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COMMITTEE AGAINST TORTURE

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

Second reports of States parties due in 2004

Addendum[*, **, ***]

BELGIUM

[21 September 2006]

[*] For the initial report submitted by the Government of Belgium, see document CAT/C/52/Add.2; for its consideration by the Committee, see documents CAT/C/SR.558, 561, 562 and 569 and official document CAT/C/CR/30/6.

[**] The annexes to this report may be consulted at the secretariat.

[***] In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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PART ONE:
INFORMATION ON THE NEW MEASURES AND FACTS AFFECTING THE APPLICATION OF THE CONVENTION

I. CONSIDERATION OF THE 16 ARTICLES

ARTICLE 1

1. The definition contained in the new article 417 bis of the Penal Code adequately incorporates article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter "the Convention"). The Convention defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".

2. The definition contained in the Belgian Penal Code refers to severe pain or very serious and cruel suffering, whether physical or mental. It therefore covers the behaviours referred to in the Convention and indeed goes beyond it by not requiring the torture to be committed by an agent of the State or for its having a clearly defined purpose (the Convention refers *inter alia* to obtaining a confession).

3. We refer also to the comments in Chapter II below "Compliance with the Committee's conclusions and recommendations", paragraphs 479 to 481.

ARTICLE 2

A. Paragraph 1

4. Belgium has adopted new legislative, administrative and other measures to prevent the commission of acts of torture (article 2) and other acts constituting cruel, inhuman or degrading punishment or treatment which are not acts of torture within the meaning of article 1 (article 16).

Legal provisions

5. Since the submission of Belgium's initial report (CAT/C/52/Add.2), the Bill to bring Belgian law into line with the Convention has been adopted by Parliament and has become the Act of 14 June 2002 (*Moniteur belge,* 14 August 2002). That Act inserted articles 417 bis into quinquies in the Penal Code and adapted to the content of these new articles the articles characterizing torture as an aggravating circumstance in certain acts. Belgium therefore has a coherent legislative framework characterizing acts of torture, inhuman and degrading treatment as offences.

6. The Act of 23 April 2003 amending the Act concerning the punishment of serious violations of international humanitarian law of 16 June 1993 and article 144 ter of the Judicial Code (*Moniteur belge,* 7 May 2003).

7. The Act on serious violations of international law of 5 August 2003 (*Moniteur belge,* 07 August 2003).

8. On 23 June 2003 Belgium ratified Protocol No.13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty in all circumstances, which entered into force on 1 October 2003. On 25 March 2004, in line with its abolitionist tradition, the Belgian Federal Parliament adopted a new provision enshrining the principle of the abolition of the death penalty in the Constitution. The inclusion of the prohibition on the death penalty in Title II of the Constitution makes that prohibition a fundamental right of citizens. It is an essential protection of the right to life.

9. On 24 October 2005, Belgium signed the Optional Protocol to the Convention which was opened for signature pursuant to article 21(1) of the Protocol on 4 February 2003. Ratification of the Protocol is the subject of detailed consideration by the Government.

10. Ratification by Parliament of the Bill assenting to Protocol No 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms should occur in the coming months. This Protocol, signed by Belgium on 11 May 2005, adds five new rights to the system provided for under the Convention, and Belgium's compliance with those rights may in future be the subject of scrutiny by the European Court of Human Rights. Among other things, the principle of *non bis in idem* should be noted here, which under the Protocol becomes unconditional.

11. The Mutual Legal Assistance in Criminal Matters Act of 9 December 2004 (*Moniteur belge,* 24 December 2004) was amended by article 2 of the Miscellaneous Provisions Act of 23 December 2005 (*Moniteur belge,* 30 December 2005) permitting mutual legal assistance with countries which still apply the death penalty where the Requesting State provides sufficient guarantees that the death penalty will not be handed down or, in the event that it is handed down, that it will not be implemented.

12. The entry into force on 1 April 2004 of the International Criminal Court and International Criminal Tribunals (Cooperation) Act should also be noted here.

13. Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States was transposed by the European Arrest Warrant Act adopted on 19 December 2003 (*Moniteur belge*, 22 December 2003). It governs the arrest and surrender of persons sought for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order between Belgium and the other Member States of the European Union (article 2(1)).

14. The Bill reforming the Code of Criminal Investigation (Grand Franchimont), was adopted by the Senate on 1 December 2005 and has been referred to the Chamber of Representatives for its first reading (Document 51-2138).

15. The Bill providing for the insertion of a new indent into article 417 ter of the Penal Code was approved by the Chamber of Representatives on 20 April 2006.

16. Note should be made of the Act of 2 August 2002 supplementing the first indent of article 33(1) of the Pre-Trial Detention Act of 20 July 1990 (*Moniteur belge,* 05 September 2002).

17. Note should also be made of the adoption of the Act of 31 May 2005 amending the Compensation for Inoperative Pre-trial Detention Act of 13 March 1973, the Pre-Trial Detention Act of 20 July 1990, and the Code of Criminal Investigation (*Moniteur belge,* 16 June 2005).

18. Belgium has also adopted the Witness Anonymity Act of 8 April 2002 (*Moniteur belge*, 31 May 2002).

19. The Undercover and Certain Other Methods of Enquiry Act of 6 January 2003 (*Moniteur belge*, 12 May 2003) provided a legal basis for such 'undercover' methods (infiltrations, telephone tapping, use of informers, interception of mail, discreet visual surveillance). It should be noted that following the judgment of the Court of Arbitration of 21 December 2004, the Undercover and Certain Other Methods of Enquiry Act of 6 January 2003 was amended by the Code of Criminal Investigation and Judicial Code (Amendments) Act of 27 December 2005 improving methods of investigation to combat terrorism and serious organized crime (*Moniteur belge,* 30 December 2005).

20. The Code of Criminal Investigation and Judicial Code (Amendments) Act of 27 December 2005 improving methods of investigation to combat terrorism and serious organized crime (*Moniteur belge,* 30 December 05) should also be brought to the Committee's attention.

21. The Act of 11 June 2002 governs protection against mental or sexual violence and harassment at work (*Moniteur belge,* 22 June 2002).

22. The Royal Decree of 11 July 2002 on protection against mental or sexual violence and harassment at work and the circular issued under it (*Moniteur belge,* 18 September 2002) set out the methods of application of the above Act in detail. It should also be noted that the Federal Act and the Royal Decree on protection against mental or sexual violence and harassment at work apply automatically in the Walloon Region and the French Community and to legal persons governed by public law under the authority of that Region and Community. Attention should be drawn to the Walloon Region Circular of 4 May 2004 on the methods of implementation of these texts.

23. A number new legal initiatives on domestic violence have been taken, such as the Family Home Assignment Act of 28 January 2003 assigning the family home to the spouse or legal partner who is the victim of a partner's acts of physical violence and supplementing article 410 of the Penal Code (*Moniteur belge,* 12 February 2003). The Act augments penalties, especially for physical violence between partners, and provides a legal basis for "temporary removal" of the perpetrators of domestic violence. A note should be made of the recent initiative by the Minister of Justice and the Prosecutors' Association on criminal policy to combat violence within relationships (see paras. 65 to 68 below).

24. The Act of 10 August 2005 amends various provisions with the aim of strengthening the fight against people smuggling, people trafficking and slum landlords. (*Moniteur belge,* 2 September 2005).

25. The Act concerning the principles of the administration of prison establishments and the legal status of detainees which was adopted on 12 January 2005 (*Moniteur belge,* 1 February 2005) was amended by the Miscellaneous Provisions Act of 25 December 2005 (*Moniteur belge,* 30 December 2005).

26. Royal Decree of 4 April 2003 amending Royal Decree of 21 May 1965 on the general regulation of prison establishments (*Moniteur belge,* 16 May 2003), was itself amended by Royal Decree of 29 September 2005 (*Moniteur belge,* 27 October 2005).

27. The Bill establishing a Sentencing Court, which was approved by the Council of Ministers on 10 December 2004 is currently the subject of scrutiny by the Parliamentary Assemblies.

28. The Bill on the external legal status of detainees, which was approved by the Council of Ministers on 10 December 2004, is currently being scrutinized by the Parliamentary Assemblies (it was approved by the Chamber's Justice Committee on 24 March 2006).

29. A proposal for a resolution on Sentencing Courts, the external legal status of detainees, the determination of a penalty and the improvement in the status of the victim (document 51-438/001) is also currently the subject of scrutiny.

30. The Act of 7 December 1998 instituting an integrated dual-level police service and providing for the establishment of a General Inspectorate of the Federal and Local Police was supplemented by Royal Decree of 20 July 2001 on the operation and staffing of the General Inspectorate of the Federal and Local Police.

31. The procedures for implementing the Police Service Staff (Disciplinary Statute) Act of 13 May 1999, as amended by the Act of 31 May 2001, were set out in the Royal Decree of 26 November 2001 implementing the Act of 13 May 1999.

32. The Royal Decree of 30 March 2001 ("Mammouth" judgment) sets out the legal position of police service staff.

33. The Act of 26 April 2002 on the essential elements of the status of the members of staff of the police services and concerning various other provisions regarding the police services (*Moniteur belge,* 30 April 2002), should also be brought to the Committee's attention.

34. The Royal Decree of 3 June 2002 sets out the status of the members of the supervisory body referred to in article 44/7 of the Police Functions Act (*Moniteur belge,* 13 June 2002).

35. The Royal Decree of 26 November 2001 introduces the procedures for implementing the Police Service Staff (Disciplinary Statute) Act of 13 May 1999 (*Moniteur belge,* 28 December 2001).

36. It should be pointed out that the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens has been amended by the Acts of 28 June 1984, 14 July 1987, 18 July 1991, 7 December 1992, 6 May 1993, 1 June 1993, 6 August 1993,

24 May 1994, 8 March 1995, 13 April 1995, 10 July 1996, 15 July 1996, 9 March 1998, 29 April 1999, 7 May 1999 and 2 January 2001; by the Royal Decrees of 13 July 1992, 7 December 1992, 31 December 1993 and 22 February 1995; and by the Royal Implementing Decree of 8 October 1981, which itself has been amended on several occasions.

37. The Royal Decree of 2 August 2002 establishing the regime and regulations applicable to premises in Belgian territory run by the Aliens Office, where foreign nationals are held, placed at the disposal of the Government and kept pursuant to the provisions cited in article 74/8, paragraph 1, of the Act of 15 December 1980 (*Moniteur belge,* 12 September 2002).

38. The Act of 26 May 2005 amends the Inter-State Transfer of Convicted Offenders Act of 23 May 1990 and the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens. This Act amends articles 20 and 21 on the framework for transfer and expulsion and repeals article 56 which allowed the expulsion of a recognized refugee either by Ministerial Transfer Order, having heard the opinion of the Consultative Committee on Aliens, or by Royal Expulsion Decree.

39. Article 74/4 of the Act of 15 December 1980 on the obligations incumbent on the carrier of an alien who does not meet the conditions of entry has been amended.

40. The Act of 22 December 2004[1] transposes European Union Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985, making it part of the Act of 15 December 1980.

41. Prior to the Act of 22 December 2004, article 74/4 of the Act of 15 December 1980 provided that a carrier who brought a passenger to Belgium who did not hold the necessary papers or whose situation was one of those referred to in article 3 (lack of means of subsistence, for example) was required to take that person back to his country of origin or to any other country where he would be allowed entry. The Act of 22 December 2004 extends that principle to situations where a carrier who is required to transport that person from Belgium to his country of destination refuses to allow him to board or where the authorities of the country of destination refuse him entry and return him to Belgium where entry is refused (aliens in transit).

42. The Act of 22 December 2004 states that in the event that the carrier clearly fails to fulfil his escorting obligations by failing to act on two letters of formal notice in succession (registered letter), the Minister or the person nominated by him may arrange for the passenger to be removed. In that event the carrier is required to pay the costs of the escort process as well as the passenger's accommodation, subsistence and health costs.

43. It should be noted that 1 May 2004 marked the opening of the Unaccompanied Alien Minors (MENA) Protection Service, a division of the Public Federal Justice Service (SPF Justice).

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[1] Act of 22 December 2004 amending the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens (*Moniteur belge*, 18 January 2005).

44. The Act of 1 March 2002 governs the temporary detention of minors who have committed acts categorized as an offence (*Moniteur belge,* 1 March 2002).

45. The Royal Decree of 1 March 2002 provides for the establishment of a Centre for the temporary detention of minors who have committed acts categorized as an offence (*Moniteur belge,* 1 March 2002).

46. It is important to note that a cooperation agreement was signed on 30 April 2002 between the Federal State, the German-Speaking Community, the French Community and the Flemish Community on the closed centre for the temporary detention of minors who have committed acts categorized as an offence.

47. The Decree of 19 July 2002 approved the Cooperation Agreement of 30 April 2002 between the Federal State, the German-Speaking Community, the French Community and the Flemish Community on the closed centre for the temporary detention of minors who have committed acts categorized as an offence. The Cooperation Agreement makes provision for the practical organization of Everberg Closed Centre.

48. A Bill amending legislation on youth protection and the taking into custody of minors who have committed acts categorized as an offence is undergoing scrutiny.

49. The Act of 4 September 2002 provides for an annual report to be drawn up on the application of the Convention on the Rights of the Child (*Moniteur belge,* 17 October 2002).

50. The Decree of 7 May 2004 sets out the rules relating to minors in connection with comprehensive youth support (*Moniteur belge*, 4 October 2004).

51. Euthanasia is dealt with in the Euthanasia Act (28 May 2002) (*Moniteur belge,* 22 June 2002).

52. Patients' rights are laid down in an Act of 22 August 2002 (*Moniteur belge,* 26 September 2002).

53. It should be noted that 1 January 2004 saw the entry into force of the Act of 26 March 2003 on the conditions under which the Commission on Financial aid to victims of deliberate acts of violence may grant aid. The intention behind these amendments is both to increase the amount of emergency aid and to broaden accessibility.

54. The Act dated 25 April 2004 governs the accreditation of certain non-profit-making associations to support the victims of deliberate acts of violence (*Moniteur belge*, 7 May 2004).

55. European Union Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims was transposed into Belgian law on 22 December 2005 (OJ 2004, L 261, pp. 15-18). However, the Directive has no bearing on victims' rights in Belgium because current legislation on compensation to victims already provides for the rights set out in the Directive.

56. The proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union aims to harmonize a number of procedures so as to increase the minimum standards as regards procedural rights for suspects and defendants.

It deals inter alia with the right to legal assistance and the assistance of an interpreter or a translator. It should nonetheless be noted that as it stands, the proposal does not require any amendment to be made to the Belgian legislation in force as regards the United Nations Convention on Torture.

Other measures

a) The "Police arrests" working group

57. The "Police arrests" Working Group, which at the request of the Minister of the Interior is studying the issue of deprivation of liberty by the police, has submitted a report containing a number of proposals to improve and change the current situation.

58. That report is the result of the work of two sub-groups studying two specific proposals.

59. The first proposal consists in drawing up a handbook covering all aspects of administrative and judicial custody, thereby enabling the federal and local police to implement in the various forms of deprivation of liberty consistently while providing the highest degree of protection for the rights and fundamental duties of all persons concerned. The handbook should be viewed as a set of binding instructions from the competent Ministers for the Interior and for Justice which apply to the police as a whole in situations where persons are deprived of their liberty, for as long as they where they remain under the authority or custody of the police services. This means that the proposals do not apply to persons placed under the authority and custody of other departments (Aliens Office, prison institutions, community institutions).

60. The second proposal consists in taking a number of legislative initiatives to strengthen the legal basis for the deprivation of liberty to satisfy the requirements of the international community (United Nations and Council of Europe) and certain pressure groups (NGOs, Centre for Equal Opportunities) and to comply with the rights of the persons concerned as set out in internal and external jurisprudence. To be more precise, the proposal concerns amending the Police Functions Act to confer a legal basis on a number of key aspects of deprivation of liberty by the police, in particular all aspects relating to administrative detention. The legal basis for judicial detention will be provided for in the Bill setting out the Code of Criminal Procedure (see paragraphs 190 to 202 below). While these legal initiatives are pending, the Ministers for the Interior and Justice will issue binding instructions governing all the aspects referred to above; failure to implement them correctly may give rise to a penalty. (See the comments in Chapter II below "Compliance with the Committee's conclusions and recommendations" paragraphs 498 to 500).

b) Combating violence against women

61. Since 2001 the Federal State has been pursuing an active policy to combat violence against women.

62. The Federal Action Plan 2004-2007 to combat domestic violence, coordinated by the Institute for Equality between Women and Men, is the embodiment of this policy. It sets out the strategic objectives of the various Federal Ministers involved in combating domestic violence

(Justice, Interior, Public Health and Civil Service, Urban Policy, Social Integration and Equal Opportunities). Actions are based around six priorities:

a) Heightening awareness: the major objective of the plan is to draw the public's attention to the issue of domestic violence to bring victims out of their silence and isolation. To that end a brochure aimed at the victims and local actors has been published entitled "Violence: how to get out of it". The brochure, of which over 20,000 copies were distributed, has been a great success. In addition, an initial information leaflet for victims is also available in 15 languages and has been widely distributed: "Let us break the silence before it breaks us". This leaflet is also aimed at victims with no knowledge of French or Dutch. In terms of numbers, 150,000 copies of the leaflet were published in the three national languages, and 5,000 copies in each of the other languages concerned.

b) Training: the aim of the plan is to ensure that each front-line officer (police, justice, health etc) has training in violence between partners and is able to react appropriately to the victim and perpetrator. To that end there are plans to make violence between partners an integral part of the structure of the normal training for front-line staff. This long-term task has been under way for over a year.

c) Prevention: violence against women is rooted in a broader social background of sexual inequality. The plan aims to act on that background by taking measures to combat stereotypes and inequalities. To that end, specific actions are planned to involve men closely in combating domestic violence.

d) Accommodation and protection: the plan provides for the adoption and effectiveness of any measure which can appropriately monitor the circumstances of victims of violence. Thus, the Family Home Assignment Act gives a victim of violence priority in occupying the home before, during or after divorce. The implementation of this Act has not been satisfactory and an assessment is under way to find out why and to propose specific solutions.

e) Repressive and other measures: In contrast to proposals for laws recently submitted, the plan places greater emphasis on measures to heighten awareness, promote prevention and provide treatment for perpetrators rather than on strictly repressive measures of little educational value which are likely to deter victims and perpetrators from turning to front-line services. The plan here is to assess three pilot projects in 2006 aimed at monitoring perpetrators of violence (treatment of perpetrators).

f) Assessment: The greatest difficulty in this respect is the lack of data and of accurate and reliable indicators on the development of domestic violence. As a result, the data and indicators published in the media should be viewed with caution. The aim of the plan is to ensure adequate recording of all instances of violence brought to the attention of front-line staff. Moreover, work is under way as part of the plan to implement indicators which will make it possible to measure trends in the long term.

63. All this work is supported by a network of experts comprising local specialists, representatives of collective organizations and university experts as well as co-ordinators from the provinces and staff from federated bodies responsible for equality between women and men. The network analyses the actions taken and gives its opinion on the progress made with the plan.

It also constitutes a forum to which all stakeholders can submit their concerns, exchange information and best practice, and question the public authorities.

64. Coordination of the various actions is carried out by the Institute for Equality of Women and Men. At the end of the period 2004-2007, the rules in force will be assessed and the Institute will draw up proposals for legislation and policy.

65. Finally, attention should be drawn to the Joint Circular from the Minister of Justice and the Prosecutors' Association adopted on 1 March 2006 on criminal policy in matters of domestic violence (COL 4/2006). The Circular entered into force on 3 April 2006 and is aimed at police officers and the public prosecution service. Its content consists principally of detailed instructions on the attitude and reactions to adopt towards victims and perpetrators of this type of violence.

66. Criminal policy as defined in the circular has a dual objective:

a) To bring about a solution appropriate to the individual circumstances in which domestic violence has occurred which respects, protects and acknowledges the victim and reaffirms the criminally reprehensible nature of the perpetrator's behaviour;

b) To demonstrate to the public the importance which the judicial authorities attach to this socially and humanly unacceptable phenomenon and their determination to combat it.

67. The concept of domestic violence is clearly defined as covering all forms of physical, sexual, psychological and even economic violence between spouses or persons who are living together or who have lived together in a lasting emotional and sexual relationship. The circumstances will be identified and recorded consistently by the police and public prosecution services.

68. The Joint Circular also provides for the management of files by specialized prosecutors who have received training on inter alia the psychosocial aspects of domestic violence.

B. Paragraphs 2 and 3

69. As regards the second paragraph of article 2 of the Convention, see Chapter II "Compliance with conclusions and recommendations", paragraphs 491 and 492.

70. The third paragraph of article 2 of the Convention prohibits an order from a superior officer or a public authority from being able to be invoked as a justification of torture.

71. In order to comply with that obligation, the Act of 14 June 2002 inserted article 417*ter* into the Penal Code characterizing acts of torture as a crime. The second indent of that article explicitly states that "an order from a superior officer or a public authority may not be invoked as a justification of the offence referred to in the preceding indent."

72. In addition, see Chapter II below "Compliance with the Committee's conclusions and recommendations, paragraphs 482 to 490.

ARTICLE 3

A. Removal of aliens

73. Following the conviction of Belgian police officers for the death of the Nigerian national Semira Adamu, the Government reconvened the Commission reviewing instructions relating to expulsion[2]. The Commission is seeking to draw up expulsion procedures which are in conformity with human rights and are to be enforced with respect for safety and dignity in compliance inter alia with the Council of Europe guidelines[3].

74. The Commission's final report contains a recommendation for ongoing, in-depth monitoring of forced removals from the territory which must be carried out by General Inspectorate of the Federal and Local Police acting on the authority of the Minister of the Interior. This form of control is already in existence and in 2003 gave rise to monitoring of 53 scheduled flights and 13 charter flights. The General Inspectorate did not note any problems.

75. For the same year, 2003, the Standing Committee on the Supervision of the Police Services processed six complaints in all concerning the transfer, removal or repatriation of aliens.

76. Article 21 of the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens was replaced by article 22 of the Act of 26 May 2005 (*Moniteur belge*, 10 June 2005) amending the Act of 15 December 1980. Paragraph 1 of the new provision lists the instances in which an alien may under no circumstances be expelled or removed from the Kingdom. Paragraphs 2 and 3 list the instances in which an alien may be expelled or removed from the territory only in the event of a serious offence against national security or public order.

77. Moreover, a Ministerial Directive of 7 July 2005 lays down the rules which must be followed in Ministerial Removal Orders and Royal Expulsion Orders dated prior to 24 July 2002 in respect of which the alien is seeking suspension or annulment, or where an alien is seeking leave to remain following the expiry of the decision. In such cases checks are to be carried out to ensure that the alien has retained his principal ties with Belgium, that he has the potential to be reintegrated into society and that he does not represent a grave and current danger to national security or public order.

78. It should be noted that in its statement of federal policy 2004-2005 the Belgian Government announced the reform of the Council of State inter alia as regards litigation involving aliens. The broad outlines of the reform are to be as follows: establishment of a specific tribunal on litigation involving law on aliens (asylum seekers and other procedures

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[2] The Commission was already in existence under that name and had been set up following the death of Semira Adamu in 1998. New instructions which still apply today were drawn up in 1999 on the Commission's advice.

[3] Council of Europe, Parliamentary Assembly, Recommendation 1547 (2002) Expulsion procedures in conformity with human rights and enforced with respect for safety and dignity, adopted on 22 January 2002 (3rd Sitting) (see Doc. 9196, see Doc. 9196, report of the Committee on Migration, Refugees and Demography).

involving refusal of a residence permit) with suspensory appeal, both de facto and de jure, before it; the Council of State, by contrast, would have jurisdiction only as a Court of administrative review.

B. Extradition

79. The situation has changed considerably since 2004 as far as Member States of the European Union are concerned.

80. Pursuant to a framework decision of the European Union, on 19 December 2003 Belgium adopted an Act which replaces the traditional extradition procedures with a European arrest warrant; the Act entered into force on 1 January 2004.

