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

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Committee against Torture
Seventy-first session

Summary record of the 1831st meeting
Held via videoconference on Friday, 16 July 2021, at 12.30 p.m. Central European Summer Time

Chair: Mr. Heller (Vice-Chair)

Contents

The meeting was called to order at 12.30 p.m.

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

Fourth periodic report of Belgium (*continued*) (CAT/C/BEL/4; CAT/C/BEL/QPR/4)

1. *At the invitation of the Chair, the delegation of Belgium joined the meeting.*

2. **Mr. Touzé** (Country Rapporteur), referring to the legal provision that allowed the Belgian authorities to refuse entry to the country to persons with diseases that could endanger public health, said that he wished to know which diseases were concerned and whether there were any limits on the application of the provision. In particular, he wondered whether a person could be refused entry owing to infection with coronavirus disease (COVID-19) or returned to another country while still infected.

3. He would like to know whether the criteria set out in the legal definition of a "safe country" were sufficient to ensure the safety of foreign nationals returned to their countries of origin; examples of checks carried out using the criteria would be appreciated. He wished to understand how the practice of maintaining a list of safe countries was compatible with the Committee's position that the risk must be assessed according to the asylum seeker's individual circumstances. It would be interesting to hear whether the COVID-19 situation was taken into account for the purpose of individual risk assessments or the list of safe countries. He also wished to know whether countries on the list were checked periodically for their continued compliance with the relevant criteria and on what basis countries were removed or reinstated, as had occurred with Albania.

4. He would appreciate clarification of the factors used to assess whether there were "reasonable grounds" to refuse an applicant refugee status or subsidiary protection on the basis that he or she posed a danger to society. If such factors included the applicant's criminal record, he would like to know what weight was given to convictions handed down in States that practised judicial persecution of political opponents. He was concerned that no objective criteria existed for identifying cases in which subsidiary protection must automatically be denied on national security grounds. He wondered how the provisions stipulating protection from judicial persecution were applied in conjunction with the requirement to refuse subsidiary protection to applicants seeking entry to the State party in order to avoid serving a prison sentence imposed for an offence that was also punishable under Belgian law. He would welcome examples of specific cases in which subsidiary protection had been refused on those grounds, as it appeared that the requirement could lead to violations of the Convention.

5. He wished to have an explanation of the procedure for assessing whether "reasonable grounds" existed for the withdrawal of refugee status for national security reasons. He would like to know what mechanism prevented the return of persons who had lost their refugee status to countries where they risked inhuman or degrading treatment and to hear examples of the checks carried out in such circumstances. The delegation should provide statistics on the proportion of removal measures opposed by the Office of the Commissioner General for Refugees and Stateless Persons and the number of removals approved contrary to the opinion of the Office. He would like to know why the opinion of the Advisory Committee on Aliens was no longer sought in removal cases.

6. While he welcomed the increased oversight of forced returns by the Inspectorate General of the Federal and Local Police, he would appreciate information about the procedures in place to ensure the impartiality of its staff, some of whom were police officers seconded from the same units they were responsible for monitoring. In view of reports that the Inspectorate lacked sufficient human and financial resources, he would like to know how many officers were currently assigned to conduct monitoring operations and what the entity's annual budget was. He would be interested to hear some examples of monitoring operations carried out, any incidents reported as a result and the action taken in response. He wondered whether non-governmental organizations could take part in monitoring and whether the State party would consider reviewing its recommendation, based on a report from 2005, against the use of video for that purpose.

7. It would be interesting to hear the delegation's view on reports that alternatives to pretrial detention were applied mainly in respect of persons who would not previously have been subject to any preventive measure. He wondered whether the State party had considered amending criminal legislation to allow for the conditional release of older prisoners. In view of reports of routine or random body cavity searches taking place in prisons and unjustified cell searches resulting in damage to prisoners' property, he would like to know what measures were being considered to improve the conduct of searches and the regulation of the related procedures.

8. He wished to understand how Committee P could be responsible both for investigating the police and helping the police to make improvements without any conflicts of interest arising. It was still not clear to him what objective criteria were used to decide that a prisoner had been radicalized. Lastly, he would appreciate information about the repatriation of Belgian women from the Syrian Arab Republic that had reportedly taken place that day and, more broadly, the number of such repatriations carried out since the change of policy on the matter announced in March 2021.

