.public.lu/eli/etat/leg/loi/2008/11/21/n1/jo>.

²⁸ Act of 18 July 2014: <http://data.legilux.public.lu/eli/etat/leg/loi/2014/07/18/n1/jo>.

²⁹ Act of 18 December 2015: <http://data.legilux.public.lu/eli/etat/leg/loi/2015/12/18/n15/jo>.

³⁰ Act of 8 March 2017: <http://data.legilux.public.lu/eli/etat/leg/loi/2017/03/08/a289/jo>.

³¹ Act of 20 July 2018: <http://data.legilux.public.lu/eli/etat/leg/loi/2018/07/20/a728/jo>.

³² Act of 20 July 2018: <http://data.legilux.public.lu/eli/etat/leg/loi/2018/07/20/a631/jo>.

Combat Discrimination for 2010–2014. This was a five-year plan based on 11 common basic principles for European integration policy.

24. The Plan provides a framework for programmes and tools to promote social cohesion between Luxembourg nationals and non-nationals. It reflects the country's social, cultural and economic realities. It constitutes a general framework, which is not time-bound and can be revised and adapted over the years.

25. The new government programme (2018–2023) calls for the amendment of the Reception and Integration Act of 16 December 2008,³³ to make it possible to adapt the legal and regulatory framework for the Luxembourg Reception and Integration Agency.

2. Luxembourg Reception and Integration Agency

26. The Luxembourg Reception and Integration Agency was established pursuant to the Reception and Integration Act of 16 December 2008. In accordance with the Act, the Agency was tasked with the reception of applicants for international protection and the establishment of integration policy, and was given the legal competence to combat all forms of discrimination. The Act also provides for the adoption of a national action plan to achieve integration and combat discrimination.³⁴ The first such plan,³⁵ issued in November 2010 and focused on four action areas (reception, integration, anti-discrimination and migration monitoring), led to the implementation of a whole range of projects intended to combat discrimination. The new integration plan,³⁶ adopted in July 2018, includes anti-discrimination measures, diversity promotion and equality of opportunity as an integral part of each of its areas. Since its establishment, the Agency has contributed to the governmental expert group in the field of non-discrimination as the representative of Luxembourg.

27. From 2002 to 2013, the Agency carried out a programme of annual anti-discrimination information and awareness-raising actions. These actions, supported by the PROGRESS programme of the European Union,³⁷ combated discrimination in the sense of article 19 of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, namely discrimination based on religion or belief, disability, age, sexual orientation or racial or ethnic origin.

28. To this end, the Agency held consultations with an ad hoc PROGRESS group consisting of specialist organizations, legal, economic and social experts from the European networks established by the European Commission and other actors (the Union of Luxembourg Businesses, the National Institute for Sustainable Development, the Centre for Equal Treatment) in order to draw up its annual programme based on a call for proposals launched by the Commission. Each year, the Agency compiled the projects submitted to it and sent the Commission a co-financing request for a programme consisting of some ten projects. Once the request was accepted, the Agency coordinated the programme, signing agreements with various partners.

29. The Luxembourg Charter for Diversity³⁸ was drawn up in 2012, to encourage public, private and voluntary organizations in Luxembourg to promote diversity.

30. The Charter, which was established at the national level, is supported by the Union of Luxembourg Businesses and other employers' organizations, the American Chamber of Commerce in Luxembourg and business networks, and also by the European Commission, the Ministry of the Family, Integration and the Greater Region, the Ministry of Equality between Women and Men and the Centre for Equal Treatment.

³³ Reception and Integration Act of 16 December 2008: <http://data.legilux.public.lu/eli/etat/leg/loi/2008/12/16/n5/jo>.

³⁴ Reception and Integration Act of 16 December 2008: <http://legilux.public.lu/eli/etat/leg/loi/2008/12/16/n5/jo>.

³⁵ Integration plan 2010: <http://www.olai.public.lu/fr/actualites/2018/07/pan/PAN-integration.pdf>.

³⁶ Integration plan 2018: <http://www.olai.public.lu/fr/actualites/2018/7/pan/PAN-integration.pdf>.

³⁷ PROGRESS: <http://www.olai.public.lu/fr/fonds-programmes/programmes-progress/index.html>.

³⁸ Luxembourg Charter for Diversity: <http://www.chartediversite.lu/>.

31. To follow up on the Charter project entitled “Inspiring More Sustainability”, Luxembourg established a Committee for the Luxembourg Diversity Charter, composed of key partners: Deutsche Bank, the Luxembourg Reception and Integration Agency, PricewaterhouseCoopers, RBC Investor & Treasury Services and Sodexo. This group steers the project and cooperates with two working groups made up of representatives from 10 different entities (public institutions, businesses, etc.).

32. Since 2012, this Committee has organized a national diversity day to promote diversity in business and among the general public. The event is aimed at bringing businesses, public entities and voluntary organizations together around diversity promotion.

33. National diversity day is a special opportunity for organizations to show their commitment through specific actions. Conferences, information meetings, workshops, stalls, lobby exhibitions, innovative partnerships and the launch of new products and services are among the actions that have been organized in the country. Many organizations present in Luxembourg came together and pooled their efforts to act for diversity. To reward good practice in diversity, the Committee for the Luxembourg Diversity Charter has held Diversity Awards every year since 2012.

34. When Luxembourg held the presidency of the Council of the European Union in the second half of 2015, the Luxembourg Reception and Integration Agency organized the Sixth European Union Diversity Charters’ Forum, which brought together representatives of all such Charters at the European Union level to discuss diversity management in respect of both the media and of the public sector.

35. In addition to direct anti-discrimination efforts, the Government applies a policy of equality of opportunity through its integration programmes. It places the integration of applicants for international protection at the heart of its reception policy, for which purpose it has developed the supervised integration process. Under this process, the route to integration for applicants for and beneficiaries of international protection is set out in the first weeks after their arrival in the territory of Luxembourg. It is based on the principle that there are two prerequisites for well-prepared integration: learning the country’s national and administrative language and understanding how everyday life works in Luxembourg. To encourage the social and professional integration of applicants for international protection, it is important for all adults in this group to be able to attend information and training sessions, regardless of their level of education or age.

36. Personnel from the Luxembourg Reception and Integration Agency have completed many different training courses on the prevention of all forms of discrimination, including on the subjects of cultural, sexual and gender identity, the Arab world and diversity management.

37. The Agency has been provided with additional resources to allow it to discharge its mandate. The massive influx of applicants for international protection which began in summer 2015 meant that the Government, and more specifically the Agency, required a rapid response capacity to enable it to address this migration phenomenon.

38. The appointment of a new director on 1 February 2015 saw the start of a reorganization process within the Agency. The Agency was restructured into divisions and sections with specific missions to meet the operational and strategic requirements identified. The years since that massive influx (2016, 2017 and 2018) have seen a high level of recruitment to enable the Agency to fulfil its role.

39. Additional resources have also been allocated to the management partners, including the Red Cross and Caritas, to which the Agency has delegated part of the day-to-day management of accommodation facilities, along with the social follow-up and educational support of the applicants for international protection who are housed in them.

40. The increased staffing levels have allowed the Agency and its partners to cope with the continued influx of applicants for international protection and to ensure the best possible reception for them.

41. Between 1 March 2016 and 1 March 2019, Agency personnel numbers increased from 78 to 129 employees, which constitutes a rise of 65 per cent.

Numbers of Agency personnel in recent years

<i>Staffing levels</i>	<i>Number</i>	<i>Percentage change</i>
As at 1 March 2016	78	
As at 1 March 2017	93	19.23 per cent
As at 1 March 2018	118	26.88 per cent
As at 1 March 2019	129	9.32 per cent

3. Advisory Commission on Human Rights

42. Pursuant to a Government Regulation of 26 May 2000, followed by an Act of 21 November 2008,³⁹ Luxembourg has an Advisory Commission on Human Rights. It is primarily a government consultative body and considers issues put to it by the Government in the area of human rights in Luxembourg. The Commission may make proposals to the Government concerning measures or programmes of action to encourage the protection and promotion of human rights. The Commission also acts as national focal point for the European Monitoring Centre on Racism and Xenophobia. (see: Act of 22 August 2003,⁴⁰ pursuant to which the role of Ombudsman was established in Luxembourg.)⁴¹

Article 3

43. The Multi-Year National Plan of Action for Integration 2018 provides a general, strategic and sustainable framework and covers two areas of action: the reception of applicants for international protection and the integration of non-Luxembourg nationals. It includes anti-discrimination, diversity promotion and equality of opportunity as an integral part of each of these areas.

44. One example is the substantive work on integration carried out through close cooperation between the Association of Luxembourg Cities and Municipalities and the Ministry of the Interior, with the implementation of a strategy for local integration. This strategy has three main focuses and aims in particular to empower municipalities and local and national stakeholders in the field of integration. To support the municipalities in their actions, the Ministry of the Family, Integration and the Greater Region, through the Reception and Integration Agency, has set aside a specific budget item and promotes both resources and practices through an exchange forum, soon to be complemented by an Internet portal. It also regularly organizes national conferences on local integration (the most recent took place in 2017) and meetings, held at least twice a year, of the Group for Information Exchange and Support for Integration, which was established by the Agency in cooperation with the Association of Luxembourg Cities and Municipalities and is run by the Support Association for Migrant Workers. The purpose of the Group is to support and better equip municipalities to meet the integration needs of all residents and to promote good practices in local integration.