81. Article 4.5 of the Act provides that such a warrant issued for the purposes of extradition to a Member State of the European Union is to be refused by a Belgian court if there are serious grounds for believing that its execution would have the effect of prejudicing the fundamental rights of the person concerned, as enshrined in article 6 of the Treaty on European Union.

82. Article 6 of the Treaty on European Union states that the Union must respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

83. Article 3 of that European Convention clearly prohibits torture or inhuman or degrading treatment and, as a result, the extradition of any person by Belgium to a Member State of the European Union could not occur if it appeared that the extradition would expose that person to such practices.

84. In view of this, the new Belgian legislation therefore complies fully with article 3 of the Convention.

85. The line of argument pursued in Belgium's initial report on this point can be reiterated in full with regard to extraditions to States which are not members of the European Union (CAT/C/52/Add.2, para. 67 to 73).

86. It may be of benefit to flesh that line of argument out with an extract from the circular on extradition distributed to the country's courts. The extract explains the scope of the restriction contained in article 3 of the Convention as follows:

> "b) Extradition may be refused on the grounds that it would expose the person concerned to torture or to inhuman or degrading treatment in breach of article 3 of the Convention.
>
> The effect of the case-law of the Court is to guarantee beyond the area covered by the Convention an individual's right not to be subjected to torture or to inhuman or degrading treatment as a result of a decision on extradition – expulsion or refoulement. This remains the case whatever his misconduct, and article 3 permits of no derogations, even in the event of public danger threatening the life of the nation (article 15(2)). "ill-treatment, including punishment, must attain a minimum level of severity if it is to fall within the scope of article 3 (art. 3). The assessment of this minimum is, in the nature of things,

relative; it depends on all the circumstances of the case, such as the […] duration [of the treatment], its physical or mental effects and, in some instances, the sex, age and state of health of the victim." "In order for a punishment or treatment associated with it to be 'inhuman' or 'degrading', the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate punishment" (judgment in *Soering* v. *United Kingdom* - 14038/88 [1989] ECHR 14 (7 July 1989), at paragraph 100; judgment in *Ireland* v. *United Kingdom*, 5310/71 [1978] ECHR 1 (18 January 1978), at paragraph 162).

Present-day attitudes in the Contracting States to capital punishment are relevant for the assessment whether the acceptable threshold of suffering or degradation has been exceeded. (judgment in Soering op. cit., at paragraphs 104 and 111; decision in *Nivette* v. *France* of 14/12/2000, p.7).

The Court is therefore of the view that the question whether the removal of an alien is likely to lead to inhuman or degrading treatment in the Receiving State must be based on "the foreseeable consequences of the removal of the applicants" (judgment in *Vilvarajah and others* v. *United Kingdom*, 13163/87;13164/87;13165/87;. [1991] ECHR 47 (30 October 1991, at paragraph 108) in the light of the general situation prevailing in the Receiving State (a non-democratic State where the political regime is making no great progress towards democracy) as well as the circumstances of the alien who has been expelled or is threatened with expulsion (must have actively opposed the political regime of the Receiving State and runs the risk of ill-treatment).

The case-law of the European Court is therefore based on the facts and on first principles, and circumstances are assessed on a case-by-case basis. The scope of article 3 has however been extended to the risk of inhuman and degrading treatment associated with the misconduct of powerful private groups which have no links to the authorities of the Receiving State in the event that that State is unable to afford the person concerned appropriate protection (judgment in *H.LR.* v. *France*, 24573/94 [1997] ECHR 23, at paragraph 39) as well as to the risk of ill-treatment arising in certain exceptional circumstances which would expose them to a real risk of dying in particularly painful circumstances, such as the planned expulsion of persons who have reached the terminal stage in an illness, and would therefore amount to inhuman treatment. (Judgment in *D.* v. *United Kingdom*, 30240/96 [1997] ECHR 25 (2 May 1997), at paragraph 53)."

c) The requirement to comply with articles 3 and 5(4) of the Convention in respect of detention.

The Court notes that where a person who has been deprived of his liberty is concerned, any use of physical force – whether as part of his detention or in the implementation of extradition elsewhere, which is not rendered strictly necessary by that person's conduct, is an affront to human dignity and in principle amounts to a violation of the rights guaranteed by article 3 of the Convention (judgment in *Ribitsch* v. *Austria*, 18896/91 [1995] ECHR 55 (4 December 1995), at paragraph 38; judgment in *Hurtado* v. *Switzerland*, 17549/90 [1994] ECHR 1 (28 January 1994); judgment in *Herczegfalvy* v. *Austria*, 10533/83 [1992] ECHR 58 (24 September 1992), at paragraphs 82-83).

Protection against physical or mental ill-treatment (insalubrity, lack of hygiene or of medical follow-up etc.) as a part of detention is, moreover, provided for as a preventive measure by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

This group of independent experts which is authorized to visit public detention centres (police stations, prisons, transit zones or airports etc.) and to report on them may, in effect, address recommendations to the authorities concerned so that they can remedy the situation in due course.

The Court may refer to those reports to appreciate the genuineness of the alleged violation of the Convention (judgment in Aerts, 25357/94 [1998] ECHR 64 (30 July 1998), at paragraph 28) (…).

87. Finally, a Bill amending domestic legislation on extradition is currently being studied. Its aims include introducing a provision which provides expressly for extradition not to be allowed if there is a serious risk that the person concerned would, if extradited, be subjected in the Requesting State to torture or inhuman and degrading treatment.

ARTICLE 4

A. Paragraphs 1 and 2

The Act of 14 June 2002 bringing Belgian law into line with the Convention

88. All the information set out in Belgium's initial report (CAT/C/52/Add.2, paras. 92 to 113) should now be read as having become the Act of 14 June 2002, inserting articles 417*bis* to 417*quinquies* into the Penal Code and modifying the articles. It should be noted that articles are no longer numbered in the same way.

89. The aim of the Act adopted by Parliament on 14 June 2002 (*Moniteur belge,* 14 August 2002) is to bring the Penal Code into line with the substantive provisions of the Convention. To be more accurate it aims, on the one hand to insert three new articles into the Penal Code which characterize torture (art. 417 *ter*), inhuman treatment (art. 417 *quater*) and degrading treatment (art. 417 *quinquies*) as offences and, on the other hand, adapting to the content of the new articles the articles characterizing torture as an aggravating circumstance in hostage-taking (art. 347 *bis*), indecent assault or rape (art. 376), and theft with violence or menaces and extortion (art. 473 indent 2) and theft or extortion with violence or menaces of nuclear materials (art. 477 *sexies*, paragraph 2(2)).

90. Finally, the Act repeals paragraph 3 of article 428 punishing the kidnap of a minor aged under 12 aggravated by acts of torture to penalties of rigorous imprisonment for a period of between 10 and 15 years and article 438 of the Penal Code punishing arbitrary or illicit detention aggravated by acts of torture to a punishment of forced labour for a period of between 10 and 15 years.

91. A new article 417 bis in the Penal Code defines the concept of torture, inhuman treatment and degrading treatment. The definitions are based in part on the case law of the European Court of Human Rights concerning article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and in part on Belgian case-law.

The Act of 5 August 2003 on serious violations of international humanitarian law

92. Since 1993 and following the review which took place in 1999, Belgium has supplied itself with a system of legislation against serious violations of international humanitarian law which enables the victims of genocide, war crimes and crimes against humanity to lodge complaints before the Belgian courts regardless of the place where the crime was committed, or the nationality either of the perpetrator or the victim.

93. The very broad scope of this Act, which does not require any link with Belgium has, however, been restricted by the Act of 5 August 2003 which repealed the 1993 Act and currently governs the matter. The Act can be consulted [in French and Dutch] on the Internet at the SPF Justice site (www.just.fgov.be), under "Sources de droit" (sources of law), then clicking on "législation consolidée" (consolidated legislation).

94. Certain conditions must be met before a complaint concerning one of the offences referred to in the Act can be lodged in Belgium.

Jurisdiction *ratione materiae*

95. Belgium has jurisdiction over serious violations of international humanitarian law; moreover, the Act of 5 August 2003 makes the offences concerned part of our Penal Code, namely the crime of genocide (art.136 *bis*), crimes against humanity (art.136 *ter*), and war crimes (art.136 *quater*).

96. Only the offences set out above can be the subject of a suit for damages in criminal proceedings in Belgium provided also that the conditions for jurisdiction *ratione personae* are met.

Jurisdiction *ratione personae*

97. In the event that one of the offences referred to in the Act was committed abroad, the Belgian courts will have jurisdiction only where:

a) The perpetrator of the offence is a Belgian national or a person whose principal residence is in the territory of the Kingdom; or

b) The crime was committed against a person who, at the time when the crime was committed, was a Belgian national or a person who had been effectively, continuously and legally living in Belgium for at least three years;

98. Therefore, where the defendant is not a Belgian national, only a Belgian victim or a victim resident in Belgium for at least three years at the time the crime was committed is able to lodge a complaint with the Belgian courts.

99. On the one hand, except in the case where the offence is committed by a Belgian national or a person resident in Belgium, proceedings may be initiated only at the request of the Federal Prosecutor who assesses, in the exercise of his own discretion, and without the possibility of appeal, the appropriateness of bringing proceedings. The Federal Prosecutor may therefore decide to take no further action in certain circumstances, as set out in the Act of 5 August 2003.

Other limitations

100. In accordance with international law, the Act of 5 August 2003 prohibits proceedings against Heads of State and of Government during their period in office and against persons who enjoy immunity based on a treaty which is binding upon Belgium.

101. Finally, persons officially invited to stay on the territory of the Kingdom by the Belgian authorities or by an international organization which has entered into an agreement on its seat with Belgium may not be the subject of measures of constraint in relation to a public prosecution.

102. Complaints may be lodged with the *Parquet fédéral* – Federal Prosecution Service at the following address:

Parquet fédéral
Rue des Quatre Bras
191000 Brussels
Belgium

The Police Functions Act – Use of restraints and recourse to force

103. In addition to the information contained the Belgium's initial report, the Committee will find in the annex on article 4 a detailed note on the use of restraints and recourse to force.

The Euthanasia Act

104. The Euthanasia Act was enacted on 28 May 2002 (*Moniteur belge*, 22 June 2002). Under this Act, a doctor practising euthanasia does not commit an offence providing he or she complies with as many as possible of the conditions and procedures that the Act specifies. In brief, the patient must be an adult or emancipated minor, who is conscious and under no disability at the time the request is made; the request must be made in a voluntary manner, after thorough consideration and repeatedly, and must not result from external pressure; the patient must be in an irretrievable medical situation and must be experiencing constant and unbearable physical or psychological suffering which cannot be assuaged and which results from a serious and incurable disorder arising from accident or disease; and he or she must comply with the conditions and procedure stipulated in the law. A Federal commission was set up under the Act to check and evaluate its implementation. The commission's tasks[4] include that of checking, in every case of

[4] In compliance with rules on linguistic parity the commission comprises 16 people: eight doctors, four legal experts and four members from specialist backgrounds in the treatment of incurable diseases.

euthanasia, that all the conditions laid down in the law have been complied with. On a point of information, we note that between 22 September 2002 (the date of entry into force of the Act) and 31 December 2003, the number of declarations stood at 259: of those declarations, 68.5 per cent were accepted immediately and 31.5 per cent required an approach to be made to doctors seeking further information. No declaration was refused or forwarded to the Public Prosecutor.

Patient rights

105. Any physical person to whom health care is administered, whether at his request or otherwise, including a person in detention, may rely on this Act in connection with the legal private and public law relationships in terms of health care administered by a professional practitioner. The patient rights listed in the Patient Rights Act of 22 August 2002 (*Moniteur belge*, 26 September 2002) are as follows:

a) The right to quality service;

b) The right to free choice of a health-care provider;

c) The right to information;

d) The right of consent;

e) The right to records which are carefully kept up-to-date and kept in a secure place;

f) The right to protection of privacy;

g) The right to mediation in the event of a complaint.

106. The right to mediation in the event of a complaint is an important right in the context of this Act. Where a patient considers that one of his rights as a patient has been infringed, he may lodge a complaint with a local or federal mediation service. He may also be assisted by a confidential adviser of his choice. The main aim of the legislator when establishing the mediation services is to encourage the patient to find a solution through discussion with the health-care provider with, if possible, a view to reconciliation. The aim is to prevent an increase in the number of complaints.

107. Every hospital is required to have a mediation service to which patients may address all complaints relating to failure on the part of health-care providers working at the hospital to respect their rights as patients. This requirement will in future be extended to other establishments employing health-care providers (care and rest homes, for example). An appropriate mediation service will also be introduced for health-care providers administering health-care externally.

108. A federal mediation service has been set up as part of the Federal "Patient Rights" Commission. It fulfils exactly the same functions as local mediation services for complaints relating to care-providers in respect of which no specific mediation service has been established. Like its local counterpart, the federal mediation service drafts an annual report giving a glimpse of the number of complaints and their nature as well as the outcome. The mediation service uses

the report to identify problems and draw up recommendations. The annual report is forwarded to the Federal "Patient Rights" Commission and the Minister of Public Health.

B. Protection of children against ill-treatment

109. The Belgian authorities are committed to pursuing actively actions taken to combat violence in the broad sense towards children (ill-treatment, sexual exploitation, etc.), both from an operational point of view and through legislation.

International level

110. Note should be made of the ratification on 6 May 2002 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and the ratification on 11 August 2004 of the United Nations Convention against Transnational Organized Crime and its Additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

111. The bill approving the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography was adopted by the Chamber of Representatives on 12 January 2006.

112. In September 2003 the Council of Europe started negotiations with a view to drawing up a European Convention on Action against Trafficking in Human Beings. This Council of Europe Convention was adopted on 3 May 2005 and opened for signature on 16 May. The purpose of the Convention is to strengthen the human rights of the victims of trafficking in human beings. Belgium participated actively in this exercise as it presided over the work. Belgium also chaired the Group of Specialists on the Protection of Children against Sexual Exploitation. We should also note that Belgium had several representatives on the Council of Europe Committee of Experts on the treatment of sex offenders in penal institutions and in the community (PC-DS).

Nationally

113. The Act of 23 March 2000 inserted a new article 22 bis into the Constitution. It enshrines in the constitution the principle of guaranteeing respect for children's moral, mental, physical and sexual integrity. The article is a concrete expression of the wish to acknowledge that children have rights under the Constitution and thus forms the foundation upon which subordinate legislation must build.

114. The Act of 10 August 2005, published on 2 September 2005, pays particular attention to minors who are victims of smuggling, trafficking and living off the proceeds of begging. The Act aims to bring Belgian law into compliance with European Directives and Framework Decisions and with the Protocol supplementing the United Nations Convention against Transnational Organized Crime to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

115. In that context the crime of trafficking is no longer restricted just to aliens as provided for in the former article 77 bis of the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens. At the same time, article 77 bis has been amended to

refer specifically and exclusively to smuggling of human beings. Previously this article drew no distinction between trafficking and smuggling. The characterization of trafficking refers explicitly to a number of forms of sexual and economic exploitation (recruitment, transportation, transfer, harbouring or accommodation of human beings for the purposes of sexual or economic exploitation).

116. Secondly, the Act broadly restates the text of Bill No.51-640/1 amending the Penal Code and the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens to strengthen penalties for persons involved in the smuggling and trafficking of unaccompanied minors. It nonetheless extends the scope of aggravating circumstances provided for in relation to the smuggling and trafficking to all minors.

117. Thirdly, it defines the scope of the crime of living off the earnings of begging, provided for in the bill referred to above. The Act is not concerned with re-criminalizing begging as an offence, but rather, after the example of prostitution, with punishing those who exploit begging by others. Furthermore, the Act incorporates article 82 (on begging by minors) of the 1965 Youth Protection Act.

118. Furthermore, a working group comprising inter alia representatives of the bench and the Criminal Policy Service has been set up to assess the Acts of 13 April 1995 on the protection of minors (on sexual abuse of Minors Act; Act on the Suppression of Traffic in Human Beings and Child Pornography; Act on Advertising of a Sexual Nature aimed at Minors). Its brief includes assessing the extent to which new classifications of offences should potentially be introduced so as to better combat child pornography, especially on the Internet.

119. Working Groups (French, German and Dutch-speaking) on child abuse set up in November 1998 will meet again to update the conclusions they had previously reached. By way of a reminder, child abuse falls within the realm of welfare, psychology and medical care as well as the law. The initial purpose of the group was to define the missions, defining characteristics and limits of each realm clearly. The group considered possible specific action to improve cooperation between the sectors with a view to dealing more effectively with the phenomenon of abuse: guidelines on criminal policy, administrative instructions, cooperation agreements and changes to legislation.

120. It should also be noted that on 1 March 2006 the Public Prosecutor's Office adopted Circular COL 3/2006 defining violence within the family and child abuse outside the family and setting out ways for police and prosecutors to identify and record them.

121. Henceforth, any form of physical, sexual, mental or economic violence between the members of the same family, regardless of their age, is deemed abuse within the family; similarly, any form of physical, sexual, mental or economic violence committed against the person of a child by a person who does not belong to that child's family is deemed to be child abuse outside the family.

122. Enforcement of this Circular will enable a tool to be drawn up which can implement and monitor criminal policy at federal and local levels and respond to requests by scientists (criminological, sociological or other types of research) and questions from the political world

(questions in Parliament, assessment and amendment of Acts, regulations and institutional provisions, etc.).

123. As far as the French Community is concerned, the Decree dated 12 May 2004 on Assistance to victims of Child abuse highlighted the importance of cooperation and coordination in youth support. Article 4 of the Decree provides for the establishment of a Commission to coordinate aid to child abuse victims within each legal district in the French-language region and the legal district of Brussels (Bilingual Brussels-Capital Region only). The task of the coordinating commission is to oversee improvements in procedures to deal with child abuse cases. It does not handle individual child abuse cases.

124. A Committee to monitor child abuse has been set up within the Birth and Childhood Office (ONE) [5]. The Committee is the internal scientific authority for any matter relating to support for child abuse victims and "SOS Teams for Children".

125. The Flemish Government also intends to prioritize awareness-raising, prevention, and improving the quality of assistance through centres for abused children and development of knowledge. It will achieve that aim by various means as follows:

a) In cooperation with partner groups, Kind en Gezin will launch ongoing campaigns to heighten professionals' awareness of child abuse prevention.

b) Kind en Gezin will promote or even set up training in the prevention of and dealing with (the risk) of child abuse. To that end it will study how a "training centre for child abuse" can be set up in Flanders, support the services or organizations which wish to draw up an internal step-by-step plan for dealing with (suspicions of) child abuse and will provide training in models for recording abuse to other sectors involved in dealing with child abuse.

c) Kind en Gezin will promote quality of support in child abuse cases.

126. We note that Kind en Gezin has produced a brochure with SPF Justice dealing with child abuse (sexual and other forms). Its aim is to raise awareness and tell people who are aware or have suspicions of cases of child abuse how to act, the course matters take and the services to contact.

127. A comprehensive policy to combat violence against children is the product of a policy which covers many forms of violence towards children, is relevant to the various contexts in which it occurs and includes sections on prevention, protection, support (whether medical, psychological, legal or social) for victims, rehabilitation and reintegration of victims and work with the perpetrators of acts of violence. Given the complexities of the Belgian institutional fabric, the forthcoming National Commission for the Rights of the Child should make a significant contribution to the establishment of a more "comprehensive" policy to combat

[5] The ONE is a public service serving the French Community. Its task is to approve, subsidize, organize, monitor, control and assess the treatment of children aged under 12 outside their family environment, within the bounds of the legislation in force and in accordance with its operational duties. (http://www.one.be/PRES/MISS/miss.htm).

violence towards children. It should be noted that a cooperation agreement on the establishment of the National Commission was concluded on 19 September 2005 between the federal and federated bodies.

ARTICLE 5

128. At present Belgian legislation complies fully with the provisions of article 5 of the Convention.

129. By way of a reminder, conformity with those provisions was achieved as a result of the recent legislation of 14 June 2002 adopted pursuant to the Convention ratified on 25 June 1999, which amended various provisions of the Penal Code characterizing acts of torture and inhuman or degrading treatment as crimes (see paras. 88 to 91 above).

A. Paragraph 1(a)

130. Article 3 of the Penal Code enshrines the principle of territoriality of domestic criminal law; all offences committed on the territory of the Kingdom are to be punished in accordance with Belgian laws, regardless of the gravity of the offence or the nationality of the perpetrator or the victim.

131. This territorial jurisdiction includes the land area within Belgium's borders, the continental shelf, the territorial sea and air space.

132. In conformity with article 5 of the Convention, that jurisdiction also extends to offences committed aboard a vessel flying the Belgian flag or aboard an aircraft registered in Belgium. Thus offences committed aboard a Belgian aircraft in the air[6] or aboard a Belgian vessel at sea[7] are deemed to have been committed in Belgium and may be prosecuted through the Belgian courts, even though the accused was not present on Belgian territory.

133. The offences of torture provided for in the new articles 417 bis, 417 ter, 417 quater, and 417 quinquies of the Penal Code fall within the scope of these provisions.

B. Paragraph 1(b)

134. The active personality principle referred to in this provision is recognized in Belgian law, whereby the fact that the perpetrator of an offence has Belgian nationality confers jurisdiction on the domestic courts.

135. Under article 7 of the Preliminary Title of the Code of Criminal Procedure, a Belgian who is guilty of a criminal offence outside the territory of the Kingdom may be prosecuted in Belgium especially where the matter involved is classed as a crime or offence under Belgian law,

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[6] Article 36 of the Aerial Navigation Regulation Act of 27 June 1937.

[7] Article 73 of the Act of 5 June 1928 revising the Disciplinary and Penal Code for the Merchant Navy and Maritime Fisheries.

it is punishable under the law of the country where it was committed and the perpetrator is present in Belgium.

136. In the event that the victim is an alien then either he (or his family) is required, in addition, to make a preliminary complaint, or the foreign authority of the place where the offence was committed must make a formal statement; proceedings may be brought only at the discretion of the Public Prosecutor.

137. The extraterritorial jurisdiction of the Belgian courts described here applies fully to torture offences as defined in articles 417 bis, 417 ter, 417 quater and 417 quinquies of the Penal Code.

C. Paragraph 1(c)

138. Belgian law also recognizes the principle of passive personality and extends the ordinary jurisdiction of its courts where the victim of an offence is of Belgian nationality.

139. Thus in the event of a crime amounting to torture which is committed abroad by a foreign national against a Belgian national, article 10(5) of the Preliminary Title of the Code of Criminal Procedure would allow the crime to be prosecuted in Belgium if the perpetrator is present there and if the incident is punishable under the law of the country where it occurred, by a maximum penalty of over five years' imprisonment.

D. Paragraph 2

140. Since the submission of the initial report, the Bill incorporating an article 12 bis into the Preliminary Title of the Code of Criminal Procedure has become the Act of 18 July 2001 (published in the *Moniteur belge*, 1 September 2001). The purpose of this Act is to convert article 12 bis into a generally applicable provision which confers competence on Belgian courts to hear all cases where an international convention contains a mandatory rule for the extension of the competence of the courts of the States parties.

141. Since that time article 12*bis* has been amended by further legislative reforms. It reads as follows:

> "With the exception of the circumstances referred to in articles 6 to 11 the Belgian courts shall also have jurisdiction to hear cases involving offences committed outside the territory of the Kingdom which are referred to in a rule of conventional or customary international law by which Belgium is bound or in a rule of secondary European Union law by which Belgium is bound, when such a rule imposes on Belgium, in any way, an obligation to submit the matter to its competent authorities for prosecution ."