9. **Ms. Belmir** (Country Rapporteur) said that she would welcome clarification regarding the routine detention of asylum seekers at the border, given the conflict between the decision of the Belgian Constitutional Court that such detention was necessary and European case law requiring an individual assessment of specific needs. She would also like to know whether the State party was considering amendments to its Code of Criminal Procedure to introduce a clear and explicit provision on the inadmissibility of evidence obtained under torture.

The meeting was suspended at 12.55 p.m. and resumed at 1.05 p.m.

10. **Mr. Verbauwhede** (Belgium) said that no one could be removed from the country if there was a risk of violation of the principle of non-refoulement. Refusal to grant subsidiary protection did not automatically result in a removal decision. Prior to any such decision, an assessment was conducted on the basis of article 3, on freedom from torture and inhuman or degrading treatment, of the European Convention on Human Rights, and the person concerned was given the opportunity to explain why he or she could not return home. Assessment was sometimes difficult because the foreign national was unwilling to cooperate; however, in case of doubt, the removal would be deferred. Following the European Court of Human Rights judgment of 27 October 2020 in the case of *M.A. v. Belgium*, changes had been made to the removal procedure, including the establishment of a special unit in the Immigration Office that could provide assistance with assessments under article 3 of the European Convention and up-to-date information on the relevant national, European and international case law. A manual and training on the subject had been provided to the officials responsible for making removal decisions and those responsible for conducting interviews in detention centres.

11. Anyone who became infected with COVID-19 while awaiting deportation would be asked to quarantine and would be given hospital treatment if necessary. While a royal decree of 1981 on access to the territory provided for a list of contagious diseases constituting grounds for refusal of entry to Belgium, the list was not up to date and thus did not include COVID-19. The absence of a disease from the list did not prevent the necessary public health measures from being taken. The designation of a country as safe was based on the risk of persecution and had no connection to the public health situation there. Nationals of safe countries could lodge applications for international protection and were sometimes granted it.

12. The return to their countries of origin of persons denied international protection on national security grounds was subject to the opinion of the Commissioner General for Refugees and Stateless Persons regarding potential violations of the principle of non-refoulement. No one could be removed contrary to such an opinion, except pursuant to a decision of the competent minister, a situation that had occurred very rarely in recent years. The right to be heard was guaranteed to persons facing removal. Specifically, anyone whose residence permit was terminated was able to explain why he or she could not be removed, either through a questionnaire or in an interview; the only exception was in the case of foreign

terrorist fighters who had already left Belgium. The role of the Advisory Committee on Aliens in the process had thus been superseded.

13. Routine detention of asylum seekers at the border was carried out in fulfilment of the country's obligations under the Agreement on the gradual abolition of checks at the common borders (Schengen Agreement) and the Convention on International Civil Aviation. There were exceptions for vulnerable groups and minors. Unaccompanied minors were transferred to specialized centres, while families with minor children were placed in open accommodation until the asylum procedure and any appeals were completed. Children could attend school and the families were provided with food, housing, health care and psychological support. Detention at the border could be challenged in court on a monthly basis and appeals lodged against the court's decision. Deportation decisions could be challenged before the Aliens Litigation Council. In urgent cases, such appeals had suspensive effect. An appeal in cassation could be lodged against decisions of the Council.

14. **Ms. Kormoss** (Belgium) said that the criteria for inclusion on the list of safe countries of origin were the legal situation in a State, the application of the law, the general political situation and the extent to which protection was provided against acts of persecution or ill-treatment. The list currently included Albania, Bosnia and Herzegovina, North Macedonia, Kosovo, Montenegro, Serbia, Georgia and India. The list was reviewed once a year, or more frequently if necessary. The Office of the Commissioner General for Refugees and Stateless Persons prioritized the processing of applications for international protection from nationals of safe countries to decide whether the applications could be considered. In general, nationals of safe countries did not need international protection. Applicants from those countries must demonstrate that, in their individual situation, they had a justified fear of persecution or ran the risk of serious human rights violations. The burden of proof was thus higher than for other applicants. Refusal to consider an application from a national of a safe country could be challenged before the Aliens Litigation Council within 15 calendar days of the notification of the decision.

