

# Luxembourg

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The Grand Duchy of Luxembourg (*Grand-Duché de Luxembourg*) is a constitutional monarchy

under a parliamentary democratic regime.

## I. CONSTITUTIONAL SYSTEM

### 1. Nationality

Luxembourg nationality is governed by the Law of 22 Feb. 1968 (*Mémorial* 1968 A, 91). This law is based on the principle of *ius sanguinis*: the quality of Luxembourger by origin is transmitted by birth, either legitimate or illegitimate, if the latter is legally established.

The voluntary acquisition of Luxembourg nationality takes place by naturalisation or by option. Naturalisation, granted by the legislator (Const. art. 10), is subject to certain conditions including that of 15 years residence and a sufficient national assimilation. The option is reserved for various categories of foreigners who have special ties with the country, notably by reason of birth in the national territory, adoption or marriage. The option takes place by declaration, subject to the approval of the Minister of Justice.

Nationality is lost upon the acquisition of a foreign nationality. Finally, the law provides for the loss of Luxembourg nationality in certain cases of grave contraventions which are defined: this loss, however, cannot affect a Luxembourger by origin.

### 2. Territorial Division

The territorial structure is of little importance in a state as small as that of Luxembourg. The country is subdivided into cantons and communes, the former being regrouped into *circonscriptions* for electoral purposes, into *arrondissements* for judicial purposes, and into *districts* for local administration. Within these subdivisions only the communes, managed by the elected communal councils, represent autonomous units (Const. art. 107); the other subdivisions are only decentralised units of state power.

### 3. State Organs

The political regime of the Grand Duchy of Luxembourg is defined as being both that of a constitutional monarchy and a parliamentary democracy. This form of the state combines a double principle of legitimacy: a historical principle resting on tradition (Const. art. 3) and a principle of popular sovereignty laid down in Const. art. 32: "The sovereign power resides in the nation", and specified by art. 51 thus: "The Grand Duchy of Luxembourg is placed under a regime of parliamentary democracy".

a. The *general structure* of the State of Luxembourg follows the doctrine of the separation of powers in the sense that, under the aegis of the Crown, three main branches of power can be distinguished: the legislative, the executive and the judiciary. Some limited links have been established by the Constitution between the organs (the Grand Duke, the House of Deputies, the Government and the Council of the State) which exercise and share, each in a different way, the first two prerogatives; however, the judicial power lies with entirely independent bodies.

b. The *Crown of the Grand Duchy* is hereditary in the family of *Nassau*. The Grand Duke is a constitutional monarch, since according to Const. art. 32 he only has those powers which are formally attributed to him by the Constitution and the laws. His general function is to represent the state at home and abroad. For the rest, he is invested with two fundamental prerogatives: on the one hand he exercises the executive power through the instrumentality of the Government; on the other hand, he intervenes in the exercise of the legislative power both by the right of initiative

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and by the sanction and promulgation of the laws. In conformity with Const. art. 45, acts by the Grand Duke are controlled by means of the counter signature of a responsible minister.

c. According to Const. art. 50, the country is represented by the *House of Deputies*, which, under a regime of popular sovereignty, has claim to the most fundamental political legitimacy (art. 51). The Luxembourg parliament consists of a single house, composed of approximately 50 deputies (the number varies in proportion to the population), elected for mandates of five years on the basis of universal suffrage, by voting for lists according to the rules of proportional representation.

The House of Deputies votes the laws. It controls the state finance by voting the budget, taxes and loans; it supervises the auditing of the state accounts. The House also controls international treaties, which are effective only if approved by statute.

d. The *Government*, named by the Grand Duke (Const. art. 77), is responsible to the House of Deputies.

The Government is composed of a President, called the Minister of State and several members, each bearing the title of Minister or, sometimes, *Secrétaire d'Etat*. Each minister is in charge of one or more departments (or ministries). The government administration is rather decentralised, each minister enjoying wide powers in the department attributed to him; the President of the Government and the Cabinet, called the Government Council, act as co-ordinators.

e. In the structure of the State of Luxembourg the *Council of State* plays a relatively important role. Its 21 members are appointed by the Grand Duke upon nominations, in turn, by the House of Deputies, the Government and the Council of State itself. This Council intervenes both in the legislation, where its opinion is required for all bills, and in the administrative jurisdiction (Const. art. 76 par. 2, and Law of 8 Feb. 1961, *Mémorial* 1961 A, 239, modified by Law of 21 March 1966, *Mémorial* 1966 A, 336).

f. Finally, attention must be drawn to the fact that since the Law of 4 April 1924 (*Mémorial* 1924,

257), repeatedly amended, the structure of the Luxembourg State includes institutions representing the professions in the form of *Professional Chambers*. They are invested with a public law statute and elected by universal suffrage from members of the principal professions: agriculture, craftsmen, industry and commerce, employees, officials and workers. An *Economic and Social Council* (*Conseil économique et social*), representative of all the professional bodies, has been created by Law of 21 March 1966 (*Mémorial* 1966 A, 337). These representative institutions play a consultative role in both the political and legislative fields.