142. Prosecution, including the inquiry into the facts of a case, may only be instituted at the request of the Federal Prosecutor, who assesses any complaints. There is no right of appeal against his decision. When dealing with a complaint pursuant to the paragraphs in question here, the Federal Prosecutor requires the investigating magistrate to conduct an enquiry into the complaint unless:

a) The complaint is manifestly unfounded;

b) The acts set out in the complaint do not qualify as an offence as referred to in Book II, Title I bis of the Penal Code, or to any other international offence deemed as such under a treaty binding upon Belgium;

c) The complaint cannot give rise to any admissible public prosecution;

d) On the basis of the specific circumstances in the matter it is clear that in the interests of the proper administration of justice and in compliance with Belgium's international obligations, the matter should be brought either before an international court or before a court in the place where the facts occurred or before the courts of the State of which the perpetrator is a national or those of the place where he is present, provided that that court displays the qualities of independence, impartiality and equity resulting *inter alia* from the relevant international commitments binding on Belgium and that State.

e) The Federal Prosecutor decides to take no action on a matter; the prosecutor informs the Minister of Justice of that decision noting the points set out in the subparagraph above on which his decision is based.

f) The decision to take no action is based solely on points 3 and 4 above or solely on point 4 above and the acts took place after 30 June 2002 and fall within the material jurisdiction of the International Criminal Court, [in which case] the Minister of Justice shall inform the International Criminal Court of those acts.

143. The article allows criminal proceedings to be instituted directly on the basis of a rule of conventional or customary international law but does not allow the conditions governing jurisdiction established under international law to be overstepped. Therefore, the Belgian courts have jurisdiction to hear a case concerning an act of torture committed abroad whose perpetrator is not on Belgian territory on the strict condition that the connecting factors provided for in that regard in article 5 of the Convention obtain.

ARTICLE 6

A. Paragraphs 1 and 2

144. Some further points should be noted in addition to the information supplied in the initial report.

145. The explanations given in Belgium's initial report can be reiterated in full as regards the description of the general extradition procedure (CAT/C/52/Add.2, paras. 67 to 73 and 129 to 135).

146. It should nonetheless be noted that the study carried out by Chris Van den Wyngaert is an academic work still and has not led to a Bill.

147. It should also be noted that since 1 January 2004 the extradition procedure between the Member States of the European Union has been replaced by the European Arrest Warrant (in this regard see the line of argument set out under article 3, principally where its impact on offences classified as torture are concerned).

B. Paragraph 3

148. Chapter III of the Act on principles governing the administration of prison establishments and the legal status of detainees adopted on 12 January 2005 (*Moniteur belge*, 1 February 2005) provides for contact with the outside world, including oral and written contact with consular and diplomatic agents (article 69).

ARTICLE 7

149. The requirement laid down by this provision is fully covered by Belgian law.

150. The combination of the new article 12*bis* of the Preliminary Title of the Code of Criminal Procedure and article 5 of the Convention result in jurisdiction being conferred on the Belgian courts to try, in the absence of extradition, the perpetrator of an offence of torture even if the perpetrator is an alien who committed the offence abroad.

151. In that respect we refer to the comments made in paragraphs 138 to 143 above.

ARTICLE 8

A. Paragraph 1

152. The extradition treaties concluded by Belgium are obviously based on the rules contained in national legislation on the matter, namely the Act of 15 March 1874 as amended by the Act of 31 July 1985 and the Act of 14 January 1999.

153. These Acts lay down the conditions governing the enforcement of extradition requests by reference to various principles related as appropriate to the situation of the persons concerned (nationality, minority, political refugee, immunities, state of health, etc.) and to compliance with certain legal principles (requirement of dual legal liability, *non bis in idem* principle, minimum threshold for the penalty, non-implementation of the death penalty, time-barring, etc.).

154. To that extent the extradition conventions concluded by Belgium do not normally set out a specific list of offences which would automatically authorize the extradition procedure.

155. However, this in no way prevents offences classed as torture from automatically being included in the extradition conventions.

B. Paragraph 2

156. Article 1(1) of the Belgian Extradition Act provides as follows:

> The Government may, for the purpose of implementing treaties entered into with foreign States on a reciprocal basis, grant the extradition of any alien who as the perpetrator, co-perpetrator or accomplice, is the subject of prosecution for an criminal offence or is wanted for the purposes of enforcing a sentence or social protection order by the legal authorities of the foreign State. […]

157. Thus the Belgian Act makes extradition conditional on the existence of a treaty which is binding on both Belgium and the requesting country; that treaty must be entered into on a reciprocal basis; in other words Belgium may, pursuant to a treaty, authorize the extradition of a person to a country only if that country is able to authorize extradition in the same circumstances. The treaty may be one dealing solely with extradition or a treaty of general scope containing certain provisions on extradition.

158. The provision set out in article 8(2) of the Convention against Torture would therefore appear to fulfil that requirement.

159. Extradition for acts classed as torture requested of Belgium by a State which has not entered into a specific extradition treaty is therefore admissible if that State is Party to the United Nations Convention against Torture.

C. Paragraph 3

160. This paragraph has no relevance here since Belgium automatically makes any extradition conditional upon the existence of a treaty.

D. Paragraph 4

161. We refer to the observations made on article 5(1) (paras. 130 to 140).

ARTICLE 9

162. Strictly speaking, the arguments put forward in Belgium's initial report can be reiterated in full.

163. However, *de lege ferenda*, it should be pointed out that on 9 December 2004 the legislative Chambers adopted the Act on Mutual International Judicial Assistance in Criminal Matters which is intended among other things to lay down the general conditions under which international mutual assistance in criminal matters may be afforded by Belgium.

164. The Act sets out the general principle of Belgium affording the greatest measure of assistance possible in criminal matters. This option is included among the recommendations given in article 9 of the Convention, in particular with regard to acts of torture which, since the reform of the Penal Code on 14 June 2002, have been regarded in Belgian law as a particularly serious form of crime to the extent that acts of torture and inhuman or degrading treatment have been specifically characterized as crimes.

ARTICLE 10

A. Training of Police Service staff

165. Both the Federal and Local Belgian Police have taken advantage of an ambitious yet difficult background for reform to review their training system. The reform introduced in 2001 for the federal police and in 2002 for the local police enabled the police services' role to be refocused on a more humane approach to police intervention. By gaining an increasingly strong foothold in society, police officers can monitor citizens' rights more closely and therefore can

more generally ensure compliance with human rights. The content of Belgian police officers' training is based broadly on this new philosophy.

Teaching human rights to the Belgian police.

166. A Ministerial Decree of 10 December 2002 entitled "General Study Regulations" includes topics associated with human rights to a greater or lesser extent.

167. There is no specific module on human rights but a significant number of modules address the issue or heighten the awareness of officers in training. For example:

a) Performance of policing functions: Police Functions Act (respect for and contribution to protecting individual rights and freedoms) history of the Belgian police; current reform and new trends (protection of citizens and assistance; respect and concern for human rights; assistance to victims; impartiality; integrity; multiculturalism).

b) The Community Policing approach: expectations of a diverse, multicultural population and the impact on the performance of policing functions.

c) Professional ethics: international regulatory context of the ethical approach to police intervention; implementation and monitoring of compliance with police ethics in practice.

d) Control of violence (theory and practice): legal texts – controlling stress and accepting an individual's aggression – mediation and negotiation – techniques for controlled supervision of a person under arrest – control of available means (firearms, spray, truncheon, etc.) – public order intervention (concept of negotiated management of public spaces).

Decentralization of Belgian police schools

168 In January 2001 the new Training Department was set up within the integrated police service. The Department was set apart by a comprehensive and relatively innovative approach within the police, the sole aim of which was to tackle the major challenge of putting together a quality training programme.

Establishment of a system for assessing police training: EVA 2003

169. A very extensive assessment system was established by the Belgian Federal Police Training Department. The report, which gave rise to a symposium in August 2004, was recently published. It will enable the content of training to be improved, including all aspects of human rights protection. We may also add that the assessment system allows and will allow control to be exercised indirectly over the content of courses.

Training within the prison administration

170. We refer to the comments in Chapter II "Compliance with the Committee's recommendations and conclusions, paras. 525 to 529.

Training of staff responsible for deportations

171. Following the tragic death of Semira Adamu on 22 September 1998, the Belgian Minister of the Interior established a Commission to review the instructions relating to expulsion which submitted its final report to him on 21 January 1999. It showed that there were serious gaps in the instructions for the removal of people whose asylum applications had been rejected and that on occasion the instructions were poorly understood because of inadequate training. The basic task was to draw up instructions to prevent accidents occurring in the future and more generally to ensure that removals were conducted in a humane manner in compliance with fundamental human rights and all the international conventions in force in that field.

172. On 13 January 2004, following the judgment of 12 December 2003 handed down by the Court of First Instance (Brussels) on where responsibility for the tragedy lay, the Minister of the Interior reconvened the Commission to review the instructions relating to expulsion, [8] albeit in a slightly different configuration.

173. Its task was essentially to re-examine the issue of removals and amend the instructions so that they could be implemented humanely with regard to persons being expelled, while ensuring the safety and legal certainty of police officers.

174. After tackling the issue of removal, studying the principal developments and problems, and running through the recommendations of a number of international bodies, the Commission made a number of recommendations on legal protection, recourse to force, communication between the services involved, special categories of persons, the broader issue of asylum and migration and monitoring of the recommendations themselves.

175. As regards the training plan for staff working in the police services and closed centres, the Commission reached the conclusion that the threshold for recourse to force was crossed more easily where no alternative methods were in place or did not appear to be in place. The same can be said for all facets of removals policy and this point is equally valid therefore to police services, staff in closed centres and all other persons with an active role in removals.

176. To reduce or even prevent recourse to force during removals, it is very important to have other non-violent tools and options available for use. The Commission therefore recommends improving the training of police officers to allow them to increase their knowledge and acquire new tools enabling them to react more appropriately during removals. In stating this, the Commission is also responding to the recommendation of the Human Rights Committee, namely that: "[…] Those responsible for effecting such deportations should be better trained and monitored." (CCPR/CO/81/BEL, para. 14).

177. Going beyond the principles underlying the management of violence as addressed in police basic training and the existing forms of social management of violence (role of colleagues, hierarchy, monitoring), the Commission is of the view that the prime goal should be to improve the organizational management of violence, in other words the professional training of staff in

[8] See the Commission's final report annexed hereto.

the Border Control section, by way of comprehensive training. Indeed, the Commission found that current training on deportation techniques is too narrow.

178. That is why the Commission recommends incorporating the following elements into comprehensive professional training:

a) Legal knowledge (powers and case-law);

b) Technical knowledge (recourse to methods of restraint, first aid);

c) Knowledge of behavioural science (social skills, psychological effects, group dynamics, multiculturalism);

d) Tactical knowledge (follow-up of complaints, team-building, ad hoc approach);

e) Knowledge in the communications field (styles and techniques of communication);

f) Ethical aspects of deportation.

179. The Commission is strongly in favour of these training modules focusing on specific situations arising in deportation in practice, for example based on the study of one or more cases highlighting the issue of proportionality in recourse to force. The case study could include role play or assessment interviews based on real incidents.

180. It is obviously crucial for sufficient time to be able to be dedicated to comprehensive professional training. That is why the Commission recommends planning for 6 per cent of working time to be given over to training.

a) Training of staff employed in closed centres

181. All members of staff at the centres receive training in the following areas:

a) Cultural diversity;

b) Management of aggression (prevention, intervention, finding a way to cope with violence);

c) Code of conduct for staff in closed centres: The code sets out the most important standards and values to which each member of staff must have regard, whatever their level, in the performance of their duties; when a member of staff deems an aspect of conduct intolerable, disciplinary action is taken;

d) Internal regulation of closed centres;

e) Health and safety procedures;

f) First aid;

g) Languages.

182. Staff at the centres also receive training for their specific duties. So management staff receive training in management and coaching. Social assistants receive special training in communication skills.

183. Centre staff are recruited following successful completion of tests and examinations held by the Federal Administration Selection Bureau (SELOR) in conjunction with experts from the Aliens Office. The tests and examinations are appropriate to the post applied for. This implies that there is a specific test and examination for each of the posts in the centre. The tests also establish each candidate's aptitude for each post.

184. As part of the modernization projects, a mentoring procedure has been designed for new members of staff (induction, basic training - mentoring) and account has been taken of the implications the projects have for the recruitment procedure.

B. Army training

185. The prohibition on torture as such is not currently the subject of any specific training within the Belgian armed forces. However, the issue is indeed addressed during all military training.

186. All categories of personnel are reminded at several points in their basic and in-service training on the prohibition on torture as part of the course on the law of armed conflict.

a) Volunteers:

   (i) During basic training, volunteer candidates follow a four-hour course on the law of armed conflict that includes two hours of teaching on the humanitarian rules for combatants.

   (ii) When the instructor deals with the protection of various categories of person (civilians, prisoners of war, the wounded and medical personnel), candidates are explicitly reminded of the prohibition on torture.

   (iii) N.B.: A reminder of the basic training in this field undergone by any soldier is given to all soldiers in a similar form before they leave on an operation, regardless of rank (officers, non-commissioned officers and volunteers).

b) Non-commissioned officers:

   (i) Non-commissioned officer candidates: Non-commissioned officer candidates receive the same basic training in the law of armed conflict, with an additional hour of teaching on their duties and responsibilities as leaders, especially as regards breaches of the law of armed conflict (murder, rape, torture, etc.).

   (ii) Elite non-commissioned officer candidates (warrant officers): The same concepts are covered eight years later on a course for non-commissioned officers aspiring to promotion to the rank of warrant officer ("Prevention and punishment of breaches of the law of armed conflict").

c) Officers

(i) Officer candidates: Officer candidates receive 11 hours of training in the law of armed conflict. In addition to basic training in the humanitarian rules for combatants, they receive an hour's training on their responsibilities as leaders in this area ("Prevention and punishment of breaches of the law of armed conflict").

(ii) Technical course for staff officers: As part of their in-service training, officers follow a technical course for staff officers, six hours of which are devoted to the law of armed conflict. Part of the course is spent on revision of the concepts studied earlier (by officer candidates) as they apply to a higher level of command.

(iii) Senior officer candidates: The course for senior officer candidates (followed by those wishing to be promoted to the rank of major) devotes 12 hours to the law of armed conflict. One hour is spent on revision of the basic rules of humanitarian law, including the protection of persons (civilians, the wounded, prisoners of war and medical personnel). The prohibition on torture is one of the prohibitions of which candidates are reminded on this occasion. A further hour is spent on responsibilities and the punishment of serious breaches of the law of armed conflict.

(iv) Higher course for staff officers: This course is intended for selected officers of the rank of major or lieutenant colonel. It includes 12 hours on the law of armed conflict, including the same in-depth revision as in the course for senior officer candidates, especially with regard to the punishment of violations and the responsibilities of military leaders in this respect.

d) Advisers on the law of armed conflict: The armed forces have introduced a network of advisers on the law of armed conflict (CDCAs) in military units and headquarters who are responsible for advising commanders in this field. The advisers are officers who have undergone a five week specialized training curse at the Higher Royal Defence Institute. During that course they are given detailed instruction in all the rules of the law of armed conflict. Four hours of the course are devoted to the status of prisoners of war, four hours to the treatment of the wounded and medical personnel and four hours to rules governing occupation.

187. Each of these training programmes includes a reminder of the prohibition on torture for each of the categories of persons protected.

C. Training of the judiciary

188. Set out below are a few of the initiatives which have been taken since the initial report was submitted to the Committee:

a) Outside training open to judges and legal trainees (favourable opinion from the Higher Council of Justice for SPF Justice to take this on). For example:

(i) Study day "De VN en de bestrijding van geweld. De VN en mensenrechten: uitdagingen en hervormingen", held on 22 October 2004 by De Vereniging voor de Verenigde Naties (VVN), at the Instituut voor de Rechten van de Mens de KU Leuven;

(ii) Seminar in international criminal law in Liège on 10 March 2006 (14.00.-18.00), "Introduction to the practice of international criminal courts".

b) Internal training held for judges and legal trainees. For example:

(i) "Human rights";

(ii) "Trafficking in human beings";

(iii) "International humanitarian law";

(iv) "Reception of victims by the prosecuting authorities and the courts".

189. Annexed to this report the Committee will find brochures for the training offered by the Higher Council of Justice to judges and legal trainees for the year 2005 and the first half of 2006.

ARTICLE 11

A. Custody /Pre-trial detention

Administrative and judicial arrest

190. See Chapter II below. Compliance with conclusions and recommendations, paragraphs 496 to 501. (See also paragraphs 502 to 516.)

191. Following the recommendations made by the United Nations International Human Rights Committee (CCPR/C/79/Add.99), the International Committee against Torture (CAT/C/CR/30/6) and the European Committee for the Prevention of Torture[9], the Belgian Government asked for a working group to be set up and co-ordinated comprising members of the Justice and Interior Ministries, the Technical and Administrative Secretariat of the Minister of the Interior and representatives of the Local and Federal police services[10]. On 25 October 2004

[9] Council of Europe, Committee for the Prevention of Torture, CPT(94)15; CPT(97)75 and CPT (2003)32.

[10] Minister of the Interior, SAT/OPS/PJ/51066/D19350/2002/D-25 of 28 May 2002.

the working group submitted a report on how to perform its task, setting out the key themes for a humane, democratic approach to the deprivation of liberty and a framework for an effective approach to deprivation of liberty. The report has been approved by the government and will form the foundation for the implementation in practice of legal powers in matters of deprivation of liberty.

Key themes for a humane, democratic approach to deprivation of liberty

192. The authorities have an obligation to watch over public security and uphold the rule of law. Respect for and protection of individual rights and freedoms and the development of democratic society must always underlie action on the part of the police and constitute the prime purpose of their role. The power conferred on police cannot be considered as an end in itself; it must continue to be one of the means available to the competent authorities to ensure social order. The police provide a public service and are therefore not only at the service of the public but must by their actions safeguard respect for democratic institutions and the authorities empowered to perform those services[11].

193. These principles were reiterated in the Act of 7 December 1998 instituting an integrated dual-level police service, and are considered to be the general task which police officers are responsible for performing[12]. The rights and freedoms of individuals enshrined in the Constitution are to some degree the nub of the relationship between the police services, the police authorities and the public. The principles which must govern that relationship are important. First among those principles is that citizens' rights and freedoms are fundamental; indeed, they are the basis of the legal order or even the rule by which justice and injustice can be differentiated.

194. The second principle is the inherent dignity of each individual. This rule is in fact the basis for the concept of human rights and the essence of the Universal Declaration of Human Rights. This means that the safeguarding of rights and freedoms goes beyond merely enforcing the law: in other words, it is the tie that binds justice to ethics, without however meaning that those two concepts are one and the same. Law has regard to the official rules whereas ethics goes beyond them and applies the same principle in fields which are not governed by law.

195. A third principle is the achievement of human rights in police duties. Until recently it was not clear whether the police should merely protect citizens' rights (negative approach) or rather if they should actively work to enforce respect for them (positive approach).

196. The Act of 7 May 1998 instituting an integrated dual-level police service allowed this uncertainty to be removed and made the positive approach part of the Act[13]. A public service's aims cannot solely be to do things as efficiently and effectively as possible; a public service

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[11] Ministry of the Interior and the Civil Service, Circular concerning the Police Functions Act of 5 August 1992, Key themes, 3.1., *Moniteur belge,* 20 March 1993.

[12] Article 123 of the Act of 7 December 1998, *Moniteur belge,* 5 January 1999.

[13] Article 123 of the Act of 7 December 1998, *Moniteur belge,* 5 January 1999.

should also do "good" things. The police authorities and services are more than providers of order and security: they are first and foremost bodies of authority which through their actions help to determine society's values and standards.

197. According to the political agreement which preceded the Act of 7 December 1998, better known generally as the "Octopus Agreement", the police discharge their duties using an integrated approach based on community policing[14]. That means that regardless of the variations in the application of the concept of community policing, there are some principles which can be deemed universal. As an integral part of society, the police cooperate closely with the public so as to be able to act in a way which resolves problems through involvement at all levels.

198. Some contacts between police officers and the public are, however, specific in nature for example when a citizen must for one reason or another renounce some of his rights and freedoms and is placed under the control of the police and the police authorities. At that point in time he is quite simply in the power of the police. The risk of abuse and problems in these situations is not imaginary. It is therefore necessary for the authorities and the police to pay special attention to this issue.

199. The reasoning behind this is straightforward: someone who is deprived of his liberty or who is the subject of a measure which restricts his actions and movements and is placed under police control is, from the very moment when this occurs, under police authority and therefore must be able to rely on protection against any affront to his human dignity and his physical and mental integrity. The rule in question is the prohibition on torture and any other inhuman and degrading treatment.

200. Any form of force exercised against persons deprived of their liberty in circumstances where that force is not strictly necessary is an affront to their human dignity and may constitute a violation of article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms[15] as well as articles 417 bis to 417 quinquies of the Penal Code[16].

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[14] Office of the Prime Minister, The reorganization of the police services – General principles, 9 anuary 1999. The Bill instituting an integrated dual-level police service takes up this idea; see the report of the Senate Committee, which is quoted verbatim. Belgian Senate, Assessment of police services, 1-700/1, 3 July 1997.

[15] European Convention for the Protection of Human Rights and Fundamental Freedoms, *Moniteur belge,* 19 August 1955; errata, 19 June 1961.

[16] By the Act of 9 June 1999 approving the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Belgium decided that the Convention would have full effect in Belgium. The consequence of this was that our country had to ensure that all forms of torture, attempts to commit torture, and acts which constitute complicity or participation in torture were offences punishable under the Belgian criminal law. The Act of 14 June 2002 bringing Belgian law into line with the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment added a Section V, "Torture, inhuman treatment and degrading treatment" to Book II, Title VIII, Chapter I of the Code of Criminal Procedure; the new Section includes articles 417 *bis* to 417 *quinquies*.

201. The principles governing medical care and liability in matters of security and respect for the dignity of persons deprived of their liberty are the result both of the European Convention for the Prevention of Torture, which has been ratified[17] by Belgium, and of the work of the European Committee for the Prevention of Torture (CPT). Visits to Belgium already made by the Committee have not thrown up any inhumane practices in our country but have brought to light cases of ill-treatment and lack of basic care[18].

202. Without prejudice to the official regulations currently in place or to be adopted concerning persons placed under the control of the police or the police authorities, police officers have a moral duty to protect people who are in this type of situation. The decision to deprive them, if only temporarily, of one or more of these fundamental rights, is precisely the reason for providing the best possible guarantee for another fundamental right, namely the right to physical integrity, and for responsibility for that right being exercised[19].

B. Framework for an effective approach to detention

Categories of detainees

203. With a few exceptions, police services have rarely in the past, if ever, drawn a distinction between persons deprived of their liberty. In principle, taking the principle of equality as the background context, this is a good point of departure except for the fact that the procedure involved in the deprivation of liberty dictates that certain differences do exist, whether they be legal (persons of full age v. minors) or social (persons in good health v. the sick and disabled) or where the reason for depriving someone of his liberty means special handling is required (drunkenness). Case-law on human rights protection includes some cases in which the authorities have been found guilty of applying a measure depriving someone of their liberty which was not tailored to the specific circumstances of the person concerned[20].

204. A list of the categories of person who may be deprived of their liberty should be drawn up:

a) Persons of full age;

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[17] Act of 7 June 1991 approving the European Convention and Annex for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, done at Strasbourg on 26 November 1987, *Moniteur belge,* 29 January 1992.

[18] Hitherto the European Committee – generally known as the CPT – has paid four visits to Belgium: 14 to 23 November 1993, 31 August to 12 September 1997, 25 November to 7 December 2001 and 18 to 27 April 2005.

[19] The draft Royal Decree establishing the police service code of ethics includes the Title "Treatment of persons deprived of their liberty", the centre-piece of which is the protection of physical integrity and human dignity.

[20] ECHR, *Price* v. *United Kingdom*, Application 00033394/96, Judgment of 10 July 2001, violation of article 3, Reports of Judgments and Decisions 2001-VII.

b) Minors;

c) Persons who are drunk in public;

d) The mentally ill;

c) The sick and the disabled;

d) Pregnant women;

e) Persons who enjoy a degree of immunity;

f) Persons who enjoy exemption from jurisdiction;

g) Persons deprived of their liberty pursuant to the Act on the entry, temporary and permanent residence and removal of aliens.

Register of detainees

205. A register of detainees is one of the core aspects of the concept of deprivation of liberty, not only because of the practical information which it contains but also because it can be used in the event of complaints and disputes, as well as for the purpose of collecting statistical information.

