



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

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COMMITTEE AGAINST TORTURE

Thirty-eighth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 759th MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 3 May 2007, at 10 a.m.

Chairperson: Mr. MAVROMMATIS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.759/Add.1.

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (continued)

Fifth periodic report of Luxembourg (CAT/C/81/Add.5; CAT/C/LUX/Q/5/Rev.1
and 5/Rev.1/Add.1)

1. At the invitation of the Chairperson, the members of the delegation of Luxembourg took places at the Committee table.
2. Ms. SCHAACK (Luxembourg) drew attention to the written replies to the list of issues, which had been circulated to Committee members in French.
3. Mr. REITER (Luxembourg), referring to question 1 of the list of issues, said that his Government had incorporated all European directives relating to the international protection of aliens into Luxembourg legislation and introduced a new concept of “subsidiary protection”. A law adopted on 5 May 2006 contained specific requirements relating to asylum procedure, the international protection of unaccompanied minors and the remedies available to asylum-seekers. It provided for an accelerated procedure for asylum applications, and for the possibility of establishing a system of temporary protection in the event of a massive influx of asylum-seekers from conflict regions.
4. An appeal against refusal of an application for international protection was lodged with the Administrative Court and had the effect of suspending enforcement of the decision.
5. It was unclear whether question 2 related to “safe third countries” or “safe countries of origin”. Article 16, paragraph 4, of the new law set out criteria for defining safe third countries, which included, inter alia, respect for the rights and freedoms protected under international conventions and the absence of any danger for the asylum-seeker’s life or freedom. The same criteria applied to safe countries of origin under article 21. In both cases, the principle of “non-refoulement” must be respected. Although, asylum applications lodged by persons from safe countries of origin were normally rejected, all such applications were dealt with on a case-by-case basis.
6. Replying to question 3, he said that diplomatic assurances had never been sought. There were no examples of extraditions or expulsions of individuals to countries where they would be at risk of being subjected to torture.
7. Mr. WAGNER (Luxembourg), referring to question 4, said that a complete and updated list of police stations with temporary holding facilities had been submitted to the Committee. Those facilities were designed in such a way as to prevent detainees from committing suicide or injuring themselves. They were under video surveillance and were equipped with an alarm system. Particular attention was paid to the maintenance of hygienic conditions.
8. Mr. THEIS (Luxembourg), responding to question 5, said that a holding centre for aliens in irregular status had been established within Luxembourg prison. Under the Grand Ducal regulation of 20 September 2002, aliens at the disposal of the authorities were required to be separated from prisoners. Aliens had the right to unrestricted correspondence and could contact

their family members and lawyer. Representatives of NGOs had been authorized to visit the centre. Construction of a new centre, entirely separate from the prison, was expected to commence by the end of 2007.

9. Mr. REITER (Luxembourg) said that his Government had undertaken to place no more than 35 people in the first holding centre mentioned.

10. Referring to question 6, he said that aliens who had not requested international protection could be detained for a maximum of three months. Aliens requesting international protection could be detained for a maximum of 12 months.

11. Mr. WAGNER (Luxembourg), turning to question 8, said that under the law, aliens at the disposal of the authorities must be informed of their rights and the remedies available to them. In future, the form informing aliens of their rights would also be translated into Arabic and Chinese. The existing form in Serbo-Croatian would be replaced by forms in Serbian and in Croatian.

12. Mr. HEISBOURG (Luxembourg), responding to question 9, said that the two public prosecutor's offices in Luxembourg and the General Inspectorate of Police had received no complaints over the previous five years alleging the use of torture or inhuman or degrading treatment.

13. Mr. REITER (Luxembourg), replying to question 10 and the case of Igor Beliatsjii, whose application for asylum had been rejected, explained that a team of four law enforcement officers had successfully deported Mr. Beliatsjii at their second attempt, when Mr. Beliatsjii had reacted aggressively and refused to cooperate. He had seriously injured two of the officers accompanying him. For reasons of security it had been deemed necessary to restrain him in a body cuff and face mask in order to prevent a recurrence of the incident in which he had spat in the faces of the officers. It had transpired that the fears he had cited in his application for asylum had proved unfounded, and upon his return, he had been able to travel freely in Belarus.

