



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

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Committee against Torture

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

**Follow-up replies from the Government of Belgium to the
concluding observations of the Committee against Torture
(CAT/C/BEL/CO/2)**

Belgium

[Received on 17 March 2010]

I. Introduction

1. The Committee against Torture considered the second periodic report of Belgium (CAT/C/BEL/2) at its 850th and 853rd meetings, held on 12 and 13 November 2008 (CAT/C/SR.850 and 853), and adopted its concluding observations (CAT/C/BEL/CO/2) on 19 November 2008. In that document (para. 31) the Committee requested Belgium to submit, within one year, information on its response to the recommendations contained in paragraphs 6, 7, 11, 16, 20 and 27 of its concluding observations. The information requested is provided below.

Reply to paragraph 6 of the concluding observations (CAT/C/BEL/CO/2)

A. External monitoring of repatriations

2. Monitoring of deportations of aliens is carried out by the following bodies: the federal airport police, which is responsible for overseeing deportation operations; the General Inspectorate of the Federal and Local Police, which is responsible for preventive monitoring and dealing with any complaints; and Committee P, which is responsible for external monitoring (judicial and non-judicial aspects) and acts on its own initiative or following a complaint or report.

3. The federal airport police command has devised procedures both to minimize the risk of misconduct on the part of individual police officers assigned to deportation operations and to ensure continuous monitoring of such operations.¹

4. Guidelines on the supervision of flights have been issued by the federal airport police in a framework note. Carrying out deportations in a humane manner while complying strictly with relevant requirements represents a real challenge for members of the federal airport police. The first goal is to persuade the returnee to leave the territory without resistance in order to avoid the use of coercive measures by police officers. The establishment of the federal airport police psychosocial support team has helped achieve this goal by reducing the number of persons unwilling to leave. Even when the use of force is required to repatriate a person unwilling to leave voluntarily, it should always be lawful, proportionate and appropriate, in accordance with current federal police guidelines.

5. During operations with escorts, accompanying personnel should include, in addition to at least two escort staff, persons responsible for the transfer, a member of the psychosocial support team and a senior officer who accompanies the escort at least until the plane reaches its destination. Senior officers are responsible for deciding (on the basis of certain criteria) on the means of restraint that should be applied or whether the operation should be interrupted. They fill in the notification number,² ask BAC-Security and the aircraft captain to complete the form, and lastly make any practical arrangements with the captain and the crew. The senior officers also handle preliminary briefings and debriefings in the event of a failed removal operation. A special checklist has been prepared for escorts.

¹ These include: profiling of police officers assigned to operations, recruitment and training procedures, presence of a senior officer during repatriation operations with escorts and involvement of social workers in psychosocial support teams.

² In accordance with the ministerial decision of 11 April 2000 regulating conditions of transport on board civil aircraft of passengers posing particular security risks (*Moniteur belge*, 14 April 2000).

A doctor is always present at the airport and can be called upon at any time during the boarding procedure.

6. The General Inspectorate of the Federal and Local Police, which is responsible for preventive monitoring and inspecting and processing any complaints, submits an annual report on the monitoring of deportations to the Ministry of the Interior. On average, the General Inspectorate monitors 1 per cent of scheduled flights. Nearly all secured flights are monitored. The General Inspectorate noted little resistance when detainees are taken out of airport police cells and transferred to the aircraft or after it has taken off. Any failure to comply with rules is investigated thoroughly by the General Inspectorate.

7. Committee P acts on its own initiative to carry out specific checks at police facilities at Brussels National Airport and during boarding of the aircraft by returnees. In early 2009, Committee P inspected places of detention located in the airport and used before repatriations. In order better to evaluate federal police service operations and the constraints on the force, Committee P pays working visits to Brussels National Airport; one such visit took place during 2005 and another in early 2009.

8. Committee P also conducts limited checks on the General Inspectorate's monitoring and inspection of repatriation operations. Committee P reports on this systematically in its annual reports. Briefing notes on the issue as a whole should be made public shortly.

9. When dealing with complaints lodged with Committee P and/or referred to it by judicial authorities relating to possible assault or misconduct on the part of police officers responsible for deportation operations, a legal record is systematically drafted for the prosecution service, even before any complaint is filed by the victim. This record is generally drafted on the day of the removal operation by the airport police unit. Subsequently, it is for the prosecution service or the examining magistrate to designate the body responsible for conducting the investigation.

B. Access to cells and boarding zones and monitoring by NGOs

10. Several bodies have access to both cells and boarding zones: internal and external police supervisory bodies (Committee P, the General Inspectorate of the Federal and Local Police and the federal police internal supervisory service), the prosecution service, relevant parliamentary committees and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in the course of its inspection visits.

11. Current regulations make no provision for access by NGOs to boarding zones during removal of foreigners by air. As indicated above, the State has its own supervisory bodies, namely the General Inspectorate of the Federal and Local Police, which operates under the authority of the Ministry of the Interior, and Committee P, which is the supervisory body of the Federal Parliament. These supervisory bodies are independent and ensure compliance with recommendations on deportations made by the Vermeersch Commission, an ethics committee. Planning and carrying out removal operations require high levels of concentration, discipline and discretion on the part of police officers, who must at all times comply scrupulously with the Vermeersch Commission recommendations. It has therefore been considered preferable not to compromise the proper conduct of those operations, since any external disruption may have security implications and result in the failure of the operation.

12. However, the question of monitoring of removal operations by NGOs was raised when deportation procedures were evaluated by the second Vermeersch Commission³ in 2005. While calling for monitoring by NGOs, in addition to checks carried out by Committee P and the General Inspectorate, these organizations were themselves nevertheless aware that they lacked the necessary time and resources to organize efficient external monitoring of deportations.

