



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
13 November 2015

Original: English

Committee against Torture

Fifty-sixth session

Summary record of the 1359th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 10 November 2015, at 3 p.m.

Chair: Mr. Grossman

Contents

Consideration of reports submitted by States parties under article 19 of the Convention
(continued)

Fourth periodic report of Liechtenstein (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of the present document* to the English Translation Section, room E.6040, Palais des Nations, Geneva (trad_sec_eng@unog.ch).

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.



The meeting was called to order at 3.10 p.m.

Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Fourth periodic report of Liechtenstein (continued) (CAT/C/LIE/4; CAT/C/LIE/Q/4; HRI/CORE/LIE/2012)

1. *At the invitation of the Chair, the delegation of Liechtenstein took places at the Committee table.*

2. **The Chair** invited the members of the delegation of Liechtenstein to reply to the questions put by Committee members at the 1357th meeting.

3. **Mr. Frick** (Liechtenstein), citing the significant legislative improvements made by his country since the submission of the third periodic report, said his Government believed that Liechtenstein could maintain its high standards with regard to the prevention of torture and other forms of ill-treatment. A recent human rights dialogue with civil society and a meeting with NGOs planned during United Nations Deputy Secretary-General Jan Eliasson's upcoming visit to Liechtenstein were evidence of his country's commitment to upholding human rights.

4. Turning to questions put at the 1357th meeting, he said that there was a distinction between ordinary jurisdiction and jurisdiction under public law. Ordinary jurisdiction covered the administration of justice in civil and criminal matters, with the three instances being the Court of Justice, the Court of Appeal and the Supreme Court. Jurisdiction under public law was exercised by the Administrative Court, which was also the appellate body for decisions and decrees of the Government and entities acting on its behalf. The Constitutional Court protected constitutionally guaranteed rights, including individual rights enshrined in international conventions, and reviewed the constitutionality of laws and the conformity of ordinances with the Constitution, laws and international treaties. The Constitutional Court was generally guided by the case law of the European Court of Human Rights, article 3 of the European Convention on Human Rights and decisions of the constitutional courts of neighbouring countries.

5. When it was necessary to determine whether a person accused of a crime was criminally liable, a report was commissioned from a psychiatric expert, and at the final hearing the author of the report was asked to testify.

6. Liechtenstein had since 2008 contributed 1.4 million Swiss francs towards the work of the Association for the Prevention of Torture in Latin America.

7. Looking for signs of human trafficking was an important aspect of the regular inspections of nightclubs conducted by the National Police and the Immigration and Passport Office. The case of human trafficking cited in paragraph 55 of the report was still being investigated. Because of the case's international nature, legal assistance was needed. In 2015 the National Police had reported another case of human trafficking, which had been closed owing to lack of evidence. As of 2016 non-nationals would no longer be allowed to enter Liechtenstein to work as nightclub dancers.

8. The Liechtenstein Women's Home was a shelter for domestic violence victims and their children. It was run by an NGO, with the Government financing some 70 per cent of its expenditures.

9. A second opinion by an independent expert was required by law when a decision regarding compulsory hospitalization had to be made.

10. The statement in a 2013 report by the Government of the United States of America on Liechtenstein that sentences for spousal rape could be reduced if the

victim decided to remain with the abusive spouse was not correct. Spousal rape was an offence requiring public prosecution and was not treated differently from other types of rape.

11. **Mr. Blank** (Liechtenstein) said that 9 out of 186 asylum applications filed by women between 2010 and 2015 had been on gender-specific grounds and/or because of violence against women. While the Asylum Ordinance did not distinguish between women and men, nearly all victims in cases that included rape or human trafficking as grounds for asylum had been women.

12. In response to a request by Ms. Pradhan-Malla for clarification of paragraph 25 of the report, he said that residence permits granted to married couples were generally revoked if the couple separated less than five years after the granting of the permit. Exceptions included situations where there was a living and intact relationship with any children and the well-being of minor children would be endangered by a revocation, and those where one member of the couple was a victim of domestic violence and the continuation of the relationship had become unreasonable. Each case was considered individually, and the well-being of children was treated as a key factor.