14. The statistics on the number of asylum applications registered and accepted, reproduced in the written reply to question 11, showed that the overall number of applications had declined considerably, whereas the number of successful applications had actually increased since 2004. Separate statistics had not been compiled on asylum status granted following torture. There had been a decline in repatriations, particularly voluntary repatriations, and it would be reasonable to conclude that asylum-seekers who refused Luxembourg's offer of repatriation travelled to third countries in the hope of being granted asylum elsewhere.

15. When the written replies had originally been submitted to the Committee, Luxembourg had had no cases pending before the European Court of Human Rights. However, since that time, new information had come to light in connection with question 12, to the effect that an unsuccessful applicant, who had been seriously ill, had complained to the Court that the medical care he required was not available in his country of origin, and that he had been deprived of medical care during his stay in Luxembourg. The latter assertion had been refuted by the Luxembourg authorities.

16. Mr. HEISBOURG (Luxembourg), in response to questions 13 and 14, confirmed that there had been no complaints of torture and therefore no instances in which the provisions of the relevant legislation had been applied. Furthermore, the Luxembourg courts had competence to prosecute acts of torture committed abroad.

17. Ms. SCHAAACK (Luxembourg) said that various types of training were offered to law-enforcement, government and medical personnel, in the first instance to raise awareness of human rights issues, including the content of international instruments, and specifically, in the detection of psychological or physical injury that might be related to torture.

18. Mr. HEISBOURG (Luxembourg) explained that within the context of question 16 (a) and (b), Luxembourg legislation included the concept of “detention law”, which had an absolute limit of 24 hours, running from the time of actual arrest by the police. Investigation procedures pertaining to the detainee must be annulled once that period had elapsed. The registration of detainees was regulated by the Code of Criminal Investigation, under which the police were required to keep a precise record of the date and time of detention and appearance of the detainee before an examining judge. The provisions governing incommunicado detention also fell within the ambit of the Code, but in practice such detention had been abandoned in the 1990s. In the unlikely event that such a measure were to be invoked, its duration should not exceed a period of 10 days and could be extended only once.

19. Mr. WAGNER (Luxembourg) said, in response to question 16 (d), that detainees were required, by law, to be informed of their rights and situation in writing, and to be examined by a doctor.

20. Replying to question 17, he said that forms were supplied to detainees by the police in a language they could understand. Regarding access to counsel, current legislation did not explicitly state that rights included prior consultation with a lawyer or consultation during the first police questioning; consultation was permitted after the first questioning. Prompt access to counsel was ensured through a system under which lawyers were available around the clock to provide free legal assistance. He further explained that a police officer was always in attendance when detainees held consultations with legal or medical personnel and during family visits.

21. With respect to the prevention of police brutality during questioning, he said that basic and ongoing training of police officers, together with internal and external monitoring mechanisms, ensured a high level of competence and performance of duties. In addition, the code of conduct sworn to by all police officers served as a reminder of proper procedure and due respect for values during questioning and criminal investigations.

22. Ms. SCHAAACK (Luxembourg) said that her country had not adopted exceptional anti-terrorist legislation and had no intention of restricting the rights of detainees. Much progress had been achieved in the logistical and administrative arrangements for the Dreibern Security Unit for minors, as mentioned under question 20. Minors were protected under the responsibility of the juvenile court and were not subject to punitive action.

23. Mr. THEIS (Luxembourg) said that there were four possibilities for what amounted to “relative” solitary confinement, which included two disciplinary and punitive measures and

two preventive measures (question 21). Punitive measures were applied only under extreme circumstances of a real risk of violence, threat to physical safety or vandalism. He gave a detailed description of facilities in the blocks used for confinement, but stressed that they were normal cells. He had used the term “relative” to indicate that there was no facility for absolute solitary confinement.

24. There were several possibilities for appeal, either through a judicial commission or an administrative tribunal. For a long time, no minors had been placed in solitary confinement, except in rare instances when 17-year-olds had been held for a few hours for their own protection.

25. Ms. SCHAACK (Luxembourg) said in that connection that, where necessary, minors had been placed in State socio-educational centres for brief periods of a day or two, and that, pursuant to legislation enacted in 2004, they had the right to appeal to a monitoring and coordination commission.

26. Mr. THEIS (Luxembourg) stressed that the “strict confinement” system should be viewed in the context of Luxembourg, which lacked maximum-security facilities that were commonplace in larger countries.

