

LUXEMBOURG

CCPR A/41/40 (1986)

47. The Committee considered the initial report of Luxembourg (CCPR/C/31/Add.2) at its 628th, 629th and 632nd meetings, on 23 and 25 October 1985 (CCPR/C/SR.628, 629 and 632).

48. The report was introduced by the representative of the State party who noted that the protection of civil and political rights in his country was ensured by such international instruments as the Covenant, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Convention on the Elimination of All Forms of Racial Discrimination, as well as by the Constitution of Luxembourg and national legislation. The provisions of international instruments were directly applicable and enjoyed precedence over domestic law.

49. Turning to specific articles of the Covenant, the representative stated, with regard to article 1, that his Government's policy was to respect the right of other peoples to self-determination on the basis of the promotion of human rights throughout the world, irrespective of political considerations. The right of self-determination of the people of Luxembourg was specifically enshrined in the Constitution, particularly in the provisions regarding elections and equality before the law.

50. In connection with article 2 of the Covenant, the representative explained that there was an unlimited right to take legal action against public officials accused of human rights violations and that, under the Penal Code, the fact that a violation had been committed by persons acting in an official capacity was often considered as an aggravating circumstance.

51. With regard to article 3 of the Covenant, the representative noted that, while the principle of equality between men and women had been largely incorporated into domestic law as a result of reforms adopted in 1972 and 1974 relating to the marriage system and the rights and duties of spouses, there were two remaining problems. One was a five-year residency requirement prior to naturalization, which was applicable only to male spouses. The other related to the inequalities of rights between legitimate and illegitimate children. However, legislative reforms were currently under consideration to eliminate both types of inequality.

52. The representative of the State party informed the Committee, with reference to article 6 of the Covenant, that legislation dealing with the repression of genocide had entered into force on 8 August 1985.

53. Regarding article 17 of the Covenant, the representative noted that under article 15 of the Constitution the home was inviolable, and that articles 443 et seq. of the Penal Code provided for the punishment of attacks against honour.

54. Concerning article 23 of the Covenant, the representative pointed out that, in the case of the dissolution of a marriage, the children involved were doubly protected. Article 217 (b) of the Civil

Code established an emergency procedure to ensure that matters relating to the children's welfare were taken into account and decided upon by the court at the time of filing a divorce petition. The welfare of the children was again considered at the time of final judgement when the court addressed such issues as permanent custody, visiting rights, financial support and education.

55. Referring, in conclusion, to article 26 of the Covenant, the representative noted that equality before the law was enshrined in article 11 of the Constitution and that that right had also been extended, by virtue of case law, to aliens. He further noted that racial discrimination was specifically punishable under article 455 of the Penal Code of Luxembourg.

56. Members of the Committee welcomed Luxembourg's recent ratification of the Covenant and expressed satisfaction over the submission of the report. While some members commented upon the clarity, relevance and objectivity of the report, others were of the view that it was too succinct, did not take account of the Committee's general comments and would have conveyed a less abstract picture of the human rights situation in the country if it had provided more information on the actual functioning of the legal process and details concerning actual human rights practices, particularly in areas where the provisions of the Covenant were not being applied.

57. With regard to article 1 of the Covenant, members requested information about Luxembourg's position on apartheid as well as the right of the Palestinian and Namibian people to self-determination. In that connection, it was asked whether Luxembourg had become a party to the International Convention on the Suppression and Punishment of the Crime of Apartheid, and whether it had prohibited its nationals from taking part in economic and commercial activities in South Africa. One member requested clarification on how the right of self-determination within Luxembourg could be reconciled with the Constitution's broad conferral of executive powers upon the Grand Duke and the provision that the Crown was hereditary in the family of Nassau.

58. Regarding article 2, members expressed satisfaction that international norms enjoyed preference over national norms in Luxembourg's legal system and that the provisions of the Covenant could be directly invoked before courts and administrative tribunals. In that connection, however, members wondered to what extent the Covenant actually enjoyed such precedence in practice and asked whether there had been any cases where international norms had been upheld over national legislation or the Constitution. Further clarification was sought in respect of the principle of popular sovereignty and whether referenda, mentioned in the report, had been held in practice. Noting that aliens, particularly migrant workers, were often subject to de facto and even de jure discrimination in various countries, it was asked whether any problems or difficulties had been encountered in the Grand Duchy in implementing the provisions of the Covenant in that area and particularly whether there had been any actual cases in which the rights of aliens had been adversely affected.

59. In connection with article 3 of the Covenant, members expressed satisfaction that the report made reference to shortcomings in current legislation with respect to the transmission of the family name to children and the acquisition of nationality by marriage, noting that article 40 of the Covenant expressly provided for reporting factors or difficulties affecting the implementation of the provisions of the Covenant, and they welcomed the statement of the representative of the State party indicating that appropriate legislative reforms to correct those irregularities were under consideration. While

also welcoming the fact that men and women in Luxembourg enjoyed complete equality in respect of political rights, they requested additional information, including statistical information, on the status and situation of women in society, for example, in such respects as the number of women at various levels of the social hierarchy or in government posts.

60. With regard to article 4 of the Covenant, members requested information on legislation, if any, which permitted the suspension of certain rights at a time of public emergency.

61. Regarding article 6 of the Covenant, members noted with satisfaction that the death penalty had been abolished in 1979. However, they felt that the report did not provide sufficient information concerning the protection of the right to life and asked for further elaboration on that point along the lines of the general comments on the subject (Nos. 6 (16) and 14 (23)) that had been adopted by the Committee.