13. The Belgian Government is currently working on the implementation of Directive 2008/115/CE of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, which provides in article 8.6 (on removal) that “Member States shall provide for an effective forced-return monitoring system.”⁴

14. This Directive was discussed at the 8th meeting with Direct Contact Points in Return Matters in Prague in late May 2009. It was noted that neither the European Directive nor the Guidelines specified the scope of the monitoring. The European Commission has indicated that the whole return procedure should be covered. Monitoring should include third (independent) parties other than the authorities conducting the return; this does not necessarily imply the involvement of NGOs.

15. However, some form of involvement in monitoring of returns by NGOs is provided for through their participation in the work of the Parmentier Commission, which is a standing committee overseeing return procedures. This Commission will be responsible for verifying the follow-up given to, and implementation of, recommendations concerning deportations. It will also be responsible for making a more general assessment of policy regarding expulsion of aliens within the overall context of migration and asylum policy.

C. Use of cameras

16. In 2002, the Belgian authorities already addressed the issue of the use of audio-visual media in cases of forced returns with escorts and secured flights when responding to the recommendation (No. 36) made by the European Committee on the Prevention of Torture in its report CPT/Inf (2002) 25.

17. From a practical point of view, filming the whole removal operation (departure from the holding centre, transfer to the airport, search, placement in a cell, preparations for transfer to the aircraft, transfer to the aircraft, boarding, placement in the seat, boarding of other passengers, flight and surrender of the person to the local immigration service) is not feasible.⁵

18. From a legislative standpoint, the use of cameras during repatriation operations is at present legally impossible. The use of surveillance cameras is governed by the Act of 21

³ Responsible for evaluating instructions regarding the deportation of foreigners. The Commission submitted its final report entitled “*Fondements d’une politique humaine et efficace d’éloignement*” (Foundations of a humane and effective deportation policy) to the Minister of the Interior on 31 January 2005.

⁴ This European Directive is itself based on Guideline 20 (para. 1) of the Twenty Guidelines on Forced Return adopted on 4 May 2005 by the Committee of Ministers of the Council of Europe.

⁵ Only qualified and trained staff could film transfers adequately. So as not to miss any image, several cameras would have to be used along with any necessary high-quality sound recording equipment. Bearing in mind that on a daily basis there may be as many as 10 returns with escorts, some extending over several days, it would, according to the authorities concerned, be very difficult to make available so many human and material resources. Partial recording of removal operations would provide only an incomplete picture of transfers.

March 2007⁶ regulating the installation and use of surveillance cameras. Under the Act, the use of fixed surveillance cameras is subject to the display of a pictogram warning individuals that they are being filmed. However, the route used during repatriation operations (from the departure from the cell or centre to the destination) makes it difficult to comply with this provision. In the absence of a pictogram, video surveillance is lawful only with the consent of the persons filmed, i.e. the returnees, the police officers involved and any third parties who might be within camera range. Obtaining the consent of all those individuals is practically impossible. With respect to the use of mobile cameras, this is possible only in the context of large rallies and demonstrations posing a risk to public order, which is not the case here.

19. In its final report,⁷ the second Vermeersch Commission also examined the proposal to film all removal operations from beginning to end with a view to both prevention and a *posteriori* monitoring of force used by the police. It considered that the practice was inappropriate. The second Vermeersch Commission also drew attention to the fact that the presence of a camera and a film crew might also have an impact on returnees, who might be encouraged to behave differently than they would have done if there had been no camera present.

Reply to paragraph 7 of the concluding observations

20. Providing unaccompanied minors with assistance, accommodation and follow-up is an important policy area for Belgium. Several authorities exercise different degrees of responsibility at different times or act jointly in this process. The measures introduced by the various actors are set out below.

A. Aliens Office

21. The circular of 25 July 2008⁸ amending the circular of 23 April 2004 concerning the “unaccompanied foreign minor” form was adopted by the Minister for Migration and Asylum Policy and the Minister of the Interior. The new form is easier to understand and raises awareness among front-line actors of the importance of indicating the risk of the unaccompanied foreign minor becoming a victim of trafficking in persons or aggravated forms of people-smuggling and any new reasons to doubt the claim that he or she is under age.

22. In the context of the residency procedure, since 1 June 2009 the Aliens Office has systematically interviewed unaccompanied foreign minors at least once in order to find a durable solution, taking into account the best interests of the child.

23. Staff at the Office for Foreign Minors and Human Trafficking within the Aliens Office have received training on interviewing, interculturalism and traumatized minors. In order to ensure that interviews are adapted to the needs of minors, the staff also received training provided by Solentra in April 2009. Subsequently, at least two feedback sessions were held based on actual situations that had caused problems for the staff during interviews. Staff from the Office for Foreign Minors and Human Trafficking interview

⁶ *Moniteur belge*, 31 May 2007.

⁷ Final report entitled “*Fondements d’une politique humaine et efficace d’éloignement*” (Foundations of a humane and effective deportation policy), 31 January 2005, item 7.3, p. 61.

⁸ *Moniteur belge*, 13 August 2008.

unaccompanied foreign minors in the presence of their guardian in specially adapted premises which are used exclusively for such interviews.

24. A cooperation agreement was signed on 24 June 2009 between diplomatic offices (Federal Department of Foreign Affairs) and the Aliens Office (Federal Department of the Interior) in order to enhance the tracing of family members and to find a durable solution for all unaccompanied foreign minors.

25. Articles 61/2 to 61/5 of the Act of 15 December 1980⁹ provide for the protection of victims of trafficking in persons or certain forms of people-smuggling. The Act contains specific provisions relating to unaccompanied foreign minors (immediate provision of a residence document, representation by guardian, etc.).

