State and Church in Luxembourg

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I. Social Facts

The Grand Duchy of Luxembourg is situated in the centre of Western Europe, landlocked between France, Belgium, and Germany. In 2018, there were 602,005 inhabitants of Luxembourg; 48% of the population were not Luxembourg citizens.\(^1\) The latest official statistics on the religious composition of the population of Luxembourg date from the census of 1970. At that time, Roman Catholics amounted to 96.9% of the population, Protestants to 1.2%, Jews to 0.2%, and others to 1.7%. Since 1979, questions about religion in population censuses are prohibited by law. According to further surveys, as of 2011, 73% of the inhabitants of Luxembourg were Christians, 68.7% of those were Roman Catholics, 1.8% Protestants, and 1.9% belonged to another Christian denomination. 2.6% of the population adhered to a non-Christian religion, and 24.9% did not belong to any religion.\(^2\)

II. Historical Background

Before obtaining its independence during the 19\(^{\text{th}}\) century, Luxembourg was under successive Burgundian, Spanish, French, Austrian, and Dutch sovereignty. During the seventeenth century the Duchy of Luxembourg was divided between the six Catholic dioceses: Trier, Liège, Metz, Verdun, Reims, and Cologne. From 1715, under Austrian rule, State supremacy over the Catholic Church was dominant. In the course of the 1789 French Revolution and the revolutionary wars, Luxembourg came under French rule and formed the Département des Forêts in 1795. The 1801 Napoleonic concordat introduced a new structure for the relationship between the


State and the Catholic Church, still providing for State domination over the Church.

In 1815, Luxembourg became a separate sovereign entity. It was established as a Grand Duchy and assigned to the king of the Netherlands in a personal union, while the country lost large territories to Prussia. Luxembourg became a member of the German Confederation.

According to Article 17 of the 1801 Concordat which envisaged a special treaty should a successor to the head of State not be a Catholic, a Concordat between the King and the Holy See was concluded in 1827. It reaffirmed the validity of the Concordat of 1801 and introduced special rules for the appointment of bishops. The Concordat of 1827, however, was never put into practice, and in 1852 it was repealed by both sides.

In the aftermath of the 1830 Belgian revolution, the 1839 Treaty of London defined two distinct Luxembourgs, the Grand Duchy of Luxembourg and Belgian Luxembourg, which formed a province of Belgium. The treaty of 1839 also defined the borders of the Grand Duchy, which have not changed since. In 1890, due to different laws of succession in the Netherlands and in Luxembourg, the personal union with the Dutch king ended, and Luxembourg had its own dynasty.

1833 the Pope appointed an Apostolic Vicar for Luxembourg, and in 1870 elevated it to a distinct diocese. Since 1988, Luxembourg has been an Archbishopric.

In 1848, a Constitution was introduced for Luxembourg, providing for extensive fundamental rights. As to religious freedom and the status of religious communities, its provisions are largely the same as in the current constitution which came into force in 1868.

In World War I, Germany occupied Luxembourg, disregarding its status of neutrality. German occupation during World War II devastated large parts of the country. The population and the Jewish community in particular suffered immensely under the Nazi regime. Out of the 3,900 Jews residing in the Grand Duchy before the war, 1,300 perished during the murderous German terror. Only two of the six original Jewish congregations remained at the end of the war.

New agreements with several religious communities were concluded in the years 1982, 1998, and 2003/2004. Far-reaching changes in State-religion relationships have been introduced, however, by the Convention between the State of the Grand Duchy of Luxembourg and the religious communities established in Luxembourg, which was concluded in 2015.
III. Legal Sources

Article 19 of the Luxembourg Constitution, dating from 1868, guarantees freedom of worship and public practice of religion, and freedom to manifest religious beliefs. The freedom of religions, that of their public exercise, as well as the freedom to manifest religious opinions, are guaranteed, save for the repression of crimes committed on the occasion of the practice of these freedoms. Furthermore, as is stated by Art. 20 of the Constitution, no one may be forced to take part in any manner whatsoever in the acts and ceremonies of a religion or to observe its days of rest.

In Luxembourg, it is considered that religious communities have a public role. In this context, and as stated in Article 22 of the Constitution, the spheres that require cooperation between Church and State are governed by conventions: The intervention of the State in the nomination and the installation of the leaders of religions, the mode of nomination and dismissal of other ministers of religions, the faculty of the former or the latter corresponding to their superiors and of the publication of their acts, as well as the relation between the Church and the State, are subject to conventions submitted to the Chamber of Deputies for the provisions which necessitate its intervention.

The Constitution also provides, in its Article 106: The salaries and pensions of the ministers of the religions are a charge to the State and regulated by the law.