#### 4. The Judiciary

The Constitution provides for two kinds of jurisdiction: the ordinary courts and an administrative jurisdiction. Outside these two orders of jurisdiction, a body of special social jurisdictions has recently developed. Justice is administered by independent magistrates who are named for life by the Grand Duke and are irremovable. All jurisdictions sit in benches with the exception of the sole justices of the peace and the judges for juveniles.

a. In the Grand Duchy of Luxembourg there is *no constitutional jurisdiction*. However, it should be understood that any court is competent to decide a point of constitutional law, if such a question arises in litigation before it and with which it is competent to deal. However, by virtue of an enduring tradition, the Luxembourg courts refrain from controlling the conformity of the ordinary laws with the Constitution if the constitutionality is in dispute. Thus the legislative has unrestricted sovereignty.

b. The *ordinary courts*, in accordance with the Constitution and the laws<sup>1</sup>, are invested with a general competence for all civil, commercial and criminal cases. The hierarchy is composed of: (1) the justices of the peace (called the police court (*tribunal de police*) in criminal matters); (2) the district courts (*tribunaux d'arrondissement*) (called the civil court, commercial court or misdemeanor court (*tribunal correctionnel*) according to the subject matter of the case); (3) the Superior Court of Justice.

The first degree of jurisdiction is shared by the

<sup>1</sup> Legislation: Const. art. 49 and 84-95; Law of 18 Feb. 1885 on the Organisation of the Judiciary (*Mémorial* 1885, 317), in which numerous points of

detail are modified by later laws; Law of 18 Feb. 1885 on Appeals in Cassation (*Mémorial* 1885, 361).

district court, which is invested with a general competence, and the justices of the peace, who are competent to deal with cases of minor importance or local interest. Appeal lies to the Superior Court of Justice; this is the same court that also sits as court of cassation by means of a rotation of the two chambers of which it is composed.

Criminal jurisdiction is exercised by the Court of Assizes, a joint body of the Superior Court of Justice and the district court, which tries in a single instance the offences classified as crimes. The jury is unknown in Luxembourg.

c. *Administrative jurisdiction* belongs to the Litigation Committee (*Comité du contentieux*), a special section provided for by the Constitution within the Council of State (*supra* 3 e). This Committee, which decides in the form of executory judgments

has a general competence in administrative litigation.

d. The laws relating to labour and social security have organised *social courts*; these comprise, under the presidency of one or more independent magistrates, an equal number of assessors representing employers and workers.<sup>2</sup>

e. The *Public Prosecution* (*Ministère public*) is composed of a hierarchy of magistrates: *les Parquets*, attached to the district courts, and *le Parquet général*, attached to the Superior Court of Justice. The task of the Public Prosecution is twofold: on the one hand to discover criminal infractions and pursue them before the criminal courts; and on the other hand to render opinions in civil cases concerning public policy and notably in cassation cases.

## II. SOURCES OF LAW

### 1. Constitution

The fundamental law of the Grand Duchy of Luxembourg is the Constitution, that entered into force in its present form on 17 Oct. 1868 (*Mémorial* 1868, 220) and has since been modified three times: in 1919, by the affirmation of the principle of popular sovereignty and the introduction of universal suffrage (Constitutional Law of 15 May 1919, *Mémorial* 1919, 529); in 1948 by defining the "economic and social rights" (Constitutional Laws of 28 April, 6, 15 and 21 May 1948, *Mémorial* 1948, 649, 685, 717, and 797); in 1956 by the introduction of a disposition permitting the devolution of inherent prerogatives of the national sovereignty to international institutions (Constitutional Laws of 27 July and 25 Oct. 1956, *Mémorial* 1956, 927 and 1151).

The Constitution enjoys a special guarantee of permanence since it can be revised only by a declaration which entails the dissolution of the House, it only being possible for the subsequent legislature to adopt the modifications by means of a vote with a specified majority (art. 114).

### 2. Statutes and Regulations

The essential part of the legislation is constituted by the statutes, voted by the House and promulgated by the Grand Duke. The statute is subordinate to the Constitution; however, as has been said above (*supra* I 4a), in the absence of a judicial control of the constitutionality of the laws, the legislature in fact has unrestricted powers.

The Constitution provides that the Grand Duke shall make the necessary regulations to ensure the enforcement of the laws while being unable to derogate therefrom (art. 36). The courts control the conformity of the regulations with the legal dispositions (art. 95).

Legislative practice in Luxembourg liberally resorts to the delegation of legislative powers. This can be found in the legal dispositions authorizing the Grand Duke to regulate certain matters. Particularly noteworthy are the so-called laws "with full powers" in economic affairs, renewed until recently from year to year. The regulations, resulting from such a delegation, can derogate from the existing laws, but they remain limited by

<sup>2</sup> Legislation: (1) Labour Courts (*Conseils de prud'hommes*): Grand Duchal Regulation (*arrêté*) of 31 Dec. 1938, *Mémorial* 1938, 1415; (2) Arbitration Tribunals for employees: Coordinated Law of 20 April 1962, *Mémorial* 1962 A, 245; (3) National Conciliation Office (*Office national de conciliation*) for collective

labour disputes: Grand Duchal Regulation (*arrêté*) of 6 Oct. 1945, *Mémorial* 1945, 731, modified by Law of 12 June 1965, *Mémorial* 1965 A, 623; (4) Arbitral Council and Superior Council of social insurance: Social Insurance Code art. 293, revised by Law of 24 April 1954, *Mémorial* 1954, 327.

the enabling law from which they derive.

