

LUXEMBOURG

Follow-up - State Reporting

Action by Treaty Bodies, Including Reports on Missions

CCPR A/59/40 vol. I (2004)

CHAPTER VII. FOLLOW-UP TO CONCLUDING OBSERVATIONS

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260. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table. Of the 27 States parties (detailed below) that have been before the Committee under the follow-up procedure over the last year, only one (Republic of Moldova) has failed to provide information at the latest after dispatch of a reminder. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party.

261. The table below details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow-up responses provided to it, decided to take no further action prior to the period covered by this report.

<u>State party</u>	<u>Date information due</u>	<u>Date reply received</u>	<u>Further action</u>
...			
<i>Seventy-seventh session (March 2003)</i>			
...			
Luxembourg	3 April 2004	25 May 2004	Next report due by 1 April 2008.

Follow-up - Reporting
Action by State Party

CCPR CCPR/CO/77/LUX/Add.1 (2004)

Comments by the Government of Luxembourg on the concluding observations of the Human Rights Committee

[25 May 2004]

Information concerning paragraph 6 of the concluding observations of the Human Rights Committee dated 15 April 2003

The Committee expresses concern about the lack of information on the conditions in which detainees may be held in solitary confinement or incommunicado detention and about the maximum length of time they may be held in this way.

The prohibition of communication (or incommunicado detention) differs from solitary confinement.

Solitary confinement

Detainees and convicted prisoners may be held in solitary confinement either because they pose a danger or as a disciplinary measure to punish the most serious instances of misconduct.

This exceptional measure is taken by the representative of the Principal State Counsel on the basis of articles 3 and 197 of the Grand Ducal Regulation of 24 March 1989 on the internal administration and regulations of prisons:

The measure is applied to a detainee considered to be dangerous only after the detainee has been given an opportunity to put his or her side of the story and has been notified in writing of the reasons for the measure, which is reviewed every three months;

The period of solitary confinement when applied as a disciplinary measure is limited to 6 months but, in the event of a recurrence of the misconduct, it may be extended to 12 months. However, as the most serious disciplinary measure, it is reserved for the most serious disciplinary offences.

In practice, the period of confinement is well below three months and is often partly suspended.

As far as remedies are concerned, an appeal to the penal commission has been possible since the Act of 8 August 2000 introduced article 11-1 into the Custodial Sentences Enforcement Act of 26 July 1986. The commission consists of a judge from the Public Prosecutor's Office, a judge from

the Court of Appeal and a public prosecutor. The commission does not act as a court of first instance, but is a body that takes administrative measures regarding the treatment of detainees in prison; consequently, an appeal may also be submitted to the administrative courts, in the form of an appeal for a stay of execution to the President of the Administrative Tribunal or an appeal for annulment to the Administrative Tribunal and to the Administrative Court (as the final court of appeal).

The administrative courts reserve the right to review the decision of the Principal State Counsel ordering that a detainee be placed in solitary confinement. The detainee may obtain an interim injunction from the President of the Administrative Tribunal and may basically have the legality of the measure reviewed by the Administrative Tribunal. An appeal against the decision of the Administrative Tribunal can be lodged with the Administrative Court.¹

Broadly speaking, the applicable rules (called the "E Rules"), which are quite distinct from those applicable to incommunicado detention, are as follows: the detainees are kept in confinement night and day; in theory, they have no right to work; they are entitled to one hour of exercise a day in the yard with other prisoners; they are entitled to receive outside visits authorized by the prison governor; and they can communicate freely with their lawyers, diplomatic or consular representatives, social workers, the relevant judicial authorities and police officers, the psychiatrist and the chaplain. They are under medical supervision. Reading is allowed in the cell, as is, with the permission of the prison authorities, listening to the radio, a CD player or a portable cassette player. They can also rent a television set. Solitary confinement may last longer than incommunicado detention, but is more flexible.

The continued use of solitary confinement is a necessity in Luxembourg, which has only one prison (a medium-security one). The possibility of using this measure as a punishment is vital to maintaining order and security in the prison.

This form of detention has been reviewed by administrative judges, who have concluded that it is not contrary to article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which, like article 7 of the International Covenant on Civil and Political Rights, prohibits inhuman or degrading treatment (see the decision in the Sciutti case of 19 November 2002, the judgement of 10 July 2002 and the ruling of 25 February 2002). The administrative judges concluded that "the placement of detainees in high-security accommodation does not mean that the provisions authorizing this action allow any detainee to be subjected to inhuman or degrading treatment".

A draft bill is being prepared to amend the amended Custodial Sentences Enforcement Act of 26 July 1986. The draft contemplates a reduction of the maximum period of solitary confinement to 45 days and draws a distinction between minor, ordinary and serious disciplinary offences, which lead to correspondingly serious punishments, by defining the behaviour in each category (current legislation does not list or define the acts of misconduct liable to be punished with solitary confinement). According to the draft, solitary confinement would be a serious disciplinary measure for serious disciplinary offences.²

Following the recommendations of the Human Rights Committee, Luxembourg has reduced the use of solitary confinement: the figures show a significant downward trend in the number of detainees placed in solitary confinement.

In 2000, this number fell sharply and there have as yet been no cases of placement in solitary confinement in 2004 (as at 11 May 2004).

Incommunicado detention

Incommunicado detention is regulated by article 84 of the Code of Criminal Procedure.³ It is an exceptional measure taken by the investigating judge pursuant to a reasoned decision immediately after the first examination of the accused, where necessary for the purposes of the investigation. The prohibition of communication is justified by the need to prevent the accused from suborning witnesses or agreeing with accomplices on a common but false version of the facts. This measure would be virtually meaningless if it could only be taken after a conviction had been obtained.

An order prohibiting communication is valid for a maximum of 10 days, and may be renewed once for a further 10 days. It does not apply to the accused person's counsel. The accused, his or her legal representative or spouse or any person with a legitimate interest in the matter may appeal against this measure to the court in chambers of the circuit court (a court of investigation consisting of three judges) and to that of the Court of Appeal. The court must rule promptly on the conclusions of the public prosecutor, the accused and counsel for the accused.

A clear distinction must therefore be made between solitary confinement and incommunicado detention, as the procedures relating to them are quite different.

Notes

¹ Admin. Trib. (Pres.) 25/2/02 (14569); Admin. Trib. 10/7/02, No. 14568 of the cause list, confirmed by decision of 19/11/02, No. 15197C of the cause list.

² That is, a physical attack on a fellow prisoner, staff member or anyone working in or visiting the prison, involvement in any group activity likely to jeopardize prison security, escape or attempted escape, possession of certain objects or substances, possession or use of or dealing in drugs, refusal to submit to medical tests, defamation of or threats against a staff member or visitor, theft or attempted theft, obtaining or attempting to obtain by use of threats, violence or force the promise or handover of any property whatsoever, serious and deliberate damage to prison premises or equipment, or inciting a fellow prisoner to commit one of the above offences.

³ Article 327 of the above-cited Grand Ducal Regulation of 24 March 1989 states that the sole effect of the prohibition of communication by decision of an investigating judge with regard to the rules applicable to the accused person, is to prohibit the latter from communicating in any way with

persons in the outside world, except for his or her lawyer to the extent permitted by law, and with other prisoners. For the rest, the accused is to be treated in the same way as other remand prisoners.

Specifically, the detainee is entitled to one hour's exercise alone every day in a yard, and has the right to read books, to receive visits and correspondence from a lawyer and the competent judicial authorities, and to go to chapel. However, he or she is not entitled to listen to the radio.