26. The circular of 26 September 2008¹⁰ on the implementation of multidisciplinary cooperation with regard to the victims of trafficking in persons and/or certain aggravated forms of people-smuggling aims to remind the various front-line services of their legal obligations and to raise awareness among the actors concerned of the specific measures applicable to unaccompanied foreign minors and the importance of taking their vulnerability into account. The circular will be evaluated on 31 October 2010.

27. The Act of 15 September 2006¹¹ (transposing European directive 2003/96) expands the categories of foreigners entitled to the right to family reunification: henceforth adult children with disabilities and the parents of foreign minors granted refugee status may benefit from this right.

28. Since 7 May 2007,¹² individuals claiming to be unaccompanied foreign minors and unable to enter the territory of Belgium under article 3 or article 52 (1) of the Act of 15 December 1980¹³ and who have been identified as unaccompanied foreign minors or about whom there is no doubt with regard to their age are admitted to an observation and orientation centre pending a possible deportation order. Where the child's return to his or her family or other responsible adults is justified in his or her best interests, the Chicago Convention¹⁴ applies.

B. Federal Agency for the Reception of Asylum-Seekers

29. Articles 40 and 41 of the "Reception Act"¹⁵ define the framework for the appropriate reception of unaccompanied foreign minors in observation and orientation centres. The Royal Decree of 9 April 2007 establishing the rules and regulations applicable to

⁹ Articles introduced by the Act of 15 September 2006 amending the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens (*Moniteur belge*, 6 October 2006).

¹⁰ This circular replaces the circular of 1 July 1994 on the issue of residence and work permits to foreign victims of trafficking in persons, and the guidelines of 13 January 1997 to the Aliens Office, prosecution services, police services, social legislation inspectorate and social inspectorate on aid to victims of trafficking in persons, as amended by the guidelines of 17 April 2003.

¹¹ *Moniteur belge*, 6 October 2006.

¹² Date of entry into force of the Act of 12 January 2007 on the reception of asylum-seekers and certain categories of aliens.

¹³ Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens.

¹⁴ Convention on International Civil Aviation, 7 December 1944.

¹⁵ Act of 12 January 2007 on the reception of asylum-seekers and certain other categories of aliens (*Moniteur belge*, 7 May 2007), hereafter "Reception Act", partially transposes into Belgian law European Directive 2003/9/CE of 27 January 2003 laying down minimum standards for the reception of asylum-seekers in Member States.

observation and orientation centres for unaccompanied foreign minors¹⁶ was adopted under the Reception Act.

30. Under its provisions, minors stay in observation and orientation centres (Neder-over-Heembeek and Steenokkerzeel reception centres) for a period of 15 days, renewable once only. This allows the minor to be registered and identified and a guardian to be appointed by the Guardianship Service. This 15-day period allows foreign minors to be observed and an initial medical and psychosocial profile to be built up so as to identify the type of assistance best suited to their situation. At the end of the stay, a report on their profile is prepared, their guardian is notified of its contents and a copy is sent to their new reception facility. In the second phase, if it has not proved possible to identify a type of care tailored to the minor's particular circumstances, he or she will be sent to a reception facility run by the Federal Agency for the Reception of Asylum-Seekers or one run by a partner agency better suited to the needs of unaccompanied foreign minors, irrespective of whether or not the individual concerned has applied for asylum. In the third and final phase, minors are cared for by the competent authorities in accordance with their status (places provided by the Federal Agency in local reception facilities; support provided by public social welfare centres, the Communities, etc.).

31. The Federal Agency provides a total of 521 care places for unaccompanied foreign minors. The system as a whole (observation and orientation centres, group and individual reception facilities) currently accommodates 598 individuals.

32. In early 2008, the Federal Agency produced an information brochure for unaccompanied foreign minors. It is now distributed to young people in the Neder-over-Heembeek and Steenokkerzeel reception centres. The brochure, which is available in several languages, explains reception arrangements, material assistance schemes, the Guardianship Service, the asylum procedure, etc.

33. On 12 November 2008, a cooperation protocol was signed concerning the handling of cases of minors disappearing from the Neder-over-Heembeek and Steenokkerzeel observation and orientation centres. In view of the large number of organizations involved, it was considered appropriate for cooperation arrangements to be set out in a protocol so that minors can be traced as soon as possible. The partner agencies involved are the principal prosecutor's office at the Brussels court of appeal, the prosecutor's office at the Brussels court of first instance, the Aliens Office, the Office of the Commissioner General for Refugees and Stateless Persons, the Guardianship Service, the Federal Agency for the Reception of Asylum-Seekers, the two police districts corresponding to the centres concerned and Child Focus.

34. With a view to achieving full cooperation between various branches of government with different powers, the Secretary of State for Social Integration initiated consultations in 2009 with the various stakeholders involved in supporting and receiving unaccompanied foreign minors. Further consultations will be held in 2010.

C. The Guardianship Service

35. In 2007, the Guardianship Service (Federal Department of Justice) signed a partnership agreement with the not-for-profit association Solentra, which has been attached to the outpatient psychiatric department for children and adolescents at Brussels University Hospital since 2001 and specializes in caring for and monitoring unaccompanied foreign minors. The programme is intended to enable guardians to understand minors better

¹⁶ *Moniteur belge*, 7 May 2007.

(culture, family, background, etc.), to present themselves and explain their role, to conduct interviews, to identify a minor's suffering, to network and to handle crisis situations.

36. European minors in vulnerable situations should be distinguished from unaccompanied foreign minors. Their situation is a matter for the service for reporting European minors in vulnerable situations (in practice, a section of the Guardianship Service), the police and the Aliens Office. The circular of 2 August 2007 provides for interim care for European minors in vulnerable situations, with no valid residence permit and in a situation of vulnerability (irregular administrative situation, unstable social situation, pregnancy, disability, poor physical or mental condition, victims of trafficking in persons or people-smuggling or subsistence by begging). Under the circular, necessary steps can be taken to provide social support adapted to the vulnerable minor's situation (youth welfare provision, accommodation in a federal observation and orientation centre, specialized services, etc.).