45. As part of the Multi-Year National Plan of Action for Integration 2018, the Ministry of the Family, Integration and the Greater Region, in cooperation with the Association of Luxembourg Cities and Municipalities and the Ministry of the Interior, organized a large-scale mobilization campaign under the slogan: "I can vote", both to encourage foreign nationals to vote in the October 2017 local elections and to initiate a debate in the host society on the need for them to do so.⁴² As a result of the campaign, the number of foreigners registered to vote increased considerably. Key players (e.g. political parties, foreigners' associations and trade unions) also realized the importance of foreigners' participation and a real awareness of the issue was fostered.

³⁹ See footnote 29.

⁴⁰ Ombudsman Act of 22 August 2003: <http://data.legilux.public.lu/eli/etat/leg/loi/2003/08/22/n2/jo>.

⁴¹ <http://www.ombudsman.lu/>.

⁴² <https://jepeuxvoter.public.lu/fr.html>.

46. With regard to the reception of applicants for international protection, a number of meetings were organized to inform local residents about the opening of an accommodation facility and explain how it would operate. In order to ensure transparent communication with local people, political decision makers are in regular contact with local actors with the aim of mobilizing and sustaining solidarity among local residents with regard to receiving applicants for international protection and providing them with accommodation.

47. While awaiting the outcome of an application for international protection in Luxembourg, all applicants are provided with accommodation and other basic necessities. At the end of 2018, nationals of 65 different countries were living in 58 accommodation facilities operated by the Luxembourg Reception and Integration Agency. The accommodation facilities are mixed and are located throughout the country in order to prevent segregation and isolation of communities.

48. Lastly, in the area of education, the Ministry of Education, Children and Youth applies the principle of equality of opportunity and does not make any distinction based on students' origin, culture or religion. Education is compulsory for all children between the ages of 4 and 16, on the same basis as for children who are resident in Luxembourg. At primary school level, students participate in regular lessons and also attend intensive language classes separately from their homeroom during the school day. Classes for newly arrived students are mixed in order to expedite language acquisition and reflect the multilingualism and multiculturalism that are characteristic of Luxembourg society. In addition, newly arrived students attend special lessons for a maximum of one year, with a view to promoting their integration in the country. However, in exceptional cases the limit may be extended if this is in the student's interest.

Article 4

A. Legislation giving effect to article 4 of the Convention

49. Offences committed with racist or other discriminatory motives were included in the Criminal Code in 1997 under articles 444, 450 (1), 453, 454 and 457 (4).

50. According to article 454 (1) of the Criminal Code, any form of distinction made between natural persons on the basis of their origin, skin colour, sex, sexual orientation, gender reassignment, family situation, age, health, disability, customs, political or philosophical opinions, trade union activities or actual or assumed membership or non-membership of a particular ethnic group, nation, race or religion constitutes discrimination.

51. Article 454 (2) sets out the same criteria with regard to discrimination against legal entities.

52. In practice, anti-discrimination efforts are guaranteed under, inter alia, the Reception and Integration Act of 16 December 2008, which gives the Luxembourg Reception and Integration Agency legal powers to combat all forms of discrimination and provides for, inter alia, the establishment of a national action plan on integration and anti-discrimination.

53. The initiative, which is supported by the European Union PROGRESS programme,⁴³ is designed to combat discrimination in the sense of article 19 of the Treaty of Lisbon, namely discrimination based on religion or belief, disability, age, sexual orientation or racial or ethnic origin.

54. In Luxembourg, the Acts of 28 and 29 November 2006 on equal treatment cover the above-mentioned grounds and address direct discrimination, indirect discrimination and harassment.

55. In addition, the National Council for Foreigners advises the Government on all matters relating to foreigners and their integration. Following elections held in 2017, the new National Council for Foreigners was formed on 23 January 2018. It held its first

⁴³ See footnote 41.

plenary session on 28 February 2018 and established a structure consisting of six standing committees and a number of ad hoc groups according to the needs identified by its members:

- Committee for Liaison with the Municipal Integration Committees
- Committee for Refugees and Applicants for International Protection
- Committee for Migrants and Cross-Border Workers
- Committee for Young People, Education and Lifelong Learning
- Committee for Civic Participation and Associations
- Committee for Older Persons

56. In accordance with the Act of 16 December 2008, the National Council for Foreigners is responsible for examining issues concerning foreigners and their integration, either on its own initiative or at the request of the Government.

57. The mission of the Advisory Commission on Human Rights is to promote and protect human rights in the Grand Duchy of Luxembourg.

58. As part of its mission, the Advisory Commission:

- Submits to the Government opinions, studies, position papers and recommendations that it draws up independently, either at the request of the Government or on its own initiative, on all matters of a general nature relating to human rights in the territory of Luxembourg
- Advises the Government on the preparation of the reports that Luxembourg is required to submit to regional and international human rights bodies
- Addresses public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations
- Maintains consultation with all national and international human rights institutions and bodies

B. Complaints and remedies relating to racial discrimination

Number of complaints of racial discrimination

<i>Year</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>
Number of complaints	29	21	28	43

59. As to the content of complaints, in the majority of cases discrimination takes the form of insults on the basis of a person's origin and nationality. In addition, cases of incitement to hatred occur on social media platforms.

60. In one specific case, someone was refused a service on the basis of origin.

61. The Centre for Equal Treatment was established by the Act of 2006, recently amended by the Act of 7 November 2017, which also brought the Centre under the auspices of the Chamber of Deputies. The Centre's role is, inter alia, to provide assistance to persons who consider themselves to be victims of discrimination by making available to them a counselling and guidance service aimed at informing them of their individual rights and how to exercise them, as well as of the applicable legislation and case law.

62. Members of the public are therefore aware of their rights and the legal remedies available to them in the area of racial discrimination.

63. With regard to legal action, in the light of article 7 of its constituent Act, the Centre for Equal Treatment states on its website that all non-profit associations of national significance whose statutory activities include combating discrimination which have had legal personality for at least five years on the date of the events and have received prior

authorization from the Minister of Justice may, even if they have no material or moral interest in the case, exercise before the civil or administrative courts the rights of a victim of discrimination with regard to matters constituting a violation in accordance with the provisions of the law and causing direct or indirect harm to the collective interests which the association is intended to defend by virtue of its statutory purpose.

64. The Centre for Equal Treatment provides information to the public about the accredited non-profit associations, which include the following:

Support Association for Migrant Workers, Luxembourg Liaison, Information and Support Centre for Associations and Luxembourg Action for Openness and Solidarity-Human Rights League, under the Act of 19 July 1997 (on the grounds of race or ethnic origin);⁴⁴ Support Association for Migrant Workers, Info-Handicap (National Council for Persons with Disabilities), Guide Dogs for the Blind Luxembourg, Luxembourg Action for Openness and Solidarity-Human Rights League and Caritas, under the Act of 28 November 2006; Luxembourg National Council of Women, under the Acts of 21 December 2007 and 13 May 2008.

C. Aggravating circumstances for racially motivated crimes

65. Article 455 of the Criminal Code sets out the forms of discrimination and the penalties applicable for them.

66. Article 457 (1) of the Criminal Code establishes as an aggravating circumstance any form of communication, by whatever means, which incites hatred or violence against a natural person or legal entity on the basis of the criteria set out in article 454 of the Criminal Code.

67. Similarly, under article 444 of the Criminal Code a person who makes a specific malicious claim about a person that is likely to tarnish that person's honour or expose him or her to public contempt – defined as slander or defamation – is subject to more severe penalties, particularly when the act is racially motivated.

68. In the case of interference with a corpse, which is prohibited under article 453 of the Criminal Code, article 457 (2) of the Criminal Code provides for more severe penalties if the act was motivated by the deceased person's actual or assumed membership or non-membership of a particular ethnic group, nation, race or religion.

69. The aggravating circumstance of racial discrimination therefore exists in criminal law in Luxembourg.

70. For the offences mentioned above, discrimination is demonstrated by objective evidence, while the aggravating circumstance is very difficult to prove for other offences, especially racially motivated offences.

D. Dissolution of organizations promoting racial discrimination

71. Article 35 (4) of the Criminal Code provides for the dissolution of legal entities, as a criminal or correctional penalty, under the conditions and procedures set out in article 38.

72. Article 38 of the Criminal Code was amended by the Act of 3 March 2010. The article states that: "Dissolution may be ordered when the legal entity has intentionally been created or, in the case of a felony or a misdemeanour for which natural persons would face a custodial sentence of three years or more, has been diverted from its purpose in order to commit the acts in question. Dissolution shall not apply to public corporations which may incur liability. Following a decision ordering the dissolution of the legal entity, it shall be referred to the competent court to enact the liquidation."

⁴⁴ Act of 19 July 1997: <http://data.legilux.public.lu/eli/etat/leg/loi/1997/07/19/n1/jo>.

73. The Act establishes the criminal liability of legal entities as a general principle which is also extended to all felonies and misdemeanours provided for in the Criminal Code.

74. Moreover, under article 100-1 of the Criminal Code, the principle is also applicable to all felonies and misdemeanours provided for by acts adopted by special procedure.

75. It follows that articles 443, 444, 454 and 457-1 of the Criminal Code, which deal with incitement to racial discrimination, apply to legal entities, under the terms set out in articles 34 et seq. of the Criminal Code.