13. Between 2010 and 2015, a total of 26 persons had been granted asylum in Liechtenstein. Three persons had been granted a residence permit since the entry into force of the Asylum Act in 2012, and 23 Syrian refugees had been granted permanent residence since August 2014. Out of the 56 appeals of asylum decisions lodged since 2010, 3 had been successful and a few were pending. Since 2010 a total of 104 persons had been returned to their country of origin.

14. When nightclub dancers who had most recently worked in Switzerland applied for permission to do such work in Liechtenstein, no special investigation into possible human trafficking was conducted. However, the application form included questions on that subject, and newly arrived dancers had to attend a mandatory briefing that included information about human trafficking, rights and avenues of recourse. Dancers who, during an initial period specified by the law, decided to cooperate with the authorities in criminal proceedings regarding human trafficking were duly looked after, under guidelines that had been in place since 2007.

15. Asylum seekers whose applications were pending were not generally placed in administrative detention. Persons whose applications had been rejected were put in such detention — usually for only one night — if there was a risk of their absconding. Persons in administrative detention had access to legal and medical aid. While it was difficult to ascertain why those asylum seekers who had absconded had done so, absconding most often happened in the context of the application of the “Dublin procedure”. The authorities were not aware of any cases of absconding that were related to human trafficking or other criminal activities, except where those issues had been detected before the person’s departure from Liechtenstein. If an asylum seeker left the country for more than a month and the place of residence during that period was unknown, the application was dismissed.

16. **Mr. Langenbahn** (Liechtenstein), replying to questions about the national preventive mechanism, said that, contrary to what had been stated at the 1357th meeting, its members were not elected. In fact they were selected by the Government for a mandate of four years. Finding candidates could be difficult, as very few people in Liechtenstein fulfilled all the requirements. The mechanism operated independently of the Government and was funded under a special legislative provision, with the members being compensated for the actual number of meetings attended and reimbursed for any expenditures associated with the mechanism’s work. There was no formal limit on spending on the mechanism’s work.

17. Regarding complaint procedures available to prisoners sentenced in Liechtenstein and serving time in Austrian prisons, he said that such prisoners had the same avenues of recourse as any other prisoners, up to and including the European Court of Human Rights. The national preventive mechanisms of Liechtenstein and Austria focused on overall prison conditions in their respective countries, and not on the cases of individual prisoners. That notwithstanding, his country's prison administration was kept abreast of issues affecting prisoners sentenced in Liechtenstein and serving time in Austria, and it held monthly meetings with the authorities of an Austrian prison just across the border from Liechtenstein, which served as the Austrian prison system's focal point for such issues. His own country's authorities could at any time request to have a prisoner transferred back to Liechtenstein.

18. Replying to questions about conditions at the National Prison, he said that, because of the bilateral treaty with Austria, under which sentences of more than 2 years were served in that country, overcrowding was not an issue. The space shortage mentioned by the national preventive mechanism in its annual report was related to inadequate infrastructure for ensuring work and leisure opportunities.

19. It was not possible to determine why his country's population had, in a 2004 referendum, rejected a proposal to expand the National Prison. The Constitution allowed the people to reject, by a simple majority vote in a referendum, parliamentary decisions regarding construction projects whose cost exceeded a certain amount. The outcomes of such referendums were binding. His Government had nevertheless upgraded the interrogation rooms, as previously recommended by the Committee, and was undertaking other improvements at the National Prison.

20. A decision about whether to renegotiate the treaty with Austria was expected shortly. In the meantime, prisoners held in Austria whose life was centred in Liechtenstein were incarcerated in Innsbruck, two hours' drive from Liechtenstein, unless they were serving special sentences (for example, for sexual offences) or required special treatment (for example, for drug addiction), in which case they were assigned to other Austrian prisons.

21. Juvenile prisoners were never held with adults and were kept in the National Prison's female sector, which was usually empty.