There is no general religious freedom law in Luxembourg. Important legal sources are, beyond the Constitution and various laws governing specific fields of religious activities, the treaties between the State and individual religious communities. The most important one of those is the 2015 Convention between the State of the Grand Duchy of Luxembourg and the religious communities established in Luxembourg. Signatories to this agreement are the State of Luxembourg and the six defined religious communities. Special individual provisions with each of these religious communities are attached to this convention. It has been concluded for a peri-

od of 20 years and will then continue to apply tacitly for another twenty years unless it is renegotiated by the signatory parties.


IV. *Basic Categories of the System*

Religious communities in Luxembourg enjoy a far-reaching religious freedom. The system of State-religion relationships is based on the constitutional guarantee of human rights. It is also characterised by an ample system of State-religion treaties. The Napoleonic concordat of 1801 still provides a basis for the status of the Roman Catholic Church while it has been developed by a number of subsequent conventions. Whether or not the 1801 concordat is still in force, and to what extent, is a matter of ongoing debate. In any case, the concordat has been intensively developed and superimposed by subsequent legal developments. Treaties have also been concluded with a number of other religious communities, including the Muslim community in Luxembourg.

V. *The Legal Status of Religious Communities*

There are six religious communities in Luxembourg which have a special status under treaty law. These are the Catholic Church of Luxembourg, the Jewish Community of Luxembourg, the Protestant Church of Luxembourg, the Muslim Community of Luxembourg, the Anglican Church of Luxembourg, and the Orthodox Church of Luxembourg. Some of these consist of several individual and separate churches or communities. The defined six religious communities enjoy their special status as contracting parties of the State.

They have to have their legal seat in Luxembourg. Each one of them may form a foundation of public utility to be authorised by the Ministry of Justice.

Pursuant to Article 1 of the Law of 13 May 1981, the Catholic bishopric of Luxembourg constitutes a legal person of public law. Likewise, some other religious communities are legal persons of public law, such as the consistory of the Reformed Protestant Church pursuant to Article 2 of the Law of 23 November 1982; however, the 2015 Convention abrogated the
Convention of 15 June 1982 which transferred public legal personality to the Reformed Protestant Church of Luxembourg.

The 2015 Convention between the State of the Grand Duchy of Luxembourg and the religious communities established in Luxembourg makes provisions for representative bodies of the religious communities under the convention. It recognises the Archbishop of Luxembourg exercising the leadership and jurisdiction of the Catholic religion in conformity with the canonical rules of the Catholic Church. As to the Jewish religion, the Convention provides that the Jewish Consistory represents the Jewish communities in Luxembourg. It is a person of private law. It functions according to the rules established by the Jewish religion in its statute, which is communicated to the Ministry of Cults for information. Likewise, the representative body for the Protestant communities is the consistory. It has civil law personality. It may represent the communities in court if its assembly has authorised it to do so, in each individual case by a majority of two thirds. The Orthodox Church of Luxembourg comprises the orthodox communities of the Greek, Romanian, Serbian, and Russian Orthodox Churches; the Orthodox Church of Luxembourg has civil law personality. It is judicially and extra-judicially represented by the Archbishop-Metropolitan of Belgium, Exarch of the Netherlands and Luxembourg, under the Ecumenical Patriarchate of Constantinople. The Assembly of the Muslim Community of the Grand Duchy of Luxembourg, called the Shoura, represents the Muslim communities in the Grand Duchy. It functions according to the rules established in its statute, which is communicated to the Ministry of Cults for information. The Shoura has civil law personality. It may represent the communities in court if its assembly has authorised it to do so, in each individual case by a majority of two thirds. The Anglican Church possesses civil law personality; it is represented judicially and extra-judicially by the Bishop of the Diocese in Europe, his or her Vicar-General or a delegate specially mandate by one of them.

Religious communities other than those established under the Convention are also free to operate. They may be created freely as private law associations.

VI. The Meaning of Religious Community and the Right of Self Determination

The Constitution of Luxembourg guarantees religious self determination in its Article 19 underlining the freedom of religions and that of their public exercise, save for the repression of crimes committed on the occasion of the practice of these freedoms.
The Convention between the State of the Grand Duchy of Luxembourg and the religious communities established in Luxembourg reiterates the guarantee of religious self determination in its Article 2 by providing for the free exercise of religion within the boundaries of constitutional law and the respect of the public order, human rights and equal treatment.

The religious communities established under the Convention may also decide freely as to territorial and personnel issues concerning their organisation. However, before appointing a new head of the community, the community has to submit its decision for approval by the State government. They also have to have their seat in the country.

The signatory religious communities of the Convention have agreed to establish a council of Convention religious communities, the Council of Religious Communities Established in Luxembourg, which acts as interlocutor for matters of common interest as defined in the Convention.