Article 5 – Information on particular rights

A. Right to equal treatment before the tribunals and all other organs administering justice

76. Equality before the courts is part of the principle of equality before the law guaranteed under article 11 of the Constitution.

77. The public nature of court hearings is emphasized in articles 88 and 89 of the Constitution. All judgments must be reasoned and handed down in a public hearing.

78. In principle, all hearings are public. Nevertheless, if a court finds in its judgment that publicity would harm public order or morals, it may order, in a judgment delivered in open court, that the proceedings be held in camera. This principle is enshrined in article 190 of the Code of Criminal Procedure. For civil matters, the same principle is set out in article 185 of the Code of Civil Procedure.

79. Mention should also be made of article 13 of the Constitution, which stipulates that no one may be separated, against his or her will, from the judge assigned to him or her by law. In addition, article 86 of the Constitution prohibits the establishment of extraordinary courts under any name whatsoever: “No court or jurisdiction may be established except by law.” The independence and impartiality of judges are derived in particular from their personal status, namely the concepts of irremovability and incompatibility with the exercise of an administrative or legislative function, which are enshrined in articles 91 and 93 of the Constitution.

B. Right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution

80. Persons acting in an official capacity are not exempt from regular remedies for violation or infringement of a right recognized in the Covenant in connection with acts committed by them. Moreover, under article 30 of the Constitution, no authorization is required to prosecute public officials for acts of their administration. Under the Criminal Code, heavier penalties are generally imposed for offences committed by public servants in the performance of their duties; similarly, abuse of authority is punishable in a range of circumstances. Article 456 of the Criminal Code provides for increased penalties for any person vested with public authority or responsible for providing a public service who, in his or her official capacity, discriminates within the sense of article 454 of the Criminal Code by denying a legally conferred right or hindering the normal pursuit of any economic activity.

81. It should be recalled that, under the Act of 28 November 2006 on equal treatment, the burden of proof of discrimination is now shared, in that the plaintiff must provide the initial evidence suggesting discrimination and the defendant must provide proof that the principle of equal treatment has not been violated.

Grand-Ducal Police

Training of Grand-Ducal Police Officers

82. The basic training for trainee police officers in categories B1, C1 and C2 was reformed in 2018. The module on Police and Society is still taught. Its main focus is the study of relations between the police and the public both at the legal and regulatory level, with regard to human rights and individual freedoms, and in terms of ethics and intercultural sensitivity. Currently, the module includes the following components:

- Human rights (10 hours)
- The Constitution and civil liberties (18 hours)
- Constitutional principles, fundamental rights and civil liberties (12 hours)
- Rights and duties of public officials (14 hours)
- Professional standards for the police and efforts to combat extremism (14 hours)
- Victimology (12 hours)

83. Article 10 (3) of the Act of 18 July 2018⁴⁵ on the Inspectorate General of the Police states that the Inspectorate must participate in the training provided to police officers in the areas of police ethics and human rights.

84. It should be noted that non-governmental associations active in the fields of immigration and cultures, such as the Support Association for Migrant Workers and the Liaison Committee for Foreigners' Associations, regularly give lectures about their work and deliver training on intercultural sensitivity for police officers. These sessions can be delivered as part of basic or in-service training.

Procedural safeguards

85. In implementation of the Act of 8 March 2017, the Grand-Ducal Police has developed processes to strengthen procedural safeguards in criminal matters. The Act strengthens the rights of victims and suspects. Police officers must rigorously respect the following rights:

- The right to a lawyer and to receive legal assistance
- The right to be informed of the charges, including the nature and alleged date of the offence
- The right to interpretation and translation
- The right to remain silent and not to incriminate oneself
- The right to notify a third party of one's arrest or detention and to inform the relevant consulate or embassy where applicable
- The right to urgent medical care
- The right of a person held in police custody to be detained for a period of not more than 24 hours for the purpose of being brought before an investigating judge

86. The Grand-Ducal Police provides its staff with forms relating to the aforementioned rights in 19 foreign languages: Albanian, Arabic, Chinese, Croatian, Dutch, English, French, German, Greek, Hindi, Hungarian, Italian, Persian, Polish, Portuguese, Romanian, Russian, Serbian and Spanish. Victim information leaflets are also available in 19 languages.

87. In implementation of the Act of 20 July 2018, the Grand-Ducal Police has adapted its procedures to strengthen the protection of children. Henceforth, when a person is evicted, any child living in the household who is a direct or indirect victim must be referred to a domestic violence assistance service specializing in the care of child victims of violence.

⁴⁵ Act of 18 July 2018 on the Grand-Ducal Police:
<http://data.legilux.public.lu/eli/etat/leg/loi/2018/07/18/a622/jo>.

The child's parents must be told that the police have made this referral and receive an information sheet.

88. Under the current procedure, the relevant information sheets must be provided to the evicted person and to the victim. The information sheets are currently available in 13 languages: Albanian, Arabic, Chinese, English, French, German, Italian, Luxemburgish, Persian, Portuguese, Russian, Serbian and Spanish.

Complaints about police officers

89. Complaints against police officers are handled by the Inspectorate General of the Police, which has been an independent body since it was reformed under the Act of 18 July 2018. The Inspectorate is no longer made up of staff seconded from the Police, but now has its own personnel. Furthermore, under the principle of no return, staff who previously worked for the Police, whether as officers or civilians, are no longer permitted to return to work there.

Representation within the Police of members of protected groups

90. In terms of encouraging the recruitment of members of protected groups, it should be noted that, by law, all applicants to the Police must be nationals of Luxembourg. However, the Police has staff from migrant backgrounds that include Portugal, Cabo Verde and the Balkans, among other places.

C. Political rights

1. Acquisition of Luxembourg nationality

91. The rules for the acquisition of Luxembourg nationality are now laid down in the Act of 8 March 2017 on Luxembourg nationality. The conditions are the same for men and women:

- Luxembourg nationality can be acquired by naturalization, by choice or by restoration (in the case of a person who has lost their citizenship of Luxembourg). Under the principle of dual nationality, which was introduced into law in Luxembourg by the former Act of 23 October 2008, citizenship of Luxembourg can be acquired without renouncing one's original nationality.
- Since the introduction of the aforementioned Act of 2017, under article 25 any person married to a national of Luxembourg can choose to acquire Luxembourg nationality solely on that basis. In the past, the legislation on Luxembourg nationality provided this choice only for a foreign woman marrying a male national of Luxembourg. That provision was considered discriminatory and was abolished in 2009.

92. Under a law passed in 1975, women no longer automatically lose their Luxembourg nationality upon marriage to a foreigner. Under the same law, women who had previously been deprived of their nationality for that reason can have it restored.

- The rules for transmitting Luxembourg nationality to children are laid down in the Act of 8 March 2017 on Luxembourg nationality.⁴⁶ The rules are the same for boys and girls and apply irrespective of whether children are born in or out of wedlock. Luxembourg nationality is transmitted either by descent, by adoption, by birth in Luxembourg or as a result of de facto enjoyment of nationality.
- With regard to transmission by descent, a minor born to a parent holding Luxembourg nationality at the time of birth or of the establishment of the parent-child relationship has the right to Luxembourg nationality.
- A minor can also acquire Luxembourg nationality if (i) one parent who has reached the age of majority acquires Luxembourg nationality by the sole effect of law or by

⁴⁶ Act of 8 March 2017: <http://data.legilux.public.lu/eli/etat/leg/loi/2017/03/08/a289/jo>.

naturalization, choice or restoration, or (ii) one parent who is a minor acquires Luxembourg nationality by the sole effect of law or by choice.

- With regard to transmission by adoption, a minor can acquire Luxembourg nationality if (i) the child has been adopted by a national of Luxembourg, or (ii) the adoptive parent acquires Luxembourg nationality by naturalization, choice or restoration, or (iii) the child has been adopted by a stateless person who is legally and habitually resident in Luxembourg, or (iv) the child has been adopted by persons of foreign nationality who are legally and habitually resident in Luxembourg, provided that the conditions laid down in law are met.
- With regard to transmission by birth in Luxembourg, a minor born in Luxembourg is entitled to Luxembourg nationality if he or she has at least one parent or adoptive parent who was born in Luxembourg.
- Children born in Luxembourg whose parents or adoptive parents do not hold Luxembourg nationality can acquire it when they reach the age of majority, provided that the conditions laid down in law are met.
- Luxembourg nationality can also be established by proof of de facto enjoyment of status, that is, a situation where a person believes in good faith that he or she is a national of Luxembourg and acts as such, when in fact he or she is not. De facto enjoyment of Luxembourg nationality is acquired through the exercise of the rights conferred by this status.

2. Right to participate in elections

Measures to guarantee these rights and their enjoyment in practice

The right to vote and to be elected

Municipal elections

93. Municipal elections are open to all Luxembourg nationals, who are automatically placed on the electoral roll as soon as they meet the conditions required by law, and to any non-national of Luxembourg who has registered on the electoral roll for municipal elections after living in Luxembourg for at least five years and who has been continuously resident in Luxembourg for the year preceding registration.

