



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

Distr.: General
3 December 2013
English
Original: French

Committee against Torture

Fifty-first session

Summary record of the first part (public)* of the 1182nd meeting

Held at the Palais Wilson, Geneva, on Tuesday, 5 November 2013, at 10 a.m.

Chairperson: Mr. Grossman

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* No summary record was prepared for the second part (closed) of the meeting.

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GE.13-48247 (E) 291113 031213



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The meeting was called to order at 10.10 a.m.

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

Third periodic report of Belgium (CAT/C/BEL/3; CAT/C/BEL/Q/3 and HRI/CORE/BEL/2012)

1. *At the invitation of the Chairperson, the delegation of Belgium took places at the Committee table.*
2. **Mr. de Crombrugghe** (Belgium) said that the third periodic report of Belgium was the result of close cooperation between the various public bodies concerned, and of contributions from the non-governmental organizations that had been consulted about the draft report.
3. **Mr. Limbourg** (Belgium) recalled the significant progress, described in paragraph 29 of the report, constituted by the adoption of the so-called Salduz Act of 13 August 2011, which strengthened the rights of persons questioned by the police or judicial authorities, especially regarding the provision of information, medical assistance, the right to notify a relative and access to a lawyer. The new Act was complemented by concrete measures, such as the issuance of Circulars from the College of Principal Public Prosecutors, the establishment of an online service of standby lawyers and the preparation of a declaration of rights in 52 languages, which should be given to each person questioned. Other progress, described in greater detail in the periodic report, concerned particularly the broadening of the right to speak of those bound by professional secrecy, so that they could inform the authorities of acts of violence between partners, temporary prohibition of residence for violent spouses or partners, legislative confirmation of the discontinuance of the practice of placing unaccompanied juveniles in detention and limitation of the duration of detention for families residing in the country illegally who had underage children, and the prohibition of expulsion of an unaccompanied foreign juvenile where there were no guarantees of the person concerned being cared for in the country of origin.
4. It should also be noted that the definition of trafficking in persons henceforth included other forms of sexual exploitation and that the amount of the fines imposed for trafficking in persons was henceforth multiplied in line with the number of victims. The action plans that had been adopted in the area of trafficking in persons and violence against women had a wider scope than previously, extending not only to domestic violence but also to female genital mutilation, forced marriages and honour-related violence. Training for police officers, judges and health-sector workers who were involved in the fight against trafficking had been strengthened, as had training for officials who carried out forced expulsion of foreign nationals. In addition to the instruments mentioned in the report, Belgium had ratified, on 8 March 2013, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.
5. Despite that progress, challenges and shortcomings still existed. Firstly, prison overcrowding remained a significant problem, but improvements should be achieved thanks to the increase in the number of places of detention and the greater use of community service orders and electronic surveillance as alternatives to imprisonment. Secondly, there had been little progress in the process of ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, since it had been decided that priority should be given to the establishment of a national human rights institution that could have a mechanism to prevent torture. Any discussion on the matter had to take into account the institutional structure of the country: the fact that the federal Government, the three communities and the three regions each had

powers relating to human rights meant that the establishment of a national institution for human rights necessarily entailed negotiation with all those entities.

6. **Ms. Belmir** (Country Rapporteur) welcomed the third periodic report of the State party and observed that it had been submitted on time. While noting the explanations provided by the State party, according to which the definition of torture contained in article 417 bis of the Criminal Code was supplemented by articles 417 ter and quater, which prescribed the relevant penalties, she considered that it would have been better for article 417 bis to be more comprehensive by, in particular, covering acts committed at the instigation or with the consent of public officials.

7. She was pleased to learn that Belgium had decided to establish a national human rights institution, but wished to emphasize that ratifying the Optional Protocol was as important as designating a national preventive mechanism. It would be interesting to know the delegation's views on all those points.

