

LUXEMBOURG

CAT A/47/44 (1992)

285. The Committee considered the initial report of Luxembourg (CAT/C/5/Add.29) at its 107th and 108th meetings, held on 29 April 1992 (CAT/C/SR.107 and 108).

286. The report was introduced by the representative of the State party who said that respect for human rights and fundamental freedoms was a real concern of his Government. In illustration of that point, the representative briefly described the manner in which Luxembourg was involved in the promotion of human rights at the national, regional and global levels. He also indicated that a commission on legislative reform had been formed in Luxembourg to adopt measures required by the Convention against Torture and that the Luxembourg authorities would very much welcome any observations and suggestions the Committee might wish to make in that connection.

287. Members of the Committee expressed satisfaction with the report submitted by the Government of Luxembourg. However, as the report was rather brief, they requested further clarification on a number of points.

288. With regard to matters of a general nature, members of the Committee wished to know how the provisions of international instruments were incorporated into domestic legislation and how any contradictions between provisions of the Convention and domestic law were resolved. They also requested further details concerning the legal structure, judicial arrangements and the separation of powers. Additionally, they wished to know whether there were any state security organs; whether habeas corpus existed; whether capital punishment and forced labour were still resorted to; how many prisons there were and how many persons were in prison or in detention. A breakdown was also requested of the number of persons held under different punishment régimes.

289. With reference to specific articles of the Convention, members of the Committee noted that the definition of torture as contained in article 1 of the Convention had not been incorporated into Luxembourg's legislation. Therefore, they wished to know whether domestic legal provisions in Luxembourg punished both psychological and physical torture. They also asked whether Luxembourg legislation clearly distinguished between torture and other cruel, inhuman or degrading treatment or punishment.

290. In respect of article 3 of the Convention, members of the Committee asked whether a decision on expulsion could be taken only by the Minister of Justice and what guarantees existed to ensure that a person would not be expelled to a State where the risk of his or her being tortured existed.

291. In connection with article 6 of the Convention, it was asked what provision was made for a person in custody to be assisted in communicating immediately with the nearest appropriate representative of the State of which he or she was a national or a resident.

292. With regard to article 7 of the Convention, members of the Committee wished to know whether the State party was fully in compliance with the article, especially in respect of dealing with torture-related offences in Luxembourg even when the alleged offender was not a national of Luxembourg or had committed the offence outside Luxembourg. In that regard, details of the domestic legislation providing for such proceedings were requested.

293. In connection with article 9 of the Convention, it was asked how mutual judicial assistance was carried out in the absence of bilateral treaties.

294. With reference to article 10 of the Convention, further information was requested as to whether medical personnel and others were educated or informed about torture-related issues.

295. With regard to article 11 of the Convention, members of the Committee wished to know what measures were available for monitoring the conditions of persons under detention; whether detention could be prolonged beyond the 24-hour limit and, if so, by whose authority; whether detainees could contact both a family member and a lawyer and could be examined by a doctor of their own choosing; who took the decision to place a person in isolation and how such a decision could be reviewed; whether a person kept in isolation could contact his lawyer and could benefit from an hour of exercise out of doors per day and what medical services were available to him.

296. With regard to articles 12 and 13 of the Convention, members of the Committee asked whether the police had the right to conduct an inquiry into any allegation of ill-treatment and, if so, how such an inquiry differed from that ordered by an examining magistrate. Members also observed that the report did not contain sufficient information about the implementation of those articles.

297. Concerning article 14 of the Convention, members of the Committee wished to know whether a victim of torture could seek redress or compensation from the State party and whether a victim in such cases could also claim compensation for loss of earnings.

298. With reference to article 15 of the Convention, members of the Committee sought clarification as to the meaning of the concept of “evidence gained by wrongful and unfair means”.

299. Concerning article 16 of the Convention, members of the Committee asked whether women were separated from men in prisons and whether minors were also held in prisons.

300. In reply, the representative of the State party informed the Committee that it was up to the Conseil d’Etat to determine whether existing legislation was compatible with both the Constitution and the Convention and that in the event of conflict the provisions of the Convention would prevail. He also indicated that a plaintiff could invoke the terms of the Convention in a domestic court and that further details of domestic judicial decisions relevant to the implementation of the Convention would be included in the next report.