62. With reference to articles 7 and 10 of the Covenant, members stressed the importance of adopting active measures and safeguards - such as a prison inspection system - to prevent torture, recalling the Committee's views as expressed in general comment No. 7 (16) ^{1/} that the mere prohibition of torture was insufficient. Since the report did not address that aspect, they asked for information concerning measures and safeguards that ensured respect for articles 7 and 10 of the Covenant by the police and by institutions where individuals were detained against their will. Members also expressed concern and asked for further information regarding Luxembourg's interpretative declaration on the principle of separation of juvenile from adult delinquents.

63. Referring to article 8 of the Covenant and remarking that the notes on the interpretation of the International Labour Organisation (ILO) Forced Labour Convention of 1930 (No. 29), ^{7/} were similar in scope to that article, one member asked whether any steps had been taken by Luxembourg since 1983, the date of the most recent ILO review, to repeal existing legislation that was inconsistent with that Convention.

64. Regarding article 9 of the Covenant, members requested information concerning the observance of the provisions of that article in cases of deprivation of liberty for reasons other than the suspected commission of a crime, such as in the case of psychiatric patients, aliens and minors, which were not dealt with in the report. Additional information was also requested on regulations and practices relating to pre-trial detention and it was asked whether there was a maximum time-limit for such detention.

^{1/} See Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V.

^{7/} International Labour Organization, International Labour Conventions and Recommendations, 1919-1981 (Geneva, 1982).

65. With regard to article 12 of the Covenant, members welcomed the prospective deletion of the provision in the Penal Code under which judges could prohibit persons released from custody but subjected to special police surveillance from appearing in certain places. Noting that the reference to that article in the report only addressed the question of freedom of movement within the national territory and of choice of residence, one member requested information concerning passport regulations and any applicable guarantees ensuring the freedom to leave the country.

66. With reference to article 13 of the Covenant, members noted that the procedure for appealing an expulsion order appeared to favour nationals of member States of the European Economic Community instead of applying equally to all aliens. It was noted further that under that regulation the Advisory Commission on Police Procedures in Respect of Aliens apparently made rulings in advance of the issuance of a ministerial expulsion order, whereas article 13 required that aliens be given the possibility of having a expulsion order reviewed after it had been issued. It was also unclear whether the rulings of the Advisory Commission were merely advisory or had effective force.

67. Members of the Committee requested information, in connection with article 14 of the Covenant, on several aspects of Luxembourg's judicial structure and procedures which were not covered in the report. They asked, *inter alia*, about the conditions of recruitment, promotion and transfer of magistrates; whether any measures were envisaged to ensure stricter application of article 14, paragraph 1, of the Covenant, and whether there were any safeguards to ensure that accused persons enjoyed the right to be presumed innocent, as provided in article 14, paragraph 2, of the Covenant and as further elaborated in the Committee's general comment No. 13 (21). ^{8/} With regard to the right of equal access to justice by aliens, one member of the Committee noted that article 14 of the Civil Code of Luxembourg seemed discriminatory. He also asked whether in the judicial precedents of Luxembourg - as in those of France - resident aliens would be given preferential treatment over non-resident aliens. He expressed surprise that the right of aliens to institute proceedings concerning civil or commercial matters in Luxembourg was determined by the national law of the person concerned. Another member expressed satisfaction that Luxembourg was preparing to adopt legislation allowing it to withdraw its reservation concerning article 14, paragraph 5, of the Covenant and praised the State party for having adopted legislation establishing objective liability for torts committed by an organ of the public authorities, thus setting an example to be followed.

68. In connection with article 17 of the Covenant and noting that under the Act of 26 November 1982 the police could be authorized to use technical means of control and surveillance, members of the Committee referred to the possibility that resort to such measures might lead to unlawful interference in the private life of an individual. Consequently, they requested additional information about the legislation in question and about the scope of such technical means. Information about safeguards that ensured the implementation of rights recognized under article 17 was also requested.

^{8/} See Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 40 (A/39/40 and Corr.1 and 2), annex VI.

69. Concerning article 18 of the Covenant, members questioned the compatibility with the Covenant - both articles 18 and 19 - of the law, mentioned in paragraph 79 of the report, under which ministers of religion were made liable to special penalties for any direct attacks on the Government or particular pieces of legislation or administrative acts. Members of the Committee also requested clarification of the relationship between Church and State in Luxembourg. Some members questioned the assertion that such relations were based on the principle of mutual independence in view of the existence of the special penal law to which ministers of religion could be subjected and the provision for the payment by the State of the salaries and pensions of ministers of religion.

70. Referring to the State party's reservation with respect to article 19 of the Covenant, members asked whether action taken under that reservation depended upon legislation or was left to the discretion of the authorities; and specifically, why the State party felt it necessary to extend the coverage under the reservation to licensing of film companies. Regarding other aspects of the rights covered by article 19, members asked for additional information or clarification on the types of offences, committed in the course of the exercise of the freedom to express opinions or freedom of the press, that were subject to repression under article 24 of the Constitution; they also asked whether the constitutional prohibition of censorship was confined to printed material or also extended to the performing arts, and whether specific legislative provisions had been introduced to protect freedom of the press and of opinion. Members also requested information on the practice of linguistic pluralism in government, education and the media.