8. With regard to the rights that had to be guaranteed to persons from the time they were taken into custody, she noted that the State party had introduced the practice of giving detainees a written letter of rights before the first hearing, but said that she was unsure about the effectiveness of the measure, given that not all the persons concerned were able to read and write. Similarly, the Salduz Act was certainly a step forward, but its implementation raised questions, particularly in relation to the limitations imposed on legal aid, confidentiality issues, medical assistance and access to files. The delegation should indicate what steps were being taken to ensure that the process of reform initiated under the Salduz Act was not counterproductive in the areas she had mentioned.

9. With regard to violence against women and girls, she acknowledged the legislation that had been adopted and the training courses that had been organized, which were steps in the right direction, but wished to know why the Convention was not cited in any of that legislation and was not included in the training programme for all persons engaged in combating such violence. It would also be helpful to obtain more specific information on punitive measures and, in particular, to know whether, in cases of human trafficking, custodial sentences really were imposed, and whether the State party applied any law enforcement measures other than fines.

10. The European Court of Human Rights had, on numerous occasions, condemned the State party for the conditions in which some forced removals had been conducted, underlining that they were indicative of a lack of humanity. In that connection, the State party had pointed out that it had an independent body to supervise forced returns, namely the General Inspectorate of the Federal and Local Police (AIG). Yet the information before the Committee suggested that the body was not truly independent, that some forced returns took place in appalling conditions, and that the officials responsible for deportations sometimes behaved in a brutal and discriminatory manner. It would be useful to receive clarification on the matter.

11. Individuals who had applied for asylum under the Dublin II Regulation could be detained for a period of between two and nine months. Some non-governmental sources, however, stated that the detention measures applied in such cases did not have a strong legal basis, and were taken solely out of concern that the person concerned might not voluntarily leave the country if ordered to do so. She invited the delegation to comment on the issue.

12. **Mr. Bruni** (Country Rapporteur) said that some non-governmental sources indicated that, owing to its very limited staff, the General Inspectorate of the Federal and Local Police (AIG) had only been able to oversee 2.6 per cent of the deportations carried out in 2012. He requested the delegation to indicate whether those figures were correct and,

if so, to describe the way in which deportations outside the supervision of the AIG were conducted.

13. The State party report indicated that between 2008 and 2012, 75 deportations had been conducted, of which 3 had been on the basis of diplomatic assurances. The Committee wished to be informed why such assurances had been requested and whether those cases had been followed up and, if so, what had been the result. In that regard, the delegation should explain why Mr. Nizar Trabelsia had been extradited to the United States of America in October 2013, despite the fact that the European Court of Human Rights, which had been seized of the case, had requested the State party's authorities not to extradite the individual concerned until it had issued its judgement.

14. The State party had indicated that law enforcement officials received no specific training on the absolute prohibition of torture, but that the issue was part of the general human rights training that was provided. Yet it was of the utmost importance to make the prohibition an explicit component of the training for such officials. With regard more particularly to staff supervising detainees, the report indicated that, in addition to the compulsory initial training that they received, officers could also attend specific training courses. The delegation should indicate whether such courses had been found to produce tangible results, such as a reduction in the number of complaints from detainees relating to violence or discriminatory treatment. It would also appear that there was no code of ethics for prison staff, which was a shortcoming.