94. The following categories of persons can stand as candidates in municipal elections:

- Nationals and non-nationals of Luxembourg who reside in Luxembourg
- Non-nationals who are resident in Luxembourg can stand as candidates for municipal elections without losing their right to vote in local elections in their country of origin and can be elected as municipal councillors, mayors or deputy mayors

95. The loss of one of the conditions of eligibility leads to the termination of the mandate.

96. Persons wishing to stand as candidates in municipal elections must:

- Enjoy civil rights and not have been stripped of the right to stand for election in Luxembourg or in their country of origin. This condition does not apply to non-nationals of Luxembourg who have lost the right to stand as a candidate in their country of origin because they reside in another country.
- Be 18 years or over on the day of the election.
- Have been habitually resident in the municipality for at least 6 months at the time the candidature is submitted.

97. For foreign nationals, it is also necessary to have been resident in Luxembourg for five years at the time the candidature is submitted, and to have been resident continuously for the year preceding submission.

European elections

98. European elections are open to all Luxembourg nationals, who are automatically placed on the electoral roll as soon as they meet the conditions required by law, and to non-nationals of Luxembourg residing in the country who have registered on the electoral roll for European elections.

99. Persons wishing to stand as candidates in European elections must:

- Be nationals of Luxembourg or another European Union member State
- Enjoy civil rights and not have been stripped of political rights in Luxembourg or in their European Union member State of origin
- Be 18 years or over on the day of the election
- For Luxembourg nationals, be domiciled in Luxembourg
- For nationals of another European Union member State, be domiciled in Luxembourg and have resided there at the time of submission of the list of candidates

Legislative elections

100. All persons holding Luxembourg nationality have the right to vote in and to stand as candidates in legislative elections.

The Civil Service

101. To become a civil servant, candidates must fulfil certain requirements, including holding nationality of a member State of the European Union, enjoying civil and political rights and having the relevant education and professional training.

102. Luxembourg nationality is a requirement for jobs that entail direct or indirect involvement in the exercise of public authority and in functions intended to safeguard the general interests of the State or public corporations.

103. Other jobs are open to persons who are not nationals of Luxembourg.

104. There is no nationality requirement for State employees.

105. As at 1 May 2019, 226 civil servants, 862 professional staff, 815 general workers and 36 volunteer soldiers in the Army were not nationals of Luxembourg.

3. Extent to which groups of persons who are or might be victims of racial discrimination are involved in the development and implementation of policies and programmes affecting them

106. Associations and organizations that provide support to potential victims of discrimination, such as the Centre for Equal Treatment and the Support Association for Migrant Workers, are directly involved in the legislative process and consulted on all relevant reform bills.

107. Their written opinions are examined and taken into account in discussions of bills in the Chamber of Deputies. The Reception and Integration Act of 16 December 2008⁴⁷ gives the Luxembourg Reception and Integration Agency legal powers to combat all forms of discrimination and provides for, inter alia, the establishment of a national action plan on integration and anti-discrimination.

108. Since 2002, the Agency has carried out annual information and awareness-raising programmes to combat discrimination.

109. In addition, as part of the implementation of the integration policy that it is developing in conjunction with the Interministerial Integration Committee, the Agency

⁴⁷ Act of 16 December 2008: <http://data.legilux.public.lu/file/eli-etat-leg-memorial-2008-209-fr-pdf.pdf>.

maintains close relations with consultative bodies such as the National Council for Foreigners.

110. The Agency also works closely with a range of associations and non-governmental organizations.

111. The Agency also maintains close relationships with research institutes, including the University of Luxembourg.

112. With regard to the integration of foreigners at the local level, the Agency is in regular contact with the municipalities.

4. Measures taken to increase awareness among members of groups and communities of the importance of their active participation in public and political life

113. On 17 December 2018, the Ministry of the Family and Integration launched the “I Can Vote” campaign at a press conference at the Maison de l’Europe. “I Can Vote” is an information and awareness-raising campaign aimed at informing non-nationals of Luxembourg who are citizens of other member States of the European Union about their right to vote in European elections and the requirements for doing so and encouraging them to register to vote.

114. The “I Can Vote” campaign is coordinated by the Luxembourg Reception and Integration Agency.

D. Other civil rights

1. The right to freedom of movement and to reside in Luxembourg

115. The right to freedom of movement is guaranteed under article 12 of the International Covenant on Civil and Political Rights. Article 12 of the Covenant can be directly invoked before domestic courts.

116. Furthermore, freedom of movement is also protected by the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, and more specifically by articles 2 and 3 of Protocol No. 4 thereto, as amended by Protocol No. 11. These rights are therefore subject to judicial review by the European Court of Human Rights.

2. The right to leave any country, including one’s own, and to return to one’s country

117. This right is also recognized in article 12 of the International Covenant on Civil and Political Rights and Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

3. The right to nationality

118. Luxembourg approved several international instruments aimed at preventing and reducing statelessness through an Act of 8 March 2017.⁴⁸ In making Luxembourg a party to these international conventions, the Government has confirmed that it stands ready to combat statelessness and to collaborate actively at the international level in respect of the acquisition of nationality.

4. The right to marriage, choice of spouse and to start a family

119. The right to marry and to start a family is also recognized in article 23 of the International Covenant on Civil and Political Rights. That article provides that no marriage may be entered into without the free and full consent of the intending spouses.

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

⁴⁸ Act of 8 March 2017: <http://data.legilux.public.lu/eli/etat/leg/loi/2017/03/08/a288/jo>.

121. Provided that the parents do not infringe the physical integrity or the moral and material interests of the 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.

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

123. There are various provisions concerning the protection of the family in Book II, Section VII, of the Criminal Code.

124. Forced marriage is prohibited and is punishable under criminal law. Article 389 of the Criminal Code provides that: “Any person who, by means of violence or threats, coerces another person to enter into a marriage or partnership will be punished by a term of imprisonment of 1 to 4 years and a fine of €20,000 to €40,000 or by one of these penalties only. Any attempt to commit this offence is punishable by a term of imprisonment of 1 to 2 years and a fine of €10,000 to €20,000, or by one of these penalties only.” Moreover, article 265 of the Criminal Code provides that any registrar who concludes a marriage against the will of the persons whose consent is required will be punished by a term of imprisonment of 3 months to 1 year and a fine of €500 to €5,000.

125. In Luxembourg, marriage is the union of two persons of the opposite or the same sex (Civil Code, art. 143). Marriage is concluded by way of an officially recorded legal act that confers the status of marriage to both spouses and changes their civil status.

126. The consent of each spouse is indispensable for the conclusion of a marriage. “There can be no marriage without consent” (Civil Code, art. 146).

127. The above-mentioned law of 4 July 2014 amending the existing legislation on marriage introduced the following changes:

- The law now provides for marriage between same-sex couples, which also means that a person bound by marriage is no longer required to seek a divorce in the event of a sex change.
- Married same-sex couples are subject to all the legal effects of marriage, including with regard to divorce, adoption, taxation, gifts and inheritance, with the exception of presumption of paternity (Civil Code, arts. 143 and 132).
- The legal age of marriage has been aligned with the age of majority; both intending spouses must be over the age of 18 to enter into marriage (Civil Code, art. 144).
- A prenuptial certificate is no longer required as part of marriage formalities (Civil Code, art. 63).
- The waiting period of 300 days during which a widowed or divorced woman was prohibited from remarrying has been abolished.

128. Since the major reform of 2014, Luxembourg has been using gender-neutral terminology. The terms “*époux*” (husband) and “*épouse*” (wife) have been replaced with the term “*conjoint*” (partner or spouse) and the terms “*père*” (father) and “*mère*” (mother) have been replaced with the term “*parent*” (parent) throughout all legislation.

5. The right to own property alone as well as in association with others

129. The right to own property is enshrined in article 16 of the Constitution, which provides that: “No one shall be deprived of his or her possessions except in the public interest, in return for fair compensation, and subject to the conditions provided for by law.” Article 16 protects the right to own property and prohibits the expropriation of property except in the public interest, subject to the payment of fair compensation.

130. Article 544 of the Civil Code provides that ownership constitutes the right to enjoy and dispose of property, provided that it is not used in a manner that is contrary to laws or

regulations or that causes a disturbance that exceeds the normal inconveniences of neighbourhood life and upsets the balance between equivalent rights.

6. The right to inherit

131. The right to inherit is enshrined in articles 718 et seq. of the Civil Code. In Luxembourg, inheritance law does not provide for the right of primogeniture and makes no distinction between male and female heirs or between children born in or out of wedlock. Inheritance law in Luxembourg dates back to 1803 and was largely reformed pursuant to the Act of 25 February 1977⁴⁹ and the Act of 26 April 1979.⁵⁰

132. Inheritance is limited to heirs existing at the time of the opening of the succession who have the right to inherit. Children who had not been conceived before the opening of the succession and non-viable children are excluded from inheriting. A child who has been convicted of a crime relating to the death of the deceased parent is debarred from inheriting.

133. A person's inheritance is distributed according to the rules of succession, the civil status of the deceased, and his or her matrimonial property regime if he or she was married. The distribution will vary depending on whether the deceased made a will, whether he or she had a partner or spouse and whether he or she had children. The children of the deceased or their descendants are compulsory heirs.⁵¹ They therefore have priority and each is entitled to an equal portion of the estate. The estate is composed of the assets in the deceased's possession at the time of his or her death, minus any debts.

7. The right to freedom of thought, conscience and religion

134. Article 19 of the Constitution provides that: "Freedom of religion and of public worship and freedom to express one's religious opinions are guaranteed, except where an offence is committed in the exercise of such freedoms."