27. Mr. HEISBOURG (Luxembourg) said that the public prosecutor had discretionary powers to close a case, but a judge would never do so in the case of extremely serious offences, such as torture, without thorough justification and full explanation to higher legal authorities, since such offences violated the physical and moral integrity of persons. He further explained, in response to question 26, that detainees had two options of appeal if their cases were closed or dismissed: either by directly citing the offence, or by acting as a claimant for indemnification in a complaint submitted to the investigating judge.

28. Mr. WAGNER (Luxembourg) said that there had been a total of 12 investigations concerning ill-treatment of detainees, resulting in the conviction of four police officers on charges of wilfully causing bodily harm.

29. Ms. SCHAACK (Luxembourg), responding to question 27, referred to the visits of the legal commission mentioned in the written replies. In addition, officials and independent bodies such as the Attorney-General, the presidents of courts and tribunals, investigating judges, juvenile court judges, the Auditor-General, the Military Auditor, and representatives of the social protection services and national human rights commission were able to conduct such visits. In 2006, the Ombudsman had established a permanent office within prisons to receive direct or written complaints from prisoners.

30. In conjunction with the written reply to question 28, she said the draft law in question expanded possibilities for compensation to injured parties. However, with reference to question 29, no compensation awards had been made since there had been no complaints of torture.

31. Mr. HEISBOURG (Luxembourg) said that, in keeping with national criminal legislation and the general principles of law, there was no doubt that statements extracted by means of torture would be considered inadmissible as evidence in court proceedings in his country.

32. Mr. WAGNER (Luxembourg) said the use of handcuffs (question 31) was strictly limited to situations where their use could be justified by the fact that the prisoner posed a risk to the police or to himself. They could only be used for a limited period and were rarely used with minors or physically frail or disabled individuals.

33. A concerted effort had been made to raise awareness within the Administration of the problem of human trafficking (question 32). In addition, a special police unit had been set up to investigate cases of human trafficking and to act as a clearing-house for information obtained at the national level and from international partners such as Europol and Interpol. Luxembourg also participated actively in European Union (EU) programmes aimed at combating that heinous activity.

34. Ms. SCHAAK (Luxembourg), referring to ratification of the Optional Protocol (question 33), recalled that Luxembourg had signed the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the Committee established pursuant to that treaty had the right to undertake missions to Luxembourg.

35. Mr. HEISBOURG (Luxembourg) said that the State party had no legislation specifically banning equipment designed to inflict torture or other cruel, inhuman or degrading treatment, although the provisions of the Criminal Code regarding involvement in a criminal enterprise could be used to prosecute such activities.

36. Mr. CAMARA, Country Rapporteur, said that he would limit his remarks to issues arising under articles 3 and 4 of the Convention. He expressed concern that, according to the periodic report (para. 15), an alien or asylum-seeker not guilty of any crime was nevertheless housed in a centre or appropriate facility monitored by the police, in order to ensure that he or she would not be able to evade any subsequent deportation order. He wondered to what extent such a person's liberty was restricted. He also requested a copy of the bill aimed at expediting asylum procedures, and wondered whether it had in fact been adopted. In that context, he expressed concern at the tendency of States to declare asylum-seekers from so-called safe third countries ineligible for asylum.

37. The Committee had received reports from a number of NGOs alleging arbitrary and racist behaviour on the part of detention centre staff, and he recalled the obligation of the State party under article 4 to criminalize all forms of torture. The State party maintained that there had been no complaints alleging torture but he pointed out that, in the absence of a clear definition of torture based on the definition contained in the Convention, such practices could occur and go unpunished. He stressed that degrading acts carried out to force a confession, punish, intimidate or exert pressure, or motivated by discrimination, were prohibited by the Convention. In that context and with regard to the discretion of prosecutors to not prosecute a case (question 24), he emphasized the State party's obligation under articles 7 and 12 of the Convention to investigate and prosecute all cases involving torture.

38. Ms. BELMIR, Alternate Country Rapporteur, requested clarification of the situation of juvenile detainees, and expressed concern at the fact that juveniles were held in the same facility as adults - albeit separately, that family visitation rights were restricted and that strict confinement could be ordered by the Attorney-General, apparently without judicial review.

She also questioned the detention together of all minors, whether or not they were guilty of any criminal offence, and the use of solitary confinement for minors for a period of up to 10 days. She asked whether there was any judicial review of, or other monitoring mechanism for, the use of handcuffs by the police and whether a detainee could appeal the use of handcuffs.