71. Concerning article 20 of the Covenant, members of the Committee asked whether the penalties provided under the Act of 9 August 1980 also applied to persons discriminating against others on account of their political or other opinions, and whether penalties comparable to those provided under that Act were available to protect persons from discrimination in the exercise of all of the rights embodied in the Covenant. Referring to Luxembourg's reservation to article 20, paragraph 1, of the Covenant, members reiterated the continuing importance they attached to the prohibition of war propaganda and asked why Luxembourg had made that reservation and whether the Government of Luxembourg had considered withdrawing it.

72. With reference to article 21 of the Covenant, members requested clarification of the restrictions on the right of assembly cited in article 25 of the Constitution. It was noted in that regard that all countries applied some restrictions to public meetings in the open air to protect public order or State security but that the State party's report did not cite such grounds for the restrictions. One member asked whether any remedy existed for citizens who had been arbitrarily prevented by the police from holding a meeting in the open air. Another member asked for further clarification of the legal guarantees protecting the right of assembly of aliens.

73. Regarding article 22 of the Covenant, members noted that under article 26 of the Constitution "the establishment of any religious corporation must be authorized by law". To some members that requirement seemed to constitute an unwarranted restriction of a right whose assertion should not be made dependent on the will of national legislatures. One member wondered, in that connection, whether the term "religious corporations" had some special meaning; otherwise, if it merely meant "religious associations", there seemed to be no reason to require prior authorization for their establishment. Other members asked whether such authorization had ever been withheld and

whether any remedies were available to persons denied such authorization. Regarding trade-union rights, members wished to know how such rights were guaranteed and whether foreign workers enjoyed the same trade-union rights as workers from the European Economic Community.

74. With reference to article 23 of the Covenant, members agreed with paragraph 96 of the report, which acknowledged that, inasmuch as the existing legislation limited the transmission of nationality to the father, it constituted a problem. The State party's intention to address that discriminatory provision during its current review of legislation bearing on the equality of sexes was welcomed.

75. Regarding article 25 of the Covenant, it was noted that, whereas under article 53 of the Constitution persons serving a term of imprisonment lost their right to vote, the terms of article 25 of the Covenant were not restrictive. It was asked how the Government of Luxembourg reconciled that divergence.

76. Concerning article 27 of the Covenant, members asked for further clarification of the statement, in paragraph 116 of the report, that there were no ethnic, religious or linguistic minorities in Luxembourg, in the sense in which those words were used in the Covenant. In that connection, one member referred to the presence in Luxembourg of large national groups - Portuguese, Italians, French, Germans and Belgians - and asked how, in the circumstances, it could be asserted that there were no minorities in Luxembourg. Another member stated that the existence of minorities within the meaning of article 27 seemed to be implied, if, as indicated in the report, "the majority of the inhabitants of the Grand Duchy regard themselves as members of the Roman Catholic Church".

77. Referring to questions raised by members, the representative of the State party explained that Luxembourg was a representative democracy in the form of a constitutional monarchy with sovereignty residing in the nation and exercised through elected representatives of the people. The people could also be consulted directly by referendum, as provided in article 51 of the Constitution, and that had happened several times. Under its system, executive, legislative and judiciary powers were separated.

78. Referring to questions concerning his country's position on respect for self-determination, the representative emphasized that Luxembourg had clearly demonstrated its firm commitment to that principle by its votes in the General Assembly on decolonization and the questions of Namibia and the Near East. His country had also officially condemned apartheid, which it rejected totally and unreservedly.

79. In response to questions raised by members on how the principle of precedence of international over domestic law was applied in Luxembourg, the representative explained that under that principle national norms could only be interpreted by the Government and by the courts in conformity with international obligations. Thus, in the event of a conflict between the two norms, international treaty provisions prevailed over national laws. Also, in situations where domestic law was silent on a specific point, a relevant regulation from an international treaty was applicable. International conventions were an integral part of national legislation and their provisions could be directly invoked by private individuals before the courts dealing with civil, commercial, social or criminal matters or before administrative tribunals. In accordance with criteria established by case law, while

international conventions were not applicable in their entirety, provisions expressly stating an individual right or imposing clear, precise and unconditional obligations were directly applicable.

80. Regarding the right of aliens to equality before the law, the representative noted that that right was guaranteed under both article 111 of the Constitution and case law, save for such expressly specified exceptions as the right to vote and access to public office and the teaching profession. Aliens also had the same right to institute legal proceedings as nationals of Luxembourg, except that an alien's right to bring civil and commercial suits was normally determined by the national law of the person concerned.

81. With reference to questions raised under article 3 of the Covenant, the representative of the State party said that the equality of men and women in the social sphere was governed by community law, implying equality in employment, vocational training and working conditions.

82. Responding to questions relating to the possible suspension of certain rights during a time of public emergency, the representative noted that Luxembourg had no specific legislation regarding the proclamation of a state of emergency or the suspension of rights and freedoms, and that there had been no such emergencies in the past. He added that article 113 of the Constitution provided that no provision of the Constitution might be suspended.

83. Regarding the request of members of the Committee for more details concerning the actions being taken by Luxembourg to protect the right to life, the representative stated that he had taken note of the comments that had been made, but that his Government would prefer to treat the question of preventive measures to be taken, along the lines of the Committee's general comments, when it submitted its second periodic report. Referring specifically to general comment No.14 (23), 2/ he stated that Luxembourg neither possessed nor manufactured nuclear weapons and was a party to the Treaty on the Non-Proliferation of Nuclear Weapons. Responding to other questions, he said that the death penalty could not be reintroduced in Luxembourg once the Sixth Protocol to the European Convention on Human Rights was ratified, in view of the primacy of international norms over national norms; and he explained that the specific enactment into domestic law of a provision of an international convention did not prejudice the general principle of according primacy to international law.

