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COMMITTEE AGAINST TORTURE

Twenty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 376th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 4 May 1999, at 10 a.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.376/Add.1.

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5)(continued)

Second periodic report of Luxembourg (CAT/C/17/Add.20; HRI/CORE/1/Add.10/Rev.1)

1. At the invitation of the Chairman, the delegation of Luxembourg (Mrs. Pranchère-Tomassini, Mrs. Clémang and Mr. Nicolay) took places at the Committee table.

2. Mrs. PRANCHÈRE-TOMASSINI (Luxembourg) conveyed to the Committee her Government's apologies for the considerable delay in submitting its report. It had been due in part to structural reasons and the excessive amount of work facing the Ministry of Justice. Luxembourg was fully aware of its obligations and had striven to reply to all the questions posed by the Committee when considering the initial report, as well as to report on all the changes that had since taken place in Luxembourg.

3. The country's institutions had been thoroughly restructured. The April 1999 constitutional review had resulted in the formal abolition of the death penalty, since articles 18 and 118 of the Constitution had been brought into line with the obligations arising from Protocol No. 6 to the European Convention for the Protection of Human Rights. Luxembourg had established a Constitutional Court on 27 July 1997 and thereby created a judicial organ with competence to rule on the constitutionality of laws. The Parliament had just adopted a bill designed to facilitate cooperation with the International Criminal Tribunal. A bill intended to bring domestic law into line with the provisions of the Convention against Torture, which had been approved by the Government and forwarded to the Conseil d'Etat for its opinion in September 1998, had been tabled in Parliament in February 1999. Meanwhile, the bill on international mutual judicial assistance in criminal matters referred to in the report was currently being examined by the Parliament's Legal Committee.

4. The present trend was to impose custodial sentences only in cases where such punishment constituted the last resort in securing the integration of the person concerned in society. The 1994 Sentencing Regimes Act had instituted a new type of punishment, namely community service, under which a convicted person was obliged to perform tasks of benefit to the community without payment. That type of punishment had originally been limited in scope, but its use was now expanding.

5. With a view to solving the problems raised by the detention of minors in the disciplinary section of the Luxembourg prison, it had been decided to build an annex to the rehabilitation centre for minors. The situation remained critical for detained minors, though a major effort had been made in the area of socio-cultural and educational activities. The deployment of staff specializing in handling minors was a slow process. Prevention activities and the protection of children enjoyed greater emphasis, in particular as a result of a recent case of child abduction in Belgium, which had greatly disturbed the public in Luxembourg.

6. The merger of the police force and the gendarmerie that had recently been decided upon would make the security forces more homogeneous and ensure a better mix of skills as well as increased transparency in staff organization and training. Training already included an introduction to human rights, for future officers, who were trained in Belgium or France, and NCOs, who were trained in the Ecole de Gendarmerie et de Police. The Institut de Formation Administrative, which was intended for all those working for the State, also provided relevant training. Where medical staff were concerned, aside from one year's university studies in Luxembourg, university-level medical and paramedical training was provided abroad, and particularly in France, Belgium and Germany. Students also received human rights training in that context.

7. Although it was possible to recruit civilians for prisons in cases where enough trainee guards could not be recruited, the shortage of prison staff had not been completely eliminated, but was due to be ended in the coming year.

8. In 1998 and 1999, Luxembourg had paid $21,000 and $17,000 respectively to the Voluntary Fund for Victims of Torture. The Government had also authorized a judge to participate in a campaign to create awareness of the problems of torture and ill-treatment in certain OSCE member countries. Luxembourg had not yet taken steps to mark International Day in Support of Victims of Torture, but public opinion had undoubtedly been mobilized in connection with those problems thanks to the international instruments to which the country was a party and the investigation and publicity campaigns carried out principally by NGOs, Amnesty International and Action by Christians for the Abolition of Torture.

9. Mr. GASPAR (Country Rapporteur) observed that Luxembourg had submitted its report very late, but noted with satisfaction that it complied with the criteria laid down regarding presentation and that the Committee had received no reports of cases of torture in the country. He also welcomed the official abolition of the death penalty in Luxembourg.