206. The register should also comply both with the recommendations of the CPT which, following several visits to Belgium, has stressed the need to put a number of procedural aspects in writing and to draw up a record of detention for each individual,[21] and with the recommendations of the Standing Committee on the Supervision of the Police Service.

207. The register should set out the sequence of events, in chronological order, of a period of deprivation of liberty, and should cover all aspects of it:

a) The identity of the person concerned;

b) The identity of the staff;

c) The time when deprivation of liberty occurred;

d) The reason for the deprivation of liberty;

e) The existence of a description;

f) Information included in the statement;

g) List of items handed over;

[21] Council of Europe, Report to the Government of Belgium on the CPT visit to Belgium, CPT/INF (94) 15, CPT (97) 75 and CPT/INF (2002) 25.

h) The identity of the people conducting a search;

i) Confirmation of the deprivation of liberty;

j) Sequence of events as they unfold during the deprivation of liberty (health care, meals, opportunities to get fresh air, notification of family or trusted persons, other information);

k) Notification and means of communication of the prisoner's duties and rights;

l) Contact with the administrative or judicial authorities;

m) Transfer (destination, who transferred by, form);

n) Contact with a supervisory body;

o) Signature of the persons concerned.

References in the statement

208. References to a judicial arrest which have to appear in a statement are the subject of article 1 of the Pre-Trial Detention Act of 20 July 1990 and the provisions of the Code of Criminal Investigation on questioning and examination. In addition to factors confirming the validity of a statement and the information required by law, the statement may contain information appearing on the register of detainees, unless it is not relevant to the case-file.

209. In the Bill setting out the Code of Criminal Procedure[22], the information which must appear in the statement is supplemented by the rights of the arrestee in terms of questioning and examination and the communication of certain other rights (right to inform a third party, right to medical and legal assistance); under the Bill, these details will also be entered in the register of detainees.

210. In the event that someone is the subject of administrative arrest alone, the information in the register may be used to draw up a statement of information or any administrative documents.

Duration of the various forms of deprivation of liberty

211. The duration of the various forms of deprivation of liberty is laid down by law. In most cases, there is a maximum duration and the necessity principle comes into play. It is important that the police ensure that that principle is complied with and that deprivation of liberty does not automatically continue for the maximum time allowed. The investigation by the Standing Committee on the Supervision of the Police Services shows that in many cases the maximum duration is applied *de facto*.[23]

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[22] *Doc.*, Chambre, 51-2138.

[23] Standing Committee on the Supervision of the Police Services, Monitoring Investigation No.9380/97.

Rights and duties communicated to interested parties

212. Deprivation of liberty is one of the most fundamental violations of a person's physical integrity; it is therefore essential for it to be applied with enormous care and for the persons affected to be afforded all necessary guarantees to restrict the infringement to the absolute minimum in physical and mental terms.

213. The communication to persons deprived of their liberty of their rights and duties is a matter of principle for international supervisory bodies with responsibility for protecting human rights[24].

214. Where judicial arrest is concerned, the Pre-Trial Detention Act of 20 July 1990 does not provide for any form of notification in the event of *flagrante delicto* (art.1); in circumstances apart from *flagrante delicto,* however, the Act provides for an oral notification of arrest to be given in the language of the procedure (arts. 2 and 3).

215. The Bill setting out the Code of Criminal Procedure[25] provides for a number of changes (see paras. 496 to 501 below).

216. For administrative arrest, notification of arrest is implicit, given that article 33 of the Police Functions Act provides that the person concerned must sign the register upon arrival[26].

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[24] Council of Europe, CPT, The CPT standards, CPT/INF/E (2002) 1; reports to the Government of Belgium on the visit to Belgium by the CPT, CPT/INF (94) 15, CPT (97) 75 and CPT/INF (2002) 25; Consideration by the Committee against Torture of the first Belgian report, CAT/C/CR/30/6.

[25] *Doc*., Chambre 51-2138

[26] Formal notification:

At the time of confirmation by the competent administrative police officer/judicial police officer of deprivation of liberty (administrative or judicial arrest) the person detained must be formally informed that he is being deprived of his liberty in a language he understands, and the reason why; he must also be informed of the maximum duration of custody, the physical procedure for imprisonment (search prior to imprisonment, handing over of certain property for safekeeping, taking of measures in the interest of the inquiry) and of possible recourse to means of restraint. That notification is to be confirmed in writing in the Register of Detainees.

Next the detainee is informed of his rights and duties as a person in police custody. Such notification may be given in writing in the form of a leaflet or brochure in one of the three national languages and possibly in other languages of the European Union.

Informal notification on the ground:

At the time when the police officer decided that the person concerned may no longer enjoy freedom of movement (arrest, deprivation of liberty) that person must be given informal oral notification thereof in a language which he understands (where possible); he must also be

Rights of a person under arrest

217. The rights of a person who has been placed under arrest are a combination of positive rights (right to …) and negative rights (protection against …). Some rights will be dependent on the specific circumstances in which the deprivation of liberty occurred (for example cautioning in the case of judicial arrest).

The right to be deprived of one's liberty only in the circumstances provided for in law

218. The right to individual liberty is a fundamental right which is enshrined in the Constitution[27] and in the international instruments which have direct effect on our legal system[28].

219. The principles underlying deprivation of liberty and recourse to force are set out in the Police Functions Act and in the Act of 7 December 1998 instituting an integrated dual-level police service.

The right to respect at all times and in all circumstances for physical integrity and human dignity

220. The right to respect for physical integrity and human dignity is a universal right guaranteed by various international rules[29] and confirmed in domestic law[30].

221. Those very principles take on another dimension where persons deprived of their liberty are concerned. The international supervisory bodies regularly note the unacceptability of ill-treatment meted out to detainees and the need for it to be sanctioned severely[31].

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informed, having regard to the circumstances in practice (resistance, rebelliousness), of the measures entailed by deprivation of liberty (security search, recourse to means of restraint, transfer to a police station).

[27] Constitution as consolidated on 17 February 1994, Titre II, *Moniteur belge,* 17 February 1994.

[28] European Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by an Act of 4 November 1950, *Moniteur belge,* 19 August 1955.

[29] European Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by an Act of 4 November 1950, *Moniteur belge,* 19 August 1955; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by Belgium in an Act of 9 April 1999, *Moniteur belge,* 28 October 1999.

[30] The Act of 14 June 2002 bringing Belgian law into line with the Convention added a Section V, "Torture, inhuman treatment and degrading treatment" to Book II, Title VIII, Chapter I of the Code of Criminal Procedure; the new Section includes articles 417 *bis* to 417 *quinquies*.

[31] Council of Europe, Report to the Government of Belgium on the CPT visit to Belgium, CPT/INF (94) 15, CPT (97) 75 and CPT/INF (2002) 25.

222. The principles underlying the protection of individual rights and freedoms are set out in the Police Functions Act and in the Act of 7 December 1998 instituting an integrated dual-level police service.

223. The Police Service Code of Ethics[32] regulates this matter in detail. The function of citizens' rights and freedoms is explained extensively as part of the ethical concepts which act as the foundation for the code. Chapter 3 of the Code is devoted to the discharge of police duties in general and to respect for constitutional rights and freedoms in particular. Particular attention is paid to the treatment of persons deprived of their liberty; in that regard the principle of respect for physical integrity and human dignity is deemed a duty[33].

The right to be protected from public curiosity for the duration of custody

224. The right to be protected from public curiosity is guaranteed under the Police Functions Act of 5 August 1992. Article 35 of that Act provides for extensive protection which, if enforced, affords the person under arrest sufficient protection. The problem lies in the implementation of the article and in the fact that most people are unaware of the provision and are therefore unable to demand its enforcement.

225. The principles of protection set out in article 35 of the Police Functions Act are reiterated in the Police Service Code of Ethics.

A detained person's right to have the fact of his detention notified to a relative or a person in their trust

226. The various supervisory bodies of the United Nations and the Council of Europe are unanimous in their view on this point[34]. The right of an arrested person to inform a person in his trust that he has been deprived of his liberty must be expressly guaranteed. Any possibility of derogating from that right must be provided for in the law and accompanied by appropriate guarantees.

227. A detained person's right to have the fact of his detention notified to a relative or a person in his trust following judicial arrest is provided for in the Bill setting out the Code of Criminal Procedure (Doc. 51-2138), which was adopted by the Senate at the end of 2005 and is currently the subject of scrutiny by the Chamber. The Bill gives the detainee the right to inform a relative or third party of his arrest. In principle, the detainee can make the telephone call to that end himself. However, if there are grounds for suspecting that the telephone conversation may lead to collusion between the arrested person and the person to whom he is speaking, the magistrate

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[32] SPF Interior and Justice, Royal Decree establishing the police service code of ethics (*Moniteur belge*, 30 May 2006).

[33] Ibid., article 49.

[34] Report to the Government of Belgium on the CPT visit to Belgium, (footnote 31 above); and Conclusions of the Committee against Torture after Consideration of the initial report submitted by Belgium (CAT/C/CR/30/6); Consideration by the Committee against Torture of the fourth Belgian report (CCPR/CO/81/BEL).

who handed down the decision to detain the prisoner will entrust the judicial police officer to make the telephone call himself.

The right to medical assistance and medical care

228. The various supervisory bodies of the United Nations and the Council of Europe are unanimous in their view on this point[35]. The right of an arrested person to consult a doctor must be expressly guaranteed. Where an arrested person is examined by a police duty doctor he must also are entitled to be examined by a doctor of his choice. The legal provisions in the matter must be sufficiently clear as to any refusal of such a request, the circumstances both of the examination and of communication between doctor and patient.

229. The right to medical care following judicial arrest is provided for in the Bill setting out the Code of Criminal Procedure (Doc. 51-2138). The Bill provides for a detainee to be able to ask to be examined by a doctor of his choosing. It also states that if the detainee does not have the means to pay, the doctor's fees are to be charged to legal costs.

230. The right to medical assistance is also provided for in the Police Service Code of Ethics.

The right to food and liquids

231. The right to food and liquids while in custody is an aspect of respect for physical integrity and human dignity. Indeed, denial of food and liquids during a period of detention is described as inhuman treatment in international case-law[36].

232. The European Committee for the Prevention of Torture has already on several occasions drawn the attention of the Belgian authorities to the need for adequate rules; in the absence of legal rules this right is not guaranteed[37].

233. The formal instructions in force are the Circular of 3 January 2003 on supplies for persons arrested with the exception of those already on a register in a prison. The instructions apply to administrative and to judicial arrest; they require the police service making the arrest to supply the services in question and set out a budget to that end[38].

234. The right to food and liquids is laid down in the Police Service Code of Ethics in line with the instructions issued in that regard.

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[35] See note 34 above.

[36] ECHR, Tekin v. Turkey, Application no. 00022496/93, Judgment of 9 June 1998, violation of article 3, Reports 1998-IV.

[37] See footnote 31 above.

[38] Ministry of the Interior and Ministry of Justice, Circular of 3 January 2003 on supplies for persons arrested with the exception of those already on a register in a prison.

The right to be informed of complaints procedures

235. It is conceivable that where a person's basic rights are infringed, of which deprivation of liberty is an example, grounds for complaint may arise whether because the person concerned is of the view that his rights have been unjustly infringed or because of something that happens in the course of procedure or while in custody. The detainee is free to choose the method by which his complaint is lodged and the body with which he wishes to lodge it. It is the duty of the police to inform the detainee of the options available to him and to notify him of the necessary and pertinent details (name of the body or persons, address, telephone, fax number, email, etc.).

The right to assistance

236. Experience in Belgium and abroad has shown that the period immediately following deprivation of liberty is when there is the highest risk of abuse and misconduct on the part of police officers. Therefore, in view of this, several national and foreign bodies argue in favour of almost immediate legal assistance; this would have a dissuasive effect on police and a calming effect on the person under arrest. These same bodies are aware of the practical disadvantages which the exercise of such a right may have; however, those disadvantages do not compensate for a complete lack of legal assistance during police custody. The argument is for legal provisions on assistance in principle as well as guarantees which are sufficient to ensure that the legitimate interests of the inquiry will not be prejudiced[39].

237. All international supervisory bodies are agreed on the need for basic legal provisions which have regard to the rights of all parties[40]. Under pressure from such organizations, several Council of Europe countries provide for legal assistance from the outset of deprivation of liberty.

238. Legal assistance following judicial arrest is provided for in the Bill setting out the Code of Criminal Procedure (Doc-450) (See paras. 496 to 501 below).

Obligations of an arrested person

239. The obligations incumbent on an arrested person are as follows:

a) Obligation to be informed of the rules of his place of detention;

b) Obligation to be informed of the existence of civil liability in the event of damage or bodily injury;

c) Obligation to respect the physical integrity and human dignity of officers;

d) Obligation to comply with the instructions of competent officers;

e) Moral obligation to inform the police of risks to his own and others' health.

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[39] Council of Europe, CPT, The CPT standards, CPT/INF/E (2002) 1.

[40] See footnote 34 above.

240. The obligations incumbent on a person under arrest are based in part on criminal law (physical integrity of persons), civil law (civil liability) and the principles of good management. Compliance with the obligation to be informed cannot in fact be enforced; that obligation must however be communicated upon each occasion of deprivation of liberty, either orally or in writing. The fact that obligations have been notified must be recorded in the register, as must a clear refusal to be informed.

Measures taken after deprivation of liberty or during transfer

241. The end of deprivation of liberty is followed by a procedure which aims to bring the period to an end without disputes. Broadly speaking, the procedure unfolds as set out below:

a) Check of the state of the cell or custody room;

b) Possibility for the detainee to freshen up;

c) Return of items handed over for safekeeping; if necessary, attachment of seals if being transferred;

d) Question as to the existence if any of grounds for making a complaint about the period in custody;

e) Signing of the register of detainees;

f) Escorting outside of the person concerned or, for transfers, escort to another location.

242. The procedure unfolds in accordance with an established sequence of events and is recorded in the register.

Handling of complaints

243. It is conceivable that where a person's basic rights are infringed, of which deprivation of liberty is an example, grounds for complaint may arise whether because the person concerned is of the view that his rights have been unjustly infringed or because of something which occurs in the course of procedure or while in custody.

244. The detainee is free to choose the method by which his complaint is lodged and the body with which he wishes to lodge it. It is the duty of the police to inform the detainee of the options available to him and to notify him of the necessary and pertinent details (name of the body or persons, address, telephone, fax number, email, etc.).

245. As police organization stands, the choices, which are available to everyone, are to:

a) Lodge a complaint with the commander of the local police corps or the head of the internal supervisory service;

b) Lodge a complaint with General Inspectorate of the Federal and Local Police;

c) Lodge a complaint with Standing Committee on the Supervision of the Police Services.

Procedure for deprivation of liberty

246. A handbook on the procedure to be followed when depriving someone of their liberty is to be drawn up. For each of the categories of persons concerned it will set out a procedure governing the essential principles of the rights and obligations of all parties; these will be the main thrust underlying implementation of the various forms of deprivation of liberty in practice. In addition to these principles a number of general and specific remarks will be made to draw police officers' attention to certain issues peculiar to the category of persons concerned.

247. The procedure will comprise 15 steps, in no particular order:

a) Keeping the person upright;

b) Identity check;

c) Security search;

d) Use of restraints (especially handcuffs);

e) Transfer to a police station or unit;

f) Confirmation of deprivation of liberty;

g) Entry in the register of detainees;

h) Judicial search;

i) Measures in the interests of the inquiry;

j) Imprisonment in a cell or custody room;

k) Notification of a relative or trusted persons;

l) Health care;

m) Exit from the cell or custody room;

n) Exit from the police station or unit;

o) The hearing.

Infrastructure

248. Adjusting the new infrastructure to bring it into line with some of the standards is among other things a consequence of the repeated requests of the European Committee for the Prevention of Torture (CPT), which has criticized the existing structure following visits to Belgium.

249. The technical working group at the Federal Police Equipment Department has drawn up a draft Royal Decree on minimum standards for any places of detention available to the police. Particularly worthy of note is the fact that the draft provides for compliance with CPT requirements on European standards on the numbers, location, size and facilities in places of detention.

250. Those aspects of the draft Royal Decree which do not fall within the remit of the "Police Arrests" Committee of Experts, are currently being finalized, namely location, relationship between local and federal service, budgeting, entry into force, periods of transition, etc.

Implementation

251. The developments outlined above will be implemented in 2005 and 2006.

252. Firstly a handbook will be drawn up on deprivation of liberty by the police, which should mean that the various forms of deprivation of liberty are implemented consistently by the federal and local police while affording maximum protection to the fundamental rights and duties of all persons concerned, namely the persons being deprived of their liberty and police officers.

253. The handbook will be in three main parts.

254. The key elements of a humane and democratic approach to deprivation of liberty. Respect for the principles underlying those key elements will in itself reduce future abuse to a minimum and can be viewed as the moral basis for the discharge of duties.

255. The framework for an efficient approach to deprivation of liberty will tackle and comment on the principal points underlying deprivation of liberty:

a) The legal basis of the various forms of deprivation of liberty;

b) The categories of deprivation of liberty in terms of their legal basis and the persons involved

c) The register of detainees (administrative and judicial arrest);

d) The statement and other reports;

e) The effective duration of the various forms of deprivation of liberty;

f) The rights and obligations of the persons involved;

g) The handling of complaints.

256. For each category of deprivation of liberty a procedure will be drawn up describing the sequence of events in the process from the time the person involved is identified until the measure comes to an end, having regard to the laws and regulations in force, whether currently or in the future.

257. Finally, it should be pointed out that the observations and recommendations of international bodies (United Nations, Council of Europe) have swayed the Belgian Government to the view that the rights of persons deprived of their liberty should be harmonized as far as possible.

258. A draft Act amending the Police Functions Act is currently before the Minister of the Interior. It sets out various proposals for amending the Police Functions Act with regard to administrative arrest and some aspects of judicial arrest which form part of the duties of the police service.

259. The principal aim of the proposed amendments is to strengthen procedural guarantees for persons deprived of their liberty, to provide fundamental guarantees against ill-treatment and at the same time to meet obligations incumbent upon Belgium to implement the international treaties referred to above.

260. Specifically, the draft Act covers the following points:

a) Use of handcuffs at each stage of the custody process;

b) Use of a register for all forms of deprivation of liberty;

c) Notification of rights and duties;

d) The right of a person deprived of his liberty to inform a third party of the fact;

e) The right to medical care and medical assistance;

f) The right to food and liquids during the period in custody.

261. The Senate of Belgium has just adopted the proposal for an Act setting out the Code of Criminal Procedure. Having been referred by the Senate to the Chamber of Representatives, the document has now become a Bill setting out the Code of Criminal Procedure[41].

C. Control of the police services: Standing Committee on the Supervision of the Police Services

262. By the Police and Intelligence Services (Monitoring) (Organization) Act of 18 July 1991, (hereafter *the Organization Act*) the legislator sought, specifically, to introduce external comprehensive monitoring and supervision of the police services in Belgium by a neutral, independent, pluralist institution answerable to Parliament: the Standing Committee on the Supervision of the Police Services (hereafter *Committee P*).

263. The task of Committee P is to supervise the overall operation of the police service and the performance of police duties by the appropriate officers concerned[42]. Committee P also inquires into the activities and methods of General Inspectorate of the Federal and Local Police.

[41] Doc., Chambre, 2138/001.

264. In particular, Committee P monitors the way in which effectiveness, efficiency and coordination are achieved and the manner in which fundamental rights and freedoms are complied with.

265. To achieve that end, the essential task of Committee P is to examine the overall operation of the police services, identify shortcomings and problems, if any, in the system, structures, methods, and police intervention and to formulate proposals or recommendations to put them right. Beyond statements, opinions and recommendations, its task also encompasses carrying out checks on measures taken or on the implementation of recommendations or opinions already formulated.

266. Thus it is the role of Committee P to obtain and present an overall picture of the operation of the police as an institution and the activities of the departments, services, officers and other people with police powers. From that point of view the committee has a privileged position as an overseer of the overall operation of the Belgian police system and especially of the implementation of the Police Functions and Integrated Police Service Acts.

a) Committee P is able to obtain its overall picture from various sources of information. Reactively, these include:

(i) complaints and reports communicated by individuals or certain police officers or notified through national human rights bodies;

(ii) information communicated by the local police corps, the disciplinary authorities, General Inspectorate of the Federal and Local Police and the legal authorities as provided for in the Organization Act[43].

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[42] In addition to the federal and local police these are mainly bodies with police powers, departments of public authorities and bodies serving the public interest whose members are agents for, or officers in, the judicial police service. For the purposes of the scope of application of the Organization Act, certain persons individually authorised to investigate and establish violations of the law are treated as part of the police services.

[43] The Organization Act of 18 July 1991 makes it a clear requirement for the following to be communicated to Committee P:

1. Automatically: regulations and guidelines, and all documents governing the conduct of members of the police services; copies of judgements and decisions on crimes and offences committed by members of police services; copies of complaints and reports of police misconduct received by the commissioner of the federal police, the General Inspectorate of the Federal and Local Police, and the local police corps commanders, and a brief summary of the inquiry's findings when it is concluded; disciplinary and law enforcement measures issued against a member of a police service; copies of the annual report drawn up by police services, and any other general report on the way in which they operate.

b) And proactively, they include:

(i) frequent, unannounced visits to police stations during which remand cells (amigos) are inspected and detainees questioned about conditions in detention;

(ii) on the ground observations during specific police operations;

(iii) supervisory investigations (quick-scan or topic-based) carried out by its Investigations Department;

(iv) reading the daily press closely, especially articles on police matters, not necessarily those which have been the subject of an express complaint to Committee P or notified to it.

267. Committee P is directly answerable to parliament, on behalf of whom it provides indirect and ongoing monitoring of police bodies that are answerable to the executive authority (and, for the purposes of carrying out certain tasks, are placed under the authority of the judicial authorities). The role of Committee P is indissociable from the principle of separation of powers: as such it acts in the service of the legislature to assist it in its duty to act as a check on the executive, a role conferred upon Parliament by the Constitution. It therefore acts as an institution which is external both to the executive and to the police services answerable to it.

268. The position it has outside the police services is one of the key aspects which set Committee P apart, especially from General Inspectorate of the Federal and Local Police and the fully internal supervisory departments. In point of fact, the latter are bodies answerable to the executive which are part of the very fabric of the police services and are therefore responsible for internal aspects of their supervision. This specific feature makes Committee P the only external body carrying out comprehensive supervision of the operation of the police services; furthermore it is autonomous, neutral and independent.

269. A Standing Committee has been established within the Chamber of Representatives to monitor the activities of Committee P: the Special Parliamentary Committee monitoring the Standing Committee on the Supervision of the Police Services. The Special Committee meets with Committee P at least once every quarter. It may make recommendations on the way

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2. Upon request: copies of files, documents and intelligence on criminal procedures against members of police regarding crimes or offences committed in the performance of their duties; all documents which Committee P deems necessary to carry out its tasks.

3. Committee P is also to be informed each time an inquiry or investigation is opened into a member of a police service. Finally, members of police services must produce an information report for the Director general of the Investigation Department whenever a report is received of a crime or an offence allegedly committed by an official with police powers. In the interests of mutual information, cooperation and cooperation, mechanisms for the notification of information have been put in place under protocols concluded with the federal police, the local police, the General Inspectorate and the Centre for Equal Opportunities and Action to Combat Racism, among others.

Committee P operates in view of the Organization Act and Committee P's Internal Rules of Procedure.

270. Committee P is a standing committee of five members and is assisted in its tasks by an Investigation Department and an Administrative Department. Committee P comprises five members including a Chairman – who must be a magistrate – and a Vice-Chairman. There are also five deputy members. Committee P is also assisted by a registrar. All the members of the Committee and the Registrar are appointed by the Chamber of Representatives for a term of five years that may be renewed twice. Members must have the qualities of loyalty, discretion and integrity that are essential when handling sensitive information. The organic law makes explicit provision to prevent certain incompatible persons from sitting on Committee P in order to guarantee its neutrality and independence. Before taking up their duties the members of Committee P and the Registrar are sworn in by the Speaker of the Chamber of Representatives.