84. With reference to questions raised by members concerning safeguards and active measures to ensure respect for rights covered under articles 7 and 10 of the Covenant, the representative of the State party explained that prisoners were in constant contact with magistrates responsible for carrying out sentences as well as with the Social Defence Commission, which was made up of social workers and psychologists engaged in activities designed to reintegrate prisoners into society. Prison conditions were also monitored by some non-governmental organizations. He also pointed out that Luxembourg had been one of the first States to sign the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 39/46), which

2/ [Official Records of the General Assembly,] Fortieth session, Supplement No. 40 (A/40/40), annex VI

was in the process of being ratified, and had also participated in preparing a Council of Europe convention on torture. As to Luxembourg's reservation concerning article 10, the representative stated that the reservation had been entered in view of his country's legislation relating to the protection of young persons - which was neither criminal nor repressive in nature. His country was of the view that in some cases, for example, in the case of vocational training, it was useful for young inmates to be in contact with older prisoners. In actual practice, accused persons in prison were segregated from those who had been convicted and prisoners were also segregated according to the gravity of their offences.

85. With regard to article 8 of the Covenant, the representative stated that his country had ratified the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, ^{9/} as well as the ILO Convention concerning Abolition of Forced Labour, of 1957 (No. 105). ^{7/}

86. In responding to questions raised by members of the Committee with respect to article 9 of the Covenant, the representative explained that his country followed the principle of allowing total individual freedom except where the law or regulations expressly prescribed otherwise. Regarding pre-trial detention, he noted that the maximum period of such detention was not established by law. However, pre-trial detention orders had to be based on the public interest and could be appealed.

87. Responding to a member's question concerning passport regulations, the representative of the State party said that passports could not be denied by the authorities to anyone who had applied for them except, for example, in the context of a judicial investigation or hearing, where such a document was withheld to ensure the accused person's continued presence in the country.

88. Regarding the questions raised in connection with preferential treatment accorded to nationals of the European Economic Community in appealing expulsion orders, the representative stated that any member State of the European Economic Community could provide preferential conditions to the nationals of other Community members. As to the role of the Advisory Commission, he explained that the Commission made a ruling before any expulsion decision was taken and that the Commissions' ruling was usually followed by the authorities. Administrative tribunals also monitored the legality of the expulsion procedure.

89. Regarding the questions raised under article 14 of the Covenant, the representative noted that, while the presumption of innocence was not based on a specific legal provision, it was a general principle of law, reflected in specific decisions. The burden of proof was upon the Public Prosecutor,

^{7/} International Labour Organisation, International Labour Conventions and Recommendations, 1919-1981 (Geneva, 1982)

^{9/} United Nations, Treaty Series, vol. 266, No. 3822.

with doubt resulting in acquittal. Luxembourg's reservation to article 14, paragraph 5, he explained, resulted from concern that a literal interpretation of that provision might imply the existence of a higher level of appellate jurisdiction beyond that of the courts of appeal. That would have been in conflict with the principle of Luxembourg law that a decision by an appeals court could not be subjected to further appeal. Currently, appeals against the verdicts of the Assize Court or courts of appeal could only be lodged before the Court of Cassation. However, a bill to reform the Assize Court system was in preparation and it was envisaged that provision would be made under the new procedure for substantive - not merely formal - review of Assize Court decisions.

90. Responding to questions raised by members concerning the protection of the right to privacy, the representative explained that the law of 26 November 1982 authorizing the use of technical means of control and surveillance had been adopted following a judicial decision to the effect that the lack of relevant regulations was incompatible with the European Convention on Human Rights. The law provided that any decision authorizing such surveillance had to be taken by a magistrate, had to be especially well founded, could be appealed, and was restricted to a period of one month, extendable up to one year only. A complaint lodged against that law before the European Commission of Human Rights in Strasbourg had been rejected as unjustified. Under the law of 14 August 1982 on the protection of privacy, magistrates were empowered to take preventive and repressive measures to protect privacy and penalties were prescribed against any person who deliberately or systematically harassed another person by telephone or letter.

91. With reference to article 18 of the Covenant, the representative stated that the antiquated provision prohibiting members of the clergy from attacking the Government was no longer applied in practice and would be deleted from the Penal Code when the Code was revised. Freedom of religion in Luxembourg was complete, which implied the freedom not to have any religion. Religious education was optional, pupils were free to choose religious education, ethics or neither subject. As to the mutual independence of Church and State, the representative explained that, although the salaries and pensions of ministers of the three most representative religions - Roman Catholic, Reformed and Judaism - were paid by the State, that did not encroach on their autonomy, since religious communities were entirely at liberty to appoint their own ministers and to have any other source or income or property that would ensure their financial independence. If a new religious community of any size were to develop the State would consider the possibility of conferring on it a status similar to that of the other three communities.