8. The right to freedom of opinion and expression

135. Article 24 of the Constitution provides that: "The freedom to express one's opinions in speech on all matters, as well as freedom of the press, are guaranteed, except where an offence is committed in the exercise of such freedoms. Censorship is categorically prohibited."

136. A "press offence" is understood to be any offence committed by means of an abuse of the freedom of the press; such offences include ordinary law offences, if they are committed through the press and involve an abuse of publication of opinion.

137. The amended Act of 8 June 2004⁵² on Freedom of Expression in the Media aims to ensure freedom of expression in the media. In accordance with article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, any restriction or interference in this regard must be prescribed by law, pursue a legitimate aim and be necessary in a democratic society. Protection of the right to freedom of opinion and expression is therefore guaranteed for all persons without distinction as to race, ethnicity, religion or nationality, across all media in Luxembourg.

9. The right to freedom of peaceful assembly and association

138. Article 25 of the Constitution provides that: "The Constitution guarantees the right to assemble peaceably and unarmed, in compliance with such laws as may regulate the exercise of this right, without any requirement of prior approval. This provision does not apply to political, religious or other gatherings in the open air, which remain entirely subject to the law and police regulations."

⁴⁹ Act of 25 February 1977: <http://data.legilux.public.lu/eli/etat/leg/loi/1977/02/25/n1/jo>.

⁵⁰ Act of 26 April 1979: <http://data.legilux.public.lu/eli/etat/leg/loi/1979/04/26/n4/jo>.

⁵¹ Protection of compulsory heirs: https://www.avocats-picovschi.com/la-protection-legale-des-heritiers-reservataires_article-hs_74.html.

⁵² Amended Act of 8 June 2004: <http://data.legilux.public.lu/eli/etat/leg/loi/2004/06/08/n4/jo>.

139. The right of association is guaranteed by article 26 of the Constitution, which reads: “The Constitution guarantees the right of association, in compliance with such laws as may regulate the exercise of this right, without any requirement of prior approval.”

140. The right of association is governed by the Act of 11 March 1936 guaranteeing Freedom of Association.⁵³

141. A law of 21 April 1928 lays down the conditions under which non-profit associations may obtain legal personality.⁵⁴ The same law also regulates the recognition of foundations. Subject to approval by Grand Ducal decree, any person may, by means of an officially recorded deed or a will, allocate all or a portion of his or her assets to the establishment of a foundation. Only those establishments which do not seek material gain and aim to carry out work of a philanthropic, social, religious, scientific, artistic, educational, sporting or touristic nature may be considered to be foundations.

E. Economic, social and cultural rights

1. The right to work

142. Article 11 of the Constitution of Luxembourg of 17 October 1868 provides that the law must guarantee the right to work and assure to every citizen the exercise of this right. Under Luxembourg law, the right to work is a fundamental freedom, embracing free choice of employment, free access to employment and freedom from discrimination.

143. The Act of 8 December 1981⁵⁵ on Equal Treatment for Men and Women defines the scope of the principle of gender equality in respect of access to employment, vocational training and promotion, and in respect of working conditions, as does the Grand Ducal Regulation of 10 July 1974⁵⁶ on equal pay for men and women.

144. With regard to employment, the amended Act of 30 June 1976⁵⁷ on the Establishment of an Employment Fund and the Regulation of Benefits awarded to the Wholly Unemployed guarantees adequate protection against unemployment. The Employment Agency is the public employment service in Luxembourg. The Agency is governed by articles L.621-1 et seq. of the Labour Code and is attached to the Ministry of Labour, Employment and the Social and Solidarity Economy. The former Employment Administration became the Employment Agency pursuant to the Act of 18 January 2012.

145. The legislation of Luxembourg and the decisions of its courts guarantee employees strict protection against arbitrary dismissal.

146. The Employment Agency provides individualized support for jobseekers. This approach takes due account of the specific challenges that women, particularly migrant women who are not European citizens, may face when looking for work. An individualized approach remains at the centre of the Agency’s efforts in this regard and is ensured through the use of a high-performance profiling system that takes into account the specific needs of jobseekers, the strengthening of the Employer Service, which responds to the specific needs of recruiters, and the development of new training courses in conjunction with employers.

147. With resources from the European Social Fund, the Government is actively supporting a series of projects run by non-governmental organizations to promote the employment of foreign migrants through targeted training courses, particularly in the area of information and communication technologies.

148. The Government is actively supporting a private initiative called the “Diversity Charter Lëtzebuerg”. The Diversity Charter Lëtzebuerg is a short pledge proposed for signature to any company in Luxembourg that wishes to commit to promoting diversity through concrete actions that go beyond their legal and regulatory obligations of non-

⁵³ Act of 11 March 1936: <http://data.legilux.public.lu/eli/etat/leg/loi/1936/05/11/n2/jo>.

⁵⁴ Act of 21 April 1928: http://mj.public.lu/legislation/asbl_fondations/LOI_21_avril_1928.pdf.

⁵⁵ Act of 8 December 1981: <http://data.legilux.public.lu/eli/etat/leg/loi/1981/12/08/n1/jo>.

⁵⁶ Grand Ducal Regulation of 10 July 1974: <http://data.legilux.public.lu/eli/etat/leg/rgd/1974/07/10/n1/jo>.

⁵⁷ Amended Act of 30 June 1976: <http://data.legilux.public.lu/eli/etat/leg/tc/1979/06/30/n1/jo>.

discrimination. The aim of the Charter is to encourage companies to respect and promote diversity.

149. The period of time that asylum seekers are required to wait after the submission of their application for international protection before being granted access to the labour market, which was previously nine months, has been reduced. Article 6 (1) of the Act of 18 December 2015⁵⁸ on the Reception of Persons Seeking International Protection and Temporary Protection provides that: “Applicants have no access to the labour market for a period of six months after the submission of their application for international protection.”

2. The right to form and join trade unions

150. Article 11 of the Constitution provides that: “The law guarantees the freedom of trade unions and recognizes the right to strike. (...) The law regulates the exercise of the right to strike.” This provision guarantees trade union freedoms, even in the absence of relevant legislation.

151. Article 4 of the law guaranteeing freedom of association provides that it is a criminal offence to attempt to limit freedom of association by wilfully making the conclusion, performance or continuation of an agreement concerning employment subject to a worker’s membership or non-membership of an association.

3. The right to housing

152. The right to housing is not mentioned as such in the Constitution of Luxembourg.

153. However, the right to housing is implicitly recognized by the law. Article 26 of the amended Act of 21 September 2006 on Residential Tenancy provides that the communal authorities are “responsible for guaranteeing housing, as far as possible, for all persons residing in the commune”.

154. The Act of 2006 also provides wide-ranging protection for tenants (for example, limiting the annual amount of rent charged to a maximum of 5 per cent of the capital invested, reducing the rent if that figure is reduced, providing periods of notice in the event of eviction and grace periods in the event of the lease being terminated).

4. The right to public health, social security and social services

Health

155. The right to medical care is guaranteed by the Act of 24 July 2014⁵⁹ on Patient Rights and Obligations.

156. Article 3 concerns mutual respect, dignity and loyalty.

157. Article 4 concerns access to good-quality health care:

(1) Without prejudice to the priority given to emergencies, the patient is entitled to equal access to the health care necessary to maintain his or her health. Health care must be provided in an efficient manner and in accordance with scientific data and legally prescribed standards of quality and safety.

(2) Health care must be organized in such a way as to ensure continuity of care in all circumstances.

158. Article 6 (2) provides that: “(2) Refusal to provide health care may not be based on discriminatory grounds.”

159. “If the patient presents evidence from which it may be inferred that discrimination has occurred, it is incumbent on the health-care provider to justify the decision to refuse to provide health care on objective and non-discriminatory grounds.”

⁵⁸ Act of 18 December 2015: <http://data.legilux.public.lu/eli/etat/leg/loi/2015/12/18/n16/jo>.

⁵⁹ See footnote 10.

Social security and social services

160. The Constitution does not directly govern social security; this responsibility is transferred to parliament pursuant to article 11 (5), which provides that: “The law governs the principles of social security, the protection of health, the rights of workers, the fight against poverty and the social integration of citizens with disabilities.” Parliament has established a comprehensive social security system to cover the risks of sickness, maternity, work incapacity, accident, old age, disability, death, addiction, unemployment, poverty and family responsibilities. It has also taken due account of the obligations deriving from the international treaties ratified by Luxembourg, including the conventions of the United Nations, when implementing and developing the various branches of the social security system.

161. In Luxembourg, social security is provided irrespective of nationality and other distinctions. Free access to benefits is guaranteed through a compulsory contribution scheme for all persons in paid employment. The same system applies to persons receiving income replacement and social inclusion income, who do not otherwise have access to protection. The family members of an insured person, namely his or her spouse or registered partner and children, may enjoy derived rights to health care, pensions and survivor’s benefit. Other persons residing in Luxembourg may obtain voluntary insurance. The social welfare office pays contributions for persons without sufficient resources and the State contributes for minor children who would not otherwise be covered, where necessary.

162. The health system is founded on the basic principles of a patient’s right to choose his or her doctor, the provision of flat-rate tariffs through mandatory service agreements and the right of all insured persons to equal provision.