271. This method of appointment clearly establishes Committee P's independence, neutrality and external nature with respect to the other forms of monitoring and inspection.

272. Committee P submits a special report on each investigation to the Chamber of Representatives. It must also report to the Chamber of Representatives and the Senate in the following instances: (1) annually in the form of a general report on activities including, where appropriate, general conclusions and proposals, and covering the period from 1 January to 31 December of the previous year; (2) whenever it deems it appropriate or at the request of the Chamber of Representatives or the Senate, in the form of an interim activity report which may contain general conclusions and proposals regarding a specific investigation; (3) when the Chamber of Representatives assigns it an investigation; (4) when it ascertains, after a reasonable period (but in any case more than 60 days), that its conclusions have not been followed up or that the measures taken are inappropriate or insufficient.

273. Committee P is assisted in its duties by an Investigation Department (*Investigation Department P*) headed up by a Director General who is assisted by two deputies. The Director General and his two deputies are appointed by Committee P for a 5-year term which may be renewed twice.

274. The members of Investigation Department P are appointed by Committee P on the recommendation of the Director General of the Investigation Department. Before taking up their duties they are sworn in by the Chairman of Committee P. The Director General of Investigation Department P, the two Deputy Directors General and the members of Investigation Department P have the rank of judicial police officer, auxiliary to the Crown Prosecutor.

275. At least half the members of Investigation Department P are seconded from a police force or administration in which they have acquired at least five years' experience in duties associated with police activities. There are therefore two categories of member of the Department: the Department's own staff in the strict sense of the term on the one hand, and staff on secondment on the other. Concern has been expressed in the past about the independence and impartiality of members of Investigation Department P seconded from the police. Following on from their secondment, they are appointed by Committee P as members of Investigation Department P for a renewable term of five years. This appointment gives them a special status different from that governing other staff seconded from the police; this status was set out very recently in two Acts

of 3 May 2003 amending the Organization Act of 18 July 1991. The vote on the two Acts was an opportunity to recall and further strengthen the external and independent nature of the supervision carried out by Committee P and the specific nature of the status of the members of its Investigation Department.

276. The Organization Act therefore provides for various measures to ensure the independence of the members of Investigation Department P seconded from the police. These various measures aim to allow Committee P gradually (over a period of 5 to 10 years) to reduce the significant proportion of investigators seconded from the police – as originally intended by the legislator – to half the staff of Investigative Department P by encouraging either a return to the police or permanent transfer to the staffing structure proper of Investigative Department P.

277. Without prejudice to the judicial powers of Investigation Department P as part of its subsidiary role as a specialized police department assigned to conduct investigations concerning felonies and misdemeanours allegedly committed by members of police services (a role performed exclusively under the authority of the judicial authorities, to whom alone the Department is answerable), the members of Investigation Department P operate directly and exclusively under the authority of Standing Committee P, to whom they are alone answerable, and which receives reports on all investigations conducted. The Committee is the body responsible both for opening an investigation, the course it takes and the conclusions it draws (brought to the attention of Parliament).

278. The composition of Investigation Department P is intrinsically linked to the tasks entrusted to it. There are three types of tasks:

a) Audit tasks or monitoring enquiries (topic-based, follow-up, etc.);

b) Handling of complaints made against police officers; and

c) Judicial tasks.

279. For the latter two types of task it is essential for the investigators to have experience and expertise in judicial investigations, listening to people, special police techniques, etc. Given that judicial investigations entrusted to Investigation Department P are by their very nature particularly delicate or important, they require special police training. The rationale behind contributions from experts other than police officers comes fully to light mainly where audit tasks or topic-based investigations are concerned.

280. Committee P pays particular attention to the skills of the members of the Investigation Department P. This is evident both when candidates are recruited and in the existence of a policy of ongoing, in-service training as well as in the continuous concern to ensure their independence in day-to-day work.

281. Committee P and its Investigation Department have a number of tools available to them when conducting investigations. Committee P and the Investigation Department may invite any person whose testimony is considered essential to a hearing. Members of the police forces must respond to any written summons received; they may give evidence in connection with facts covered by professional secrecy. The chairman of Committee P may have members of police

forces called as witnesses via bailiffs. After swearing an oath, members of the police force are required to give evidence; if they fail to do so, they are subject to criminal proceedings. They have an obligation to disclose to Committee P any secret information to which they may be privy, except information pertaining to a judicial inquiry or investigation under way.

282. If a member of a police service feels he must not disclose any secret information to which he may be privy for to do so would physically endanger another individual, the matter is referred to the chairman of Committee P who rules on it.

283. Committee P and the Investigation Department may ask to be assisted by experts and interpreters. The Investigation Department is competent to conduct inquiries in places where the members of a police service work and may confiscate any objects and documents that may be useful to the investigation. They may request assistance from the police. Committee P and the Director General of the Investigation Department may also impose binding time limits on police services or their members to whom they refer matters in the performance of their duties.

284. The methods used by Committee P to conduct a supervisory investigation have changed a great deal over the last ten years, making a supervisory investigation an increasingly effective tool in measuring and assessing police operations as a whole.

285. Among the annexes (Annex – article 11), the Committee will find information about the supervisory and follow-up investigations carried out by the Standing Committee on the Supervision of the Police Services into respect for basic rights and freedoms in the context of the performance of police duties.

D. General Inspectorate of the Federal and Local Police

286. The General Inspectorate of the Federal and Local Police was established as a result of the Act of 7 December 1998 instituting an integrated dual-level police service. Title V of the Act concerns the inspectorate, a body which is autonomous of the two levels of police, namely local and federal. It is answerable to the Ministers for the Interior and Justice and includes federal and local police officers. Title V of the Act was implemented under the Royal Decree[44] on the operation and staffing of the General Inspectorate of the Federal and Local Police.

287. The Decree reiterates the point that the Ministers for the Interior and Justice have authority over the service and are responsible for its management. It sets out the composition of the Inspectorate which, apart from an inspection department, has an Individual Investigations Department and a Regulations Department; the Decree also provides for decentralized inspectorate offices in the courts of appeal. The latter offices are part of a policy of optimizing services provided to citizens.

288. The General Inspectorate of the Federal and Local Police has responsibility for carrying out inspections, monitoring and audit exercises on the federal police and the 196 local police corps. Mediation, management of complaints and reports of misconduct as well as the discharge of judicial duties fall within the remit of the Individual Investigations Department.

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[44] Royal Decree of 20 July 2001, *Moniteur belge,* 18 August 2001.

289. The General Inspectorate of the Federal and Local Police has the right of initiative but submits a general action plan to the two relevant Ministers each year. The Government was of the view that a distinction had to be established between the independence of the General Inspectorate vis-à-vis the police, its right of initiative, and the fact that operationally it is dependent on the Ministers to whom it is answerable.

290. As far as the handling of complaints and reports of misconduct are concerned, the identity of the complainant is divulged only at the end of the investigation when the complete file may be consulted, unless the General Inspector orders that the complainant should remain anonymous for fear of possible reprisals.

291. The decision may be taken not to pursue certain complaints, especially where the facts are already the subject of an investigation by another competent authority. Indeed, some complainants lodge complaints with several bodies at the same time. To prevent an investigation from becoming bogged down or not reaching a conclusion, the General Inspectorate may assert the right to order pending proceedings to be transferred to it for a decision in respect of all complaints and reports of wrongdoing made to the police.

292. When it draws to a close, the mediation procedure which may be applied as between members of the police service and citizens and as between members of the police service themselves, precludes the carrying out of any other administrative or disciplinary procedure based on the dispute which was the subject of the investigation.

E. Detention in prison establishments

Rules governing detainees and their position

293. See also paragraphs 502 to 516 below.

294. The Act concerning the principles of the administration of prison establishments and the legal status of detainees adopted on 12 January 2005 (*Moniteur belge*, 1 February 2005) aims to establish a modern legal framework to govern the internal legal status of detainees. It also sets out the operational principles arising from it for the prison administration authorities. The Act is the product of a lengthy legislative process which began with the draft Act referred to in Belgium's first report.

Monitoring of prison establishments

295. Where the monitoring of prison establishments is concerned, the Royal Decree of 4 April 2003 amending the Royal Decree of 21 May 1965 laying down general regulations for prison establishments (*Moniteur belge*, 16 May 2003) establishes a Central Supervisory Council for Prisons and a Supervisory Commission within each prison establishment.

296. See also paragraph 524 below.

F. Institutions supplying social assistance to detainees

297. The French Community has accredited 14 services actively providing social assistance or social protection to detainees to operate in prisons in its territory.

298. Their tasks are set out in article 2 of French Community decree of 19 July 2001 on social welfare for prisoners for the purposes of social rehabilitation:

> The general aim of social assistance services supplied to prisoners is to provide users who request or accept it with social assistance, including psychological assistance.
>
> For the purposes of the present article, *social assistance* means any individual or group initiative aimed at facilitating active participation in social, economic, political and cultural life, in accordance with human rights […]
>
> *Psychological assistance* means any assistance of a psychological nature intended to support persons facing the direct and indirect consequences of detention […]

299. The right of a detainee to request social and/or psychological assistance, along with the right of the French Community to pursue that offer of assistance effectively in prison, can therefore be considered to contribute to the prevention of torture.

300. It should also be noted that structures intended to maintain or re-establish the ties between a detainee and his children are in place and were the subject of a French Community Decree[45]. This Decree refers in particular to cooperation with the youth assistance services (SAJ), and the judicial protection services (SPJ) to ensure that children's wishes to have contact with a detained parent are respected and that they are accompanied on visits, etc.

Social assistance for individuals

301. The Flemish Community subsidizes a social assistance service for individuals in each judicial district.

302. The task of the services is to contribute to the provision of comprehensive quality assistance and services for detainees and their relatives to enable them to blossom fully and harmoniously in society.

303. Intervention by social assistance services must be viewed in the context of measures to prevent torture, inhumane treatment or degrading treatment:

a) The supply of assistance and well developed services affords protection against inhuman or degrading treatment;

b) The regular presence of external social actors in prisons also involves a form of monitoring of detainees' treatment.

Case-law

304. Some clarification should be given in the paragraphs which follow as to the case-law of the courts, particularly on ill-treatment of detainees.

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[45] French Community Decree of 28 April 2004 amending the Decree of 19 July 2001 on social welfare for prisoners for the purposes of social rehabilitation, *Moniteur belge*, 21 June 2004.

305. As far as one can say – since the information is neither communicated systematically to the prison authorities nor, more significantly, processed by them either in terms of their number or nature, there has been no significant change in instances of ill-treatment

a) The practice followed by the prosecution authorities as regards deciding to take no action on complaints should be examined to assess the how much attention the authorities pay to the issue of violence against detainees.

b) In administrative terms, where a prison governor becomes aware that a detainee has become the subject of an act of violence constituting a crime or offence he is required pursuant to article 29 of the Code of Criminal Investigation to report it to the judicial authorities. Under the law as it currently stands criminal proceedings must await the outcome of disciplinary enquiries. Where disciplinary matters are concerned, in the strictest sense of the term, the authorities have various possible responses open to them: an officer suspected of violence may be barred from entering the premises or suspended in the interests of the service (on a reduced rate of pay) pending a disciplinary decision. The body which hands down disciplinary decisions is composed of all the senior officials of the ministry, not only in the prison hierarchy, and performs its duty most thoroughly. It should however be noted that the current disciplinary procedure is not always an effective means of combating abuse (difficulties with evidence, composition of appeal bodies, on which unions have equal representation); as a result, governors may hesitate to implement the procedure in the fear that it has no effect and therefore proves counter-productive, thereby sending out very negative signals.

c) Although the CPT on the one hand, and a university study on the other hand, do not highlight any complaints of acts of violence by staff against detainees (talk of torture in the Belgian prison system seems inappropriate), those working in the field undoubtedly come across it. Belgium does not have a benchmark by which it could be measured objectively, whether it involves staff/prisoner relations or relations between prisoners. A tool of this kind could be developed using the observations of doctors, who have a front-row seat when it comes to recording the consequences of violent acts.

d) There has been a significant development in the case-law of the Council of State: although it had previously refused jurisdiction in all matters related to the management of imprisonment, it has given a number of rulings in applications brought in extreme urgency, and has suspended disciplinary measures taken by the administrative authorities. Although the Council of State has never declared an administrative measure invalid on the ground of a manifest error of assessment on the part of the authorities as to the nature and severity of the disciplinary penalty imposed, it has on several occasions condemned the absence of guarantees safeguarding the exercise of detainees' rights to due process in disciplinary procedures. The authorities have made significant efforts to comply with those decisions in the expectation that the General Policy Act has filled this gap in the law (see commentary below). Since 1 May 2005 proceedings have been governed by a procedure which safeguards detainees' right to due process.

G. Committal of mentally ill offenders

306. First of all we should recap on the various concepts. The mentally ill should be distinguished from inmates and detainees who have psychiatric problems:

a) Inmates are persons who during their trial or detention present with a mental disturbance which renders them incapable of controlling their actions; they are therefore made the subject of a confinement measure (not a sentence) under the Social Protection Act. They are placed in psychiatric wings pending a decision by a social protection committee, a quasi-judicial committee chaired by a judge. The committee has competence to follow up the confinement order, which may be carried out in a public or private psychiatric institution (as an in-patient or out-patient) or in a prison.

b) There are also some detainees who have a mental disability but are sent to prison following a conviction. They are given care if they require it (by the relevant community services with responsibility in the matter) and if necessary, depending on their pathology, are held in a psychiatric wing.

c) It should also be noted that article 71 of the Criminal Code provides for the acquittal of persons who have committed a crime or offence while insane. Where such people present a danger to themselves or to other people they fall within the scope of the Mentally Ill Persons (Protection) Act.

d) The final category is made up of detainees who although not confined or mentally handicapped present at a certain time with a psychiatric disturbance requiring care in a psychiatric ward.

307. These distinctions are important for defining the problems relating to inmates more precisely.

308. Genuine problems relating to inmates exist throughout the country but have become of key importance in Flanders because of the lack of a social protection institution in the region. The decision has been taken to equip Flanders with two social protection institutions with 400 beds. This would make it possible to reduce the number of inmates in prisons and the length of their stay in prison.

309. A working group has been established under the chairmanship of a professor of psychiatry, its role is to formulate recommendations with a view to building a hospital complex for inmates. The working group is of the view that the complex should be under the authority of the [Ministry of] Justice where security aspects are concerned, and the [Ministry of] Public Health for aspects relating to organization and coordination of care in line with sectoral rules; it should cooperate with the communities and regions in accordance with their respective remits. The working group has recommended that the organization of care within the social protection institution of Paifve, in the French Community, should be placed under the authority of the Ministry of Public Health so that inmates who must be held in a high security establishment can receive treatment equivalent to that dispensed in psychiatric institutions.

H. Detention of aliens

310. The Royal Decree of 2 August 2002 establishes the regime and regulations applicable to premises in Belgian territory run by the Aliens Office, where foreign nationals are held, placed at the disposal of the Government and kept pursuant to the provisions cited in article 74/8, paragraph 1, of the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens.

311. Holding, placing at the disposal of the government and keeping are not penalties; rather they are means of enforcing an order for removal.

312. The task of the staff at the centre is to:

a) Hold aliens placed in the centre pending authorization to enter or reside temporarily in the Kingdom or their removal from the territory, as applicable;

b) Provide psychological and social support and prepare them for possible removal;

c) Encourage them to comply with any removal decision taken in their regard.

313. The Royal Decree of 2 August 2002 provides for:

a) Regulations for residents;

b) Rules governing life in the centre and the centre's disciplinary regime;

c) Provisions on security and the maintenance of law and order.

314. As far as regulations for residents are concerned, note that:

a) The staff of the centre treat each resident equally, correctly and with respect without any discrimination and with respect for privacy. Article 8 of the Royal Decree provides that the staff of the centre must have no further contact with residents than that required to perform their duties. A professional attitude is required at all times.

b) Searches[46] are carried out by a member of the security staff of the same sex as the resident or by another member of staff of the same sex, in which case the search is to be carried out under the supervision of the head of the department. Metallic objects are identified with the aid of a metal detector. The aim of the search is to establish whether the resident is in possession of items or substances which are banned or potentially dangerous to himself, to other residents, staff or the security of the centre. The search must not go on for longer than is necessary and is to be carried out on the order of the Director of the centre or his substitute.

[46] Body searches are conducted in accordance with article 10 of the Royal Decree of 2 August 2002 referred to above.

c) Each occupant is entitled to receive adequate medical care: a medical examination is conducted upon an alien's arrival at the centre. The examination is a preventive measure to protect the centre from any illness and maintain best possible hygiene. The examination is also carried in the interests of the alien in that it allows any medical problems to be identified. The physician assigned to the centre dispenses adequate treatment to the alien in accordance with his code of ethics and the law.

d) Each resident may receive mail and also has the right to send mail. If necessary, the centre will provide the means and assistance required to that end. To protect the security of the centre, all items of incoming mail and all packets and parcels are inspected to establish that they do not contain dangerous or banned items. The addressee's right to privacy prohibits staff from familiarizing themselves with the content of letters.

e) Each resident is entitled to one free telephone call[47] to a number in Belgium upon arrival. Each alien is entitled to telephone, at his expense, numbers in Belgium or abroad every day between 08.00 and 22.00. The director of the centre ensures that all residents are genuinely able to enjoy this right equally. Warders must respect the privacy of telephone conversations. An alien[48] is entitled to telephone his lawyer every day without charge. Lawyers have the right to make contact by telephone with their client at any time.

f) Each resident is entitled to receive visits; visits are organized in accordance with the internal regulations of the centre, the purpose being for each resident to be able to receive visits in the normal way.

g) Residents who declare their adherence to a faith and a desire to practise it receive all possible moral and religious support to do so;

h) All residents are informed of their administrative position by the centre's social department. Carers strive to encourage the personal development of residents and to that end organize all sorts of activities. Some of the activities are intended to involve residents in certain fields which may prove beneficial to them upon their return to their country.

315. Measures are implemented to ensure the quality of the centre's infrastructure in terms of temperature, ventilation and security. Some rights and duties are prescribed as regards hygiene in the centre and personal hygiene. Rules on food are applied. Medical and religious constraints in this regard are borne in mind at all times (for example pork is never served).

316. As regards the centre's disciplinary regime, it should be noted that it was drawn up fairly to ensure order and security in the centre. Good preventive work by all members of staff means that warnings are given only in exceptional circumstances. The principle of legality and the *non bis in idem* rule are explicitly spelled out. The aim is to guarantee residents' legal certainty.

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[47] Article 15 of the Royal Decree of 2 August 2002 referred to above.

[48] Article 63 of the Royal Decree of 2 August 2002 referred to above.

Individual Complaints Board

317. The Board and its Secretariat are responsible[49] for dealing with individual complaints from residents relating to the application of the Royal Decree of 2 August 2002 and the internal regulations of the centre which implement it. The procedures and rules of operation of the Board and its Secretariat were provided for by a Ministerial Decree of 23 September 2002[50].

318. Alongside the existing procedures for appeal to the Council Chamber, the Council of State and the civil courts, the procedure establishes a flexible means of non-suspensory recourse for any problems arising in closed centres. The procedure does not establish a new means of appeal against a decision to hold someone in a closed centre or against a decision on deportation.

319. The Individual Complaints Board may declare a complaint founded in whole or in part. By annulling a decision the Director of a centre can bring the resident's situation into line with the Board's decision. The Board may also make certain recommendations to the Director of the centre regarding the application of the decision or the implementation of the Royal Decree of 2 August 2002 generally. The Board may make any recommendation it deems appropriate with regard to the implementation of the Royal Decree of 2 August 2002, to the Director of the centre and to the Director General.

Detention in an INAD centre (passengers refused entry to the territory)

320. The rules of operation of the INAD centre are based broadly on those set out in the Royal Decree of 2 August 2002 establishing the regime and regulations applicable to premises in Belgian territory run by the Aliens Office, where foreign nationals are held, placed at the disposal of the Government or kept. Since the Royal Decree does not apply to the INAD centre, the relevant legal instrument is the Chicago Convention of 1944 on International Civil Aviation, which has been ratified by Belgium. The view may also be taken that some of the articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms offer some guidance as to the operation of the centre and the basic rights of its residents.

321. The regulations of the INAD centre comprise internal instructions and memos.

322. The residents of the INAD centre are able to contact a lawyer. Telephone calls to lawyers and Embassies are free of charge (from the centre's land-line). A meeting between lawyer and client can be organized if necessary. In view of the security measures which apply in the transit zone such a meeting would not take place at the centre but at the federal police offices in the national airport.

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[49] Pursuant to article 30 of the Royal Decree of 2 August 2002.

[50] Ministerial Decree establishing the procedure and operation of the Board and Permanent Secretariat referred to in article 130 of the Royal Decree of 2 August 2002 establishing the regime and regulations applicable to premises in Belgian territory run by the Aliens Office, where foreign nationals are held, placed at the disposal of the Government and kept pursuant to the provisions cited in article 74/8, paragraph 1, of the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens (*Moniteur belge*, 22 October 2002).

323. The medical service of the national airport manager supplies medical assistance to the residents of the INAD centre. Non-serious illnesses are treated on site by colleagues at the centre.

324. Residents of the INAD centre may not receive any visits as the centre is located in the transit zone and access to the zone is strictly regulated. They may nonetheless contact their friends and family by telephone. In certain circumstances, family visits can be organized at the federal police offices.

325. The period of time for which a person who has been refused entry may be kept in an INAD centre is limited to the time strictly necessary to organize his departure on the first return flight. The cost of keeping him there are borne by the carrier.

Holding of persons who state at the border that they are unaccompanied foreign minors

326. When someone who declares himself presents at the border declaring him or herself to be an unaccompanied foreign minor[51] and cannot satisfy conditions for entry[52], that person becomes the subject of a removal decision (refoulement) and a decision to hold him or her in a centre at the border. Both decisions are notified to a guardian[53]; the guardian is appointed as a matter of

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[51] "Unaccompanied foreign minor" means:

"Any person who appears or declares himself to be under the age of 18 years, and who:

" is not accompanied by anyone exercising parental authority or guardianship pursuant to the applicable law under article 35 of the Act of 16 July 2004 on the Code of Private International Law;

"is a national of a country which is not a member of the European Economic Area (EEA);

"and whose circumstances are as follows:

"either, he has applied for recognition of refugee status;

"or, he does not meet the requirements for entry and residence laid down in the Act of 15 December 1980 on the entry, temporary and permanent residence and removal of aliens."

[52] Under articles 2 and 3 of the Act of 15 December 1980 and international rules binding on Belgium, including the Convention applying the Schengen Agreement, the Chicago Convention and the Dublin rules. Note that article 3 of the act of 15 December 1980 merely transposes article 5 of the Convention applying the Schengen Agreement into Belgian law. That article deals only with grounds for return ("refoulement") which are identical for all States participating in the Schengen Area.

[53] Article 16 of Title XIII, Chapter 6, "Guardianship of unaccompanied foreign minors" in the Programme Act of 24 December 2002, as amended by the Programme Act of 27 December 2004, known as the "Guardianship Act".

urgency following a request to the Guardianship Service when an unaccompanied minor file[54] is forwarded to it upon the arrival of the self-declared unaccompanied minor, and while the minor's identity is being established.

327. Unaccompanied minors who are refused entry at the border are held on the basis of article 74/5 of the Act of 15 December 1980, either at the INAD centre if they do not request asylum, or at Centre 127 if they do request asylum.

Agreement of the Council of Ministers of 20-21 March 2004 on the reception of unaccompanied minors

328. The Government agreement provides that:

> In accordance with the recommendations of the Committee on the rights of the child, the Guardianship Service for Unaccompanied Minors provided for in the Act of 24 December 2002, will be established with due diligence to provide legal protection to all unaccompanied minors in Belgium. They will no longer be housed in closed centres at the border but in secure institutions appropriate for their age. They will be monitored and protected to prevent their being exploited by criminals.
>
> The Communities will be involved in the organization and funding of these institutions and with supporting the young people.

