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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 1830th meeting
Held via videoconference on Thursday, 15 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 (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. Neijens** (Belgium), introducing the fourth periodic report of Belgium (CAT/C/BEL/4), said that the document was the result of close cooperation between the State's various federal and federated entities. Representatives of civil society had been widely consulted prior to the current dialogue.

3. **Mr. Flore** (Belgium) said that he wished to highlight the progress made in implementing recommendations made by international mechanisms, including the Committee, concerning the right of persons deprived of liberty to lodge complaints. As from 1 October 2020, prisoners could file complaints with a complaints commission, established within each prison, about any decision taken against them by the prison governor concerning their rights and obligations. The commissions were composed of members recognized for their expertise, independence and impartiality. The detained persons in question had the right to be assisted by a lawyer or a designated support person, including a fellow inmate. The commissions' decisions were subject to appeal. Although an impact assessment of the new right of complaint had yet to be carried out, as at 1 June 2021, a total of 855 complaints had already been processed and a quarter of them had been considered to be substantiated or partially substantiated.

4. The coronavirus disease (COVID-19) pandemic had had a considerable impact on the daily lives of many citizens, particularly the most vulnerable. The various governments in Belgium, aware that people who suffered violence in their homes had been confined with their abusers, had acted quickly to strengthen capacity to support them.

5. There was a need to strike a balance, in pandemic responses, between efforts to prevent the virus from spreading to facilities where people shared living spaces and the right of persons in such facilities to social life and visiting rights. Each authority in Belgium had worked to address that challenge in coordination with others and in accordance with World Health Organization (WHO) guidelines. The authorities had focused on reducing the number of people in the places concerned while ensuring that links were maintained with the outside world. Alternatives to deprivation of liberty had thus been provided, including early release, extension of prison leave or the interruption or delay of the enforcement of sentences. In centres for minors over whom the jurisdiction of a juvenile court had been relinquished, efforts had been made to place the residents in foster care. In secure centres, priority had been given to the detention of persons who posed a threat to public order or national security or for whom removal from the country remained possible. Virtual meetings and appropriate visits had been organized in the country's nursing homes and care centres and in institutions for persons with disabilities. The rules for visits to prisons and secure psychiatric centres had been adjusted to the current circumstances and videoconference calls had been introduced in all institutions.

6. Several independent reports had emphasized the urgent need to establish a national mechanism for the prevention of torture in accordance with the Optional Protocol to the Convention. Since 2018, much progress had been made towards that goal, including the approval by all the country's assemblies of the ratification of the Optional Protocol. Furthermore, an evaluation of the existing independent preventive mechanisms against the criteria specified in the Optional Protocol had been carried out and agreement had been reached on the principle of designating one or more existing oversight bodies as the mechanism. The next step would be the start of political discussions in the Government and with the federated entities to select the institution or institutions that would act as the national preventive mechanism. The instrument of ratification could then be deposited and the measures for setting up the mechanism introduced.

7. **Mr. Touzé** (Country Rapporteur) said that dealing appropriately with the wealth of information that had been provided by the State party would have required a much longer dialogue than the two online meetings with the delegation allowed for.

8. Concerning police violence, the State party's report rightly emphasized training mechanisms for officers, which the Committee considered indispensable for the prevention of ill-treatment in the course of police operations. The results of the inspection inquiry (*enquête de contrôle*) into police violence conducted by the Standing Committee for Police Oversight (Committee P) in 2017 had shown that, while training in violence control had had very positive results, it was no less important to provide officers with instruction in other areas such as stress management and ethics. He wished to know how the State party intended to implement the recommendations made by Committee P and how they would be translated into specific training for officers.

9. The rules on police restraint techniques and the use of force were vague and therefore potentially permissive. He was aware of only one relevant provision, namely article 37 of the Police Functions Act, which provided that force could be used to pursue a legitimate objective that could not otherwise be achieved. It was unfortunate that there was no legal basis governing restraint of a person in the prone position, also referred to as ventral decubitus. The practice had been controversial since the death of Jozef Chovanec at Brussels South Charleroi Airport in February 2018, after officers had pinned him down on his stomach for 16 minutes with a knee on his back. He wondered what measures had been taken to limit such restraint and to train and supervise police officers in the field.