39. Turning to the issue of trafficking, she acknowledged the State party's legislation and efforts in that area but enquired whether it was true that individuals suspected of involvement in human trafficking had little difficulty in obtaining visas from the authorities. She asked for further information on sexual exploitation of children in the State party and on whether corporal punishment was tolerated or regulated in any way.

40. Mr. MARIÑO MENÉNDEZ enquired whether the Act on the Prevention of Domestic Violence of September 2003 prohibited corporal punishment of children and whether it was true, as stated in the periodic report (para. 23), that the penalty for domestic violence was increased if the perpetrator was a civil servant or public official. Since, according to the delegation's written replies (para. 85), a detainee did not have the right to legal counsel when questioned for the first time, he asked if the detainee had the right not to answer questions, and the right to legal counsel when questioned a second time.

41. With regard to the State party's universal jurisdiction to prosecute an offence, including torture (paragraphs 31 and 42 of the report and 53 of the replies), he asked if he was correct in understanding that, if no extradition request was forthcoming, Luxembourg would not exercise its jurisdiction with regard to an alien in its territory who was accused of torture but had not committed a crime against a citizen of Luxembourg in or outside its territory. If so, he recalled a State party's obligation under article 2 of the Convention to prevent acts of torture. He also expressed concern that the requirement that a prosecutor or investigating judge approve a consular visit for a detainee who was a foreign national could be used to restrict direct consular access.

42. He requested clarification of the situation of asylum-seekers in the context of the new procedure adopted on 5 May 2006, which incorporated the relevant EU directives, instituted subsidiary protection measures for individuals denied asylum and regulated matters such as the situation of unaccompanied minors. Concerns had been raised by NGOs about the degree of discretion allowed the authorities in ordering the extradition or deportation of an individual, for example the deportation of a sick individual to a third country where adequate medical care was not available, which would constitute inhuman treatment. If the authorities had absolute discretion, that could constitute a violation of the principle of "non-refoulement" and he requested clarification from the delegation. Lastly, he suggested that the statistics provided in the annex to the written replies relating to applications for refugee status and asylum be further disaggregated according to country of origin and whether or not the application was approved.

43. Mr. GALLEGOS CHIRIBOGA commended the healthy relationship between Government and civil society in Luxembourg. He shared the concerns of colleagues about trafficking in persons. He also expressed concern that the Government did not consider accession to the Optional Protocol to the Convention against Torture a priority.

44. Mr. KOVALEV noted that, although the fifth periodic report was generally very thorough, it failed to address article 1 of the Convention concerning the definition of torture. He wondered whether that meant that the definition of torture in Luxembourg's legislation corresponded entirely to the definition in the Convention.

45. Mr. GROSSMAN welcomed the fact that in Luxembourg international treaties took precedence over national legislation, and asked whether such treaties were self-executing so that an individual could invoke the provisions of the Convention in the courts. He requested clarification as to whether only Luxembourg citizens had access to the Ombudsman's Office, which, on the basis of the periodic report, appeared to be the case. He wished to know whether the reports of the Ombudsman submitted to parliament contained elements relating to the Convention or to the issue of torture in general.

46. Ms. SVEAASS expressed concern about information received from NGOs on the case of a citizen of the Democratic Republic of the Congo who had allegedly been subjected to physical violence during questioning by officials from the Ministry of Foreign Affairs. The Committee had been informed that, although two medical reports had confirmed the physical consequences of the questioning, no complaint had been filed against the officials involved; rather, the victim had most likely referred his case directly to the European Court of Human Rights. She wished to know how it had been possible to go directly to the regional level without first making a domestic complaint. She would welcome any other information on that case.

47. The CHAIRPERSON said the Committee was agreed that there was a healthy situation with respect to the promotion and protection of human rights in Luxembourg, and hoped that any shortcomings identified during the current dialogue would be taken into consideration by the Government. He endorsed the views expressed by Ms. Sveaass concerning the case of the citizen from the Democratic Republic of the Congo subjected to physical violence during questioning, in which there appeared to be sufficient grounds to initiate an investigation. The case of the Ukrainian that had been brought to the Committee's attention also appeared to warrant an investigation. Concerning accession to the Optional Protocol, he stressed that, as part of the universal effort to eradicate torture, that question should always be considered a priority, regardless of whether it created a problem for the country concerned.

The public part of the meeting rose at 12.35 p.m.