329. Unaccompanied minors who commit criminal acts will be escorted, if necessary by order of a juvenile court and with the assistance of the IOM back to the area where they live in their country of origin.

330. Pursuant to the Government Agreement, article 495 was included in the Programme Act of 22 December 2003 stating that:

> Section 1 bis is hereby added to article 62 of the Programme Act of 19 July 2001, and reads as follows: Section 1. The coordination of the various forms of reception for unaccompanied minors shall be determined by the King in a Decree discussed in the Council of Ministers. The task of coordination will involve the conclusion of an agreement between the Federal State and the Communities, endeavours being made to regulate the methods of organization and funding establishments, and support.

331. With a view to implementing the Government agreement (CM of 20-21 March 2004) which states that unaccompanied foreign minors who arrive in Belgium and who are refused entry shall be housed in a secure centre having the status equivalent to the premises referred to in article 74-5, paragraph 1 of the Act of 15 December 1980, for a maximum period of 14 days.

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[54] Circular of 23 April 2004 on "unaccompanied foreign minor file" (*Moniteur belge*, 30 April 2004).

332. The Council of Ministers meeting on 19 May 2006 expressed its agreement with the following principles:

a) Unaccompanied minors who have been identified as minors will no longer be held in closed centres but accommodated in an observation and orientation centre (COO) under a secure regime. The principles contained in the Convention on the Rights of the Child and in the Reception Act will be the basis for establishing the secure regime.

b) Pursuant to the provisions of the law on the guardianship of unaccompanied foreign minors, the Guardianship Service must appoint a temporary guardian for anyone declaring himself at the border to be an unaccompanied foreign minor.

333. The Guardianship Service must identify a person declaring himself to be an unaccompanied foreign minor as quickly as possible. The age of the applicant must be determined within three working days unless there are properly explained exceptional circumstances:

a) An unaccompanied foreign minor must, within 24 hours of notification of the decision of the Guardianship Service to the Aliens Office attesting that the person concerned is a minor, be admitted to a COO falling within the remit of the Minister of Social Integration.

b) Where the best interests of the child justify his being returned to his family it is helpful to be able to implement the Chicago Convention. The secure regime ensures that the conditions for its application apply for a period of 15 days. That time-limit may be extended by five days in properly explained exceptional circumstances.

c) A decision to return a minor (refoulement) must be implemented at most 15 days after the minor has been admitted to the COO. That time-limit may be extended by five days in properly explained exceptional circumstances. In the event that the decision is not implemented, entry is deemed to have occurred.

d) Equal treatment of unaccompanied foreign minors accommodated in COOs: it is not feasible to operate two different regimes within a single reception structure on the basis of the administrative provisions.

e) Fedasil has a duty to use its best endeavours but not a duty to achieve a result. The principal task of Fedasil is to provide material assistance. Subject to compliance with the internal regulations ensuring a secure regime, it may not be held responsible for the spontaneous departure of one of its residents.

334. With a view to transposing the principles set out above, the Council of Ministers meeting on 9 June 2006 agreed to insert article 40 bis into the Bill on the reception of asylum seekers and certain categories of aliens covering measures to accommodate, in a COO, unaccompanied foreign minors who present at the border and are refused entry. This amendment is currently being considered by the Council of State.

Transposition into Belgian law of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers

335. The Bill on the reception of asylum seekers and certain categories of aliens is currently being scrutinized by Parliament (Doc. Parl. 51 K 2565). The Bill sets out a specific legislative framework for the reception of asylum seekers. Special attention is paid to vulnerable groups, which include minors. The framework takes several elements into account: reception appropriate to a minor's needs (depending on his experience of life and an assessment of the risks he faces (prostitution networks, trafficking, disappearances, etc.), educational background, medical, social, legal and administrative support, schooling and uniform standards across the reception network.

I. Treatment of children deprived of their liberty, including any form of detention, imprisonment and remand to a custodial setting

336. See also the information in the second part of the report on the number and age of juvenile delinquents subject to detention, rigorous imprisonment or remanded to a closed centre, the average duration of isolation and the reasons for the penalty meted out to them (paras. 533 to 586).

At federal level

a) Bill amending legislation on youth protection and dealing with minors who have committed acts categorized as an offence.

337. A Bill amending legislation on youth protection and dealing with minors who have committed acts categorized as an offence was adopted on 4 May 2006[55] (*Moniteur belge,*

[55] The amendments can be summarized as measures placing greater responsibility on parents by encouraging them to be aware of their part in the delinquent conduct of children and to take charge of them. Parents are thereby involved in the various stages of the procedure and are afforded the opportunity to play their child-rearing role. To that end the Crown Prosecutor, the children's judge and the tribunal may make a proposal or order for a parenting course. This involves punishing the attitude of disinterest towards criminal behaviour by young people towards whom the persons concerned have a responsibility.

Placing greater responsibility on the young person is another key point. The Bill is intended to supplement current measures with clear responses whose emphasis is on having regard for the victim's rights through a restorative approach to juvenile delinquency.

The proposal is to increase and diversify the panoply of measures available to Crown Prosecutors and children's courts. We are therefore witnessing the increase of alternative measures such as mediation or welfare provision and community service, allowing young people to be players in their "rehabilitation" and to reduce recourse to custodial orders of all types.

The removal of a case from the [youth] court will be a measure of last resort for young repeat offenders or those who have committed serious crime. Exceptionally, the youth court has the specific option to refer the file on a young person (aged over sixteen at the time of the offence) to

2 June 2006). Among the Annexes the Committee will find information on the key themes of the Bill on remand of minors.

b) The remand centre in Everberg for juvenile delinquents

i) Recap of the situation

338. After it was established that in the temporary absence of custodial places juvenile delinquents have sometimes had to be released, the Act of 1 March 2002 on the short-term remand in custody of minors who have committed acts categorized as an offence provides for the possibility of the youth court and the investigating magistrate to remand a minor who has committed an offence to a short-term remand centre by way of a measure to protect society.

339. Access to the centre is for boys only and is subject to certain conditions which must all be met[56].

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the court normally reserved for adults. A special chamber will be established to that end in the youth court.

The youth court will use this option as a last resort if it takes the view, based on a medical and psychological report and a social inquiry, that none of the measures available to it to impose on the youth is appropriate.

It is important to stress that the different communities have been consulted and the intention is that in future this type of consultation is to be pursued on an in-service basis with a view to regulating matters which fall within the competence of the communities. Several provisions in the Bill provide for cooperation agreements to be entered into to that end.

[56] The conditions are as follows:

- the youth is over 14 years old at the time of the offence;

- there is sufficient solid evidence of guilt;

the offence for which the youth is being prosecuted is such that if he were of age, it would carry either a) a penalty of rigorous imprisonment of between 5 to 10 years or a more serious penalty, or b) a period of principal correctional imprisonment of one year or a more severe penalty if he has previously been the subject of a final measure handed down by the youth court for an offence carrying the same penalty;

there are compelling, serious and exceptional circumstances relating to the requirements of public security;

the admission, pursuant to a short-term custodial measure, of the youth concerned to an establishment provided for under the Youth Protection Act of 8 April 1965 is impossible on the ground that it is full.

340. A short-term custodial social protection measure may only be ordered for the shortest time possible and only where the objective of that measure cannot be achieved using other means.

341. The initial order made by the youth court is valid for five days. In the five days following the initial order, the youth court must make a determination on the measure and either revoke it, amend it or extend it. In the event that the measure is extended or amended, the placement order remains valid for one month. In the event that the measure is revoked the youth must be released and removed from the records.

342. Since a short-term custodial measure can be extended on only two occasions, each for a maximum period of one month, the total length of a stay in the centre cannot be longer than two months and five days. All orders made by the youth court are notified upon receipt to the youth concerned.

343. The youth may appeal the order of the youth court in the form of a statement to the management of the centre within 48 hours of being notified of the order. The measure imposed is kept in place unless amended by the appeal court. The youth chamber of the Court of appeal reaches a determination in 15 working days calculated from the date of the notice of appeal.

ii) Assessment

344. Pursuant to article 33 of the cooperation agreement concluded between the Federal State, the German-Speaking Community, the French Community and the Flemish Community on the closed centre for the short-term custody of minors who have committed acts categorized as an offence, an Assessment Board with responsibility for carrying out an annual assessment of the cooperation agreement and the operation of the centre is hereby established . Set up on 26 January 2004, the Board comprises one representative from each party to the cooperation agreement and experts in juvenile delinquency.

345. An initial assessment report was finalized in June 2004 by the Assessment Board, which has met six times[57].

346. The assessment report, which is annexed hereto, is in three parts.

347. The first part of the report analyses the various provisions of the cooperation agreement and the internal regulations which apply in the closed centre.

348. The second part sets out the proposals and recommendations the Board wished to make following an analysis of the data collated as part of its assessment work.

349. The proposals and recommendations relate both to the operation of the closed centre and to the way in which the annual assessment provided for in article 33 of the cooperation agreement should be carried out in future.

[57] On 26 January, 16 February, 22 March, 2 and 27 April and 4 May 2004.

350. The third part consists of the annexes. These include the Act of 1 March 2002; the cooperation agreement; the internal regulations; the educational plans drawn up by each of the Communities; various numerical data which could be of benefit when reading the report.

351. The plans for the months and years to come are based on the recommendations made in the assessment report by the Assessment Board for the Placement Centre in Everberg.

352. They are mainly of two types:

a) The establishment of a punishment system which has regard to the approaches taken by the federal and community contributors (applicable penalties, disciplinary procedure, complaints, etc.). The agreement on that point should allow the Ministers concerned to approve the internal regulations.

b) Setting in train the infrastructures called for in the assessment report (construction of sports infrastructures, fitting a kitchen for the youths and staff, finishing the car park, etc.).

At community level: Initiatives or legislative measures taken by Communities regarding Public Youth Protection Institutions (IPPJ)

French Community

353. It should be pointed out that the Decree of 4 March 1991 on Youth Support was amended by the Decree of 19 May 2004 (*Moniteur belge,* 23 June 2004) with the result that:

a) The concept of the IPPJ group has been removed to ensure better compliance with minors' right to due process;

b) The provision allowing solitary confinement to be extended beyond eight days has been repealed.

354. Additionally, a French Community Government Decree dated 15 June 2004 (*Moniteur belge,* 2 September 2004) on IPPJs provides in law for each institution to have an Education Committee. The Committee's responsibilities include drawing up and periodically assessing the institution's educational plans. The Decree also confirms the existence within the DGAJ of an information, guidance and coordination unit which is available to the courts to inform them of the availability of places. It establishes a consultation committee in each IPPJ including people from outside the institution; it is responsible for assessing the implementation of the educational plans. Finally, it lays down the information to be communicated to parents and the federal police in the event of absconding and sets the time-limits for which a place is held for youths who are absent without leave.

355. Finally, the educational plans of the IPPJ (the text of which is available on the Internet site aidealajeunesse.cfwb.be of the Directorate-General for Youth Support (DGAJ) were all approved by the Minister of Guardianship in 2003.

Flemish Community

356. Since 2000, several legislative initiatives have been taken both at federal and community levels. The creation of the closed centre in Everberg in 2002 marked an important step for the Community Institutions Department. The centre is the result of a cooperation agreement between the federal authorities and the three communities.

357. It goes without saying that the interests of minors are still central. Both the Decree of 2004 which more fully protects the legal status of minors and the amendment to the Constitution in 2000 guaranteeing the integrity of young people bear witness to this.

358. Where education is concerned, various new working methods have been brought in. A uniform model of education is being drawn up within the institutions and emphasis is also placed equally on parental guidance and follow-up. These initiatives should help increase the likelihood of minors reintegrating into society.

359. Mixed support is another new aspect of the educational process This means that both men and women are employed in nearly all peer groups.

360. Solitary confinement of a minor in community institutions is exceptional. Placement in an isolation cell is only standard procedure for a minor upon arrival while he is initially being accommodated. All the community institutions have a procedure for isolation as part of their disciplinary or criminal procedure. The procedure should, on the one hand, support social contributors and on the other hand, act as a safeguard to the minor. The isolation procedure must be entered in a register (duration, grounds, etc.) which means periods of isolation can be assessed subsequently.

361. Remand of minors to community institutions by youth courts for in-house accommodation and support purposes is based on two different pieces of legislation:

a) Decrees on special youth assistance, both of 4 April 1990, concerning youths with a difficult upbringing (SEP). The Decrees provide for a temporary restriction on liberty justified only by a serious threat to the personal integrity of the young person or by the threat the young person poses to others.

b) The Youth Protection Act of 8 April 1965 which applies to minors whose conduct amounts to an offence (FQI). Deprivation of liberty under this Act is justifiable on the ground of educational needs or the need for highly structured care and support.

Task of the community institutions

362. As part of an integrated welfare policy, the community institutions are seeking to provide young people for whom a restriction on liberty and structured support are necessary, with additional, quality educational assistance to improve their future prospects in society.

Education within the community institutions

363. Since 2002, close attention has been paid to education in community institutions, the processes used have been reformed, staff plans adjusted and the resulting provisions have begun

to be implemented. To make this possible, the necessary changes have been made to infrastructure, teaching equipment has been acquired and a number of teachers recruited.

364. As far as the actual organization of education in practice in the community institutions is concerned, a framework has been used which covers the rules in force and strategic reflections on how the task should be conducted and the vision implemented.

365. The Flemish Government Decree of 27 June 1990 sets out the conditions in which compulsory schooling can be provided within the community institutions. Teaching is organized along the lines used in home education.

366. A circular (of 26 September 1990) provides a number of organizational details with regard to the Decree. The important principles are:

a) To tailor things to the young person's needs to the greatest possible extent;

b) To find connections between the guidance programme and the young person's year of schooling;

c) To follow the existing programmes as much as possible.

367. The special vision has been developed for teaching in community institutions.

368. In a teaching situation young people need to be taught how to acquire and apply understanding, practical knowledge and social skills to give them the greatest chance of integration in society.

369. Action must be effective and based on individual problems and the young person's needs and interests, bearing in mind the environment he lives in and his socio-cultural roots, using special methodologies and teaching material innovatively and combining the various support tools available in the institution to the maximum extent.

370. As regards the specific form of teaching, the mission and vision are based on recent developments in the world of work, and this inherently creates a degree of tension with the rules in force. The rules view education as a means of replacing and/or continuing a young person's schooling.

371. According to that view, teaching is essentially a preliminary journey along road which will lead the young person to full social reintegration.

372. The principle was that the right to education for all young people resident in a community institution had to be guaranteed as part of the teaching process. A number of pathways have been drawn up to try and embrace a very heterogeneous population as broadly yet as individually as possible.

373. The outcome it seeks to achieve is as follows:

a) To correct the education process through individual action plans and coordinated support plans.

b) To draw up a flexible daily programme enabling the individual needs and skills of the young people to be met in full and to develop those skills in line with society's needs.

c) This involves developing social skills programmes and also ordinary education programmes for a more widely recognized picture of what can be achieved through education to maximize the likelihood of reintegration.

374. The content of the education programme is determined on the basis of end expectations (the young person's expectation at the end of his time in custody: continue with his schooling, lead an independent life, etc.), the educational route aspired to or the route taken within the institution (young people in lengthy periods of custody).

375. In any event, this is the means by which attempts are being made to respect more fully the following rights of the child, as set out in the Convention on the Rights of the Child:

a) Education (art. 28(1) and (2); art. 29(1); art. 40(4);

b) Continuity in upbringing (art. 20(3);

c) Social reintegration (art. 39; art. 40(1).

376. Additionally, other international rules such as the Beijing Rules (1985), the Riyadh Guidelines (1990) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), are a guiding thread.

377. Moreover, the community institutions also pay special attention to the following aspects:

a) Health care (art. 25), both physical and mental health (and, if necessary, outside assistance or a referral to outside bodies);

b) Sport and leisure (art. 31): each time the accommodation is altered (master plans + Everberg opinion), the necessary infrastructure is planned to allow for physical relaxation; similarly, in the educational provision, contact with nature is maintained (experimentation);

c) The fight against drugs (art. 33) is a fixed part of the programme.

d) Support in child-rearing (art. 18, 2). During the long periods set aside for visits parents become more and more involved in the path taken by their child and receive the tools allowing that path to be followed.

e) Reintegration through training for independence (art. 39; art. 40(1)). The project "Geïndividualiseerd Residentieel Traject" (personalized on-site pathway) has been set up and has the necessary facilities and staff.

g) Accommodation/modernization: all the infrastructure of the institutions is the subject of a thorough modernization programme set out in the "master plans".

Educational support within the community institutions

378. After the reform of teaching, the key mission of the institutions, namely educational and therapeutic action, was also studied in depth.

379. In terms of content, a specific vision of the pedagogical process was developed and a teaching model whose effectiveness has been scientifically established was chosen. Specific contributions of assistance, guided by the action plan, provide responses to the demand for individual assistance. A number of structurally integrated consultation platforms ensure that the various measures are consistent and readjusted in good time. Finally, tools such as parental guidance, parental support, work in context and subsequent follow-ups are also put in place so that the skills acquired in the institution can be transferred to the family environment, thereby increasing the likelihood of positive reintegration.

380. In addition to the improvements in content, the staffing structure has been broadly strengthened. The number of managers who have to implement new models and new methods as well as manage and train colleagues has risen. The number of support workers has also increased sharply and now all units have twice the number of staff previously, which also means there is greater room for a personalized approach for each of the young people. Finally, the team of staff in charge has also been strengthened considerably.

Mixed support within the community institutions

381. All roles in the current pedagogical process are open to and filled by both men and women.

382. The employment of male support workers/carers or female support workers/carers is the only exception to this. A Royal Decree of 9 November 1984 on conditions of access to certain posts in State observation and supervised care establishments (today's community institutions) provides that a post as a member of the care staff or supervisory personnel are reserved for candidates of the same sex as the minors for whom the post-holders are responsible. Specifically, this means that girls are supervised by women and boys by men.

383. As this rule has been the subject of discussion for some time and many of the pedagogical arguments are in favour of support being given both by men and by women, it is intended that this practice should be abolished. However, given the legal and practical problems raised by introducing mixed support workers all at once and without restriction into all peer groups, the decision has been taken to introduce the change gradually and therefore the Royal Decree will be repealed gradually.

384. On 1 January 2000, two groups were allocated a mixed support team. Since then, 20 of the 24 groups have been allocated mixed teams. The Community Institutions Department will introduce the principle of mixed support into all groups during 2005.

385. As regards gender-related matters– or sociosexual matters – the basic principle in the mixed teams is to work in a way which turns the traditional social roles upside down: for

example, men take on household chores while women organize sporting activities or intervene when there is conflict.

Decree of 7 May 2004 on the Status of Minors in Comprehensive Youth Support

386. This new Decree deals with the Status of Minors in Youth Support in the broad sense, namely regardless of the sector of youth support in which the young person finds himself. It governs the rights of minors in relation to suppliers of youth support, the entry point (a body independent of providers of youth support which organizes extrajudicial access to modules which are not directly accessible) and finally, support along the way.

387. The Decree implements the Convention on the Rights of the Child in respect of a local affected legal body.

388. The Decree applies as of the first contact between the minor and any of the organizations referred to. Capacity in a judicial context, in other words a minor's capacity in a trial, is not governed in the decree since that is a federal matter.

389. The Decree deals with the following topics:

a) The right to youth support;

b) The right to consent and to freedom of choice in non-judicial youth support;

c) The right to information and clear communication;

d) The right to express an opinion and the right to participation;

e) The right to assistance;

f) The right to privacy;

g) The right to a freely usable allowance;

h) The right to humane treatment;

i) The right to complain.

390. The institutions will have to take the implementing measures necessary to meet the conditions set out in the Decree on status.

J. Detention in psychiatric institutions

391. In addition to the information included in Belgium's initial report reference should be made to two pieces of information concerning the powers exercised by Walloon Region.

392. The powers concerned related to the rules of accreditation for psychiatric institutions and concern inspection visits conducted in that regard. The measures set out below are not really new, but in the light of the previous report it would appear that greater vigilance has become

evident in a "sensitive" sector where shortcomings in respect for people's dignity are still too frequent.

393. In the context of the application of the Mentally Ill Persons (Protection) Act of 26 June 1990 (repealing the Act on "Placement"), the taking into care of patients placed in psychiatric departments "as a protective measure", implying forced hospitalization; compliance with certain legal provisions is assessed annually by the inspecting psychiatrist. Those provisions include the maintenance and content of the administrative register and the physical restraints register (in other words containment measures: causes, nature, duration); these are examined by the accredited official appointed to the task by the regional authorities to whom he reports.

394. An annual report of quantified activities is forwarded to the authorities by each of the establishments with psychiatric services designated for the purpose of application of the Act. Those reports state inter alia the number of confinements for observation (MEO), their duration, extensions (+ duration) and any aftercare (+ duration) as well as the number of discharges, on an annual basis.

395. Pursuant to the Patient Rights Act of 22 August 2002 (see para. 108 above), it should be noted that a Federal "Patient Rights" Commission has responsibility for implementing the Act. A mediation role has been established to allow patients to make complaints about their care, the mediator's role being to try to reach a solution without the need for a binding decision having to be made. Information on the existence of the Act and the possibility of recourse to the mediator must be made accessible to all, including psychiatric patients. In addition to mediation which is organized and assessed at federal level, local mediation more specific to the mental health sector has been put in place.

396. It is for the psychiatrist with responsibility for inspecting psychiatric institutions to ascertain the existence and accessibility on site of mediation, and to familiarize himself with the mediator's report of activities (number and type of complaints, etc.). If necessary he deals with complaints received by the authorities.

397. As noted above, his observations are taken into consideration when the operation of the institution is assessed with a view to accreditation.

ARTICLE 12

398. In addition to the information given in Belgium's initial report the following points should be mentioned.

399. Where there is reasonable ground to believe that an act of torture has been committed, an investigation and indeed a judicial investigation will be opened *ipso jure* if the victim instigates a measure as set out in article 13. Reference should also be made to article 29 of the Code of Criminal Investigation:

> Any appointed authority, any officer or public servant who, in the performance of his duties, obtains knowledge of a crime or an offence shall immediately so inform the Crown Prosecutor at the court in the district where that crime or offence is alleged to have been

committed or where the accused is likely to be present and shall transmit to the court all information, statements and instruments relating thereto.

400. The provisions of the Police Functions Act set out below apply specifically to the police.

401. Article 15: In the discharge of their judicial police duties, it is the task of the police services to:

a) Investigate felonies, misdemeanours and petty offences, collate evidence thereof, inform the competent authorities, apprehend and arrest the offenders and place them at the disposal of the competent authority, in the manner and in accordance with the formal requirements provided for in law;

b) Conduct searches for persons whose arrest is provided for in law, apprehend and arrest them and place them at the disposal of the competent authorities;

c) Search for, seize and place at the disposal of the competent authorities items whose seizure has been ordered;

d) Transmit to the competent authorities the report of their investigations and the information gathered as a result. .

402. Article 40: Complaints and reports of offences made to any police officer, and information obtained and statements made about offences shall be the subject of statements which shall be transmitted to the competent judicial authority.

403. The State authorities may also take the initiative to instigate an administrative or disciplinary investigation the conduct of which is entrusted to senior officers or the inspectorate of the corps in question. They may subsequently bring legal proceedings pursuant to article 274 of the Code of Criminal Investigation which provides as follows:

The Public Prosecutor acting either on his own initiative or on the instructions of the Minister of Justice shall instruct the Crown Prosecutor to prosecute the offences which have come to his knowledge .

404. As regards the disciplinary procedures which apply to the integrated police service, the legislator has conferred the right to give instructions binding on a number of authorities. Where those authorities inform the disciplinary authority of acts which may constitute a violation of discipline, the latter authority is required to examine whether those acts require a disciplinary procedure to be opened. Moreover, the disciplinary authority must inform those authorities of the action taken on the information supplied by them.