10. According to the relevant regulations, the weapons issued to police officers included semi-automatic pistols, expandable batons and incapacitating weapons. It appeared that the use of such weapons and other means to crack down on social protest was becoming increasingly frequent. One example was the use of water cannon, pepper spray and batons to suppress a banned demonstration of the environmental movement Extinction Rebellion on 12 October 2019. The delegation might comment on the excessive use of such weapons during rallies and on the need for stricter regulation. He would be grateful if it could also explain how the State party intended to prevent the abuse of 7.62 mm x 35 mm calibre ammunition, newly authorized to respond to terrorist threats, given that one arms manufacture expert had likened such high calibre ammunition to munitions of war.

11. The inquiry of Committee P had also shown that police chiefs did not have a common understanding or their own definition of police violence and preferred to refer to the existing legal framework. Police violence was perceived as any use of the means of coercion made available to officers that was not in keeping with the relevant laws. However, in certain areas of policing, efforts had been made to raise awareness of a broader definition of police violence that included, for example, verbal and psychological violence. The State party should consider reviewing the notion of police violence and consolidating the relevant legislation on the matter.

12. He would welcome any comments on the steps taken to ensure the independence and impartiality of the country's police monitoring mechanisms, namely, Committee P, the Inspectorate General of the Federal and Local Police and the internal oversight services. A major problem was that the latter services were not necessarily independent. Furthermore, the Inspectorate General was composed solely of police superintendents and detectives. Similarly, the Police Investigation Service of Committee P was partly made up of members seconded from a police department or public service.

13. The law on Committee P required public prosecutors and auditors general to transmit to Committee P any final court decisions concerning offences committed by Belgian police officers. However, problems of access to the relevant statistics were routinely reported by non-governmental organizations. He wished to know whether the State party would consider introducing more centralized and efficient statistical processing of data on judicial decisions, especially concerning police officers.

14. Between 2013 and 2017, 41 police officers had been charged with offences. However, the courts had deferred passing judgment on 21 of them. Of the remaining officers, 12 had been given a partially suspended sentence or a fine, 1 had been given a totally suspended sentence and 7 had been sentenced to unpaid community work. He failed to understand how

the State party justified such extensive use of deferred judgments. Moreover, it was not clear why only 6 per cent of cases against police officers resulted in prosecution or punishment.

15. The law on disciplinary action against police officers had been the subject of strong criticism. The failure to enforce the law had led to inadequate or no punishment of offenders. There had been much discussion of initiatives to amend the law to address its shortcomings; most recently, the Ministry of the Interior had announced such a project in February 2021. He wondered why the State party had not considered amending the law earlier and whether the proposed changes to the legislation would be accompanied by greater access to data on disciplinary sanctions.

16. With regard to overcrowding in prisons, a major concern for the Committee, he would like first to welcome the efforts made by the Government to reduce the number of prisoners. The rate of prison overcrowding had fallen between 2013 and 2018, from almost 25 per cent to 12 per cent according to the periodic report. However, as Belgium had refused to take part in the Council of Europe Annual Penal Statistics (SPACE) survey, the Committee was unable to verify those figures. Furthermore, according to data from the Council of Europe, Belgium had the second highest rate of overcrowding among its 52 member and observer States, after Turkey. He would appreciate it if the delegation could provide the Committee with additional information on the reported decrease in prison overcrowding.

17. Overcrowding continued to be a problem owing to the imposition of consecutive sentences, the increase in sentence lengths, delays in release on parole and – in the case of remand prisons, where the situation was most acute – the rise in the use of pretrial detention. The overcrowding rate in the Saint-Gilles prison in the Brussels-Capital Region was close to 50 per cent, to take but one example. The French-speaking Court of First Instance of Brussels had ordered the Belgian State in January 2019 to put an end to the overcrowding in the Saint-Gilles prison within six months. He would welcome information on the current status of the prison and whether the authorities had complied with the Court's demand. More generally, he wished to know what steps were being taken to reduce recourse to pretrial detention.