92. In his reply to questions raised by members concerning article 19 of the Covenant, the representative of the State party noted that the constitutional prohibition of censorship was applicable not only to the written word but also to all audio-visual information media and that no restrictions were in use except for age-limits established for certain films to protect the young. Licensing requirements in connection with films were not related to the nature of the film shown but only to such matters as safety standards in cinemas or conditions for engaging in trade. As to freedom of expression, he said that only the abuse of that right was punishable, such as in the case of slander, libel or the disturbance of public order. The case law regarding press offences was extremely restrictive, providing that only private individuals could bring charges, which had to be filed within a period of three months of the date of the alleged offence. The residence requirement applicable to publishers was not a discriminatory measure but one relating to the establishment of the chain of

responsibility - from author to distributor to printer, and lastly to the publisher. Concerning linguistic pluralism, he explained that, although Luxembourgish was established in recent legislation as the national language, government services would also continue to use French and German, with Italian and Portuguese often being used for correspondence, especially in the larger towns where most members of those two important expatriate communities lived.

93. Regarding article 20, paragraph 1, of the Covenant, the representative explained that his country's reservation had been entered because the authorities considered that the provision posed too great a danger to freedom of expression and did not indicate clearly whether war propaganda was to be prohibited by a general law or in a case-by-case basis. Concerning the Act of 9 August 1980, he indicated that the law had been adopted as a measure for implementing the International Convention on the Elimination of All Forms of Racial Discrimination and was aimed at areas such as the procurement of goods and services and the publication and expression of ideas - spheres in which there was the greatest likelihood of discrimination.

94. Responding to questions by members relating to the right of assembly, the representative noted that open-air meetings were not subject to any prior authorization except for the need to observe such communal regulations as those relating to traffic, security, public health and public order.

95. In connection with article 22 of the Covenant, the representative stated that the provision requiring legal authorization for the establishment of religious corporations applied to organizations directly engaged in worship and not fringe associations, but indicated that it was a very old provision, which would be amended when the Penal Code was revised. Regarding the protection of trade-union rights, he noted that Luxembourg was a party to the ILO Convention concerning Freedom of Association and Protection of the Right to Organise, of 1948(No. 87). ^{7/} In the absence of any comprehensive regulations the form of trade-union organization remained free. Union membership could be comprised of both nationals and aliens.

96. Regarding article 25 of the Covenant, the representative explained that the deprivation of civil and political rights was a penalty provided for in the Penal Code in cases of particularly serious anti-social offences entailing sentences to hard labour in excess of 10 years.

97. Responding to questions raised by members of the Committee concerning article 27 of the Covenant, the representative stated that Luxembourg had no minorities within the meaning of the Covenant, but did have a large alien population, constituting more than 25 per cent of the total. Measures had been taken in education, audio-visual techniques and cultural life to promote their integration and to safeguard their cultural identity, including radio and television programmes in Italian and Portuguese and the establishment of cultural and sporting associations. Aliens were associated with public life through an Immigration Council.

^{7/} International Labour Organisation, International Labour Conventions and Recommendations, 1919-1981 (Geneva, 1982)

98. Several members thanked the representative for having answered most of the questions, but felt that some of them had not been answered or needed a more detailed answer. They therefore expressed the hope that the Government could provide further information in a supplementary or a subsequent report.

99. In conclusion, the representative of the State party thanked the members of the Committee for their kind reception of his delegation and expressed the hope that the open and fruitful dialogue that had been initiated between Luxembourg and the Committee would continue. He had taken note of the request by several members to the Committee for additional information on a number of points in advance of the date of submission of his country's second periodic report and would transmit the request to his authorities.

100. The Chairman expressed appreciation to the representative of Luxembourg and requested him to inform his Government of the Committee's gratitude for the spirit of co-operation that had prevailed during the consideration of his country's report.

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115. The Committee considered the second periodic report of Luxembourg (CCPR/C/57/Add.4) and the core document (HRI/CORE/1/Add.10) at its 1187th and 1188th meetings, held on 26 October 1992 (CCPR/C/SR.1187 and 1188). (For the composition of the delegation, see annex XI.)

116. The report was introduced by the representative of the State party, who pointed out that under article 111 of the Constitution of Luxembourg all foreigners in the territory enjoyed the protection of their fundamental rights subject only to exceptions established by law. Extensive jurisprudence on the matter reflected the fact that foreigners enjoyed the same political rights as citizens of Luxembourg.

Constitutional and legal framework within which the Covenant is implemented and non-discrimination and equality of the sexes

117. With respect to those issues, the Committee wished to know whether there have been any cases where the provisions of the Covenant had been directly invoked before the courts or referred to in court decisions and, if so, what the relevant details were; what the status was of the special commissioner appointed to enforce decisions taken by the litigations committee of the Council of State and what powers were vested in him; whether the term "foreigners" referred only to immigrants or also to non-citizens in general, including asylum seekers or even tourists; whether appeals could be made against decisions of the military courts and, if so, to which body; whether decisions taken by the Committee under the Optional Protocol were known in Luxembourg, particularly among members of the legal profession, the judiciary and government officials; and, with reference to paragraph 35 of the report, whether religious ministers remunerated by the State belonged to a particular religion.

118. Members of the Committee also wished to have further details on the work being accomplished by the special consultative commissions of the various communes, referred to in paragraph 48 of the report, including information on the support they received from communal authorities; on the application of recent laws designed to protect small and lesser-known minorities; on restrictions to the right to take part in elections; and on offences that could result in a person being deprived of the right to vote.

119. In his reply, the representative of the State party said that there had been a number of cases where the provisions of the Covenant had been invoked in a court of law. The judicial authorities in all such cases had held that the provisions of international instruments took precedence even over the provisions of the Constitution and also, therefore, over existing laws and regulations. Where domestic legislation was not in line with international instruments, the courts had the authority to declare the provision in question illegal in relation to a specific case brought by a given claimant. The legislation itself was not declared illegal, however. Currently there was no provision for monitoring legislation to see if it was in accord with the Constitution and international instruments, which admittedly represented a serious gap in the country's legal system.