405. The following authorities are involved:

a) The Minister of the Interior and the Minister of Justice;

b) The Governor of the Province and the Burgomaster;

c) The Federal Prosecutor and the Public Prosecutor, the Crown Prosecutor or the competent investigating magistrate

d) The Chairman of the Standing Committee on the Supervision of the Police Services;

e) The General Police Inspectorate;

f) Any hierarchical or operational superior in the disciplinary authority;

g) Any hierarchical or operational superior of a seconded member of staff;

h) The Institute for Equality between women and men where the acts concerned give grounds for believing that an act of discrimination has occurred or where those acts are incompatible with the laws and regulations on equality between women and men.

406. The legislator also lays down rules governing contact between the Centre for Equal Opportunities and Action to Combat Racism, Committee P and the General Police Inspectorate. Where the Centre notifies one of the above bodies of facts which give grounds for believing that inhuman treatment has occurred, that body must open an investigation, inform the competent authority and notify the disciplinary or judicial authority of the facts. The bodies must inform the Centre of the results of their action.

a) It should be pointed out that article 12 bis of the Preliminary Title of the Code of Criminal Procedure introduced under the Act of 18 July 2001 and amended on two occasions in 2003, transposes into Belgian law some of the extensions of jurisdiction contained in conventions ratified by Belgium or which are by custom binding on Belgium. It states that the Belgian courts also have jurisdiction to hear cases involving offences committed outside the territory of the Kingdom which are referred to in a rule of conventional or customary international law binding upon Belgium (or in a rule of secondary European Union law binding upon Belgium), when such a rule imposes on Belgium, in any way, an obligation to submit the matter to its competent authorities for prosecution. Pursuant to article 12 bis, where the alleged perpetrator of an act which is a crime under the Convention against Torture has been apprehended in Belgian territory and has not been extradited to one of the States competent under the Convention, he must be tried in Belgium regardless of his nationality, the nationality of the victim or the place where the offence was committed. The Act of 5 August 2003 on serious violations of international humanitarian law provides, however, that proceedings under article 12 *bis*, which include investigation, can be brought only at the request of the Federal Prosecutor, who makes a finding on any complaints. The Act introduces a rule of immunity from jurisdiction, notably for Heads of State and of Government, as well as for Ministers of Foreign Affairs, during their period in office. Note that the Act of 5 August 2003 has recently been annulled in part by judgment 62/05 of 23 March 2005 of the Court of Arbitration (annulment of the second indent of article 10(1) bis, and the second indent of article 12 bis, of the Preliminary Title of the Code of Criminal Procedure) and that an Act taking account of that judgment was therefore necessary before 31 March 2006. In this regard, see the comments below in point II.2.4.

b) Mention should also be made of article 25 of the Police Services (Monitoring) Act of 18 July 1991 which requires any law enforcement officer who finds that a crime or offence has

been committed by a member of a police service to draw up a report for the attention of Investigative Department P.

c) It is also important to mention the Act of 31 May 2005 amending the Compensation for Inoperative Pre-trial Detention Act of 13 March 1973, the Pre-Trial Detention Act of 20 July 1990, and certain provisions of the Judicial Investigation Code (*Moniteur belge,* 16 June 2005).This Act, which entered into force on 26 June 2005, is designed to intervene specifically in the pre-trial detention procedure so that it can run more smoothly and more effectively. The key aspects of the act are as follows.

407. The authority and independence of the investigating magistrate as regards release has been strengthened further. Since the investigating magistrate directs and coordinates the investigation, he is the person best placed to determine the need to extend pre-trial detention.

408. In that spirit the investigating magistrate, acting alone may, after the first appearance before the Council Chamber take an unappealable decision to release the accused if new and significant evidence emerges: the Crown Prosecutor cannot, therefore, object to this decision.

A. Restricting monthly checks of pre-trial detention

409. Within five days of the issue of the arrest warrant by the investigating magistrate, the Council Chamber (Court of First Instance) conducts a check on the lawfulness of the warrant. Each month the Council Chamber reassesses progress made in the investigation file and assesses the merits of the pre-trial detention.

410. For acts which may not be reduced from felonies to misdemeanours by statute (which automatically fall within the jurisdiction of the Court of Assize, not the Criminal Court), this monthly checking procedure is slightly different: once a third appearance has been made before the Council Chamber the extension of pre-trial detention is valid for three months. During that period the person in pre-trial detention may make an application for release to the Council Chamber each month.

411. This restriction on monthly checks for offences which may not be reduced from felonies to misdemeanours by statute is the result of a finding that the acts in question require more lengthy investigation. Therefore the file must be prevented from going back and forth too many times between the investigating magistrate and the Council Chamber because while it does so, the investigating magistrate is left without his file and cannot pursue his investigation. This is liable to prolong the duration of pre-trial detention.

B. Penalties for failure to comply with procedural formalities

412. Under the previous system (1990 Act) no formal penalty was systematically provided for in the event of failure by the investigating magistrate or the Council Chamber to comply with the procedural formalities required for the issue of an arrest warrant. The result was a degree of vagueness in the law.

413. To clarify the law, certain penalties of invalidity were introduced for failure to observe the rights of the defence.

C. Duration of conditional release

414. Conditional release was able to be imposed for a period not exceeding three months, renewable before the expiry of that period. In practice the period was sometimes renewed after the expiry date without a new application by the investigating magistrate.

415. The law has been amended to state clearly that the conditions may be extended only before the expiry of the initial period as the result of an application by the investigating magistrate. It is expressly stated that if this is not the case, the conditions imposed automatically lapse.

D. Increased monitoring of protracted pre-trial detention

416. Where pre-trial detention lasts longer than six months, the investigation is automatically made subject to checks by the Indictments Chamber. Pre-trial detention of six months' duration is considered exceptional. The investigating magistrate and the parties are summonsed before the Indictments Chamber, which checks on the progress of the investigation and the need to extend pre-trial detention.

417. The Undercover and Certain Other Methods Of Enquiry Act of 6 January 2003 (*Moniteur belge*, 12 May 2003) provided a legal basis for 'undercover' methods of enquiry (infiltrations, telephone tapping, use of informers, interception of mail, discreet visual surveillance). It should be noted that the Court of Arbitration annulled that Act in part on 21 December 2004. Substantively the judgment objected in particular to the lack of independent control (by an investigating magistrate or a judge) when these methods were used. The Court of Arbitration provided for a time-limit (end of 2005) by which some of the annulled provisions had to be amended. The Code of Criminal Investigation and Judicial Code (Amendments) Act of 27 December 2005 improving methods of investigation to combat terrorism and serious organized crime was adopted and appeared in the *Moniteur belge* on 30 December 2005. The aim of the Act is to respond to the points of the judgment given by the Court of Arbitration.

Bill reforming the Code of Criminal Investigation (Grand Franchimont)

418. To recap, the Act of 12 March 1998 on improving criminal procedure at the information and investigation stage, christened "Petit Franchimont", was the first stage in the modernization of criminal procedure. The principal amendments are as follows:

a) The 1998 Act gave statutory form to information which had evolved by judicial decision but without any basis in law, by introducing the requirement to set out the reasons for a decision to take no action on a complaint and to notify the injured person of that decision, the guarantees afforded to the person heard, the mini-investigation and an urgent application in a criminal matter.

b) It retained the investigating magistrate, strengthened his independence vis-à-vis the Public Prosecutor and at the same time defined his task, which he is called on to perform under increased supervision from the Indictments Chamber.

c) It confirms the (relative) confidentiality of the investigation as the basic principle governing the preparatory stage of criminal proceedings while providing for three derogations

from the confidentiality requirement: issue of a copy of the hearing to the person heard, right of access to the file to the parties within certain limits and the possibility of communication with the press.

d) It lays the foundations for a cooperative relationship between judges and the police based on principles of management and authority on the one hand, and principles of loyalty and elative autonomy on the other.

e) It affords judicial rights and guarantees during an autopsy or intimate strip search, to victims, to persons injured by an investigative measure into their assets (urgent application in criminal proceedings), to persons who have been interviewed, defendants and parties claiming damages during an inquiry into the facts.

f) It provides for rules of procedure before the Council Chamber when the inquiry into the facts is deemed complete.

g) It provides for checks on the proper conduct of the investigating courts.

419. The Bill reforming the Code of Criminal Investigation ("Grand Franchimont"), which was adopted by the Senate at the end of 2005, has been referred to the Chamber of Representatives for its first reading (Doc.51-2138). It amends over 500 articles of a Code dating back to 1808 and seeks to establish a general balance between the effectiveness of justice (the investigative powers of the Crown Prosecutor and the police are considerably strengthened) and the rights of the various participants in criminal proceedings (new rights for the person who has declared himself injured and the suspect are established both during the preliminary investigation and when it closes). The Bill aims to make the *inter partes* nature of the preliminary investigation stage as effective as possible and to make it a bigger feature in the inquiry stage without prejudice to the effectiveness of the two phases in proceedings[58].

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[58] General principles concerned:

a) The principles of proportionality and subsidiarity are reaffirmed.

b) The violation of due process may lead to invalidation of the judicial process and dismissal of the evidence collated.

c) Theory of nullities based on the distinction between absolute nullity and other types of nullity, which can be cured.

d) End of the concept that the authority of a judgment in a criminal matter is binding in relation to subsequent civil actions; the authority of a judgment is merely a rebuttable presumption.

e) The time bar on criminal proceedings will, in the event of plurality of offences, run separately for each offence in accordance with the time-limit allowed for each.

f) Applications to be joined to proceedings and joinder of a third party in criminal matters will generally be allowed.

420. The Council Chambers will also be afforded new powers. They will, if the accused does not object, be able to rule directly on the substance of the case and to deliver sentences of imprisonment of less than one year.

421. Amendments are also planned for trial courts. For example, it will be possible upon the request of the accused or the prosecutor to divide the proceedings into two stages; first on the facts and guilt and a second stage on the penalty or applicable measure and civil damages. As a result in the event of an acquittal there will be no need to submit pleadings on a penalty, measures or civil provisions and, secondly, the accused can tailor his defence more to the situation and the procedure.

422. The Bill also makes a number of amendments to the operation of the Court of Assize, a matter which was the subject of some thought on the part of the Commission established in this regard. The Commission's proposals will be incorporated into Grand Franchimont.

ARTICLE 13

423. As well as the information given in Belgium's initial report (CAT/C/52/Add.2), a few comments should be added.

A. Impartial examination of a case /Right to lodge a complaint

424. The Standing Committee on the Supervision of the Police Services (Committee P), which was described in detail in paragraphs 262 to 285 of this report, deals with complaints and reports of police misconduct it receives with respect to operations, response, action or inaction of police services and their members. Intervention by Committee P in the handling of complaints and reports of misconduct relates as a matter of priority to complaints and reports which fall within the scope of the Committee's key activity. Thus, first and foremost, Committee P examines complaints about the performance of police duties relating to structural problems which are linked to the way effectiveness, efficiency and coordination are achieved, and the way in which basic rights and freedoms are respected. Where complaints or reports of misconduct submitted to the Committee do not fall within its key area of activity, the Committee sees to it that they are dealt with by the most appropriate department.

425. The position of Committee P as an external, independent police supervisory body means that the police do not investigate their own shortcomings themselves.

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g) A copy of the judgment on the merits is to be communicated free of charge to the parties and their lawyers within five days of delivery.

h) Obligation to join proceedings in the event of complicity or where offences are closely linked.

i) The rights of victims and persons who have declared themselves injured as provided for in the 1998 Act are reiterated and extended.

426. Any citizen directly affected by police action may lodge a complaint or report of police misconduct, or pass on any information to Committee P. Any police officer may lodge a complaint or report of misconduct without requesting authorization from their commanders or superior officers. In certain special instances, if the citizen expressly wishes, Committee P can guarantee his or her anonymity and is bound to take measures to ensure that this is done. In such cases, the person's identity may be revealed only within the Investigation Department or Committee P and, in exceptional cases, to the judicial authorities.

427. All complaints and reports of misconduct are handled on a case-by-case basis and Committee P, acting as a body, reaches a decision after studying or investigating the merits. In the event of a violation or manifest error, proceedings are brought before the courts and/or disciplinary authorities whenever required. The results of the various investigations or studies allow Committee P both to target the improvements which should be made in certain areas of infrastructure and structure, to influence the conduct of individuals through their superiors and overall to make recommendations to all component parts of the integrated police service and the police corps or services or services with police powers.

428. Faced with facts which could amount to a breach of discipline, article 26 of the Act of 13 May 1999 concerning the disciplinary statute for police service staff confers upon Committee P the right to give instructions through its Chairman. Thus, when the Chairman of Committee P informs the disciplinary authority of facts which may amount to a breach of discipline, the disciplinary authority is required to examine whether those facts are indeed such as to merit disciplinary proceedings. Moreover, the disciplinary authority is required to inform the Chairman of Committee P of the action taken in the light of the information supplied by him. This does not mean that the disciplinary authority is bound to impose a penalty; it must however establish whether the facts alleged may entail disciplinary proceedings and subsequently communicate its decision. Where the ordinary disciplinary authority takes the view that the claims are not such as to merit disciplinary action, the Chairman of Committee P may bring the matter before the higher disciplinary authority which, in its turn, will be required to carry out an investigation.

B. Protection of witnesses

429. Protection of witnesses, especially witnesses to acts of torture, or degrading or inhuman treatment; the Witness Anonymity Act of 8 April 2002 provides that certain information concerning the identity of a witness or even his full identity may be kept secret both during the investigation stage and the criminal proceedings.

430. As regards the probative value of statements collected in this manner, there is provision to ensure that a conviction cannot be based "exclusively or conclusively" on witness statements obtained under full anonymity but that such statements must be "corroborated conclusively by other forms of evidence" (indent 3, art. 189 bis, Code of Criminal Investigation).

ARTICLE 14

A. Procedures for the grant of legal aid and judicial assistance

431. A Bill amending the Judicial Code as it relates to judicial assistance and legal aid was tabled in Parliament on 22 December 2005. The key themes of the Bill are as follows.

Simplification of procedures for the grant of judicial assistance.

432. Judicial assistance is currently provided at the end of a particularly cumbersome procedure: in principle it requires summonsing the opposing party, attempting reconciliation and the opinion of the public prosecutor on the claimant's financial situation. Moreover, the procedure is rarely implemented by judicial assistance boards.

433. It also has other disadvantages, namely:

a) The *inter partes* nature of the award procedure raises an issue with regard to privacy: the weaker party must give an account of his financial situation to his future adversary;

b) The requirement for the judicial assistance board to obtain the opinion of the prosecutor is another formality which bogs the procedure down without making it any more efficient or effective: it involves making a member of the prosecution authorities available for each of the board hearings let alone the time spent, albeit brief, in preparing for them.

434. The draft law proposes doing away with appearances by the parties and the prosecutor's opinion. In future the court alone will make a decision on the basis of evidence of the applicant's financial position in accordance with the regulations currently governing such evidence.

435. Additionally, the petition will be replaced with a simple written application, or even an oral application to the Registrar. Where the application is made in writing it will have to incorporate at the very least the elements set out in a standard form which will be brought into general use shortly.

Improving access to justice in cross-border matters

436. The Bill provides for the drawing up of common rules to facilitate the award of judicial aid to any persons lacking sufficient resources to enable them to contest a dispute with a resident of another State of the European Union.

Increase in the number of measures covered by assistance

437. The draft law provides for extending the measures covered by judicial assistance: the cost of travel, translation and interpreting services may now be covered in a cross-border case where the costs in question are the result of an appearance in person or the lodging of evidence required by law or the courts.

Making applications for judicial support

438. To make an application for judicial support, a foreign claimant can currently apply directly to the competent legal aid or judicial assistance board. To simplify the steps a foreign applicant must take, he will also be allowed to submit his application to the competent authorities of the State where he is resident or directly to the SPF Justice which will direct him towards the body with jurisdiction there.

439. Applications made in Belgium for assistance abroad will be centralized by the SPF Justice which will have any necessary translations done and will transmit applications to the competent authority of the receiving State.

440. In order to simplify the exchange of information between the authorities of the various States as much as possible, those authorities will use a standard form which will be put into general use for all applications for judicial assistance.

B. Financial support for victims of deliberate acts of violence

Recap: the Financial Support Board for the Victims of Deliberate Acts of Violence

Legal status

441. The legislative provisions on financial support for victims are contained in articles 28 to 41 of Chapter III of the Fiscal and Other Measures Act of 1 August 1985. That Act was amended by the Acts of 24 August 1991, 24 December 1993, 17 and 18 February 1997, 24 December 1993, by the Financial Assistance Board for the Victims of Deliberate Acts of Violence (Conditions of Awards) Act of 26 March 2003, by the Financial Support Board for the Victims of Deliberate Acts of Violence (Composition and Operation) Act of 22 April 2003 and the Programme Act of 27 December 2004. The aim of these legislative amendments is both to increase the maximum amount of emergency support and expand the Board's accessibility.

Content

442. Where damage cannot be repaired effectively and sufficiently by the perpetrator or the person with civil liability, by a social security system or by private insurance or by any other means, the Financial Support Board for the Victims of Deliberate Acts of Violence may award financial support to:

a) Persons suffering significant physical or mental harm as the direct result of a deliberate act of violence.

b) The relatives of a person or persons in a lasting family relationship with a person whose death is the direct consequence of a deliberate act of violence.

c) The father and mother of a minor or the persons caring for a minor who, following a deliberate act of violence, requires lengthy medical treatment or therapy.

d) The relatives in the second degree of a victim or relatives who lived in a lasting family relationship with a victim who disappeared more than one year previously whose disappearance is due in all probability to a deliberate act of violence.

443. The financial support referred to in article 31 of the Act is awarded in the following circumstances:

a) The act of violence was committed in Belgium. An act committed abroad where the victim is a person serving under orders is treated as a deliberate act of violence committed in

Belgium as referred to in article 42(2) of the Act of 1 August 1985. The persons referred to in article 42 are:

[…]

2° (the) members of the State Security department external services at the Public Security authorities, Federal Public Justice Service;

3° (the) members of staff of the armed forces and civilian staff of the Ministry of Defence;

[…]

5° (the) members of the public fire services;

[…] .

b) At the time of commission of the act of violence the victim had Belgian nationality, the right to enter, reside temporarily or permanently in the Kingdom or has been subsequently awarded a permit granting him or her indefinite leave to remain by the Aliens Office as part of an investigation into trafficking of human beings.

c) A final judgment must have been given on the criminal charge and the applicant must have endeavoured to obtain compensation for his injury by suing for damages in the criminal prosecution, summoning the defendant directly or bringing an action in a civil court.

d) Where the prosecution is dropped because the alleged offender has not been identified, the Commission may consider that the applicant's filing of a complaint or the acquisition of the status of person injured is sufficient. Assistance may also be applied for where at least one year has elapsed since the commencement of the suit for damages in criminal proceedings and the offender's identity is still unknown.

444. Support is awarded on a case-by-case basis to individual applicants and is limited to a sum of 62 000 euros. That sum may be increased by Royal Decree which has been deliberated in the Council of Ministers.

445. The Act provides for emergency support where any delay in an aid award could cause significant harm to the applicant in the light of his financial situation and, where the damage becomes manifestly more serious after assistance has been given, the commission may grant further assistance.

446. We note also that the new Acts of 2003 and their implementing regulations have simplified the procedure to allow victims better access to financial support.

447. The new Acts of 2003 have also improved compensation and have extended the conditions of access to the Victim Support Board, especially for foreign nationals in the country unlawfully who are victims of human trafficking.

448. The Programme Act of 27 December 2004 has introduced a new category of people to whom financial support can be awarded, namely voluntary rescuers.

Accreditation of certain non-profit-making associations to support the victims of deliberate acts of violence

449. The Act of 25 April 2004[59] on the accreditation of certain non-profit-making associations to support the victims of deliberate acts of violence (*Moniteur belge*, 7 May 2004) provides for the Minister of Justice to accredit one or more associations in each judicial district whose charters state that their object is: to provide victims of deliberate acts of violence with all useful information on the procedures and means of defence provided for in law in the event of harm resulting from an act punishable under criminal law; to help victims comply with the measures and steps they must take to assert their rights, except for any intervention before the judicial investigation or trial bodies; to cooperate with the public bodies with responsibility for helping or accommodating victims; and finally, to help increase public knowledge and understanding of the structures and operation of the judiciary and the police. The Minister of Justice draws up a single report on the basis of reports drafted each year by the accredited associations.

C Support for victims from the prosecuting authorities

Overview

450. Article 3 *bis*, first indent, of the Preliminary Title of the Code of Criminal Procedure provides that the victims of offences and their relatives must be treated correctly and conscientiously, in particular by providing them with all necessary information and where appropriate putting them in contact with specialists, especially legal assistants.

451. Since February 1996 the Minister of Justice has operated a reception service for victims in each public prosecution office.

Legal assistants for victim support

452. Article 3 *bis*, second indent, describes legal assistants as members of staff of the Legal Advice Centres Department who assist the competent judges in guiding individuals involved in legal proceedings. The judge is the main person responsible. The essential tasks of legal assistants are set out below:

a) Heighten awareness in the prosecution offices and the courts;

b) To report, make proposals;

c) Provide a welcome and information during proceedings;

d) Provide assistance at certain stages of the proceedings including the questioning of victims, inspection of the criminal file, during court hearings, at the reconstruction, when last respects are paid to a deceased person;

e) Make dispatches to and cooperate with local services;

[59] A Royal Decree which has not yet been adopted is required in order for the Act of 25 April 2004 to enter into force.

f) Carry out special duties in the enforcement of sentences.

Status of legal assistants

453. Since July 1999 legal assistants have been part of the staff of the Legal Advice Centres Department (SPF Justice).

Assistant legal advisers for victim support

454. Assistant legal advisers under the authority of the Regional Director have responsibility for victim support and work in close cooperation with the Prosecutor General at the Court of Appeal; they assist him in drafting a consistent, uniform policy for victim support to be followed by all members of staff in the Public Prosecution Offices in the area.

455. The key duties of assistant legal advisers include:

a) Coordination and opinions;

b) Supporting and monitoring legal assistants with responsibility for victim support.

456. Legal advisers and, more particularly, coordinating assistant legal advisors who oversee the exchange and communication of information between assistant legal advisers, the SPF Justice and the Prosecutors' Association play a crucial role in the communication of information and the harmonization of practice within the various public prosecution authorities.

Liaison Magistrate

457. A Liaison Magistrate responsible for policy towards victims has been appointed in the prosecution services, both at the court of first instance level and the Court of Appeal level.

458. By delegation he has responsibility for correct policy towards victims in the prosecution authorities or the General Public Prosecution Office. His role is that of "privileged intermediary" and he is the link with other bodies such as judges and the Bar.

Prosecutors' Association

459. The Association is under the authority of the Minister of Justice. The decisions of the Association are binding on prosecutors-general and on all members of the Public Prosecutor's Office.

460. Among other things, the Association takes all measures necessary to ensure the consistent implementation and coordination of policy towards victims within the courts and the prosecution service.

461. The Prosecutor-General at the Court of Appeal, Brussels, has special duties in the field of policy towards victims. He submits a report to the Minister of Justice every year.

Legal Advice Centres

462. Each judicial district has a Legal Advice Centre. Apart from supporting victims (see para. 453 above), the role of the Centres is as follows:

a) Civil law duties, especially as part of proceedings on the exercise of joint parental authority and the right to a personal relationship with one's child;

b) Duties in the field of criminal mediation, a voluntary procedure aiming to resolve a dispute through compensation for a material, moral or emotional injury without the intervention of a court;

c) Criminal law duties, especially in surveillance and guidance to a prisoner who has been conditionally released through the drafting of social investigation reports and guidance;

d) Front-line legal assistance and social support tasks through the communication of information and, if necessary, directing people (in their capacity as private individuals or professionals) to the appropriate department.

Training of judges

463. Since 1997, special training on the place of the victim in criminal proceedings has been part of the training programme for judges. Other training programmes have also been held on subjects such as physical and sexual violence against women and children, implementation of the Franchimont Act, combating racism (see also the comments on article 11, paras. 190 to 398 below).