15. **Ms. De Souter** (Belgium) said that the decision to use electronic monitoring as an alternative to pretrial detention was made by the investigating judge on the basis of the specific circumstances of the case. The relevant law provided that such a decision could be taken at any time during proceedings, and the text had been drafted in such a way as to highlight the role of electronic monitoring as another means of enforcing an arrest warrant. Electronic monitoring had not been widely used immediately following its introduction, however, probably because judges were not familiar with it. More recently, use of the measure had been increasing steadily.

16. The legal provision allowing police interviews to begin before the arrival of the suspect's lawyer must be read in the light of the Pretrial Detention Act, pursuant to which the interview could not begin unless at least a telephone consultation with the duty lawyer had taken place. The provision was applied only in exceptional circumstances when it was impossible to contact or find a lawyer who could provide assistance within two hours and the interview could not be delayed, for example because the custody period would expire. The impossibility of finding or contacting a lawyer must be recorded in the custody log and the suspect must be reminded of the right to remain silent. If an interview began before the arrival of the suspect's lawyer and the conditions set out in the law were not met, the defence could invoke a violation of the right to a fair trial. The Code of Criminal Procedure stipulated that no one could be convicted on the basis of a statement obtained in violation of the provisions on the right of access to a lawyer. While the right to be assisted by a lawyer did not apply to persons under administrative arrest, such persons were not considered suspects. At the end of the period of administrative arrest, a decision was taken as to whether to make a criminal arrest. If there was reason to interview the person concerned on suspicion of criminal offences, access to a lawyer was guaranteed.

17. **Mr. Van Wynsberge** (Belgium) said that a specific unit adapted to the needs of older prisoners would be created as part of the renovation of Merksplas Prison. A project was under way to develop e-learning modules for prison staff on the treatment of older prisoners. Sentence enforcement courts could take the age of prisoners into account for decisions on conditional release.

18. Body searches could be carried out only pursuant to a substantiated decision issued by the prison director on the basis of specific indications that a clothing search was insufficient to maintain order and security. Body searches must always be carried out with respect for the prisoner's dignity. The Directorate General of Prisons was currently revising its procedures for body searches in response to recommendations made by the Federal Ombudsman. A working group had been set up to draft new instructions on the use of body searches to be incorporated into training. The practical application of the new instructions would be monitored centrally by the Integrated Security Directorate and locally by security directors and by safety and security managers who were currently being recruited.

19. Prisoners' cells were searched regularly to verify compliance with prison rules. Such searches must be carried out with respect for prisoners' dignity and right to privacy. Following searches, cells must be restored to their original condition and prisoners must be notified that a search had taken place.

20. **Ms. Kormoss** (Belgium) said that, in the draft strategic note on extremism and terrorism, radicalization was defined as a dynamic process involving increasing estrangement from society and the political system, mounting intolerance towards the ideas of others and a growing willingness to accept violence as a means of imposing one's own ideas. In a democratic State governed by the rule of law, the expression of radical ideas was not a problem in and of itself. The strategic note would be used to shape efforts to combat the causes of terrorism and extremism, which included radicalization. It covered all forms of extremism entailing incitement to or encouragement of violence. The many factors underlying the radicalization process made it impossible to define a single profile shared by all radicalized individuals. The typical terrorist profile was evolving, with attacks increasingly being perpetrated not by members of cells who travelled from conflict areas, but by lone actors. Transparency and cooperation between different stakeholders were essential to ensure a shared understanding of radicalization. A multidisciplinary approach was the best way to limit the harmful effects of radicalization. The threat management approach had given way to a broader approach of preventing violent extremism and countering violent extremism.

21. **Ms. Simons** (Belgium) said that Belgium had recently accepted a recommendation made in the context of the universal periodic review, to ensure that the definition of torture in national law was consistent with the Convention. The amendment of the Code of Criminal Procedure to provide for an explicit provision on the exclusion of evidence obtained under torture, in line with the country's international obligations, was currently under consideration.

22. **Mr. Flore** (Belgium) said that the independence of the judiciary was guaranteed by article 151 of the Constitution and other constitutional provisions. The autonomous management of the justice system was part of a long-term project to give the judicial authorities greater independence in the administration of their own resources. Colleges of judges and prosecutors had been established to organize such management. A joint management committee comprising representatives of the Federal Public Service for Justice and the colleges had been set up with the aim of moving towards fully autonomous management by the judicial authorities. The current Government had committed to invest approximately €500 million in the justice system over three years, which would allow for an increase in the number of judges and other judicial officials and digitization of the justice system.