15. According to non-governmental sources, the level of overcrowding in several major prisons was in excess of 50 per cent. The delegation should indicate whether that information was correct and provide detailed information on the measures being taken to reduce prison overcrowding, and on the substantive impact of such measures, particularly in respect of the number of incarcerations in the country and the overall situation of prisoners. One of the steps that the State party said it had already taken was renting the prison of Tilburg in the Netherlands, which held prisoners who had been sentenced by criminal courts in Belgium, a measure that the Committee found strange. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) had conducted a visit to the facility in October 2011 and noted that the level of inter-prisoner violence was very high. The violence was essentially linked to the large number of beds in each dormitory and to the non-separation of various categories of detainees. Moreover, it had been reported in the press that the rental agreement for the prison would expire on 31 December 2013, and that the Dutch authorities intended not to renew it, but rather to close the facility. Did the State party have a contingency plan to prevent the closure from inevitably exacerbating the problem of overcrowding in its other prisons? In that connection, the report indicated that a master plan for 2008–2016 had been implemented to build new prisons and renovate and extend existing facilities. The delegation should provide an assessment of the plan's implementation and state whether it had made a positive impact on the ground. In 2012, the CPT had also carried out visits to detention centres, including Forest prison. It had found that, although the facility was designed to hold 405 detainees, it had 706 inmates, which might constitute degrading treatment. Non-governmental sources had indicated that a number of services provided in the facility were inadequate, particularly medical services. He invited the delegation to comment on the issue.

16. The Principles Act of 12 January 2005 granted detainees the right to complain to independent bodies, namely the supervisory commissions. The commissions, however, had still not become operational, which warranted an explanation. Moreover, in a judgement delivered on 30 October 2013, the Constitutional Court had ruled that a provision of the Act relating to the systematic searching of detainees under certain circumstances was contrary to article 3 of the European Convention on Human Rights. The Committee wished to be

told what action the authorities planned to take in that regard. The report indicated that a computerized register of detainees had been implemented on a trial basis in the Federal Judicial Police of Brussels. It would be useful to receive further details on the project and to know whether the system had proved successful.

17. With regard to the implementation of article 12 of the Convention, the State party had indicated that, at the time of preparation of the report, the Standing Committee for Police Monitoring (Committee P), which was an external body, had not had a comprehensive system for assessing the handling of complaints against members of the police services. The delegation should indicate whether such an assessment had since been carried out, and should provide information on the outcome of complaints filed against police officers. According to non-governmental sources, Committee P was composed of former police officers who were disinclined to incriminate former colleagues and had only very limited resources at their disposal. He would welcome the delegation's views on those assertions and on the functioning of Committee P.

18. With regard to the implementation of article 15 of the Convention, the State party had indicated that its legislation did not explicitly provide that evidence obtained through torture was inadmissible, but that evidence obtained unlawfully could not be taken into consideration. Nevertheless, the Committee was of the opinion that, in order for article 15 to be implemented effectively, it was essential for domestic legislation to provide explicitly that no statement made as a result of torture could be put forward as evidence. In that connection, the delegation could perhaps comment on the case of Lahoussine El Haski, who had been sentenced to 7 years' imprisonment in 2008 for involvement in terrorist activities. The European Court of Human Rights had held that he had not received a fair trial, because he had been convicted on the basis of witness statements obtained through torture in a third country.

19. In respect of the implementation of article 16, the Committee wished to obtain updated information on the prosecution of 14 federal railway police officers for ill-treatment perpetrated while they had been on duty at the Bruxelles-Midi station. Lastly, the delegation should indicate whether the State party had established a clear time frame for ratifying the Optional Protocol and establishing a national preventive mechanism.

20. **Mr. Gaye** wished to know whether Belgian legislation included provisions to protect from possible reprisals police officers who challenged or refused an order from a superior that entailed the commission of an illegal act, particularly an act of torture. Pursuant to article 2 bis of the Act of 15 March 1874 (as amended by the Act of 15 May 2007), the Government granted extradition only if the requesting State gave formal assurances that the death penalty would not be carried out. It would be useful to know how that provision was applied in practice, particularly in the case of requesting States that did not observe a moratorium on the implementation of that penalty. How was it guaranteed, in practice, that they would honour their commitment? The inability to identify police officers was known to favour their impunity. Were there any plans to issue police officers with identification badges? It had been reported that 10 per cent of prisoners had mental disabilities, which was a relatively high proportion. Could it be concluded that persons with such disabilities could be held to have criminal responsibility?