22. The two juvenile prisoners mentioned by the Committee had been found guilty of bombing a shop and a Turkish family. No children had been detained since then. In fact, his country's courts were very reluctant to imprison children.

23. Given the prison's very small size, it was not feasible to have a medical department or a doctor on the payroll. The private doctors who serviced the prison reported any signs of ill-treatment or improper care to the health-care authorities rather than to the police or prison authorities. His Government had determined that the cost of hiring a nurse to distribute medications to prisoners would be disproportionate to the added value created. Decisions about what medications to administer to prisoners were taken solely by doctors; the prison staff simply followed the doctors' instructions in that regard. Moreover, prison staff were trained in preventing the clandestine collection or trade of medications among prisoners, while nurses were not. There had never been a case in which a prisoner had been administered medications other than those prescribed by a doctor.

24. While his Government was aware that under international standards the Ministry of Justice should be solely responsible for the administration of prisons, given the special characteristics of the detention centre in Liechtenstein, the Government believed that the current system whereby the police and the Ministry of Justice held joint responsibility was the most appropriate. The future strategy for dealing with the

prison population was currently being developed, and the issue of responsibility would be reassessed as part of that process.

25. While national law did not classify torture as a separate offence, it did criminalize the cruel and negligent treatment of prisoners, which included humiliating treatment, and it set out punishments of 2 to 10 years' imprisonment for that offence. The national preventive mechanism had stressed that inmates in the prison were treated with great respect.

26. In response to a previous recommendation made by the Committee, the police no longer made dangerous criminals wear black goggles during their arrest. Instead, the police officers themselves wore masks during those operations. Pursuant to the most recent amendment to the Code of Criminal Procedure, it was the prosecutor rather than the investigating judge who led police investigations. Once the accused had been found guilty and sentenced, the prosecutor no longer played a role in the criminal procedure.

27. The police took immediate action to respond to cases of domestic violence. All police officers could exercise the same powers in such first-response actions, after which the case would be assigned to two specialized officers, who also served as the point of contact for the NGO that operated the shelter for women.

28. The system of criminal procedure was based on written documentation, which must be attached to the case file. Thus, the records kept of interrogations were normally in written form rather than in the form of audio or visual recordings, so that the person being questioned could read through the statement and sign it at the end of the interrogation. Recordings were used only in specific cases as stipulated by law, for example if the person being questioned was uncooperative and it was thought that evidence might be needed to protect the officers involved in the event of any allegations against them. The individuals being questioned always had the right to have a lawyer present during the questioning, and the questioning would be recorded if they requested it. His Government saw no reason to change current practice in that regard. Interrogations conducted inside the prison were recorded by the prison staff, but only for surveillance purposes.

29. National law provided for the possibility of implementing a witness protection programme, but in practice that had never been done, as there had not been any need for such measures. Before being interrogated, arrested persons had the right to request the presence of a lawyer or a "person of trust", who could be a family member. Once they had been transferred to the prison, they could inform a relative of their situation.

30. The creation of an interrogation room inside the prison was a major improvement, as it meant that the person being questioned did not have to be transferred to a separate location. Pursuant to the revised Code of Criminal Procedure, persons who were interrogated must be informed in writing of the charges against them and of their rights. They also had the right to consult a lawyer before the interrogation or to have a lawyer present during the interrogation.

31. **Mr. Bruni** (Country Rapporteur) asked whether the working group mentioned at the previous meeting was mandated to draft an amendment to the Criminal Code that would include a definition of torture, or whether its task was limited to exploring the feasibility of such an amendment. He requested further information about which types of asylum applications were examined directly by the Liechtenstein authorities.

32. While he understood the delegation's explanation of the practical reasons for maintaining a system of joint responsibility with respect to prison management, it was important to clearly separate the responsibilities of the two ministries, so that there would be no room for confusion about police interference in the administration of

penalties. He urged the State party to consider recording all interrogations, as those recordings provided a basic safeguard against mistreatment in addition to their use as a practical tool.