Thus in practical effect the Luxembourg legislative hierarchy is ranged in four degrees: the Constitution, the laws properly so called, the regulations based on legislative delegation, and the ordinary regulations of execution.

Several of the more comprehensive legislative acts have taken the form of *codes*. Some of these codes are already long established: the Civil Code (1803-1804); the Code of Civil Procedure (1806); the Commercial Code (1807); the Criminal Investigation Code (1808); and the Penal Code (1879). There are more recent codifications: the Social Insurance Code (1925) and the Highway Code (1955).

### 3. Customary Law and Court Decisions

Custom is recognised as a source of law, but in the presence of the mass of legislative and regulatory law custom plays an entirely marginal role.

As for the authority of judicial decisions, Luxembourg firmly adheres to the conceptions peculiar to the Civil Law countries, in the sense that a judicial decision only has a legal effect for the particular case in which it was made. The authority of precedents, as far as future decisions are concerned, is purely intellectual and not juridical. This being said, however, the real influence of judicial precedents must not be under-estimated.

Finally, for those general conceptions which shape the law, Luxembourg intimately adheres to the legal community of countries influenced by French law.

### 4. Collections of Legislation and Court Decisions

The official journal bears the title of *Mémorial*. It is edited by the Central Legislative Office (*Service central de législation*), under the authority of the President of the Government. Since 1961 the *Mémorial* appears in three parts: A - Legislative Collection; B - Administrative and Economic Collection; C - Special Collection on Companies.

The preparatory documents of legislation, debates and parliamentary documents have been published since the middle of the nineteenth century in *Compte-Rendu de la Chambre des Députés*.

Since 1830 there has existed a legislative collection, limited to legislation of general interest, under the name of *Pasimie Luxembourgeoise*. In this work the texts are reproduced chronologically and annotated by references to the preparatory documents of legislation.

Judicial decisions of general interest, from both the ordinary courts and the administrative jurisdiction, are published periodically in a collection entitled *Pasicrisie Luxembourgeoise*.

## III. HISTORICAL EVOLUTION

### 1. The Close Affinity With French Law; Other Influences

Luxembourg law received its fundamental orientation at the time when the territory of the Grand Duchy, following its occupation by the French revolutionary forces, was part of the Empire of *Napoléon I*. The French codifications and notably the *Code Napoléon* were maintained in force after the dissolution of the Empire. Since that time, throughout the political developments which led to the Constitution of the Grand Duchy as a fully independent state, Luxembourg has continued to belong to the French law family.

In its evolution, the Luxembourg legislation was inspired generally from legislative precedents in France; however, it should be recognised that very often the Luxembourg legislators sought their models on the Belgian side instead, it being remembered that Belgium in turn has remained attached to the influence of French law. One noti-

ces particularly in this connection, that the national Constitution of Luxembourg is directly inspired from the model of the Belgian Constitution of 1831; the same reflections can be seen in the Penal Code (Law of 16 June 1879, *Mémorial* 1879, 589) and the legislation on Commercial Companies (Law of 10 Aug. 1915, *Mémorial* 1915, 925, repeatedly modified and since completed).

Thus, a close link is maintained between the law of Luxembourg on the one hand and that of France and Belgium on the other, to the extent that, apart from the divergencies that can be put in evidence in the details of positive legislation, there remains the consciousness of a common body of fundamental legal conceptions, legal writing and case law. Therefore the interpretation of legislation in Luxembourg can generally be approached by the medium of French and Belgian legal publications.

One notices, however, that German legislative precedents have exercised an influence in two



specific fields: that of social security and that of revenue. The legislation relating to social security in Luxembourg has been developed since the beginning of the twentieth century following the pattern of the German social laws.

As regards the fiscal legislations, introduced under the German occupation in the Second World War, it has remained in force, notably in the field of direct taxation; a recent Law of 4 Dec. 1967 (Mémorial 1967 A, 1128), relating to income tax, has remained in line with the German model.

## 2. The Influence of Economic Unions

In view of the similarities stated, it would seem superfluous to devote more profound explications to the diverse areas of the law. One sees, however, a peculiarity resulting from the fact that through-

out its existence the Grand Duchy of Luxembourg has belonged to systems of customs unions and economic unions: from 1841 to 1918, it had been a part of the German system of customs and commerce (*Zollverein*); from 1921 it has been linked by an economic union to Belgium; from 1944/1948 on it has belonged to the Benelux economic union; finally, from 1958 to the European Economic Community.

Luxembourg has aligned its economic and financial system with the unions mentioned above. At present this fact has favoured a narrow adaptation of the economic and commercial legislation of Luxembourg to that of Belgium, it being remembered that the union, instituted by the Belgo-Luxembourg Convention of 1921, is still maintained in the framework of Benelux and the European Economic Community.

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