37. The circular does not provide for the appointment of a guardian for European minors in vulnerable situations. Care is provided for them by the service for reporting European minors in vulnerable situations, which immediately takes all necessary steps as a matter of urgency.

D. Office of the Commissioner General for Refugees and Stateless Persons

38. Asylum applications made by unaccompanied foreign minors are treated as a matter of priority and interviews are organized in consultation with guardians. Interviews are tailored to the minor's age and maturity.

39. During 2007, thanks to co-financing by the European Refugee Fund, the Office of the Commissioner General provided special training for officials specialized in handling asylum applications from unaccompanied foreign minors. The first part of the training covered a series of issues related to the situation of minors in exile (residence, accommodation, social assistance, schooling, health care, trafficking in persons, guardianship) and cultural and psychological issues related to the situation of unaccompanied foreign minors. The second part considered in depth the issue of special techniques for interviewing children. This training was provided for officials responsible for interviewing minors and also for interpreters who regularly assisted asylum-seeking minors during interviews.

40. A special five-phase interview scenario has been developed for minors:

(a) Introduction (putting the minor at ease, explaining the procedure, checking that the minor understands the procedure, explaining the conduct of the interview and the role of the interpreter);

(b) A section on questions related to identity, family situation and documentary data (in order to establish the minor's profile);

(c) Narrative phase (unstructured);

(d) Fourth phase consisting of more detailed questions (enabling the interviewer to gain a clear understanding of the grounds for the asylum application);

(e) Concluding phase (allowing the minor to bring this phase to a close by asking a few questions about the person's life in Belgium, daily routine, etc.).

41. In January 2009, after the Office of the Commissioner General moved into its new premises, new interview rooms were fitted out. These included three rooms specially adapted for minors (two rooms for those aged 12 years and over and one more specifically for younger children). Both the space (lighting, size) and the choice of furnishings (oval

desk, cabinet, rug, plant, etc.) were designed to make the interview area as pleasant as possible. In addition, children are provided with stationery (paper, pens, etc.) to help them express themselves more freely.

E. Communities

42. From the emergency reception centre, all unaccompanied foreign minors are redirected as soon as possible to longer-stay reception facilities, either to an asylum or other centre run by the federal authorities or to support and supervision arranged by the Communities.

43. There are two care centres for unaccompanied foreign minors in the French Community: the Esperanto service (capacity for 15 unaccompanied foreign minors) and the El Paso service (capacity for 38 unaccompanied foreign minors with 13 places arranged by the Federal Agency for the Reception of Asylum-Seekers).

44. An agreement with the public social welfare centre in Assesse, which provides 26 places for unaccompanied foreign minors through a special agreement with the Federal Agency for the Reception of Asylum-Seekers, helps ensure closer monitoring of all unaccompanied foreign minors for whom assistance has been requested. As part of the agreement, the French Community provides a grant, on the basis of a daily rate, for all minors receiving assistance.

45. In addition to the care arrangements in the two specialized centres and those provided by the Assesse public social welfare centre, approximately 100 unaccompanied foreign minors are cared for each year by French Community youth welfare counsellors and directors.

46. A study into the response of the French Community to the needs of unaccompanied foreign minors in Belgium was carried out in 2007. The research report, published on 15 January 2008, contains a number of very interesting recommendations in the chapter entitled "Summary and prospects".

47. The government of the French Community has undertaken to support, during the legislative period 2009–2014, a cooperation agreement between the Federation, Regions and Communities on the reception of unaccompanied foreign minors and the systematic provision of care for minors at risk or with emotional, psychological, relational or behavioural disorders.

48. The Walloon Region, along with several care centres for unaccompanied foreign minors, is working on a pilot scheme for work-based vocational training for unaccompanied foreign minors aged between 16 and 18 years who have attended school irregularly or not at all and whose particular circumstances prevent them from benefiting properly from conventional schooling or centres offering sandwich courses.

49. In the Flemish Community support and supervision for minors not seeking asylum are provided by the special youth welfare service. This service can provide support and supervision for unaccompanied foreign minors (not seeking asylum) only if the committee for special youth care or the juvenile court so decides. Care is provided within the limits of programmed resources and the existing categories of service available.

50. Unaccompanied foreign minors (not seeking asylum) cared for by the Flemish Community have the following care options:

(a) Category 1 bis: "Residential". The De Oever Centre in Limbourg (capacity 15 places), the Minor-Ndako Centre in Brussels (capacity 20 places) and the Juna Centre in Aalst (capacity 20 places).

(b) Category 6: “Supervised autonomy”. The Minor-Ndako Centre (capacity 16 places) and the Joba Vluchtelingenwerking Centre in Antwerp (capacity 16 places).

(c) Category: “Project”. The Joba Vluchtelingenwerking centre in Antwerp (capacity 6 places).

51. Tuition to facilitate initial reception is provided for unaccompanied foreign minors who speak only a foreign language (pupils recently arrived from abroad and starting Dutch-language education). This tuition is designed to accommodate non-Dutch-speaking pupils newly arrived in Belgium, to teach them Dutch as quickly as possible and, at the primary level, to include them in a regular class. At the secondary level, the aim is to help new arrivals to pursue the type of education and branch of studies best suited to their personal capacities, thereby ensuring that they are better integrated into society.

Reply to paragraph 11 of the concluding observations

A. Preliminary remarks

52. Before considering the question of Committee P’s independence, we would like to comment on the causal link established by the Committee against Torture between:

- On the one hand, the expression of regret over the fact that: “Many of the members of Committee P are police officers and individuals seconded from police services, which raises concerns as to the guarantees of independence to be expected from such an external oversight body, in particular with regard to the handling of complaints concerning police conduct and any disciplinary action taken against police officers”
- On the other, the observation that: “This problem has grown to the point that Committee P itself, in its annual report for 2006, stated that ‘police officers seem to receive extremely favourable treatment from the criminal justice system’”

This causal link is erroneous and must be corrected.