33. **Mr. Domah** (Country Rapporteur) said that Liechtenstein was in many ways a very good model for other countries to follow, as it provided an example of a society that could live in peace and harmony very successfully without any cases of torture. However, it was difficult for the Committee to hold the State party up as an example when it was not fulfilling all its obligations under the Convention, notably the obligation to establish a definition of torture in national law. He saw that situation as a missed opportunity for collaboration between the State party and the Committee. While it was admirable that a society without torture had been created in the country, it was important to have a system in place to ensure that that situation continued into the future.

34. **Mr. Modvig** said that, while the recommendations he had mentioned previously regarding medical care in prison had originally been made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Committee had also endorsed those recommendations, which included the recommendation to routinely examine all newly arrived prisoners. He therefore wished to know whether that was standard procedure in the State party.

35. In addition to distributing medications, nurses could also serve as liaisons between prisoners and doctors. In their absence, that role was performed by prison guards, which was less than ideal. The administration of medication by non-medical staff was not in line with the general standards on the subject, as it raised issues of medical confidentiality. Furthermore, prison staff were not trained in maintaining stocks of needed medications. The absence of any reported cases of the wrong medications being administered could simply indicate a lack of sufficient checks and balances to identify such cases. He recommended that a review of the prison medical services should be conducted, perhaps by a doctor from the State health-care services.

36. **Mr. Zhang** requested further information about the training provided to police officers in relation to the Istanbul Protocol and the absolute prohibition of torture.

37. **Ms. Belmir**, expressing concern that prisoners who were transferred to neighbouring countries to serve their sentences had to negotiate a different criminal justice system and might therefore face additional difficulties, asked whether a solution could not be found to ensure that prisoners were incarcerated in their country of origin. Although the State party claimed that there were no cases of torture in Liechtenstein, she objected to the humiliating practice of hooding arrested persons, which was reminiscent of the treatment of prisoners in Guantánamo.

38. **The Chair** welcomed the fact that rape and human trafficking were specific grounds for asylum, in accordance with article 3 of the Convention. He would be interested to know about any decisions that had actually been taken on the basis of the provisions of the Liechtenstein Asylum Act concerning gender-specific grounds for asylum. He wondered whether the Convention was directly applicable in Liechtenstein in the absence of a definition of the crime of torture. He would welcome clarification on the State party's understanding of administrative detention and whether it was ordered by a judge or by the executive power. Noting that there was the possibility of prisoners serving sentences in Austria being returned to Liechtenstein if necessary, he asked whether such transfers were ever made in practice and, if so, for what reasons.

The meeting was suspended at 4.40 p.m. and resumed at 4.50 p.m.

39. **Mr. Frick** (Liechtenstein) said that, under the State party's monist system, the Convention had become an integral part of national law upon ratification, which meant

that it enjoyed substantive constitutional status and that provisions of a sufficiently specific nature were self-executing. The working group mentioned by Mr. Bruni was responsible for examining whether the addition of a new provision on torture to the Criminal Code made sense. As Liechtenstein and Austria shared a common legal tradition, there were parallels between their criminal codes; therefore, if the working group came to the conclusion that a new provision should be introduced, it was likely that Liechtenstein would simply copy the provision already adopted by Austria. If Liechtenstein used the same provision as Austria that meant that it would also be able to rely on the jurisprudence of the Austrian courts, which was standard practice. Further to Mr. Domah's remarks, it was a constant challenge to maintain an excellent human rights record, but the Committee's concerns would motivate Liechtenstein to work even harder to do so. The delegation considered Ms. Belmir's comparison with the situation in Guantánamo inappropriate.

40. **Mr. Blank** (Liechtenstein) said that there was no categorization of asylum applications, and that all persons had the right to apply for international protection, regardless of their nationality. The first step for the Liechtenstein asylum authorities was to check whether the individual had already applied for asylum in a member State of the European Union or the Dublin System, in which case that State would be responsible for examining the asylum claim. If that was not the case, the Liechtenstein authorities would conduct the regular asylum procedure. Under the Foreigners Act, administrative detention could be ordered by the Migration and Passport Office, but if the duration of the detention exceeded 96 hours it had to be reviewed by a custodial judge of the Court of Justice.