VII. Churches and Culture

In public schools, a course “Education in Values”, in practice called “Life and Society”, has been introduced. It replaces the former system of confessional religious instruction, in which the pupils were able to choose between the confessional religious instruction and a course of general moral instruction. The new course is obligatory and aims at teaching about the great questions of humanity, philosophy and ethics as well as the great cultural and religious traditions. The content of the courses is defined by a national commission and approved by the Ministry of National Education. Procedural rules of the national commission must guarantee close participation of civil society in defining the contents. The Council of Religious Communities Established in Luxembourg is to be consulted on a regular basis on religious and philosophical contents of the course.

The teachers of the former confessional religious instruction are offered special training in order to teach the new courses of education in values and be employed in the public school system.

The Grand Séminaire du Luxembourg – Centre Jean XXIII – has been reorganised and transformed into a more interdisciplinary institution of higher education. As Grand Séminaire it still prepares future Catholic priests, offers courses for lay pastoral staff, and is open to other interested

persons. Together with a number of other institutions it has created the Luxembourg School of Religion and Society as an institution of higher education and research, lifelong learning, and adult education in the archdiocese of Luxembourg. The Luxembourg School of Religion and Society cooperates with other religious communities. The State subsidises the Centre Jean XXIII with a sum of 600,000 Euros per year.

The Archdiocese of Luxembourg is the majority owner of the "Luxemburger Wort", the daily newspaper with the largest circulation in Luxembourg.

VIII. Labour Law within the Churches

Labour relations of the staff of religious communities are governed by private law. This also applies to the staff of the Convention religious communities which have been employed after the entering into force of the Convention. Clergy employed before that date with the status of public officials will remain to so; they are to be encouraged by their respective religious community to retire at the age of 65.

IX. Financing of Churches

Instead of the previous contributions, the State of Luxembourg pays certain amounts of money to the religious communities with which a treaty exists. The amount varies according to the importance of the religious community. For the Roman Catholic Church it amounts to 6,750,000 Euros per year, while the previous yearly payment was as high as 23,720,000 Euros; the Jewish community receives 315,000 Euros, the Protestant church 450,000 Euros; the Orthodox church 285,000 Euros, the Anglican church 125,000 Euros, and the Muslim Shoura 450,000 Euros each year.

The contribution each year is linked to the development of salaries. The religious communities are examined by an independent auditor, whose report is submitted to the State authorities.

The payment can be stopped if the religious community does not respect the basic principles enumerated in Article 2 of the Convention between the State of the Grand Duchy of Luxembourg and the religious communities established in Luxembourg, such as the rights and freedoms laid out in the constitution, respect for public order, human rights and equal treatment.
The State continues to pay the salaries and pensions of the church officials who have been employed since before the entering in force of the new system. Church staff recruited after that date are employed under the regime of civil law and paid by the respective religious community.

In 2018, the 'church factories' were abolished and the new system of financing religious communities was introduced. These church factories, dating back to 1809, had been in charge of the collection and administration of the funds and revenues necessary for the construction and maintenance of the buildings and goods of the parish. Budget deficits had to be covered by the local community.

For the Roman Catholic Church, a church fund has been created by State law as a public law entity which is the owner of and in charge of maintaining the church buildings and other objects necessary for the Catholic Church. The church fund is governed by an administrative council appointed by the archbishop of Luxembourg. It is tax exempt.

Church buildings and church objects previously owned by the Roman Catholic Church, the State or the local communities have been transferred to the church fund.

Separate special agreements apply to Notre Dame Cathedral in Luxembourg City and the Basilica in Echternach, both of which are considered to be part of the national heritage.

X. Religious Assistance in Public Institutions

Military chaplains provide pastoral care for military personnel and the police force. The legal status of the chaplains is governed by military law. Hospital chaplains have access to public hospitals.

XI. Matrimonial and Family Law

The legal principle of universal civil marriage applies in Luxembourg. Pursuant to Article 21 of the Constitution, civil marriage must always precede the nuptial benediction. Clergy performing religious marriage before civil marriage are punishable with a fine from 500 Euros up to 5,000 Euros, in cases of repeated commission with imprisonment from eight days up to three months, as is stipulated in Article 267 of the Criminal Code.
XII. Religion and Criminal Law

Pursuant to Article 268 of the Criminal Code, clergy owe a duty of restraint in exercising their office. Directly attacking the government or an act of the State authorities as well as causing public uprising or disobedience to the law can constitute a punishable crime.

XIII. Particular Questions of Civil Ecclesiastical Law

The reform of State-religion relationships in Luxembourg has been and continues to be a matter for intense public debate. The current government, in its official statements, underlines the assumption that religion has in recent years lost much of its impact in the population.

XIV. Bibliography