53. It is true that, after analysing all information at its disposal on judgements and decisions handed down against police officers, Committee P concluded in its annual report for 2006 that some police officers found guilty of wrongdoing were shown considerable leniency by certain judicial authorities “to the extent that it is permissible to speak of a policy of tolerance towards criminal offences committed by rogue elements within the police force”. However, it is wrong to link this observation with the fact that some members of Investigation Department P are seconded from police forces and hence supposedly lack impartiality when handling complaints about the conduct of police officers.

54. Since 1 April 2007, complaints submitted to Committee P have been handled by the complaints unit, which is staffed by 14 administrative officers (i.e., not by police officers).

55. The question of the independence of certain members of Investigation Department P has been raised in the past by various international human rights monitoring bodies, including the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the United Nations Human Rights Committee and the United Nations Committee on the Elimination of Racial Discrimination. Each of these bodies expressed concern about the fact that some members of Committee P’s Investigation Department are seconded from a police service. With a view to ending doubts as to the

independence of some of its members, Committee P addressed the issue in its annual report for 2004.¹⁷

56. In addition, the question of the independence and neutrality of the persons responsible for processing complaints made against the police by members of the public and conducting the corresponding inquiries was considered at an Expert Workshop organized by the Council of Europe at the instigation of the Commissioner for Human Rights, Thomas Hammarberg, on 26 and 27 May 2008.¹⁸ A member of Committee P was asked to make a statement on the Committee's composition and operation at a session dedicated to independence and effectiveness. On the question of whether the police can investigate the police, the report of the Expert Workshop makes the following observation: "The consensus was that a mixture of police and non-police investigators is necessary, particularly until an *esprit de corps* for complaints investigators is established." A further consensus reached during discussions was that some types of judicial investigations could be entrusted only to persons with police training and experience (i.e., former police officers or seconded officers).

57. In his Opinion concerning Independent and Effective Determination of Complaints against the Police,¹⁹ the Commissioner for Human Rights of the Council of Europe discusses the independent police complaints body. He sets out five principles for the effective investigation of complaints against the police, as developed in the jurisprudence of the European Court of Human Rights on articles 2 and 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. One of these principles is independence, which means that "there should not be institutional or hierarchical connections between the investigators and the officer complained against and there should be practical independence".

58. In addition, a working group has been established within the framework of the EPAC²⁰ network, within which Belgium is represented by Committee P and the General Inspectorate of the Federal and Local Police, to formulate principles and standards for the work of the public institutions responsible for exercising police oversight. Of particular note among the principles and standards concerning independence, which take the jurisprudence of the European Court of Human Rights and the European Code of Police Ethics as their point of departure, is the principle establishing that: "The public institution shall be governed and controlled by persons who are not current or serving police officers or law enforcement officials. Institutions might wish, however, to employ former, current or seconded police officers or other law enforcement officials."

¹⁷ Annual report of the Standing Police Monitoring Committee for 2004, Parl., Doc, Chamber, 2004–2005, No. 1966/01 and Senate, 2004–2005, No. 3-1321/1, p. 57 et seq.

¹⁸ The Expert Workshop, which was entitled "Police complaints mechanisms: ensuring independence and effectiveness", brought representatives of police complaints mechanisms, police forces, prosecuting authorities, government departments, intergovernmental organizations, non-governmental organizations and academics together to discuss the different types of complaints systems and assess their effectiveness and independence, in conjunction with the Commissioner for Human Rights of the Council of Europe.

¹⁹ Opinion of the Commissioner for Human Rights, Thomas Hammarberg, concerning Independent and Effective Determination of Complaints against the Police, Strasbourg, 12 March 2009 (CommDH(2009)4).

²⁰ European Partners against Corruption. This network groups together the national police oversight bodies and anti-corruption authorities of States of the European Union.

59. It should be noted that, to the best of our knowledge, not a single complaint or specific accusation regarding a lack of independence, neutrality or impartiality in the work of Committee P or any of its constituent parts has ever been received.

B. Guarantees of the independence of members of Investigation Department P

60. The questions raised with regard to the independence of members of Investigation Department P were already addressed in paragraphs 273 to 280 of the second periodic report of Belgium. These responses are developed and expanded upon below.

61. The members of Investigation Department P fall into two categories:

(1) Statutory members appointed on a permanent basis. These include members who have been recruited by Committee P directly to the statutory staff of Investigation Department P and members initially seconded on a temporary basis who subsequently join Committee P's statutory staff by virtue of the transfer mechanism established in article 22 quater of the Organization Act of 18 July 1991,²¹ introduced in 2003 to further strengthen the neutrality and independence of Investigation Department P, particularly in the light of certain recommendations formulated by international bodies;

(2) Statutory members appointed on a temporary basis. Serving police officers and officers attached to an administrative body in which they have acquired at least five years' experience in positions directly relevant to policing may be recruited to Investigation Department P on a temporary basis for a renewable term of five years. As required under article 20 of the Organization Act of 18 July 1991, at least half the members of Investigation Department P are appointed in this manner. Members appointed in this way have a specific status distinct from that of other members.

62. It is important to recall at this point that when Committee P was first established, the legislator's intention was that, as an interim measure, set forth in article 67 of the Organization Act of 18 July 1991, the initial members of Investigation Department P should be appointed through their secondment from a police force or an administrative department. This explains why, from the outset, the Department's staff has always included a number of investigators who have been seconded from a police force but are entirely separated from their original force or department, on a temporary basis, by virtue of their new appointment or status.