18. The delegation should explain what the State party planned to do to address complaints about the food and the lack of special diets for persons with health conditions, such as diabetes, at some places of detention. WHO had issued a report that pointed to an insufficient number of health-care workers in some European prisons. Furthermore, following its visit to Belgium in 2017, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had highlighted a number of shortcomings in the care provided in prison institutions to persons subject to committal. It would be useful to learn how its recommendations on care had been implemented. He would also be grateful if the delegation could provide the Committee with recent data on the suicide rate in prisons.

19. Turning to the issue of terrorism, he said that a law introduced in 2016 had made it possible to conduct searches round the clock in cases of criminal conspiracy or cases involving organized criminal groups. He would like to know what criteria were applied to justify the use of night searches, what guarantees were extended to people who were subjected to such searches and what grounds investigating judges were required to give before authorizing them.

20. It was a cause for concern that the maximum period during which a person could be deprived of liberty without being brought before a judge had been increased from 24 to 48 hours and that the right of access to a lawyer did not apply to persons under administrative arrest. He would like to know whether the State party planned to extend the right of access to a lawyer to all forms of detention, including administrative arrest. The Code of Criminal Procedure should be amended, as it currently provided that the initial interview with the police or the investigating judge could start before the arrival of the suspect's lawyer. Moreover, there were reports that, in practice, access to a lawyer was sometimes denied until after the first police interview. He wondered what measures had been taken to ensure that the right of access to a lawyer was always respected.

21. He would like to have more information about the system for categorizing prisoners according to their degree of radicalization, including statistics on the number of prisoners in each category. Given that such classifications served as the basis for the application of special

prison regimes, they should be based on specific objective criteria and concrete data; however, he had not been able to find any such criteria or a definition of the term "radicalization". Information on the specialized units established in prisons to accommodate prisoners considered to have been radicalized would also be appreciated.

22. In view of the essential role of deradicalization programmes in the fight against terrorism, he wished to know whether the Government intended to put in place mandatory individualized programmes for all prisoners who needed them. There should be a common policy on deradicalization throughout the prison system to ensure that programmes were effective, harmonized and consistent. He would also like to hear about the findings of the working group on radicalization in prison, set up under the Action Plan against Radicalism, and he would welcome an assessment of the effectiveness in combating radicalization of the National Security Plan 2016–2019 and the Framework Note on Comprehensive Security 2016–2019.

23. In accordance with the Committee's jurisprudence, Belgium had jurisdiction over the Belgian women and children currently detained in camps in the Syrian Arab Republic for the purpose of its Convention obligation to prevent acts of torture. While he commended the Government's decision, announced on 4 March 2021, to review its initial refusal to repatriate those Belgian nationals, he was concerned that only children under the age of 12 years would be eligible for repatriation. He would appreciate an explanation of the age limit, which appeared incompatible with the State party's obligation – under the Convention on the Rights of the Child and the Optional Protocol thereto on involvement of children in armed conflicts – to protect all children. He also wondered how the Belgian authorities would determine the age of the children. Lastly, he would like to know whether the children's mothers would be able to return to Belgium and, more generally, how the repatriations would be carried out.

24. **Ms. Belmir** (Country Rapporteur) said that it was not clear whether international human rights treaties prevailed over national law in Belgium. The Court of Cassation had upheld the primacy of international standards; however, according to another interpretation of the relevant provisions, such primacy was unconstitutional. She would appreciate clarification, especially as the Constitution provided that European standards prevailed over national law in some cases, which would imply that regional standards had a higher status than international standards. She would also like to know whether, under article 167 of the Constitution, international human rights standards had direct effect and immediate applicability in national law.

25. The Committee had recommended that the definition of torture contained in article 417 bis of the Criminal Code should be amended to include the motive of discrimination, in line with article 1 (1) of the Convention. She would like to understand the State party's position that article 417 bis read in conjunction with the other applicable provisions went further than what was required by the Convention and that the amendment recommended by the Committee would constitute a step backwards.

26. She wished to know whether the legislative amendments of 2013 and 2014, on the removal of judges and the autonomous management of the justice system by the judiciary, had adversely affected judicial independence given the concerns raised by judges that the judiciary was increasingly treated as part of the executive branch. She would also like to receive information about the procedure whereby the police could conduct a preliminary investigation without input from the prosecution service. In particular, she wondered whether such investigations undermined cooperation between the police and prosecutors and what the impact on the level of police brutality had been, if any. Lastly, in view of reports of racial profiling by law enforcement officials and the absence of reliable data on the subject, she would like to know whether the State party planned to strengthen training for police officers on racism.