21. **Ms. Gaer** wished to know what Belgium had learned from the joint administration of Tilburg Prison in the Netherlands, where inter-prisoner violence was, according to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), a major problem. Was the delegation aware of any cases of sexual violence at the facility? It was stated in the report that the Government did not collect data disaggregated by ethnicity, and it would be interesting to know why. Did Belgium plan to introduce prisoner searches that were less intrusive than strip searches, which the Committee viewed as cruel, inhuman or degrading treatment? Could the delegation provide

any data on cases of honour-related violence and female genital mutilation? More generally, what had the authorities learned from efforts to combat such practices?

22. **Ms. Sveaass** wished to know what steps the State party was taking to improve the situation of detainees with mental disorders and address the lack of staff qualified to assist them. Was the Istanbul Protocol part of the training provided to police officers and health professionals? She would welcome information on reparation and compensation measures, including the necessary means for rehabilitation, ordered by courts in cases involving torture or ill-treatment. Did Belgium intend to follow up on the recommendation of the Committee on the Rights of the Child that corporal punishment in the home should be explicitly prohibited by law? Lastly, what complaints mechanisms were available to foreign nationals in an irregular situation in closed centres who wished to report ill-treatment?

23. **Mr. Mariño Menéndez** asked whether diplomatic assurances were also sought in deportation procedures and, if so, what mechanisms were used to ensure that the guarantees provided by destination countries were fully respected. What specific criteria did the authorities reply upon in deciding that, because of the general human rights situation in a country, no weight at all could be given to diplomatic assurances? Could the delegation elaborate on the cooperation between the Belgian authorities and the special tribunal to try former Chadian president Hissène Habré? Lastly, it would be useful to know whether measures had been taken to ensure that the personal data of asylum seekers and illegal immigrants collected on the Eurodac system were not passed on to third States.

24. **Mr. Wang** Xuexian wished to know why the State party had not accepted the recommendations of the universal periodic review that, firstly, Belgium should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; secondly, that it should provide sufficient legal safeguards to ensure that complaints by foreigners did not jeopardize their right to stay in the country; and, thirdly, that it should put an end to the practice of detaining of asylum seekers at borders. He also wished to know how often the Belgian police had used electroshock weapons (Tasers), and whether the use of such weapons had led to any deaths.

25. **The Chairperson**, speaking as a Committee member, asked about the status of the inquiry into the circumstances surrounding the death of Jonathan Jacob. He also wished to know when persons placed in administrative or judicial detention had the right to consult a lawyer. The report mentioned a brochure to raise awareness in the medical community of the symptoms that trafficking victims might exhibit; had the document been circulated? How many trafficking cases had been brought before courts during the period covered by the report? He welcomed the fact that Belgium had ratified Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, but were all the conditions in place to ensure that the text would be fully implemented? The Committee also wished to know what the maximum period of detention was for an asylum seeker under the Dublin II Regulation. Moreover, did Belgium intend to amend the police code of ethics to explicitly prohibit torture? Lastly, were there plans to amend legislation in order to make confessions obtained through torture legally inadmissible?

26. **Ms. Belmir** asked to what the extent the provisions of article 92 of the Code of Criminal Investigation, on the video recording of hearings involving minors, were effectively implemented in practice. More generally, what steps was the State party taking to ensure that its juvenile justice system was compatible with the Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice? Lastly, she asked whether Belgium had taken measures to ensure that the police respected the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

27. **Mr. Bruni** requested information on the status of the six persons awaiting deportation whose cases were mentioned in paragraph 58 of the report. He also sought clarification on the content of the agreement of principle between the Belgian authorities and the International Committee of the Red Cross, regarding the assessment of detention conditions of convicted persons and those awaiting trial in terrorism cases. Lastly, the delegation should outline the conclusions drawn by the Criminal Policy Service in its January 2013 report on the implementation of the Act of 13 August 2011 amending the Code of Criminal Investigation and the Pretrial Detention Act of 20 July 1990.

The first part (public) of the meeting rose at noon.