63. The Minister of the Interior stated at the time that: "The intention is to allow for a degree of development over time. The aim is to minimize risk, as far as possible, by initially appointing only police officers to the Investigation Department. Police officers have the training required to conduct police investigations. Other persons may also be appointed in due course. Those persons will have the benefit of working as part of an experienced team that will be able to provide them with the necessary training and

²¹ Article 22 quater of the Organization Act of 18 July 1991 provides that all members of the Investigation Department who, at the end of their first renewable five-year term, obtain a rating of "good" in their final assessment may apply to Standing Committee P for a permanent transfer to the statutory staff of Standing Committee P's Investigation Department. All members of the Investigation Department who, at the end of their second renewable five-year term, are rated "good" in their final assessment have an automatic right to be transferred to the statutory staff of Standing Committee P's Investigation Department.

assistance. It is essential to bear in mind that members of the Investigation Department are officers of the judicial police.”²²

64. As stated in paragraphs 278 and 279 of the second periodic report of Belgium (CAT/C/BEL/2), the composition of Investigation Department P is intrinsically linked to the tasks entrusted to it.

65. Without prejudice to judicial investigations, the members of Investigation Department P work directly and exclusively under the authority and responsibility of Committee P. Reports on all investigations undertaken are submitted to Committee P, which has sole responsibility for deciding the relevant course of action. The investigator has no decision-making powers in this regard. Committee P, acting collectively through its board members, is responsible both for initiating investigations and for their outcome (which is brought to the attention of Parliament).

66. Committee P has responsibility for deciding, in full independence, which investigations should be undertaken and how they should be conducted. Again without prejudice to Investigation Department P’s judicial police missions, the reports produced and circulated are in all cases those of Committee P and not those of Investigation Department P or any individual investigator.

67. The Organization Act of 18 July 1991 establishes various measures designed to guarantee the independence and neutrality of members of Investigation Department P who are seconded from a police force or other government body.²³ These include: (1) the possibility of members being permanently transferred to the statutory staff of Investigation Department P; (2) the provision that members shall retain their right to promotion and advancement in their original force or department; (3) the provision that members shall be subject to the disciplinary authority of Committee P; (4) the possibility of members being commissioned at a higher rank; and (5) specific terms and conditions of remuneration and promotion. These various measures have the additional aim of enabling Committee P gradually to reduce the relatively high proportion — as originally designed by the legislator — of investigators seconded from an administrative department under the remit of the police or from active police service in that they encourage these members either to return to their original department or force or to transfer permanently to the staff of Investigation Department P.

68. The special status and independence of members of Investigation Department P were further reinforced by the Federal Parliament in 2007, when, on 17 February, it adopted new regulations governing the status of the Director General and members of Investigation Department P. These new regulations clearly establish that members of the Investigation Department are independent from the Executive, the police authorities and the whole sphere of police operations by expressly placing the Department under the exclusive authority and management of Committee P. The regulations governing members’ status are currently undergoing a further revision, which should be concluded in 2010.

69. In addition, at the start of 2009, in pursuance of the concluding observations of the Committee against Torture,²⁴ Committee P reviewed the regulations governing the status of investigators, in conjunction with the parliamentary committee that monitors its activities, and undertook to adopt additional measures to guarantee as fully as possible the independence of those members of its Investigation Department who are seconded from a

²² Parl. Docs, Chamber, 1990-1991, No. 1305/8, p. 109.

²³ See articles 20, 20 bis, 22 bis, 22 ter and 22 quater of the Organization Act of 18 July 1991.

²⁴ CAT/C/BEL/CO/2, 21 November 2008.

police force. These additional measures included the presentation of a draft bill to amend the Organization Act of 21 July 1991, under which only certain members of Investigation Department P may be seconded from a police force or other government body. Over the next 10 years, the number of investigators seconded from police forces (who might therefore return to police service one day) will be reduced very substantially.

70. At present, 6 of the investigators originally seconded from police forces have had no link with the force from which they were recruited for more than 15 years and 19 have had no link with their original force for more than 10 years. Four investigators have just commenced their fourth five-year term with Committee P. These investigators' increasing length of service within a structure that is totally independent from the Executive has reinforced their independence.

71. It should also be noted that mission assignments within Investigation Department P take account of the fact that individual members may retain affinities with their particular police force or unit of origin. Members of the Department who have been seconded from a police force will never, under any circumstances, be instructed to conduct investigations within their former force or unit.

C. Systematic linking of cases

72. This matter is currently under consideration.

Reply to paragraph 16 of the concluding observations

A. Presence of a lawyer/trusted adult

73. With regard to the presence of a trusted adult, it should be noted that:

Under article 33 quater of the Police Functions Act, all persons subject to administrative detention have the possibility of contacting a trusted third party. In the case of minors, the individual responsible for their care is automatically informed of the detention;

The Youth Protection Act²⁵ establishes, in article 48 bis²⁶ and article 51²⁷, respectively, that a responsible adult must be notified whenever a minor is detained

²⁵ The Act of 15 May 2006 amending the Youth Protection Act of 8 April 1965, the Code of Criminal Procedure, the Criminal Code, the Civil Code, the new Municipal Act and the Act of 20 April 2003 reforming the adoption process and the Act of 13 June 2006 amending the laws on the protection of young people and care of minors who have committed an act constituting a criminal offence have been adopted.

²⁶ 1. When a minor is detained following arrest or is released against a promise to appear or upon signature of an undertaking, the police officer responsible for his or her detention must, as promptly as possible, communicate or cause to be communicated to the mother and father, guardian or persons with legal or de facto custody of the minor, an oral or written notification of the arrest, the reasons for the arrest and the place where the minor is being held. If the minor is married, the notification must be given to his or her spouse rather than to the persons mentioned above.