The meeting was suspended at 1.40 p.m. and resumed at 1.45 p.m.

27. **Ms. Rochez** (Belgium) said that the violence control training given to police officers was based on the principle of de-escalation. There was a special focus on psychosocial skills, with training modules on communication, stress management and conflict management already available. The main recommendations resulting from the inspection inquiry conducted by Committee P had already been implemented, through process improvements

developed by various working groups. One such group was working on the revision of circular No. GPI 48, which regulated training for police officers in the area of violence control; another was reviewing the training of violence control specialists.

28. A mechanism was being put in place to monitor the training provided to police officers, both at police academies and on the job. The revised training system would place renewed emphasis on the reasonable use of force in accordance with the legal framework, the importance of reporting violent incidents and the proposed changes to the law on disciplinary procedures. Training courses were supplemented by information and awareness-raising campaigns on integrity, non-discrimination, anti-racism and violence control. In addition to violence control training, police officers received training on human rights and other topics related to the prevention of abusive behaviour.

29. The use of force by the police must comply with the principles of appropriateness, proportionality and subsidiarity. With regard to the policing of demonstrations, the philosophy applied was the negotiated management of public space. One of the essential principles of that philosophy was de-escalation, which meant that force could be used only to the extent required and when all other measures had failed. The use of force would always be preceded by a warning. The relevant decisions were taken in consultation with the administrative police authorities and in accordance with the general principles on the use of force set out in the Police Functions Act. Special equipment was used only as provided in the Act and following a risk analysis carried out by an administrative police officer. Pepper spray and tear gas spray could only be used defensively and in limited situations such as incidents of serious mass violence. Tear gas grenades could be used in the same situations and for the dispersal of violent armed crowds. The use of water cannon was permitted only if that was possible without endangering the physical integrity of the persons present.

30. Racial profiling was prohibited, and all police interventions were governed by a strict legal framework that was in line with international human rights standards. The law prohibited any discrimination on protected grounds, including ethnicity, and police officers who, in the exercise of their functions, failed to respect that prohibition were liable to criminal penalties. The law also contained an exhaustive list of the scenarios and circumstances in which the police were authorized to check a person's identity. A person's apparent ethnicity could be taken into account only when it was a relevant element justifying the check. Racial profiling was prevented through training in targeted profiling, human rights, behaviour detection and diversity, as well as initiatives based on Belgian and international best practices. A complaints mechanism was being envisaged, as was the generalization of the use of body cameras to improve prevention and accountability when the police infringed fundamental freedoms. Lastly, the rights and guarantees of persons under administrative arrest were laid down in the Police Functions Act.

31. **Ms. Kormoss** (Belgium) said that Committee P was a completely external and neutral entity independent from both the executive branch and the judiciary, making it unique among police oversight bodies. The Police Investigation Service of Committee P, the staff of which had grown by 25 per cent between 2018 and 2020, impartially investigated all police-related deaths. The Inspectorate General of the Federal and Local Police might be a public body, but it complied with the recommendations of the European Code of Police Ethics. It was responsible, among other things, for monitoring forced returns of foreign nationals and ensuring respect for returnee rights and freedoms on the basis of a common European framework of standards, good practices and harmonized procedures. The Inspectorate drew up a detailed report for each situation it monitored, as well as a judicial report, which was transmitted to the public prosecutor. Committee P had the power to monitor the activities of the Inspectorate.

32. **Mr. Flore** (Belgium) said that the delegation could not comment on the convictions handed down by the courts, as judges were independent and took their decisions on the basis of all the facts in a case.

33. **Ms. De Souter** (Belgium) said the Government was aware that a large share of the prison population was made up of persons in pretrial detention, even though the conditions under which investigating judges could order such detention were very strict and their decisions in that regard were subject to automatic monitoring on a regular basis and could be

appealed up to the Court of Cassation. In addition to the use of the alternatives to pretrial detention described in paragraph 103 of the report, other measures had been explored, including setting a maximum duration for pretrial detention, ordering pretrial detention only for persons accused of offences punishable by 3 or more years' imprisonment rather than the current 1 year and restricting the list of offences in connection with which pretrial detention could be imposed. However, none of those measures had been retained owing to their counterproductive effects. The proposals for reform centred instead on procedural aspects, such as requiring investigating judges to justify why pretrial detention was the only option.