10. He pointed out that Luxembourg had incorporated in its legislation on aliens the guarantees they were offered under article 3 of the Convention as regards expulsion and refoulement, but that the amendment of the extradition law was still only at the draft stage.

11. He took note of the fact that certain penalties had been redesignated with the aim of avoiding any confusion as to the real nature of the punishment previously known as hard labour. Yet it had to be recognized once again that the legislation in Luxembourg did not define torture as a separate criminal offence even though the State party had made an undertaking to that effect under articles 1 to 4 of the Convention. Such a step was essential in the interest of greater transparency, and in particular for the purposes of international mutual judicial assistance. Consequently, the Committee wished to receive more extensive information on progress in making the modification along those lines as indicated in the report, as well as on the proposed change designed to meet the requirement for a universal jurisdiction to hear cases of crimes involving torture and provide persons in custody with greater rights.

12. He sought clarification concerning the conditions in which minors were held and the absence of checks on the disciplinary measures imposed on them. Appropriate steps should be taken to prevent punishments which amounted to ill-treatment. In that regard, the solitary confinement regime applied as a punishment to certain minors placed in socio-educational centres was a matter for serious reservations, as no appeals were possible and, in the case of minors, isolation could be equivalent to inhuman treatment.

13. Similarly, the report stated that adults could be subjected to disciplinary penalties such as placement in solitary confinement, which could last up to 12 months, and that no appeals could be made against that punishment before a judge or independent body. He would be pleased to have further details on that subject, and to know whether there were plans to modify that state of affairs.

14. Mr. CAMARA (Alternate Country Rapporteur) noted with surprise that, while the report did refer to article 8 in paragraphs 105, 106 et seq., it contained no section dealing specifically with that article. He therefore asked the Luxembourg delegation to account for that omission, and to report on the present status of the legislation and any planned new provisions.

15. Noting that articles 11 and 14 were not covered in the report, he called on the Luxembourg delegation to rectify that omission, in view of the special importance of article 11 in the context of the prevention of torture.

16. He also sought further information on the application of articles 12 and 13, since the paragraphs of the report in question seemed somewhat beside the point.

17. Concerning the application of article 15, he pointed out that departures from established practice were never to be ruled out, and for that reason the Committee considered that the obligations stemming from article 15 were of a procedural nature and should be handled through legislation. In addition, the practice of the courts referred to in paragraph 120 of the report only partially took article 15 into account. Under that article, not only were statements obtained as a result of torture not admissible in evidence, but they could and should serve as evidence against the torturer.

18. He pointed out that the scope of article 16 went beyond the treatment of minors and adults. The wording “Each State Party shall undertake to prevent ...” imposed an obligation on States parties to take specific measures, particularly the enactment of laws designed to forbid all actions that constituted cruel, inhuman or degrading treatment or punishment other than torture. Consequently, he wished to know whether such steps had been or were due to be taken.

19. He also sought the views of the Luxembourg delegation on the issue of minors in detention as raised in the papers sent to the Committee by Action by Christians for the Abolition of Torture and Infoprisons. The treatment of minors appeared to be incompatible with the obligations arising from article 16 as well as those imposed by other international instruments, including the Convention on the Rights of the Child and the Beijing Rules.

20. Mr. SØRENSEN asked whether persons held in pre-trial detention, and consequently still presumed to be innocent, could be placed in solitary confinement, and if so which authority took such a decision, what was the maximum duration of the punishment and whether there was a system for reviewing the decision.

21. Regarding convicted prisoners, he felt that the maximum length of solitary confinement was particularly long. He wished to know the delegation's view on the subject, and asked how frequently such punishment was imposed.

22. He considered that the two medical examinations which were mandatory for detainees placed in solitary confinement might serve as a justification for extending the punishment. In his view the doctor should come only at the request of the prisoner or the guards. Was Luxembourg prepared to contemplate such a change?

23. Concerning the rehabilitation of victims of torture, he welcomed Luxembourg's contribution to the United Nations Fund for Victims of Torture and asked whether centres offering treatment specifically aimed at such persons existed in Luxembourg.

The first part (public) of the meeting rose at 10.40 a.m.