2. If notification is not given in accordance with this article and none of the persons to whom such notification could have been given has contacted the juvenile court dealing with the case, the court may either adjourn the case and order that a notification should be issued to the person that it designates or, if it deems such notification not to be essential, proceed to hear the case. In the latter situation, it must state the reasons for its decision in the judgement on the case.

following arrest or is released against a promise to appear or upon signature of an undertaking, and that such notification shall be issued by the court dealing with an act constituting a criminal offence.

With regard to cases of judicial detention, article 91 bis of the Code of Criminal Procedure establishes that any minor who has witnessed or been the victim of an indecent act or other form of abuse has the right to be accompanied by a trusted adult and that the presence of a trusted adult can be refused only where a substantiated decision to the contrary has been made in the interest of the minor or of establishing the truth.

74. With regard to the presence of a lawyer, it should be noted that:

Article 20 of the Pretrial Detention Act of 20 July 1990 provides that accused persons shall be permitted to communicate freely with their lawyer after the initial hearing before the investigating judge, which must take place within 24 hours of their arrest;

The Youth Protection Act establishes that copies of all orders and decisions must be systematically communicated to the minors concerned, their parents and their lawyer. Minors must be assisted by a lawyer, if necessary an officially appointed one. Article 54 bis²⁸ stipulates that if a minor is a party to proceedings and does not have a lawyer, an officially appointed lawyer shall be assigned;

In cases involving minors, judges and courts are also subject to a legal obligation to provide additional substantiation for decisions, to apply specific decision-making criteria, to perform more frequent reviews and to use measures that restrict physical liberty (i.e., certain forms of placement) only in the specific circumstances established by law (which are linked, inter alia, to the gravity of the offence and the past history of the young person concerned);

The requirement to provide a copy of the transcript of the hearing and the specific rules that apply in those cases where a copy is issued to a minor are expressly established in article 28 quinquies, paragraph 2 (4), and article 57, paragraph 2 (4), of the Code of Criminal Procedure.²⁹

²⁷ 1. As soon as the court is seized of an act constituting a criminal offence, the judge shall inform the persons exercising parental authority in respect of the person concerned and, if applicable, the persons who have legal or de facto custody (...), so that they may be present at the proceedings.

2. Once seized of a case, the juvenile court may summons the accused, his or her parents or guardians, the persons holding custody, or any other person, at any time, without prejudice to article 458 of the Criminal Code, article 156 of the Code of Criminal Procedure and article 931 of the Judicial Code.

²⁸ 1. Where a person aged under 18 years is a party to the proceedings and does not have a lawyer, an officially appointed lawyer shall be assigned. Where a case is referred to the juvenile court pursuant to article 45, paragraph 2 (a) or (b), or article 63 ter (a) or (c), the prosecuting authority shall inform the President of the Bar Council immediately. This notification shall be sent at the same time as the charge, summons or caution, as applicable. The President of the Bar Council or the legal assistance bureau shall appoint a lawyer within two working days of receiving the notification.

2. The prosecuting authority shall send the juvenile court dealing with the case a copy of the notification informing the President of the Bar Council of the referral.

3. Where there is a conflict of interests, the President of the Bar Council or the legal assistance bureau shall ensure that the minor concerned is assisted by a lawyer other than the lawyer who would have been appointed by his or her parents or guardians or by the persons responsible for his or her custody or vested with powers to act on his or her behalf.

²⁹ Without prejudice to the provisions of specific laws, the investigating judge and any police force involved in questioning a person shall inform him or her that a copy of the (transcript) of the hearing may be requested, and that such copy shall be provided free of charge. Such copies shall be handed

75. The question of access to legal assistance during questioning has again come to the fore following the European Court of Human Rights' rulings in the *Salduz* and *Panovits* cases. On this issue, the Minister of Justice has embarked on a process of broad consultation with all professional groups concerned, namely the Bar Council, the Association of Public Prosecutors, the Higher Council of Justice and the Council of Crown Prosecutors. Most of the parties have given their opinion and a summary of their views is currently being prepared.

B. Audio- and videotaping

76. Articles 92 to 101 of the Code of Criminal Procedure provide for the possibility of audio- and videotaping the questioning of minors who have witnessed or been victims of an offence, the aim being to prevent the secondary victimization caused by repeated questioning. The audio- and videotaping of the questioning of minors suspected of committing an offence is also permitted pursuant to article 112 ter of the Code of Criminal Procedure.

77. A special budget has been established for equipping Belgium's 27 judicial circuits. Currently, each circuit has an interview room specially fitted for audio- and videotaping minors, a control room and a reception room where children can be shielded from unwanted attention, and made to feel secure and at ease. The unit of the behavioural sciences department of the Directorate General of the Judicial Police responsible for audio- and videotaping interviews with minors (known as the TAM unit) also equips its investigators with mobile interviewing kits thus allowing them to question children who are not able to travel.

78. A network of certified interviewers drawn from both the Federal and local police has been established in each judicial circuit. Only trained interviewers are permitted to question minors who have witnessed or been the victims of an offence. These interviewers are selected personally by the judge overseeing the case. Efficient network organization is essential to ensure that requests for trained interviewers can be met. This administrative responsibility rests with a network coordinator who organizes group feedback sessions and assumes the network's day-to-day management.

79. Instruction in the principles set out in the various legal and regulatory texts is initially provided by experts in the field, who train up the instructors who will in future provide training to the investigators themselves. There are a total of 500 trained investigators (268 French-speaking and 232 Dutch-speaking) at present. To refresh their

over or mailed by the investigating judge immediately or within 48 hours, or by the police force concerned, immediately or within one month. However, in particularly serious and exceptional circumstances, the investigating judge may, by reasoned decision, postpone transmission of this material for a period of up to three months, renewable once. This decision shall be recorded in the case file. Where the person concerned is a minor and there is a risk that he or she may be deprived of the copy or be unable to maintain its confidential nature, the investigating judge may, by reasoned decision, refuse to provide the minor with a copy of the transcript of the hearing. This decision shall be recorded in the case file. In these cases, the minor may consult the transcript of his or her hearing in the presence of a lawyer or legal assistant attached to the prosecution services' victim support unit. However, in particularly serious and exceptional circumstances, the investigating judge may, by reasoned decision, postpone this consultation for a period of up to three months, renewable once. This decision shall be recorded in the case file.