120. Unfortunately, Luxembourg's citizens were not well aware of the rights contained in the Covenant and even lawyers who could have invoked human rights instruments in legal proceedings had failed to do so because of their unfamiliarity with the relevant conventions. Although the competent ministries had considered the reports of the Committee, only limited publicity was given to such reports. The representative indicated that he would make the necessary recommendations to the authorities on these points.

121. A variety of measures had been taken in order to improve the participation of foreigners in communal life. Foreigners would be accorded the right to vote in communal elections, as a result of the Treaty on European Union, signed in Maastricht on 7 February 1992, and would also be able to vote in professional organizations and chambers of commerce, pursuant to a recent decision of the Council of State. While there were no problems concerning housing, health and social services, there were difficulties in the field of education, where efforts were being made to better integrate foreign children into the school system.

122. There were presently three officially recognized religions in Luxembourg: Catholicism, Protestantism and Judaism. The status of "official religion" entitled ministers of such religions to be remunerated as State employees on the basis of conventions signed with the State. To be recognized as an official religion, other religions would have to take steps to conclude similar conventions with the State.

Treatment of prisoners and other detainees and right to a fair trial

123. With reference to those issues, the Committee wished to have further information on the functions and activities of liaison officers who supervised places of detention, as referred to in paragraph 10 of the report; on guarantees provided under the Acts of 16 June and 7 July 1989 to safeguard the interests of persons under arrest; on the implementation in practice of article 9, paragraph 3, of the Covenant; on the activities of the official appointed in mental health establishments to inform and advise mentally-ill patients of their rights; and on the procedure and criteria for selecting magistrates and appellate court judges.

124. With respect to regulations pertaining to the application of isolation to detainees, members of the Committee wished to know what offences gave rise to isolation as a punishment; who decided when it would be applied; how were prisoners defined as "dangerous" and for how long could they be held in isolation; whether a decision to place a detainee in isolation could be appealed; why isolation also included a prohibition against reading literature; how many people had been placed in isolation in 1992; and whether it was regarded as satisfactory that prisoners in isolation were allowed only one hour's exercise per day out of their cell.

125. Members of the Committee also wished to know whether there were any maximum limits on the length of pre-trial detention; whether the draft bill on the protection of youth had been adopted by the Chamber of Deputies; whether consideration was being given to changing the interpretative declaration made by Luxembourg in respect of article 10, paragraph (2) (b), of the Covenant; whether the prison population included drug abusers and how necessary care was administered to such persons; and whether the Constitution had been modified to reflect the decision, adopted

pursuant to the law of 20 June 1979, to abolish the death penalty.

126. In his reply, the representative of the State party said that the public prosecutor and a liaison officer, who was always a judge of the ordinary courts, monitored compliance with the internal regulations of penal institutions. Complaints from prisoners were always heard by the public prosecutor. Existing procedures concerning pre-trial detention provided that a detainee's immediate release had to be ordered if no court decision had been reached within one month of the detainee's initial interrogation. Victims of unlawful arrest or detention had a right to compensation, which was ultimately decided upon by the Minister of Justice.

127. Resort to the isolation of prisoners was very exceptional, and was a disciplinary rather than a punitive measure. The decision to impose isolation could be made only by the public prosecutor, taking into account the advice of a doctor. The detainee's lawyer could appeal the decision, particularly on the grounds that the imposition of isolation would endanger the physical and psychological well-being of the detainee. Any disciplinary measure of such a serious nature could be appealed to the judge responsible for monitoring prison conditions. Detainees were always able to communicate with their families, lawyers or with the public prosecutor, except where such communication was expressly forbidden by the examining judge. Such decisions were made strictly in accordance with the penal code. The sentence of hard labour, which was still provided for under the penal code, was never applied in practice.

128. The Law of 12 November 1971 relating to the protection of minors had been recently replaced by a new law, which would be provided to members of the Committee. Minors in detention were separated from contact with adult prisoners except in workshops or similar activities in which the minors had chosen to participate. Steps for the social rehabilitation of delinquent minors had been elaborated by the Minister of Social Assistance in consultation with experts and specialists in psychology. In general, good results had been obtained by the system, although it was always difficult to eliminate the problem of repeat offenders. Prisoners who were drug addicts could obtain specialized treatment for their problem on request. Drug addicts could also be placed in isolation from other prisoners for their own protection. The death penalty had been abolished from the Penal Code, although the reference to it in the Constitution had been maintained. In practice this means that it cannot be applied by the courts.

Freedom of movement and expulsion of aliens and freedom of expression and assembly

129. Regarding those issues, the Committee wished to know how many aliens have been refused permission to settle in Luxembourg or had had their identity cards withdrawn or their renewal refused because they failed to fulfil legal obligations towards their families; how compatibility with article 21 of the Covenant by communal authorities who were authorized to issue regulations relating to the exercise of the right to freedom of assembly was ensured; and what administrative arrangements had been established for the detention of aliens awaiting expulsion.

130. In his response, the representative stated that no alien had been refused permission to settle in Luxembourg or had had his or her identity card withdrawn or its renewal refused because of the failure to fulfil legal obligations towards the family. The right of peaceful assembly was guaranteed

under article 25 of the Constitution. Open-air public assemblies, whether political, religious or otherwise, were subject to laws and regulations of the police and communal authorities. Relevant communal regulations were subject to the approval of the Minister of the Interior and persons or organizations affected by such Ministerial decisions could contest the legality of the decision before an administrative judge. Police regulations applicable to such matters, had been established in conformity with the limitations foreseen in article 21 of the Covenant.