23. **Mr. Verbauwhede** (Belgium) said that a new department for alternatives to detention had been established within the Immigration Office. An independent commission, chaired by two professors of immigration and asylum law, had been established to work on a thorough revision of the Act of 15 December 1980 on the Entry, Temporary and Permanent Residence and Removal of Aliens.

24. **Mr. Neijens** (Belgium) said that the delegation was not aware of any repatriation operations that had taken place since the announcement of the change of policy on that matter in March 2021. However, the authorities were taking the necessary preparatory steps as quickly as possible.

25. **Mr. Vedel Kessing** said that he would like to know whether the measures taken to reduce prison overcrowding during the COVID-19 pandemic, such as the use of alternatives to detention, would continue to be applied in the future. He wondered whether the State party would consider ratifying the Optional Protocol to the Convention immediately; the process could take place in parallel with its deliberations about the establishment of a national preventive mechanism. Lastly, he wondered whether the police in Belgium would take into consideration the newly finalized Principles on Effective Interviewing for Investigations and Information Gathering.

26. **Mr. İşcan**, noting that in Belgium it was generally for the courts to decide whether a treaty provision was self-executing, said he would be interested to hear whether the delegation regarded that approach as compatible with articles 18, 26 and 27 of the Vienna Convention on the Law of Treaties. He would like to know whether the State party would consider developing a new legal provision to ensure direct application of the international treaties to which it was a party.

27. **Mr. Rodríguez-Pinzón** said that article 14 of the Convention, on the need for guarantees of redress and compensation for victims of torture, must be incorporated into national law. Paragraphs 147 and 150 of the periodic report, on victims' rights, were unfocused and overly general, particularly on the issue of rehabilitation. It was not clear what systems currently existed to ensure that victims of torture, including those who were deprived of liberty or who were migrants or refugees, received the necessary care and support and the means for their full rehabilitation. He wondered how the State party ensured that rehabilitation of victims was not limited to those who had suffered torture in Belgium but also extended to those in other countries who might be seeking asylum in Belgium. There was a dearth of statistical information on victims of torture. The delegation might describe what obstacles stood in the way of gathering such data and what measures the State party intended to take to overcome them.

28. **Mr. Van Wynsberge** (Belgium) said that detained persons had been able to receive visits from family members and meet with their lawyers via videoconference during the pandemic, sometimes in their cells. That system would certainly be retained in the post-COVID-19 period. Detained persons could also communicate with the authorities using the same means.

29. Pursuant to article 38 of the Act on the Principles of Prison Administration and the Legal Status of Detainees, individual detention plans were developed in consultation with convicted persons and with their participation. The plans included all the details on which the prisoner in question wished to work during the period of detention in order to prepare for his or her release. While the person concerned could take the initiative, he or she was guided by the prison's psychosocial services, which must evaluate the prospects for the prisoner's rehabilitation and identify the prisoner's needs.

30. **Ms. Leclercq** (Belgium)said that the relevant law provided for the instrument of ratification of the Optional Protocol to be deposited as soon as all the parliamentary assemblies concerned had given their approval, which had already occurred, and the bodies that would make up the national preventive mechanism had been designated, which had yet to be done. Belgium was doing everything possible to put in place a mechanism that would be effective and have jurisdiction over the entire country. The aim was to ratify the Optional Protocol during the current legislature, or before 2023.

31. **Ms. De Souter** (Belgium) said that she wished to draw the Committee's attention to paragraphs 20–33 of the periodic report, concerning the right of access to a lawyer. The law provided for the right to be assisted by a lawyer from the moment that a person was deprived of liberty. If persons subject to legal proceedings were not deprived of liberty, they were informed in advance that they were to be questioned and could consult a lawyer beforehand and have a lawyer present during the questioning. The person concerned was also informed in writing of his or her rights before the interview. The model letters of rights had been translated into some 60 languages. They were also available on the Ministry of Justice website.

32. With respect to assistance to victims of torture, she wished to draw attention to paragraphs 147–150 of the periodic report, which outlined the guarantees of assistance to

victims during judicial proceedings and thereafter and even during the period of enforcement of sentences. Annex 15 of the report contained the amounts of compensation that had been provided to victims since 2013. Her delegation could provide the Committee in writing with updated figures covering the period up to 20 June 2021.