163. Benefits are financed by employers, the persons protected by the insurance and the State. The contributions to be paid by employers and protected persons are calculated using a uniform contribution rate, which is not linked to the individual situation of the person concerned (age, sex, marital status, state of health, nationality, race or origin). The State’s contribution is primarily based on general tax revenues.

164. Moreover, the Act of 28 November 2006⁶⁰ enacted into national law European Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. Any direct or indirect discrimination based on religion or beliefs, disability, age, sexual orientation or actual or assumed membership of a specific ethnic group or race is prohibited. The principle of non-discrimination applies to all persons, whether public or private, natural or legal, including government agencies responsible for social protection, including social security and health care, and social assistance benefits.

165. The Act of 29 August 2008 on the Free Movement of Persons and Immigration introduces penalties for unauthorized entry and residency and provides that any employer who hires a foreign worker without a valid residence permit entitling him or her to work, or without the appropriate work permit, must pay all unpaid taxes and social contributions, including, where appropriate, administrative fines.

166. Article L.572-7 of the Labour Code provides that an employer who has employed a third-country national with irregular migration status must pay all unpaid taxes and social security contributions, including, where appropriate, administrative fines, as well as court costs and lawyers’ fees.

167. The Social Security Code also requires employers to make a social security declaration within eight days for each employee they hire. Any employer who does not meet or is late in fulfilling his or her obligations under the Social Security Code, provides late or inaccurate information, does not comply with auditing efforts, or does not make contributions by the required deadline may be subject to a fine of up to €2,500.

⁶⁰ Act of 28 November 2006: <http://data.legilux.public.lu/eli/etat/leg/loi/2006/11/28/n1/jo>.

168. In the event of a late declaration, a worker's affiliation to the system is applied retrospectively, and in the case of an accident in the workplace, the accident insurance provider provides benefits in cash and in kind, in accordance with the law. If a social security entry declaration has not been submitted prior to the accident, the accident insurance association may require the employer to reimburse up to half the amount of any subsequent benefits paid following the accident, to a maximum of €30,000.

169. Furthermore, any company director, employer or employee who commits the following offences is subject to a fine of up to €6,250, unless he or she is subject to a harsher penalty arising from another legal provision or regulation:

- Knowingly precluding the total or partial application of Social Security Code provisions to the detriment of those insured through the use of employment agreements or rules, or restricting the insured persons' freedom to accept or exercise an honorary function conferred on them under the Code; such agreements and rules shall be null and void
- Knowingly making deductions that are not legally authorized from the income of insured persons
- Not using the deductions taken, pursuant to the Code, from the salaries of employees for the purposes of insurance

170. If, in the latter case, the perpetrator is deemed to have acted with fraudulent or malicious intent, the judge may, in addition to a fine, impose a prison sentence of between 8 days and 3 months. The Government strives to strengthen bilateral relations by negotiating social security agreements with countries outside the European Economic Area in an effort to maintain and facilitate access to social rights for third country migrants in Luxembourg. Agreements have been concluded with Albania, Argentina, Bosnia and Herzegovina, Brazil, Canada, Cabo Verde, Chile, China, Croatia, India, Japan, Montenegro, North Macedonia, the Philippines, Québec, the Republic of Moldova, Serbia, Tunisia, Turkey, the United States of America and Uruguay, and negotiations are under way with the Russian Federation, Thailand and Ukraine. An agreement with the Republic of Korea is currently in the process of ratification. With a few exceptions, these agreements apply regardless of nationality. All of the agreements provide for the equal treatment of nationals of the contracting States and the maintenance of acquired rights in regard to social security, including the export of pensions and the recognition of periods of insurance for acquisition of the right to pensions. Some agreements also regulate health insurance and accident insurance, while others provide for mutual recognition of periods of employment in the other country for acquisition of the right to unemployment benefits and take account of the family members of workers who live in the other State in any potential increase in unemployment benefits. Bilateral agreements enhance cooperation between the institutions of the States concerned, in the interest of persons who are or have been subject to legislation in both Luxembourg and the partner country.

171. Furthermore, Regulation (EU) No. 1231/2010 of 24 November 2010 extended Regulations (EC) No. 883/2004 and No. 987/2009 on the coordination of social security systems in the European Union to third country nationals not already covered by these Regulations solely on the ground of their nationality, as well as to their family members and survivors, provided they are legally resident in the member State and their situation connects them to several member States.

172. Seventy-one per cent of persons employed in the Grand Duchy of Luxembourg are foreign nationals (foreign residents and non-resident, cross-border workers). Legislation to protect the health and safety of workers applies to all employees working in Luxembourg, regardless of their origin.

173. The training and information relating to health and safety at work that are required by law are provided in the languages commonly used in Luxembourg (Luxemburgish, German, French and English). This training can therefore be understood by the majority of employees in Luxembourg.

174. The Act of 18 December 2009⁶¹ on Social Assistance entered into force on 1 January 2011. Article 4 of the Act states that any person residing in the Grand Duchy of Luxembourg has the right to assistance, in accordance with the legislation in force.

175. The establishment of 30 welfare offices (public establishments under the supervision of the communes) has fostered a preventive approach designed to break the vicious circle of social exclusion. In addition to ensuring that people in need and their families have access to the goods and services required by their circumstances, the Act helps them to preserve or acquire independence. Assistance may be palliative, curative or preventive and has a subsidiary role as a complement to other social assistance measures and to the financial benefits provided under other laws and regulations, which applicants for social assistance must first exhaust.

176. The benefits provided by the social welfare offices include:

- Statutory assistance to individuals and their families
- Advice and information and assistance with accessing the social, material and financial benefits to which the persons concerned are entitled under other laws and regulations
- Social and educational guidance to help the persons concerned to gradually overcome their difficulties
- Assistance with access to means of communication and cultural activities
- Appropriate material support and emergency accommodation
- Registration in the social security system
- Referral to the most appropriate specialized services
- Encouragement to use all available means to improve the applicant's individual situation

5. The right to education and training

177. The languages taught in Luxembourg are German, French, English and Luxembourgish. The latter is taught as a language of communication, to facilitate integration. The Ministry of National Education has taken significant steps to diversify the education system in order to facilitate the integration of newly arrived students and their access to a Luxembourg diploma or equivalent qualification. The Ministry organizes teaching in a variety of languages at different levels. Students can choose to learn in German, French or English.

178. Article 43 of Act of 29 August 2017 on Secondary Education provides that: "The disciplinary board may apply the penalty of expulsion for the following acts: ... incitement to discrimination or discriminatory behaviour of a xenophobic nature or on the basis of ethnicity, sex or gender identity, disability, age, sexual orientation, or religion."

6. The right to equal participation in cultural activities

179. The activities of the Ministry of Culture are based on the principle of respect for the cultural diversity of the individuals and communities present in the territory of Luxembourg. As Luxembourg is a multilingual and multicultural country, respect for cultural diversity is one of its intrinsic features and goes hand in hand with the promotion of participation in cultural life.

180. In furtherance of the efforts made by the previous Government, this objective is once again made explicit in the programme of government for 2018–2023, which states that: "The Government shall pursue the development of an inclusive, participatory and open cultural policy that grants a key role to citizen engagement and bottom-up approaches. Only a cultural approach to societal development that is based on mutual respect and open dialogue among cultures can produce inclusive, equitable and sustainable outcomes ... The

⁶¹ Act of 18 December 2009: <http://data.legilux.public.lu/eli/etat/leg/loi/2009/12/18/n14/jo>.

goal is a cultural policy that respects, supports and promotes individual and collective cultural emancipation, social justice, the affirmation of cultural rights, cultural democracy, social cohesion, economic development and the creation of wealth and employment in the creative industries ... Cultural diversity is one of the country's assets and a part of its identity. Cultural activities help people from different backgrounds to meet and engage with one another. In this way, culture helps to build bridges across society and to foster integration and social cohesion. For this reason, the Government shall promote intercultural events and programmes that contribute to the dialogue among the different members of our society.”

181. Young people and their equal access to artistic and cultural activities are the focus of special attention. During the previous legislative period, Luxembourg launched many projects to bring the cultural sphere and schools closer together, among them the Kulturama platform⁶² for the promotion of cultural education at school and in childcare centres. The goal is to facilitate children's access to culture and art, which open their eyes and enable them to develop key skills for the future.

182. As young people, foreign nationals, unemployed persons and single-parent families face an increased risk of poverty, Luxembourg has introduced the Kulturpass, a card that gives people on low incomes the opportunity to participate in cultural life. The card offers free access to partner museums and tickets to dance performances, concerts, plays, film showings, festivals and other events at a reduced rate.

183. In addition, several dozen associations continue to be covered by an agreement with the Ministry of Culture, which ensures that common objectives in terms of access and diversity are incorporated into their missions and activities.

184. Participation in and access to cultural content increasingly take place through and thanks to digital technologies, which are a means not only of cultural consumption, but also of cultural creation. In this regard, Luxembourg is in the process of introducing a national strategy for the digitization of its heritage. One of its three priority objectives is to provide broad and inclusive online access to items of cultural heritage in digital form.

7. The right of access to places of service

185. Since the assets that constitute public State property are provided for the use of all, they are not subject to legal transactions, and no one may acquire over them, whether by agreement or by enjoyment over time, a private right that hinders this use or infringes the right of the public authorities. The State may regulate and modify public property at any time, in accordance with the needs and interests of all citizens. Consequently, these assets are not capable of being rented or leased commercially. Assets that have been provided for public use, which means that they are not subject to legal transactions or capable of being possessed or privately owned, are deemed to be public property. Public property consists not only of assets that are necessary for a public service, by nature or design, but also of those that are provided directly to meet a public need or for public use.