41. **Mr. Langenbahn** (Liechtenstein), referring to training for the police on human rights in general and torture and ill-treatment in particular, said that the State party's police officers were trained at a police academy in eastern Switzerland. The curriculum included a mandatory general human rights module, made up of 26 45-minute lessons, and a module on human trafficking and torture and ill-treatment, made up of 8 45-minute lessons. Human rights issues were also an important part of the training provided to the prison wardens of Liechtenstein at the Swiss Prison Staff Training Institute in Fribourg.

42. The Government was aware of problems in relation to the shared responsibility for the prison in Vaduz between the Ministry of Justice and the Ministry for Home Affairs and took very seriously the recommendations to consider a separation of competence. The issue had been considered on numerous occasions at different levels, but a reasonable solution had not yet been found. The police had indicated its willingness to support any solution the Government decided to adopt. It was not that Liechtenstein was opposed to changing its system, but rather that it was difficult to develop economically feasible solutions due to the small size of the country. It would simply not be possible to develop a complete prison system on a professional level without relying on institutions in neighbouring countries. For example, various categories of prisoners, such as sex offenders or prisoners with drug addictions, required specialized facilities and treatment; given the extremely low number of such cases in Liechtenstein, it would not make sense to develop a system catering specifically to such categories of prisoners. Liechtenstein had thus concluded cooperation treaties with neighbouring countries to offer sensible solutions.

43. Responding to Ms. Belmir's concerns about prisoners serving their sentences in Austria, he stressed that the legal systems of Liechtenstein and Austria were almost identical, that the two countries shared the same language and that prisoners of Liechtenstein had the same rights in both countries. Sending prisoners to serve their sentences abroad was in their best interests and not intended as an additional punishment. Convicted prisoners were required by law to spend their time in prison

productively, by working or learning a new profession, which would not be possible in Liechtenstein given the size of the prison. Prisoners serving sentences in Austria were frequently transferred back to the prison in Liechtenstein as they approached the end of their sentences so that they could prepare for release. There had been no cases involving the return of a prisoner to Liechtenstein because of a complaint of ill-treatment in an Austrian prison, although the authorities would have no hesitation in taking such action if the situation arose.

44. The point concerning the videotaping of interrogations had been well understood. As the Criminal Code and Code of Criminal Procedure of Liechtenstein were modelled on the Austrian codes, Liechtenstein tended to adopt the same amendments as Austria in order to keep the systems as similar as possible. There was no reason why interrogations could not be recorded and it was likely that the practice would be introduced in the future, following an amendment to the necessary legal provisions. With regard to health care, prisoners did not systematically undergo a medical examination within 24 hours of their arrival at the prison; that standard was met in between 30 and 40 per cent of cases. As the doctor visited the prison at least once a week, that issue had not been considered a major priority until now. Guaranteeing that every prisoner had a medical examination within 24 hours would require the introduction of a totally different medical model for the prison. The State party's health authorities would, of course, discuss the matter, as well as the recommendation that a nurse should be present at the prison at all times.

45. No comparison could be drawn between the practice of hooding arrested persons and the treatment of prisoners in Guantánamo. The European Court of Human Rights had found the practice to be in compliance with human rights standards in the *Portmann v. Switzerland* case, and the rules governing hooding were in fact much more restrictive than that decision would allow. The practice was used only in very specific circumstances; in the past three years, only three persons — members of the Pink Panther armed gang — had been hooded. The purpose of the hoods was to ensure that suspects were not able to recognize the police officers involved in their arrest, thus ensuring the protection of the police and their families.

46. **The Chair** thanked the delegation for its contribution to the dialogue and its thorough answers, which the Committee would take into account in formulating its concluding observations.

47. **Mr. Frick** (Liechtenstein) thanked the Committee for the constructive dialogue, which had once again given the State party a welcome opportunity to review its implementation of the Convention. Liechtenstein would continue to attach great importance to the fight against torture and ill-treatment and would pursue its strategy of zero tolerance of torture.

The meeting rose at 5.15 p.m.