34. **Mr. Van Wynsberge** (Belgium) said that Belgium had not refused to take part in the SPACE survey on prison populations; it had simply been prevented from doing so at the time of the request for technical reasons. The figures had been provided retroactively. Furthermore, two data analysts had been recruited to facilitate the processing of relevant data, and a public call for tenders would be launched shortly for the creation of a new database that better met evolving needs.

35. Prison overcrowding had decreased considerably since 2008 but remained an issue, especially in remand prisons owing to the number of persons in pretrial detention. The overall rate of overcrowding had been 10.76 per cent in 2020, although measures taken in response to the COVID-19 pandemic, namely, early release and interruption of the enforcement of sentences, had helped ease the situation. Efforts to reduce overcrowding involved investing in alternatives to deprivation of liberty, additional capacity, including in psychiatric centres, and renovation work; ensuring that persons subject to committal were not held for long periods in prison psychiatric wings; and promoting prisoner reintegration, for instance through the opening and expansion of halfway houses. Much of the renovation work would be completed in 2022, and all new or renovated establishments would meet the standards set by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. In addition to traditional alternatives to deprivation of liberty, such as community service and electronic monitoring, the public prosecution service and the criminal courts were contemplating other ways of terminating public proceedings, for example the placement of offenders in specialized drug treatment facilities. A new Criminal Code was being drafted with greater emphasis on alternatives to imprisonment.

36. By law, all prisoners were entitled to sufficient, good quality food adapted to their state of health. Food included at least one hot meal distributed at fixed times. Prison food services were currently decentralized and used local providers, but a 2018 study had recommended the adoption of an action plan with specific objectives to professionalize and optimize food services across establishments, including through more centralized management. Owing to the pandemic, the action plan had yet to be devised.

37. Regarding access to medical care for prisoners, there was no prior triage and therefore no need for a particular justification; all that was required was the individual's identification and cell number. Some prisons had mailboxes through which consultations could be requested using a sealed envelope that only the medical service could open. Naturally, management had to be informed of when and where a prisoner was to receive medical care, as that implied the person being moved. Unfortunately, the suicide rate among prisoners remained higher than in the general population, despite a number of measures for inmates with mental illness. There had been 12 cases in 2019. Efforts to address the phenomenon, including monitoring of new arrivals, were being stepped up, and the basic training for prison guards included suicide prevention, communication, and conflict and aggression management. In addition, inmates could call a toll-free suicide prevention helpline. Access to medical care and psychological support had been guaranteed throughout the pandemic.

38. As at November 2020, there had been 131 radicalized prisoners. The preventive strategy involved distributing those persons across the country's prisons and placing them as much as possible with the general inmate population to promote integration. More than 20 safety and security managers had been recruited to bolster local teams. A progamme focused on disengagement was being developed in cooperation with the Communities.

39. **Ms. Failla** (Belgium) said that the searches referred to by Mr. Touzé could not be conducted without a warrant, except in cases of flagrante delicto or with the consent of the

occupant of the property. An inventory of objects taken during a search was drawn up, and searches were subject to the oversight of the judge or indictment chamber concerned.

40. **Mr. Neijens** (Belgium) said that the Government actively sought to repatriate Belgian minors from conflict zones in accordance with the best interests of the child. The repatriation of children aged 12 or older was decided on a case-by-case basis. To the authorities' knowledge, there was currently only one Belgian child over 12 in north-east Syria. Children who could be reasonably believed to be entitled to Belgian citizenship were included in the policy. Belgian mothers who wished to return and whose return was in the best interests of their children were repatriated, provided that they did not pose a threat to national security. A DNA test to determine a biological link with a Belgian parent was typically required for children born abroad who did not hold official documentation. In terms of determining the age of children born abroad, in the case of the Syrian Arab Republic, the children could logically be assumed to be under 10 years old given when the conflict had begun. Since 2019, 30 children had returned to Belgium, most from Turkey and a few from north-east Syria, in two repatriation operations.

The meeting rose at 2.30 p.m.