301. In addition, he informed the Committee that the death penalty had been abolished in 1979 and that there was only one prison in Luxembourg. He also stated that the references in article 438 of

the Penal Code to “hard labour” derived basically from the Code Napoléon and as such should be regarded as a survival from earlier times.

302. The representative indicated that a written reply would be given to the various questions of a general nature raised about the judicial system in Luxembourg. He also informed the Committee that the principle of habeas corpus was enshrined in the provisions which safeguarded individual freedoms. There was no state security police in Luxembourg and the entire police force was administered by the Ministry of Justice.

303. With regard to article 1 of the Convention, the representative of the reporting State informed the Committee that neither the Constitution nor the Penal Code provided for a definition of torture. Luxembourg law did not differentiate between torture and ill-treatment but there clearly was scope for a more systematic interpretation which would distinguish between ill-treatment and physical or mental torture.

304. Concerning article 5 of the Convention, the representative stated that some exceptions were allowed in Luxembourg to the principle of territoriality in criminal law. Provision was also made for the apprehension in another territory of a person who had committed an offence against Luxembourg law. However, it was unfortunate that no arrangements had been established for cases in which a Luxembourg citizen sought by the authorities of another State for an offence relating to torture might face penalties more severe than those provided under the law of Luxembourg itself.

305. With reference to article 9 of the Convention, the representative of the reporting State said that Luxembourg could make appropriate arrangements with other States in regard to the supply of evidence and other assistance if the political, legal and penitentiary régimes in the country concerned were acceptable and the country had no known record of systematic violations of human rights.

306. In connection with article 10 of the Convention, the representative said that he believed the training of medical personnel would conform to the provisions of the Convention but that the matter would be checked into further.

307. With regard to articles 11, 12, 13 and 15 of the Convention, the representative of the reporting State said that new provisions on detention in custody had been introduced in 1989 pursuant to which the period of custody could not exceed 24 hours; the criteria relating to preventive detention involved such factors as the likelihood of flight by an alleged offender and the need to keep preventive detention proportionate to the likely penalty for the alleged offence; the State Prosecutor could require fingerprints to be taken of a detainee or a search to be undertaken for dangerous objects, if necessary, but a detainee was equally entitled to request an independent examination by a doctor of his or her own choosing if allegations of ill-treatment were raised. Even under a strict régime of detention, detainees could participate in some communal activities and had a permanent right of access to their legal representatives. Complaints concerning the conditions of detention could be referred to the Director of Public Prosecutions. The representative also said that further information on those matters would be provided to the

Committee in the future.

308. With regard to article 16 of the Convention, the representative of the reporting State informed the Committee that men and women were kept in separate quarters and minors were not kept in custody.

Concluding observations

309. The Committee thanked the Government of Luxembourg for its report and the replies offered by its delegation. It was noted that according to the representatives of Luxembourg and the information contained in the report, torture did not exist in Luxembourg. It observed, however, that the report was not fully comprehensive and that Luxembourg legislation was not in conformity with all of the provisions of the Convention. Accordingly, the Committee requested that more detailed answers to certain questions be provided in the first supplementary report, to be submitted by Luxembourg by the end of October 1992. In that connection, special reference was made to the following matters: the need for a legal definition of torture (article 1 of the Convention); the need for further clarification as to the applicability of article 3 of the Convention under domestic legislation; measures required to close any possible loopholes in domestic legislation (articles 4 to 8 of the Convention); and measures taken to prevent torture, investigate alleged complaints of torture or ill-treatment and ensure redress to victims of such violations (articles 10 to 14 of the Convention).

CAT A/54/44 (1999)

170. The Committee considered the second periodic report of Luxembourg (CAT/C/17/Add.20) at its 376th, 379th and 383rd meetings, held on 4, 5 and 7 May 1999 (see CAT/C/SR.376, 379 and 383), and adopted the following conclusions and recommendations.

1. Introduction

171. The Committee welcomes the second periodic report of Luxembourg and the oral report given by the State party's representatives. It notes, however, that the report was submitted six years late.