Protection of the family, right to vote and rights of persons belonging to minorities

131. Concerning those issues, the Committee wished to have further information on existing legislative or administrative arrangements for protecting the interests of children in cases of family separation, other than those described in paragraph 37 of the report, and on the ways and means by which the Immigration Council integrated aliens into society. Regarding the deprivation of voting rights as part of sentencing in some cases, members of the Committee wanted to know how long the deprivation of the right to vote lasted and whether the sentence was applied routinely for certain types of crimes or whether it was employed only as an exceptional measure.

132. In his reply, the representative of the State party pointed out that among Luxembourg's 378,000 inhabitants more than 80 nationalities were represented, a situation which made it difficult to speak of specific minorities. Immigrants did not constitute ethnic minorities under Luxembourg law and were extended the same rights as citizens. Foreigners, including nationals of other European Community States, were part of the national community regardless of their race, nationality, colour or religion. As such, they were extended the same rights as citizens in matters pertaining to social security, sickness, pensions and retirement, with the exception of the right to vote. The exclusion of convicted criminals from voting was regulated under article 53 of the Constitution, which provided that persons convicted and sentenced for a variety of crimes could lose their right to vote. In cases of serious crimes, such as murder or rape, the deprivation could be mandatory whereas for minor crimes the right to vote could be temporarily suspended at the discretion of the sentencing judge. In all cases, voting rights could be restored by decision of the Grand Duke.

Concluding observations by individual members

133. Members of the Committee thanked the delegation of Luxembourg for its frankness and cooperation in helping the Committee to better understand Luxembourg's legal system. It was noted that while the general situation with respect to the application of the Covenant was satisfactory, certain problems had persisted. In this regard, members considered that the practice of including a suspension of voting rights as part of sentencing raised a number of problems under article 21 of the Covenant. Members also expressed concern over practices in Luxembourg regarding the application of isolation to detainees including, in particular, the length of isolation, the prohibition of reading materials to isolated detainees and the fact that they were allowed only one hour out of their cell each day for exercise. It was also noted that the use of preventive detention should not become routine nor should it lead to excessive periods of detention or infringe upon the presumption of innocence. Members were satisfied that the death penalty had been abolished in practice but none the less expressed the hope that it would be abolished at the level of the Constitution in the near future.

134. Concern was also expressed over the position of religious sects which had not entered into a covenant with the State and which, therefore, were at a disadvantage relative to sects that had done so and were supported by the State. Additionally, members noted that, under article 27 of the Covenant, ethnic, religious and linguistic minorities had a right to their own cultural life and that the exercise of that right needed to be guaranteed and monitored by the State. It was also noted that, in general, the provisions of the Covenant were not adequately publicized in Luxembourg. In this regard, it was suggested that the Government facilitate a greater awareness among the general public and, in particular, among members of the judiciary and the legal profession.

135. In concluding the consideration of the second periodic report of Luxembourg, the Chairman expressed his appreciation for the delegation's competence and candour in responding to the questions and concerns raised by the Committee, as well as his confidence that those concerns would be taken into account by the Government. He observed that in as much as judges were able to overturn national laws they considered incompatible with treaty law, it would be desirable if members of the judiciary could be made more familiar with the Covenant and the way its provisions were interpreted by the Committee, particularly through its general comments and its decisions under the Optional Protocol.

Comments of the Committee

136. At its 1203rd meeting (forty-sixth session), held on 5 November 1992, the Committee adopted the following comments.

Introduction

137. The Committee commends the State party on its report which contains clear and basic information on laws relating to the implementation of the provisions of the Covenant. The Committee, however, regrets that the report lacks information concerning the actual situation on the ground, including factors and difficulties which may affect the implementation of the Covenant.

138. The Committee also commends Luxembourg for the core document (HRI/CORE/1/Add.10) submitted in accordance with the consolidated guidelines for the initial part of reports submitted under the various international human rights instruments (HRI/1991/1).

139. The Committee expresses its appreciation for the high-level delegation which represented the State party during the consideration of its report. The competence of that delegation and the cooperation it demonstrated in responding to requests for further information facilitated a constructive dialogue between the Committee and the State party.

Positive aspects

140. The Committee welcomes the position accorded to the Covenant within the hierarchy of the State party's national law. The Committee has noted the delegation's statement that the provisions of the Covenant may be directly invoked in the courts and that, where there is a conflict between those provisions and national law, the Covenant is accorded supremacy. The Committee also

welcomes the initiative taken to ensure the abolition of the death penalty.

Principal subjects of concern

141. The Committee expresses its concern over the insufficient publicity given to the Covenant among persons in those professions most concerned with its application and among the general public, who thus may not be adequately informed of the protection afforded by the Covenant and of the possibility of submitting individual communications under the Optional Protocol.

142. With respect to the treatment of prisoners, the Committee is concerned over present practices pertaining to solitary confinement which are incompatible with article 10 of the Covenant. Additionally there is no remedy available with regard to the decision of the Prosecutor General to apply solitary confinement. Another area of concern is the application of pre-trial detention which may lead to excessive periods of detention and which may infringe upon the presumption of innocence.