186. Private State property consists of assets that the State, a department or a municipality owns and manages as an individual and that generate income for them. These assets are capable of passing into private ownership and are therefore subject to legal transactions and acquisition by prescription.

Information from groups of victims or potential victims of racial discrimination

187. According to the Centre for Equal Treatment, 21 persons (11 women and 10 men) lodged complaints of racial discrimination with the Centre in 2018. Of these 21 complaints, 9 concerned discrimination in the workplace, 4 concerned access to goods and services and 8 were related to another area.

⁶² <https://www.kulturama.lu/>.

188. Nationalities of the persons who lodged complaints with the Centre for Equal Treatment:

- Third countries: 9
- France: 4
- Not disclosed: 3
- Germany: 2
- Macedonia: 1
- Montenegro: 1
- Luxembourg: 1

189. Ages of the persons who lodged complaints with the Centre for Equal Treatment:

- 18–30: 2
- 31–40: 6
- 41–50: 5
- 51–60: 2
- 60+: 0
- Not disclosed: 6

190. The Centre was able to offer guidance and support in respect of 9 of the 21 complaints lodged with the Centre for Equal Treatment; 7 of the complaints were withdrawn; 3 of the complaints remained open at the end of 2018; and no discrimination was identified in respect of 2 of the complaints.

Descriptions of the complaints lodged with the Centre for Equal Treatment in 2018

- 201701-007: Refusal of employment
- 201701-008: Inappropriate behaviour by security staff (headscarf)
- 201712-111: Inappropriate treatment by a physician
- 201801-001: Complainant unable to acquire Luxembourg nationality because he is illiterate
- 201801-007: Workplace harassment; repeated racial slurs
- 201802-016: The complainant, a cross-border worker, feels discriminated against by her employer (complaint withdrawn following a request for details)
- 201802-017: Racist comments by a Luxembourg family
- 201802-021: Racist comments by a work colleague
- 201803-031: The complainant did not receive help/information about opening a company; instead, the interview revolved mainly around his origin
- 201803-035: Workplace harassment based on skin colour
- 201803-036: Threats and insults by neighbours
- 201804-037: Insults and violence by the authorities during an arrest
- 201806-049: Discrimination in the workplace
- 201806-052: Temporary employment agency: application shortlisted but ultimately rejected
- 201806-053: Discrimination in the workplace
- 201806-065: Discrimination in the workplace

- 201807-075: Problem in renting an apartment, as the complainant’s partner is Syrian and unemployed
- 201810-097: A website refused to sell tickets to the complainant
- 201811-110: Discrimination in the workplace
- 201812-123: Discriminatory comments on Facebook
- 201812-124: Request for information on filing a complaint against a company located in Luxembourg

Article 6

A. The practice and decisions of the courts

Number of convictions for racial discrimination

Year	2013	2014	2015	2016	2017	2018
Number of convictions	5	4	7	10	18	12

191. Among the State courts, a distinction must be drawn between ordinary courts and those exercising another kind of jurisdiction, specifically administrative or constitutional jurisdiction.

192. The ordinary courts consist of criminal chambers (*chambres criminelles* and the *chambres correctionnelles*) and magistrates’ courts (*justices de paix*) (which include police courts).

193. The criminal chambers have jurisdiction over any offence in the area of racial discrimination, provided that it constitutes a crime or a misdemeanour.

194. Under article 4 of the Civil Code, any court that does not rule on a dispute referred to it commits a denial of justice. Article 258 of the Criminal Code establishes penalties for “any judge, public official or member of a public body who, under any pretext whatsoever, even if the law is silent or obscure on the matter, has refused to render the justice owed to the parties”.

195. Moreover, if the authority does not render a decision within three months, the complainant may consider the complaint to have been rejected and may bring proceedings before the administrative court to challenge the authority’s failure to respond.

196. Court decisions are enforceable by virtue of the writ appended to them, which orders bailiffs to execute them, the public prosecutor’s office to offer assistance and members of the police force to provide support, where they are legally required to do so. Public authorities must ensure the enforcement of their own decisions.

197. Mention should also be made of article 95 ter of the Constitution, the first paragraph of which provides that the Constitutional Court adjudicates on the constitutionality of laws by issuing orders.

198. The International Convention on the Elimination of All Forms of Racial Discrimination is recognized by the ordinary courts of Luxembourg as having direct effect and precedence over all provisions of domestic law, including the Constitution.

199. In accordance with the constitutional amendments introduced on 13 July 2006, article 10 bis of the Constitution enshrines equality before the law as follows:

Article 10 bis. (1) All nationals of Luxembourg are equal before the law. (2) They are eligible for all employment in the public service, both civil and military; the law determines the eligibility of foreign nationals for such employment.

200. It is recognized in case law that, in the Grand Duchy, foreign nationals enjoy all rights that are not specifically denied to them. In the absence of any provision to the

contrary, they are treated as citizens, and no right may be denied to them unless the legislature has expressly so decided.

201. Article 111 of the Constitution provides that every foreign national in the territory of the Grand Duchy enjoys the protection accorded to persons and property, except where otherwise provided by law. Article 11 (2) of the Constitution establishes the principle that men and women are equal in rights and duties and requires the State to actively promote the elimination of such obstacles as may exist with respect to gender equality.

202. Luxembourg is a party to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), signed at Rome on 4 November 1950, and to the Protocols thereto.⁶³ 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.

203. Luxembourg is also bound by the Charter of Fundamental Rights of the European Union, proclaimed in Strasbourg on 12 December 2007.⁶⁴

204. Moreover, under article 6 of the Treaty on European Union, fundamental rights, as guaranteed by the European Convention on Human Rights and as they result from the constitutional traditions common to the member States, constitute general principles of the Union's law.

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

B. Measures taken

206. Various bodies work to combat discrimination. The aforementioned Act of 16 December 2008 on the Reception and Integration of Foreign Nationals in the Grand Duchy of Luxembourg gives the Luxembourg Reception and Integration Agency legal powers to combat all forms of discrimination and provides for the establishment of a National Integration and Anti-Discrimination Action Plan.

207. The Luxembourg Reception and Integration Agency is not the only body that ensures respect for human rights and equal treatment; the Centre for Equal Treatment established under the Act of 28 November 2006 on equal treatment, the Advisory Commission on Human Rights and the Ministerial Integration Plan are also instrumental in this area.

208. In areas other than criminal law, the Inspectorate of Labour and Mines, the Housing Observatory and the National Programme Council deal with discrimination in the labour and housing sectors.

209. The Labour Code also provides for the establishment of specific bodies and the issuance of mandates among social partners with a view to combating discrimination.

210. On 18 August 1995, in order to guarantee access to justice for persons on low incomes, the Luxembourg legislature passed a law on legal aid, which significantly expanded the list of persons who are entitled to free and full legal aid in order to defend their interests in the Grand Duchy. Article 37-1 of the amended Act of 10 August 1991 on the legal profession governs the conditions under which legal aid is granted.

211. With regard to procedural matters, the Act of 6 October 2009 strengthening the rights of victims of criminal offences establishes the rights of victims in criminal proceedings, including the right to receive regular information from the judicial authorities, and contains special provisions on the protection of victims in particular circumstances.

⁶³ Luxembourg has also signed the most recent protocol, No. 16, which allows the highest courts of a contracting party to request the European Court of Human Rights to give advisory opinions. A bill of approval, numbered 7396, has been added to the list of bills before the Chamber of Deputies.

⁶⁴ Pursuant to article 6 (1) of the Treaty on European Union, the Charter proclaimed in 2007 has the same legal value as the treaties.

212. In addition to the organizations and centres mentioned above, the Victim Support Service under the Central Social Assistance Service works with victims who have suffered physical or mental harm as a result of a criminal offence (e.g. in cases of threats, assault, stalking, etc.). The Service also works with persons (relatives) who, by virtue of their relationship with the victim(s), have shared in his or her (their) suffering and with witnesses of criminal offences.

213. The team provides counselling and psychotherapy and informs victims about their rights (information on the law on the victims of criminal offences, on legal proceedings and on the law on compensation for victims of violent crimes) and can support them during the trial. The Service also offers group therapy for victims of domestic violence.

214. Sessions are free and by appointment only.

C. Ombudsman

215. Established under a law of 22 August 2003,⁶⁵ the Ombudsman is an independent institution attached to the Chamber of Deputies and is responsible for receiving, within the conditions laid down by law, complaints made by private individuals in connection with a matter that concerns them and relating to the functioning of State or municipal authorities or public institutions under the authority of the State or the municipalities, excluding their industrial, financial and commercial activities.

216. The Ombudsman may issue recommendations for the public services and individuals concerned and may suggest any legislative amendments that he or she considers appropriate. If the Ombudsman does not receive a satisfactory reply within the time limit that he or she sets, or if the authority takes no action in response, he or she may publish the recommendations. If the authority does not follow the Ombudsman's instructions after failing to execute a final court decision, the Ombudsman draws up a special report addressed to the Chamber of Deputies and published in the Official Gazette.

217. At least once a year, the Ombudsman submits a report to the Chamber of Deputies, which the latter then makes public. In these reports, the Ombudsman takes stock of his or her activities and makes any recommendations that he or she deems necessary. The Ombudsman may also be heard either at his or her request or at the request of the Chamber of Deputies.

