

## BELGIUM

### CAT A/58/44 (2003)

125. The Committee considered the initial report of Belgium (CAT/C/52/Add.2) at its 558th, 561st, 562nd and 569th meetings, held on 6, 7, 8 and 14 May 2003 (CAT/C/SR.558, 561, 562 and 569), and adopted the following conclusions and recommendations.

#### A. Introduction

126. The Committee welcomes with satisfaction the initial report of Belgium, which does not, however, contain enough information on the practical implementation of the Convention and the difficulties encountered in that regard.

127. The Committee welcomes the presence of a delegation composed of high-level experts, who replied fully and frankly to the many questions asked. The Committee welcomes with great satisfaction the very high quality of the ensuing dialogue.

#### B. Positive aspects

128. The Committee notes with satisfaction the following elements:

- (a) The ratification of the Convention without reservations and the recognition of the Committee's competence to consider inter-State and individual complaints (arts. 21 and 22);
- (b) The adoption on 14 June 2002 of the Act bringing Belgian law into line with the Convention and introducing in the Penal Code articles on torture and inhuman or degrading treatment stating that an order by a superior cannot justify the offences of torture or inhuman treatment;
- (c) The adoption on 18 July 2001 of an article in the Code of Penal Procedure recognizing the competence of Belgian courts to try offences committed outside Belgium which are covered by an international convention which is binding on Belgium;
- (d) The establishment in 1991 of the Standing Committee on the Supervision of the Police Services (P Committee), under parliamentary authority, and the subsequent strengthening of its powers;
- (e) The repeal in 1999 of article 53 of the Act of 8 April 1965 allowing minors to be placed in detention centres for a period of not more than 15 days, and the efforts being made by the Flemish and French communities to solve problems of overcrowding in specialized establishments for juvenile delinquents.

#### C. Subjects of concern

129. The Committee is concerned about:

- (a) The lack of explanations concerning the concept of a "manifestly unlawful order" and the fact that an official having subjected a person to degrading treatment may be relieved of criminal responsibility under article 70 of the Penal Code if he or she was following the order of a superior;
- (b) The lack of a legal provision clearly prohibiting the invocation of a state of necessity as a justification of torture;
- (c) Cases of the excessive use of force during public demonstrations and expulsions of foreigners;
- (d) The fact that foreigners who have been resident in Belgium for a long time but who have disturbed public order or endangered national security may be expelled from the territory, even though most of their ties and attachments are in Belgium;
- (e) The non-suspensive nature of appeals filed with the Council of State by persons in respect of whom an expulsion order has been issued. The Committee is also concerned about the administration's delay in implementing ministerial orders issued in 2002 and giving suspensive effect to emergency remedies applied for by rejected asylum-seekers;
- (f) The possibility of extending the detention of foreigners for as long as they do not cooperate in their repatriation, the possibility of placing unaccompanied minors in detention for lengthy periods, and information that asylum-seekers who have been formally released have been transferred to the transit area of the national airport, without assistance and without being allowed to leave;
- (g) The reform on 23 April 2003 of the rules governing the exercise of universal jurisdiction by Belgian courts in cases involving serious violations of international humanitarian law, authorizing the Minister of Justice in some circumstances to remove a Belgian judge from a case;
- (h) The lack of legislation on the rights of persons under judicial or administrative arrest to have access to a lawyer, to inform their family of their detention, to be clearly informed of their rights and to be examined by a doctor of their choice;
- (i) The lack of an exhaustive list of disciplinary offences in prisons and of any effective remedy for detainees against disciplinary decisions taken against them;
- (j) Prison violence;
- (k) Information on the lack of access to medical care in prisons, including psychiatric and psychological care, particularly as a result of the lack of qualified and available staff;
- (l) The possibility of ordering the isolation of juvenile delinquents aged 12 years and over, for up to 17 days;

- (m) The poor functioning of the administrative commissions, which are internal prison monitoring bodies;
- (n) The lack of training for prison administrative staff, including medical staff, in particular on the prohibition of torture and inhuman or degrading treatment, owing especially to the lack of resources earmarked for that purpose;
- (o) The fact that rules on the exclusion of evidence obtained as a result of torture have emerged only from the decisions of the courts, and that judges seem to retain discretionary power in that regard.

#### D. Recommendations

130. While the Committee welcomes the decision of the Belgian authorities to extend the definition of torture and inhuman or degrading treatment to the commission of such acts by non-State actors, even those acting without the consent of a State agent, it recommends that the Belgian authorities ensure that all elements of the definition contained in article 1 of the Convention are included in the general definition provided by Belgian criminal law.

131. The Committee recommends that the State party:

- (a) Ensure that officials who have subjected any person to degrading treatment are liable to criminal penalties, even though they may have acted on the order of a superior, and explain the concept of a ☐ manifestly unlawful order ☐;
- (b) Include a provision in the Penal Code expressly prohibiting the invocation of a state of necessity to justify the violation of the right not to be subjected to torture;
- (c) Ensure that the guidelines on the use of force during public demonstrations and expulsions of foreigners are fully in keeping with the requirements of the Convention, guarantee their full implementation and conduct immediate inquiries into any allegations of the excessive use of force by law enforcement officials;
- (d) Give suspensive effect not only to emergency remedies applied for but also to appeals filed by any foreigner against whom an expulsion order is issued and who claims that he or she faces the risk of being subjected to torture in the country to which he or she is to be returned;
- (e) Set a time limit for the detention of foreigners against whom an expulsion order is issued, draft specific legislation on unaccompanied minors that takes account of the best interests of the child, and monitor asylum-seekers who have been released;
- (f) Ensure respect for the principle of the independence of Belgian courts from the executive branch, in particular where the exercise of universal jurisdiction in relation to serious violations of international humanitarian law is concerned;

- (g) Expressly guarantee in national legislation the right of all persons who are judicially or administratively detained to have access to a lawyer and a doctor of their choice immediately following their arrest, to be informed of their rights in a language they understand and to inform their families promptly of their detention;
- (h) Urgently modernize its prison law, particularly by defining the legal status of detainees, explaining the prison disciplinary regime and guaranteeing the right of detainees to institute proceedings and obtain effective remedies against unwarranted disciplinary penalties through an independent and promptly accessible body;
- (i) Combat prison violence more effectively;
- (j) Improve the system of access to health care in prisons by recruiting more qualified medical staff;
- (k) Ensure that the isolation of juvenile delinquents is imposed only in entirely exceptional cases, and for a limited period;
- (l) Improve the system of prison supervision by ensuring the prompt replacement of the administrative commissions by more effective bodies, as planned, and by considering the possibility of allowing non-governmental organizations to visit prisons regularly and meet detainees;
- (m) Guarantee the training of prison administrative staff, including medical staff, in the prohibition of torture and inhuman or degrading treatment;
- (n) Clearly state in national legislation that evidence obtained under torture is automatically inadmissible and must therefore not be submitted for consideration by the court itself.

132. The Committee recommends that the present conclusions and recommendations and the summary records of the meetings at which the State party's initial report was considered be widely disseminated in the country in the appropriate languages.

133. The Committee recommends that Belgium's next periodic report contain detailed information on the practical implementation of the Convention and all of the points raised in the present conclusions, in particular detailed information, including statistics, on the functioning and effectiveness of the prison supervision system, prison violence and the effectiveness of the measures taken in that regard. The Committee wishes to receive information on the number and age of juvenile delinquents placed in isolation, the average length of their detention in isolation and the reasons for the penalties imposed on them.