2. Positive aspects

172. The Committee takes note of the following positive aspects:

- (a) The formal abolition of the death penalty;
- (b) Legislation concerning the entry and residence of foreigners, which prohibits the expulsion or return of a foreigner if he is in danger of being subjected to acts of torture or cruel, inhuman or degrading treatment in another country;
- (c) The proposed amendments of criminal legislation relating to: (i) the characterization of torture as a specific offence; (ii) amendment of the law on extradition in order to bring it into line with article 3 of the Convention; (iii) establishment of universal competence concerning acts of torture; and (iv) improvement of guarantees for persons held in custody.

3. Factors and difficulties impeding the application of the provisions of the Convention

173. The Committee has noted no factor or difficulty impeding the effective implementation of the Convention for the State of Luxembourg.

4. Subjects of concern

174. The Committee is concerned about the following:

- (a) The excessive length and frequent use of strict solitary confinement of detainees and the fact that this disciplinary measure may not be the subject of appeal;

- (b) The situation of young offenders held in Luxembourg prisons;
- (c) The disciplinary regime imposed on minors held in the socio-educational centres;
- (d) The fact that the report did not cover all articles of the Convention, particularly articles 11, 14, 15 and 16.

5. Recommendations

175. The Committee recommends that the State party should:

- (a) Adopt the legislation defining torture in accordance with article 1 of the Convention, and consider all acts of torture as a specific offence;
- (b) Introduce into law the possibility of an effective appeal against the most severe disciplinary measures imposed on detainees and reduce the severity of these measures;
- (c) End, as soon as possible, the practice of placing young offenders, including minors, in the prison for adults;
- (d) Ensure that the obligations arising from articles 11, 12, 14 and 15 of the Convention are duly respected;
- (e) Submit its third and fourth periodic reports, due on 28 October 1996 and 28 October 2000 respectively, by 28 October 2000 at the latest.

CAT A/57/44 (2002)

75. The Committee considered the combined third and fourth periodic reports of Luxembourg (CAT/C/34/Add.14) at its 514th, 517th and 525th meetings, held on 7, 8 and 15 May 2002 (CAT/C/SR.514, 517 and 525), and adopted the following conclusions and recommendations.

A. Introduction

76. The Committee welcomes the third and fourth periodic reports of Luxembourg, which were combined in a single document following the Committee's recommendation. The report was submitted on time and is in full conformity with the guidelines of the Committee for the preparation of State party periodic reports. The Committee compliments the State party for the excellent quality of its report and welcomes the fruitful and constructive dialogue with the high-level delegation of the State party during its consideration.

B. Positive aspects

77. The Committee commends the State party for maintaining a high level of respect for human rights in general and for its obligations under the Convention in particular.

78. The Committee notes the following positive developments:

(a) That all matters of concern as well as previous recommendations of the Committee have been positively addressed in detail;

(b) That by the Act of 24 April 2000 torture has been incorporated into the Penal Code as a specific crime and an aggravating circumstance of a crime or offence against the person. Furthermore, the definition of torture is broadly based on the definition contained in article 1 of the Convention, and relates both to physical and psychological torture;

(c) The establishment of the Advisory Commission on Human Rights on 26 May 2000;

(d) The Act of 31 May 1999 establishing the Grand Ducal police force and the General Police Inspection Department, whose main objective is the merger of the Police and the Gendarmerie. The Act also criminalizes, inter alia, trafficking in persons;

(e) The Act of 14 May 2000 by which Luxembourg ratified the Rome Statute of the International Criminal Court.

C. Subjects of concern

79. The Committee expresses concern about the following:

(a) That minors ordered to be placed in disciplinary centres are put in adult prisons;

(b) The institution of solitary confinement, particularly as a preventive measure during pre-trial detention.

D. Recommendations

80. The Committee recommends that:

(a) The State party refrain from placing minors in adult prisons for disciplinary purposes;

(b) Solitary confinement be strictly and specifically regulated by law and that judicial supervision be strengthened, so that this punishment is applied only in severe circumstances, with a view to its abolition, particularly during pre-trial detention;

(c) The State party consider making provision for appropriate compensation specifically for victims of torture;

(d) The Committee's conclusions and recommendations be widely disseminated in the State party in all appropriate languages.