218. Under the Act of 11 April 2010, Luxembourg approved the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁶⁶ and designated the Ombudsman as the national preventive mechanism within the meaning of article 3 of the Protocol.

219. Victims of racism or discrimination may lodge a complaint with the Centre for Equal Treatment, the public prosecutor's office or any other association authorized to initiate legal proceedings.

D. Reparation

220. Reference should be made to the Act of 6 May 1999,⁶⁷ which introduced the concept of criminal mediation into the Code of Criminal Procedure. Under the Act, the State prosecutor is authorized to make use of mediation if to do so appears likely to ensure reparation for the injury caused to the victim, end the distress resulting from the offence or help in the rehabilitation of the offender.

⁶⁵ See footnote 44.

⁶⁶ Act of 11 April 2010: <http://data.legilux.public.lu/eli/etat/leg/loi/2010/04/11/n1/jo>.

⁶⁷ Act of 6 May 1999: <http://data.legilux.public.lu/eli/etat/leg/loi/1999/05/06/n1/jo>.

E. Burden of proof

221. In a step forward for the law, the burden of proof is now shared between the plaintiff, who must provide the initial evidence of discrimination, and the defendant, who must counter with proof that the principle of equal treatment has not been violated.

Article 7

A. Education and teaching

222. The Support Association for Migrant Workers and the Ministry of Education have an agreement to cooperate on various activities organized by the Intercultural Education Centre.⁶⁸ The projects cover a range of topics from multilingualism to applicants for international protection.

223. In 2016, a new course, entitled “Life and Society”, was added to the school curriculum. One of its key objectives is to promote knowledge-based tolerance, which involves developing an understanding of the plurality of lifestyles, ways of viewing life, cultures and religions and the values and beliefs associated with them. The aim is to overcome ignorance, which can increase the likelihood of adherence to radical or dogmatic opinions about other cultures or groups of people. The affirmation of human rights is a central part of the curriculum for the course.

224. The Ministry of Education buys school textbooks from abroad rather than producing them. The Ministry is therefore unable either to determine the subjects addressed in the textbooks or to influence their content. Those books that the Ministry of Education does produce are generally bilingual. The Pedagogical and Technological Research and Innovation Coordination Service ensures that the content of books for pupils is suited to the multicultural and multilingual context of Luxembourg.

225. The National Teacher Training Institute makes ongoing efforts to provide training to help teachers to interact with children from a diverse range of backgrounds. This includes support for language learning and awareness-raising on issues such as the traumas or challenges faced by certain groups of newly arrived students. The training is offered both in the form of in-service courses and during initial training. In addition, at specific events, the Office of Education for Foreign Children carries out awareness-raising among school staff, including on the importance of intercultural communication.

226. Article 10 of the Civil Service Code, which concerns the duties of civil servants, stipulates that: “Civil servants must behave with dignity and civility both in their professional relationships with their superiors, colleagues and subordinates and in their relationships with the users of their services, whom they must treat with understanding and consideration and without any discrimination.” Before assuming their duties, civil servants must also take an oath to perform their duties with integrity, accuracy and impartiality.

B. Culture

227. With regard to legislation and the various support and assistance measures for artists (whether professional or not) and contract workers in the theatre sector, no distinction is made on the basis of nationality, provided that at least two years of residence in Luxembourg, which need not be continuous, can be demonstrated.

228. Concerning language policies, multilingualism (Luxemburgish, French and German) has been enshrined in law since 1984. In practice, the use of these languages and of the languages spoken by the different communities varies greatly, depending on the context and the purpose (workplace interactions, written texts, formal or informal communication). Given the increased importance of knowledge of Luxemburgish, Luxembourg has adopted

⁶⁸ <https://www.ikl.lu/workshops/>.

a long-term strategy with four main objectives, namely to strengthen the importance of Luxemburgish; develop the standardization, use and study of Luxemburgish; promote the learning of Luxemburgish and knowledge about the language and culture of Luxembourg; and promote culture in Luxemburgish.

229. In order to give a greater number of citizens and foreign nationals the opportunity to learn the national language, an online dictionary of Luxemburgish words and their German, French, English and Portuguese equivalents has been created.

230. In the same vein, entries to the literary competition organized annually, since 1978, by the Ministry of Culture are accepted in Luxemburgish, French, German and English.

231. Luxembourg also continues to support the translation of literary works, whether written by native authors or by authors residing in Luxembourg, and foreign works considered to be of genuine cultural or intercultural interest.

232. In addition to the measures mentioned in the previous report, in particular those concerning the various cultural institutions and establishments, which are measures that remain in force, Luxembourg has also drawn up a cultural development plan. The plan is the outcome of a process of “co-creation” that took place over a period of nearly two years and involved collaboration among many groups of stakeholders from both the artistic and cultural community and the institutional and ministerial community. The plan sets out 62 measures to be implemented by 2028, some of which will make a direct contribution to the strengthening of the right to equal participation in cultural activities, as they provide for the development of cultural mediation, specific integration measures, active participation and cultural citizenship.

C. Information

233. In its current version, article 26 bis of the amended Act of 27 July 1991⁶⁹ on electronic media provides that “audiovisual or audio media services may not contain any incitement to hatred on grounds of race, sex, opinion, religion or nationality”. Article 27 bis (1) (d) of the same Act also states that commercial communications may not contain “any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation”.

234. According to article 2 (2) of the amended Act of 20 April 2009 on access to public film screenings, freedom of access to such screenings may be restricted if they are likely to “harm the physical, mental or moral development of minors”. It is the responsibility of the person organizing the screening to scrutinize “the content of the film, particularly with regard to the following critical elements: violence, horror, sex, discrimination on the basis of race, gender, opinion, religion or nationality, incitement to hatred, drug or alcohol abuse, inappropriate language, sensitive topics, including suicide and family break-up, and the overall impact of the film or projected images”.

235. Since 1991, Luxembourg has had binding regulations to combat sexist discrimination in the media and advertising. Under article 26 bis of the amended Act of 27 July 1991 on electronic media, “audiovisual or audio media services may not contain any incitement to hatred on grounds of race, sex, opinion, religion or nationality”. Article 27 bis of the same Act states that commercial audiovisual communications may not offend human dignity or contain “any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation”.

236. In this connection, it is also important to mention the amended Act of 21 December 2007 on the equal treatment of women and men in access to goods and services and the supply of goods and services, the application of which was extended in 2012 to cover media and advertising content. This text provides for the prohibition of any direct or indirect discrimination based on sex and any harassment or sexual harassment.

⁶⁹ Act of 27 July 1991: <http://data.legilux.public.lu/eli/etat/leg/loi/1991/07/27/n1/jo>.

237. In addition to the amended Act of 8 June 2004 on freedom of expression in the media, the Press Council has drawn up a code of ethics by which all players in the Luxembourg press and all media outlets are bound. Article 5 of the code states that the press must undertake to avoid and oppose any discrimination on grounds of sex, race, nationality, language, religion, ideology, ethnicity, culture, class or belief, while ensuring respect for fundamental human rights. In this regard, the press has undertaken to specify a person's racial, religious, national or ethnic origins only where this information is essential for understanding the facts or there is a direct link with them.

238. In 2013, Luxembourg established the Independent Luxembourg Audiovisual Authority, a public institution responsible for monitoring the proper application of regulations in force in the area of audiovisual media. The Authority prioritizes its receptiveness to listeners and viewers. In this regard, any natural or legal person alleging injury as a result of the content of a service may lodge a complaint with the Authority, where the content undermines the protection of minors or human dignity or contains elements of pornography. In the interests of transparency, the Authority publishes all the decisions of its supervisory board on its website.

II. Conclusions: the application of the Convention

239. International law is incorporated directly into domestic law and takes precedence over national law.

240. As part of this monistic approach, the national courts consider that duly approved and ratified treaties and conventions are an integral part of the domestic legal order and produce the corresponding legal effects.

241. The national courts consider that treaties and conventions have a higher value than the will of a domestic body.

242. Once a convention has been ratified in accordance with constitutional procedures and the rules of international law, the State is internationally bound and, in accordance with article 27 of the Vienna Convention on the Law of Treaties, signed on 23 May 1969 and approved by the Act of 4 April 2003, may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

243. It follows that, in the event of a conflict, the provision of the international treaty must prevail over the domestic provision, regardless of its nature (Supreme Court of Justice (General Assembly), judgment of 5 December 2002, No. 337/02 (*Annales du droit luxembourgeois*, 2003, ed. Bruylant, p. 683)).

244. The Administrative Court, for example, considers that the judgments of the Constitutional Court should, as a matter of principle, be understood as being consistent with the provisions of the European Convention on Human Rights, provided that the latter overlap in substance with the provisions of the Constitution in terms of their content. (Administrative Court, judgment of 21 June 2016, No. 37592C.)

245. The courts therefore refuse to apply national legislative acts, even subsequent ones or those relating to public order, which are contrary to the international commitments of Luxembourg or the jurisprudence of the relevant international courts. (District Court of Luxembourg (Civil Division), judgment of 14 June 1995 in the case concerning *Banque nationale de Paris Luxembourg S.A. v. A.V., E.S. and D.D.* (*Annales du droit luxembourgeois*, 1996, ed. Bruylant, p. 514)).