In the situation envisaged in subparagraph 4, without prejudice to the application of subparagraph 3, the investigating judge may decide to provide a free copy of the transcript of the hearing to the minor's lawyer. This decision shall be recorded in the case file.

basic skills and develop whatever new skills may be necessitated by changes in the field, investigators attend group feedback sessions with their instructors three times a year.

Reply to paragraph 20 of the concluding observations

A. Investigation, monitoring and inspection of places of detention, to verify compliance with the obligation to keep a register of detainees

80. Article 33 bis of the Police Functions Act,³⁰ added by virtue of the Miscellaneous Provisions Act of 25 April 2007,³¹ stipulates that all instances of deprivation of liberty must be entered in a register of detainees. The content and form of the register of detainees and the method of information storage must be established by the Crown. The royal decree establishing these parameters is currently in the drafting stages. Internal police guidelines have been drawn up to ensure that the law is applied consistently and effectively until this decree is promulgated.

81. The Directorate General of the Administrative Police has adopted a circular issued by the Federal Police on 24 January 2008³² which contains observations and guidelines for administrative detention. Point 3.9 of the circular, concerning the register of detainees, specifies the information that should be included in the register.³³

82. Following the issue of the circular dated 24 January 2008, the Directorate General of the Administrative Police drew up a model for the standard format to be used for the register of detainees, which is applicable for both administrative and judicial detention. The format is already used by the Federal airport police and the model to be adopted by the Directorate General of the Administrative Police and the Directorate General of the Judicial Police is currently nearing completion. A copy of the model has also been sent to the Standing Committee of the Local Police, with a view to its possible adoption by the local police.

83. Committee P has been monitoring the detention conditions of persons held in police custody for several years. Whenever a report of unsatisfactory detention conditions or a judicial or informal complaint alleging such conditions is received, Investigation Department P carries out systematic on-site inspections. In addition, a comprehensive review of conditions in remand cells (*amigos*) and lock-ups within Belgian police stations has been under way since 1997, over which period the initial findings have been subject to regular follow-up. A total of 310 police stations in which persons are detained following arrest have been visited or revisited since the start of the review. After each visit, a report detailing observations made and recommendations formulated, as applicable, is submitted to the station's commanding officer. Committee P recently drew up a document

³⁰ *Moniteur Belge*, 22 December 1992.

³¹ *Moniteur Belge*, 8 May 2008.

³² Directorate General of the Administrative Police Circular No. 2008/224, of 24 January 2008, entitled "Police Functions Act – Arrests and searches – Observations and guidelines".

³³ Time of arrival at the unit; actual time of detention; name of the detained person; reason for detention; whether or not a wanted notice was issued; inventory of personal belongings; name of officers who performed the search; time at which notification given to administrative police officer, judicial police officer or judge, and time of decision; time of release for outdoor exercise; supervision of detainee while in cell; name of trusted adult informed; time of release (accompanied by notice from the Crown prosecutor or other authority); transfer order; signatures; proof of transfer; column detailing meals; time placed in/released from cell; any medical care provided; lastly, confirmation of notification of rights of detainees.

summarizing the results of 12 years of systematic monitoring and inspection of places of detention which is due to be published in the near future.

84. During its inspections, Committee P found that a register of detainees was kept in each of the facilities visited. However, the fact that the royal decree establishing the content and form of the register of detainees has yet to be passed continues to pose problems. In those cases where the register of detainees was found to be incorrectly kept, Committee P brought the irregularities to the attention of the commanding officer and the police officers with whom it spoke.

B. Recording signs of injury in the register of detainees

85. With regard to records of the physical condition of persons under arrest, the State party has taken note of the Chamber judgement of the European Court of Human Rights in *Turan Cakir v. Belgium*, dated 10 March 2009,³⁴ particularly point 54 of the judgement, which stipulates that the State has a duty to protect persons in custody on account of their vulnerable situation. A field for recording any visible injuries and the perceived physical condition of detainees prior to placing them in their cell and upon their removal will be included in the standard register of detainees used for administrative and judicial detention which is referred to above and the specific parameters for this information will be established in the future royal decree.

86. Some police chiefs and unit commanders nonetheless insist that information concerning an individual's behaviour at the time of arrest and any physical marks or injuries identified before, during or after the police intervention should be recorded in an official police report. A Federal Police circular dated 4 August 2009³⁵ supports this position. Whenever members of Committee P meet with a detained person during one of the Committee's inspection visits, they always enquire about the detainee's state of health and record this information in their post-visit report.

Reply to paragraph 27 of the concluding observations

The State party is encouraged to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

87. Belgium signed the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 24 October 2005.

88. The preparatory work for ratification of the Optional Protocol has since begun. A working group made up of representatives of the federal and federated entities concerned was set up under the preceding legislature to examine the technical and legal aspects of the obligation of all contracting parties to establish a national mechanism to prevent torture.

89. The working group issued its preliminary conclusions under the preceding legislature. It will resume its work in January 2010 with a view to reaching an agreement with all authorities concerned on the structure, composition, mandate and funding of Belgium's national preventive mechanism.

³⁴ Application No. 44256/06.

³⁵ Federal Police Circular DGA/SPC/SEC OPS/2009/3978 of 4 August 2009, entitled "Content of police reports – Description of detained persons".