33. **Ms. Lefebvre** (Belgium) said that there was no consensus in the legal literature of Belgium or the case law of the courts on the issue of the primacy of international law over national law. In practice, however, the lack of consensus had little bearing on how that issue was resolved, as the ratification process in Belgium entailed the adoption of laws of parliamentary approval. The preparation of such laws constituted in principle a check on the compatibility of international provisions with the domestic legal order. The Council of State would highlight any inconsistencies between a given treaty and national law. At that point, the Belgian authorities would take a position. With respect to the Convention, the issues of the primacy of international law and direct applicability did not arise, since the Criminal Code allowed for the full application of the instrument.

34. **Ms. Rochez** (Belgium) said that the training offered to police officers covered various techniques for quelling violence. They were also taught under which circumstances such techniques were appropriate or not. Police officers who intervened to quell violence were required to apply the technique that would pose the lowest level of risk for the person concerned and for the officers themselves. There was a prohibition against sitting on the body of an arrested person once the person in question was handcuffed and placed under control. The tactics used were continuously reviewed on the basis of the recommendations of national and international monitoring bodies. The technique of ventral decubitus had been subject to those evaluations.

35. Concerning the use of 7.62 mm x 35 mm calibre ammunition, the weapons acquired for the police must comply with the technical standards and directives established by the Federal Public Service for Home Affairs. They included semi-automatic firearms with a calibre of less than 9 mm. Weapons with a calibre of 7.62 mm x 35 mm could be used only in semi-automatic mode and thus met the relevant standards.

36. With respect to the definition of police violence, the police had a monopoly over the use of force. However, the use of force within the framework of police work did not constitute violence as such but rather coercion. Police interventions must be in strict compliance with the principles of lawfulness, appropriateness and subsidiarity. Coercive measures could take several forms, ranging from warnings to physical restraint, with or without the use of firearms. Any use of coercive measures that did not adhere to the above-mentioned principles was considered to constitute unlawful use of force and categorized as police violence. Currently, there was no discussion within the police concerning the review of the definition of police violence.

37. Lastly, concerning the independence of the police, prosecutors had a duty to investigate any allegations of police violence. Reports were drawn up on all complaints lodged and were submitted to the competent judicial authority. Disciplinary measures were taken against police officers if they did not report complaints. Senior officers could not decide on their own initiative whether or not to draw up a report when an offence was alleged, regardless of whether the victim was willing to press charges. A circular issued by the Belgian College of Prosecutors General, on ex officio investigations, provided for a simplified procedure for a certain number of offences committed by the police. However, the simplified procedure could not be used for complaints of police violence or the unlawful use of force.

38. **Ms. Leclercq** (Belgium) said that another circular issued by the College dealt with violence against the police as well as the judicial handling of cases of unlawful use of force by police officers that led to death or serious bodily harm. In accordance with the circular, legal proceedings must be brought as a matter of course when the use of force had resulted in a person's death or serious injuries. In such cases, the public prosecutor's office relied on an independent investigation conducted by Committee P.

39. **Mr. Touzé** said that he would appreciate further information on the issue of extradition. He had not raised the question during the discussion with the delegation. However, he understood that the State party continued to carry out extraditions on the basis of diplomatic assurances, including to countries in conflict such as Afghanistan. He also

wished to know whether the lack of suspensive appeals against deportation orders was justified by compelling reasons of national security. Those answers might be provided in writing. He wished to thank the members of the delegation for their very detailed replies.

40. **Ms. Belmir** said that she, too, wished to thank the delegation for the answers provided. It should be pointed out that the Committee's view on the definition of torture would remain unchanged regardless of whether another body considered that the position of the State party in that regard was in keeping with the Convention.

41. **Mr. Flore** (Belgium) said that his delegation would like to thank the Committee for the excellent questions raised and constructive dialogue held. It would send its answers in writing to questions that it had not had a chance to answer.

42. **Mr. Neijens** (Belgium) said that he wished to draw attention to a letter to the treaty body Chairs that Belgium had signed with 45 other countries, calling for a more predictable reporting cycle and harmonized and streamlined working methods. Targeted reviews such as the one just conducted would make a significant contribution to reducing the burden of work and ensuring that the focus was on major priorities.

The meeting rose at 2.30 p.m.