143. Other areas of concern include article 18 of the Constitution which still presupposes the existence of the death penalty; the lack of a remedy to decisions of the Prosecutor General regarding internment of the mentally ill; the deprivation of the right to vote as a further sanction in criminal cases; and continuing provision in the law for hard or forced labour, which has not yet been abolished. The Committee also notes that care must be taken with present practices for financing religious minorities to ensure that they remain in conformity with articles 2, paragraph 1, and 27 of the Covenant.

Suggestions and recommendations

144. The Committee recommends that the State party undertake steps to disseminate information about the Covenant and the Optional Protocol; restrict the use of solitary confinement to short, temporary periods and only where necessary as part of disciplinary measures; provide an effective remedy for those who have been subjected to solitary confinement in a prison or to internment in a facility for the mentally ill; and review legislation on criminal procedure so that it is fully in line with provisions concerning pre-trial detention under article 9 and the presumption of innocence under article 14 of the Covenant.

145. The Committee also suggests that the State party consider abolishing the deprivation of the right to vote as part of legitimate punishment; consider a new approach to guaranteeing the rights of minorities, particularly in regard to the system of conventions between the State and various religious communities; and consider the need for a constitutional remedy to further clarify situations where conflicts may seem to arise between the provisions of the Covenant and the Constitution. The Committee also invites the State party to review the reservations and interpretative declarations it made upon ratification with a view to withdrawing them as far as possible.

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80. Luxembourg

(1) The Committee considered the third periodic report of Luxembourg (CCPR/C/LUX/2002/3) at its 2080th and 2081st meetings (CCPR/C/SR.2080 and CCPR/C/SR.2081), held on 24 March 2003, and adopted the following concluding observations at its 2089th meeting (CCPR/C/SR.2089) on 28 March 2003.

Introduction

(2) The Committee welcomes with satisfaction the third periodic report of Luxembourg. It is pleased to be able to resume its dialogue with the State party over 10 years after the consideration of the preceding report. It regrets that the third report did not go into detail on the issues of national jurisprudence, the practical aspects of the implementation of the Covenant and the many questions raised by the Committee during the consideration of the second periodic report. However, it welcomes the high quality of the written and oral replies provided by the Luxembourg delegation.

Positive aspects

(3) The Committee has taken note of the Luxembourg delegation's position that the Covenant takes precedence over internal law, including the Constitution. The Committee welcomes the institutional changes the State party is making in prisons in order to prevent suicides. It has also taken note of the initiatives in the form of bills that the State party is taking in order to ensure better protection for the victims of trafficking in persons for the purposes of forced prostitution and for witnesses in judicial proceedings; to combat family violence; and to change the law relating to the press to embody in it the principle of proportionality. It has taken note of the State party's intention not only to implement the relevant legislative provisions, but also to make society, and victims in particular, aware of the use of existing protection mechanisms.

Principal subjects of concern and recommendations

(4) The Committee takes note of the Luxembourg delegation's comments on the limited, or even theoretical, scope of the reservations formulated by the State party to various provisions of the Covenant.

The State party should reconsider its reservations with a view to ensuring, insofar as possible, that they are withdrawn.

(5) The Committee regrets the lack of detailed information on equality of men and women in the private and public sectors and, in particular, on obstacles in this regard (articles 3 and 26 of the Covenant).

The State party should provide the Committee with a detailed analysis of the question in its next

report.

(6) The Committee continues to be concerned, on the one hand, about the maximum length of time detainees may be held in solitary confinement, i.e. six months, and the lack of information on the conditions in which such treatment is applied and, on the other hand, by the holding of detainees incommunicado, even though this has happened only once in 12 years.

The State party should ensure that practices with regard to the treatment of detainees are in keeping with articles 7, 9 and 10 of the Covenant. In this connection, the State party should adopt legislation regulating and limiting incommunicado detention with the long-term objective of eliminating it completely, particularly during pre-trial detention.

(7) The Committee notes, on the one hand, that the State party grants financial assistance to the Christian and Jewish communities only and, on the other hand, that the criteria applied (such as membership of a religion recognized worldwide and officially in at least one European Union country) may give rise to problems as far as their compatibility with the provisions of articles 18, 26 and 27 of the Covenant is concerned.

The State party should guarantee non-discriminatory treatment of communities of religion and belief in respect of financial assistance and, to this end, ensure that all criteria in this regard are revised to guarantee that they are in keeping with the Covenant.

(8) The Committee remains concerned that, for a large number of offences, the systematic deprivation of the right to vote is an additional penalty in criminal cases (article 25 of the Covenant).

The State party should take steps to bring its legislation into line with paragraph 14 of general comment No. 25.

(9) The Committee notes that the Civil Code still draws a distinction between “legitimate” children and children born out of wedlock, whereas by law, they are entitled to the same rights (article 26 of the Covenant).

The State party should remove this obsolete distinction from the Civil Code.

(10) While taking note of the awareness-raising efforts being made by the State party, the Committee regrets that the Covenant and the Optional Protocol are still not well known to the public.

The State party should disseminate the Covenant and the Optional Protocol more widely.

(11) The State party should disseminate widely the text of its third periodic report and the present concluding observations.

(12) In accordance with rule 70, paragraph 5, of the Committee’s rules of procedure, the State party should within one year provide information on the implementation of the recommendations made by the Committee in paragraph (6) concerning the question of the holding of detainees in solitary

confinement. The Committee requests the State party to provide information on the other recommendations made and on its implementation of the Covenant as a whole in its next report, which it is scheduled to submit by 1 April 2008.