D. Special cases – Right redress of persons unlawfully deprived of their liberty (unlawful arrest or detention /or "inoperative" or wrongful detention)

464. The Act of 31 May 2005 amended the Compensation for Inoperative Pre-trial Detention Act of 13 March 1973, the Pre-Trial Detention Act of 20 July 1990, and certain provisions of the Judicial Investigation Code (*Moniteur belge,* 16 June 2005).

465. In its judgment of 26 November 2003, the Court of Arbitration was of the view that article 28(5) infringed articles 10 and 11 of the Constitution because it provided that the time-limit for appealing the Minister's decision begins to run as from the moment when the decision is taken and therefore does not take account of the time needed to communicate that decision to the party concerned. By reason of that fact, the provision establishes a difference in treatment as between individuals depending on whether they bring an appeal before the court in question or before courts where the time-limit for the appeal would not begin to run before the individuals had had knowledge of the decision. The current provision therefore restricts the time available to these people to lodge an appeal. The Court of Arbitration therefore took the view that: By failing to take into account the time necessary to communicate the decision of the Minister to the parties concerned and by thereby reducing by that amount, for no relevant reason, the time available to them to prepare an appeal which is to be brought within the relatively brief period of time laid down by the legislator with the aim of 'providing a rapid resolution in circumstances which require urgent intervention' (Doc. Chambre, 1968-1969, n° 472/1, p. 8), the contested provision disproportionately prejudices the rights of the parties concerned.

466. In order to put an end to that discrimination the law therefore provides for the amendment of the indent in question of article 28, paragraph 5 such that the time-limit for bringing an appeal begins to run only as from when the decision of the Minister has been served.

467. Finally, the Committee will find a figure in the annex for the number of people who, following an application or appeal based on the provisions referred to here, have been the subject of a decision to award compensation.

E. Psychosocial support to victims

468. Victim support means psychosocial or therapeutic assistance. That assistance falls within the remit of the Communities.

469. In the Flemish Community, victim support is an additional task performed by the autonomous general social support centre for the judicial district.

470. Victim support is intended for victims (and their relatives) of material, physical and/or non material damage occurring as the result of an offence or by consequence of witnessing an offence. Victim support is also aimed at the relatives of fatal accident victims, the relatives of suicide victims, and to witnesses to suicide. This support requires a holistic approach at all stages of the legal proceedings with special attention being paid to the police-related, legal, administrative and psychological aspects as well as the way those aspects link together.

471. The task of supporting victims is assigned to social support services accredited by the Walloon Region. The services are open to victims of offences of all types and victims are directed there by the police or staff of the prosecution service and the courts; they are also open to people who approach the centres directly. They provide their services free of charge and on a non-discriminatory basis. Support for individuals comprises social support (information, help in taking necessary steps in proceedings) and psychological support focused on the direct and indirect consequences of becoming a victim and coming to terms with the upset caused by the experience.

ARTICLE 15

472. It should be noted that in criminal matters any form of evidence is admissible provided it had been investigated and produced following certain methods and in line with certain rules.

A. Exclusion of unlawful evidence

473. Evidence is illegal not only if it is obtained by an act explicitly prohibited by law (threats, corruption, etc.), but also if it is obtained by an act not consistent with the substantive rules of criminal procedure or the general principles of law, and specifically the right to a defence.

a) Evidence which is inadmissible by its very nature: a confession obtained following the use of violence, including torture or inhuman or degrading treatment, or threats or corruption.

b) Evidence which is inadmissible by reason of the conditions in which it was gathered: police provocation, evidence collected in breach of professional secrecy, unlawful searches or seizures of property, etc.

c) Evidence which is inadmissible by reason of the way it is handled in court: evidence must be subject to discussion by both parties.

B. Probative value

474. The trial and appeal courts assess the probative value of the evidence on which their decisions are based (this principle is enshrined in article 542 of the Code of Criminal Investigation).

Confessions

475. Confessions have for a long time been considered the highest form of evidence. Legal psychology teaches us, however, that confessions are not a decisive form of evidence. They may, for reasons of circumstance such as the length of an interrogation, have no probative value.

476. Confessions have no special probative value. A confession can be freely retracted.

ARTICLE 16

477. All the information contained in the initial report (CAT/C/52/add.2, paras. 386 to 393) can now be presented as having become the Act of 14 June 2002, inserting articles 417 *bis* to 417 *quinquies* into the Penal Code and amending certain articles. However, the definition of the acts, now given in article 417 *bis*, still requires amendment (initially the definitions were set out only in the explanatory memorandum), and this explains the changes in numbering of the articles as compared with the Bill:

a) Article 417 *bis*: definitions,

b) Article 417 *quater*: characterization of inhuman treatment as an offence (and applicable penalty + superior orders or orders from a higher authority)

c) Article 417 *quinquies*: characterization of degrading treatment as an offence (+ applicable penalty)

II. COMPLIANCE WITH THE CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTEE

478. The measures set out below are a response to the conclusions and recommendations made by the Committee following its consideration of the initial report (CAT/C/CR/30/6).

A. The definition of torture (CAT/C/CR/30/6, para. 6)

479. The definition contained in the new article 417 *bis* of the Penal Code adequately incorporates article 1 of the Convention. That article defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such

pain or suffering I inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

480. The definition contained in the Belgian Penal Code refers to severe pain or very serious and cruel suffering, whether physical or mental. It therefore covers the behaviours referred to in the Convention and even goes beyond it as it does not require the torture to be committed by an agent of the State or for its having a clearly defined purpose (the Convention refers inter alia to obtaining a confession).

481. The Belgian authorities are of the view that there are three factors which offset the risk of the offence becoming trivialized and the lack of a differentiation in the penalty depending on when the act was carried out by an official authority.

a) The power of discretion of the court in the determination of the penalty having regard in particular to the aggravating circumstance set out in article 417 *ter*, indent 2, 1° of the Belgian Penal Code. Under that provision, rigorous imprisonment of between 15 to 20 years may be imposed if the offence is committed by a public officer or official, an agent or officer of the police acting in the line of duty.

b) The wider application here – in accordance with article 1(2) of the Convention is to the advantage of victims, who will be able to obtain retribution, redress and compensation in all instances of torture and inhuman or degrading treatment regardless of the capacity in which the offender was acting.

c) Finally, the consequences of the act for the victim are so serious that they must be taken into consideration regardless of the capacity in which the offender was acting.

B. Clarification of the concept of a "manifestly unlawful order" (CAT/C/CR/30/6, para. 7 *a*)

482. After publication of the Committee's recommendations a working group met to consider them. After consulting the Prosecutors' Association and the federal police it became apparent that there was no need to amend domestic law.

483. The Act of 14 June 2002 inserted article 417 *ter* into the Penal Code making acts of torture an offence. The second indent of that article explicitly states that: An order from a superior or from a public authority cannot justify the offence provided for in the indent above.

484. Moreover, it should be noted that the principle whereby a police officer cannot use an order from a superior officer as a means of escaping prosecution for a violation of someone's basic rights is set out in the provisions on the exercise of authority.

485. The exercise of authority within the integrated police is governed by article 120 of the Act of 7 December 1998 which states that authority must always be exercised within the limits of the powers set out in the legislative, contractual or regulatory provisions or in the orders for the service, whether they be standing or temporary orders.

486. Exercise of authority within the integrated police is also governed by the Royal Decree of 30 March 2001 determining the legal status of members of the police services (Part III, Title II). With regard to orders it states that orders from members of staff who exercise authority under the law must always aim to perform police duties correctly and ensure the proper operation of the service. Orders must moreover be lawful, appropriate and proportionate to the objective they are seeking to achieve. It must be possible to carry them out with regard to rules of ethics. A superior who issues an order is bound to supply any additional information necessary for its proper implementation.

487. Where the receipt and implementation of orders is concerned a subordinate is supposed to carry the orders out properly having regard to the instructions supplied to him to that end. He may if necessary request additional instructions. Where a member of staff receives an unlawful order, he must immediately communicate his intention not to carry it out to the superior who gave the order or to his superior's superior officer.

488. The Act determining the legal status of members of the police services of 13 May 1999 goes even further. It clearly states in article 8 that a manifestly unlawful order may not be carried out.

489. The cumulative effect of these provisions is such as to make it unlikely for a police officer to hide behind an order given by a higher-ranking police officer or police official which might at least have an air of unlawfulness about it. However, even where there are doubts, the subordinate always has the option to obtain additional information to clarify the true nature and character of the order.

490. Finally, it should be noted that as far as the military forces are concerned, article 11 of the Armed Forces (Disciplinary Regulations) Act of 14 January 1975 states that "An order may not however be implemented if implementation may manifestly involve the perpetration of a crime or an offence". That principle was reaffirmed in the new regulations on internal discipline, Ed 01, 23 August 2005.

C. Inclusion in the Penal Code of a provision expressly prohibiting the invocation of a state of necessity to justify the violation of the right not to be subjected to torture (CAT/C/CR/30/6, para. 7 *b*)

491. The draft law inserting a new indent into article 417 *ter* of the Penal Code was approved by the Council of Ministers on 27 May 2005. The Council of State delivered its opinion on 21 November 2005. The Bill was adopted by the Chamber of Representatives on 20 April 2006.

492. In accordance with this recommendation the Act makes it impossible in law to invoke a state of necessity to justify torture.

D. Respect for the principle of the independence of Belgian courts (CAT/C/CR/30/6, para. 7 *f*)

493. Respect for the principle of the independence of Belgian courts from the executive branch where the exercise of universal jurisdiction in relation to serious violations of international humanitarian law is concerned, is ensured by the legislative reform of August 2003. In contrast to the system under the Act of 23 April 2003, which was repealed by the Act of 5 August 2003,

the new provisions of criminal procedure do not give any power to the Minister of Justice. In the event of the application of article 12 *bis* of the Preliminary Title of the Code of Criminal Procedure, which contains a general provision conferring competence on Belgian courts to hear all cases where an international convention contains a mandatory rule for the extension of the competence of the courts of the States parties, it is for the Federal Prosecutor to examine whether the conditions set out in article 12 *bis* have been satisfied before requesting the investigating magistrate to investigate the matter. Specifically, the matter will be the subject of investigation unless:

a) The complaint is manifestly unfounded; or

b) The acts set out in the complaint do not qualify as an offence as referred to in Book II, Title I *bis* of the Penal Code, or to any other international offence deemed as such under a treaty binding upon Belgium; or

c) The complaint cannot give rise to any admissible public prosecution; or

d) On the basis of the specific circumstances in the matter it is clear that in the interests of the proper administration of justice and in compliance with Belgium's international obligations, the matter should be brought either before an international court or before a court in the place where the facts occurred or before the courts of the State of which the perpetrator is a national or those of the place where he is present, provided that that court displays the qualities of independence, impartiality and equity resulting *inter alia* from the relevant international commitments binding on Belgium and that State. If the Federal Prosecutor decides to take no action on a matter, he must inform the Minister of Justice of that decision noting the points set out in the subparagraph above on which his decision is based. If the decision to take no action is based solely on points 3 and 4 above or solely on point 4 above and the acts took place after 30 June 2002 and fall within the material jurisdiction of the International Criminal Court, the Minister of Justice must inform the International Criminal Court of those acts.

494. Any intervention on the part of the Minister of Justice is restricted to informing the International Criminal Court, in his capacity as the central liaison authority between Belgium and that Court, of the fact that the Belgian judicial authorities have decided not to take action in a matter that may lie within the Court's jurisdiction.

495. A Bill further amending article 12 *bis* by strengthening the independence of the courts in relation to the executive was adopted by parliament on 11 May 2006. The amendment provides that the decision to take no action on one of the first three grounds listed above will in future be a matter for a court (Indictments Chamber, with possible appeal to the Court of Cassation) upon request of the Federal Prosecution Service; it will no longer be a decision for the General Prosecutor.

E. Right of detainees to have access to a lawyer and a doctor of their choice, and to be informed of their rights in a language they understand (CAT/C/CR/30/6, para. 7 *g*)

496. It should be noted that under Belgian law, people may be deprived of their liberty in several ways. They may be placed under judicial arrest pursuant to the Pre-Trial Detention

Act of 20 July 1990 and under administrative arrest pursuant to the Police Functions Act of 5 August 1992.

Judicial custody

497. The Grand Franchimont study was the subject of the Proposal 3-450 for an Act setting out the Code of Criminal Procedure, adopted by the Senate of Belgium and referred to the Chamber of Representatives, having become the Bill setting out the Code of Criminal Procedure (Doc.51-2138/001). The Bill, which is currently undergoing scrutiny by the Chamber of Representatives, sets out certain provisions on the rights referred to by the Committee and set out the Concluding Observations of the Human Rights Committee (CCPR/CO/81/BEL).

498. Chapter 4 (on Pre-trial Detention), Section 1(on arrests) of the Bill reads as follows:

> Article 249: The arrest of someone in the act of committing a felony or misdemeanour is subject to the following rules:
>
> "a) Deprivation of liberty may in no circumstances exceed twenty-four hours;
>
> b) Law enforcement officers shall immediately place any suspect whose escape they have prevented at the disposal of the senior law enforcement officer. The twenty-four hour time limit referred to in the preceding subparagraph shall run as from the time when the arrestee, following the intervention by the law enforcement officer, is no longer free to come and go;
>
> c) Any private citizen who detains a person in the act of committing a felony or misdemeanour shall immediately report the circumstances to a law enforcement officer. The twenty-four hour time-limit provided for in the first subparagraph shall run as from the time of that report;
>
> d) As soon as the senior law enforcement officer has made an arrest he shall immediately so inform the Pubic Prosecutor's Office using the quickest means of communication. He shall implement the instructions given by the judge in terms of deprivation of liberty and duties to be performed;
>
> e) If the offence is the subject of a preparatory inquiry, the information provided for in the 4th subparagraph above shall be communicated to the investigating magistrate;
>
> f) The detainee may notify a relative or a third party of his choice that he is under arrest using the most appropriate means of communication. However, where there are grounds for suspecting that the notification may lead to collusion between the detainee and the person he is notifying, the magistrate who handed down the decision to detain the prisoner shall entrust the judicial police officer to make the notification himself;
>
> g) The detainee is entitled to request an examination by the doctor of his choosing. Where the detainee does not have the means to pay, the doctor's fees shall be charged to legal costs;

h) A detainee who is deprived of his liberty for more than eight hours or who when deprived of his liberty must spend the night in a holding cell before being brought before the judge, may ask to be visited by his lawyer or by designated counsel;

i) A record of arrest shall be drawn up. That record shall state:

(i) The exact time when deprivation of liberty occurred, with a detailed note of the circumstances in which the deprivation of liberty was carried out;

(ii) The notifications made pursuant to the 4th and 5th subparagraphs above, with a note of the exact times and the decisions made by the judge;

(iii) The information provided to the detainee on the rights provided for in the 6th, 7th and 8th subparagraphs above, and on the rights provided for in article 86; he shall also be informed that he shall appear before an investigating magistrate within a maximum of twenty-four hours of the time he was deprived of his liberty unless he is released in the meantime. A copy of the record shall be given to the detainee either immediately or upon service of the arrest warrant, along with a copy of the record of his hearing before the investigating magistrate and a copy of the other documents provided for in article 263(7). The original copy of this record shall be kept in the file. The file shall also note the completion of duties in relation to deprivation of liberty and any special circumstance which occurs during the period of detention".

Article 250: Apart from persons who are apprehended in the act of committing a felony or a misdemeanour, a person in respect of whom there is solid evidence of culpability of a crime or an offence may be placed at the disposal of the courts for a period of time not exceeding twenty-four hours pursuant only to the following rules:

a) The decision on detention may be taken only by the Public Prosecutor's Office;

b) Where the person concerned attempts to flee or to escape custody of a law enforcement officer, interim measures may be taken pending a decision by the Public Prosecutor's Office, who shall be immediately informed by the most rapid means of communication;

c) The decision to make an arrest shall be immediately notified to the party concerned. Such notification shall comprise verbal communication of the decision in the language of the procedure and shall be confirmed by the record provided for in the 7th subparagraph;

d) The detainee may notify a relative or a third party of his choice that he is under arrest using the most appropriate means of communication. However, where there are grounds for suspecting that the notification may lead to collusion between the detainee and the person he is notifying, the magistrate who handed down the decision to detain the prisoner shall entrust the judicial police officer to make the notification himself;

e) The detainee is entitled to request an examination by the doctor of his choosing. Where the detainee does not have the means to pay, the doctor's fees shall be charged to legal costs;

f) A detainee who is deprived of his liberty for more than eight hours or who when deprived of his liberty must spend the night in a holding cell before being brought before the judge, may ask to be visited by his lawyer or by designated counsel;

g) A record of arrest shall be drawn up stating:

(i) The decision and measures taken by the Public Prosecution Office and the manner in which they were communicated;

(ii) The date and time when deprivation of liberty occurred, with a detailed note of the circumstances in which the deprivation of liberty was carried out;

(iii) The date and time when the person concerned was notified of the decision to arrest him.

(iv) The information provided to the detainee on the rights provided for in the 6th, 7th and 8th subparagraphs above, and on the rights provided for in article 86; he shall also be informed that he shall appear before an investigating magistrate within a maximum of twenty-four hours of the time he was deprived of his liberty unless he is released in the meantime. A copy of the record shall be given to the detainee either immediately or upon service of the arrest warrant, along with a copy of the record of his hearing before the investigating magistrate and a copy of the other documents provided for in article 263(7). The original copy of this record shall be kept in the file. The file shall also note the completion of duties in relation to deprivation of liberty and any special circumstance which occurs in the course of detention.

h) The arrestee or detainee shall be released as soon as the measure ceases to be necessary. Deprivation of liberty may in no circumstances exceed twenty-four hours calculated from notification of the decision or, where interim measures are taken, calculated from the time when the person is no longer free to come and go;

i) Where a matter is referred to the investigating magistrate, he shall exercise the powers conferred on the Public Prosecutor's Office under the present article.

Administrative custody

499. Administrative arrest may last for a maximum of 12 hours and is entirely under the authority of the administrative authorities.

500. Partly because of the remarks and recommendations of international bodies, the Belgian Government has been swayed to the view that the rights of persons deprived of their liberty should be harmonized as far as possible.

501. A draft Act amending the Police Functions Act is currently before the Minister of the Interior. It sets out various proposals for amending the Police Functions Act with regard to administrative arrest and some aspects of judicial arrest which form part of the duties of the police service.

F. Modernizing prison law (CAT/C/CR/30/6, para. 7 *h*)

Legislative developments:

502. The Act concerning the principles of the administration of prison establishments and the legal status of detainees which was adopted on 12 January 2005 (*Moniteur belge*, 1 February 2005). The Act, which establishes the internal legal status of detainees (rights and duties) includes:

a) Provisions on the regime for detainees: physical living conditions, community living conditions, contacts with the outside world (correspondence, visits, telephone usage, contact with the media), religion and philosophy, training and leisure activities, work, health care and health protection, social support, judicial assistance and legal aid.

b) Provisions on the disciplinary regimes: list of disciplinary offences and penalties, introduction of proceedings involving the participation of both parties.

503. The introduction of a complaints procedure; complaints are dealt with by independent bodies (local commissions and the central supervisory council of the prison administration).

504. The Act is the product of a protracted labour and meets a genuine expectation. Its entry into force will be the culmination of much work: drafting of numerous decrees, staff training and recruitment, expenditure on infrastructure requiring new funds. It proved necessary to establish priorities and plan its introduction. Eight working groups have been set up, four of which are responsible for fleshing out four areas of law which could be described as pillars.

Use of restraints

505. The Act provides a vital frame of reference: it not only defines order and security but also the means of achieving them, as well as the duties incumbent on individuals as part of a philosophy of control where each side draws on the other. The use of restraints is a physical reality in prison. The working group has been asked to propose an information policy as well as a "practical code on the use of restraints in prison" drawing on the basis of the experience of people on the ground, best practice by other bodies (police, psychiatric hospitals), and training (theory and practice).

Drafting of internal rules (ROI)

506. The ROI organize daily life in prison and lay down the rules which must be obeyed by detainees. They are an absolutely essential tool for applying the Act. The group will have to design ROI in accordance with all Chapters of the Act which enter into force.

Preparation for setting up consultative bodies

507. This is another priority as it is part of a fundamental principle of the Act, namely introducing a culture of respect between individuals living in prison, training by prisoners and the performance of duties and obligations.

The detention plan and the preliminary investigation stage

508. These are at the heart of detention management, the corner-stone. They will accompany the prisoner throughout his incarceration to give him direction and ultimately result in successful reintegration.

509. The articles of the Act on practising a religion or non-confessional morality entered into force in November 2005 on the heels of the entry into force of the Royal Decree accrediting prison chaplains and moral counsellors.

510. On 10 December 2004 the Council of Ministers approved the draft law establishing a Sentencing Court and the draft law on the external legal status of detainees. Both Bills are under discussion in Parliament.

511. The two draft laws are closely linked: it makes no sense to establish a judicial body to rule on the methods of implementing a penalty if there is no strict legal basis for those methods. The establishment of a Sentencing Court will involve a further division of powers between the executive and the judiciary so as to comply with the principle of separation of powers.

512. The main theme of this new division is as follows: decisions likely to make a substantive change in the nature of the penalty fall within the remit of the judiciary. The proposal is to leave the Minister of Justice with the power of decision in the following matters:

a) Day-release permit, in other words authorization for the detainee to be absent from the prison for one day at most on a regular basis (to prepare for release) or occasionally (to fulfil family, legal, medical obligations, etc).

b) Prison leave, namely the opportunity for the detainee to be absent from prison with one night outside (maximum of three days every three months).

c) Suspension of penalty, which may be granted for a renewable period not exceeding three months where the detainee has to contend with serious and exceptional family events which require him to be outside prison.

513. The Minister will make a decision on the basis of the application made by the prisoner and the case-file drawn up by the governor. He must communicate his decision within 14 days of receipt of the case-file.

514. The Sentencing Court will in future be the only body with jurisdiction to make a decision on applications for the following:

a) Restricted detention, a unique form of detention combining the current semi-liberty and semi-detention measures: the prisoner is authorized to leave prison regularly for

predetermined periods not exceeding 12 hours (as preparation for conditional release or for professional, training or family reasons).

b) Electronic surveillance, in other words house arrest under electronic surveillance: the prisoner is not incarcerated but his freedom to come and go is supervised according to a timetable drawn up in advance.

c) Sentencing Courts will rule on all forms of early release.

d) Decisions made by a Sentencing Court or another court may be appealed on points of law.

515. The Sentencing Court will monitor the enforcement of penalties. In that task it will use the reports of the legal assistants in Legal Advice Centres who supervise prisoners in the community.

516. By contrast, the Public Prosecutor's Office will have responsibility for supervising measures and may if necessary refer an application for review, suspension or revocation of the measure to the Court.

G. Combating prison violence effectively (CAT/C/CR/30/6, para. 7 *i*)

517. The issue of violence in prisons, regardless of its nature and its perpetrators (prisoners, staff, etc.), was the subject of a study by the Université Libre de Bruxelles and Vrije Universiteit Brussel between 1999 and 2000. The conclusions reached as a result of their research advocate an all-embracing approach to the problem given its many facets. Important aspects include the atmosphere within prisons (especially staff management aspects) and the development of a new philosophy towards the treatment of detainees (regime, penalties, control). The new Act concerning the principles of the administration of prison establishments and the legal status of detainees includes a set of principles which clarify and redefine elements peculiar to prison life including the regime, disciplinary aspects and use of restraints as viewed from a management perspective which seeks to build human relationships based on the principle of mutual respect. Article 7 of the Act provides for the establishment of a consultative body to allow detainees to give their views on issues of interest to the community. The Act is a further attempt by local and central bodies to reduce physical, mental and institutional violence in prison.

H. Improving the system of access to health care in prisons (CAT/C/CR/30/6, para. 7 *j*)

518. As far as qualified medical staff are concerned:

a) The number of hours allocated to general medicine, specialized medicine, dental care and nursing and paramedical care has mirrored the upward trend in the prison population.

b) As for recruitment, in most cases staff who have left have been replaced and the general staffing levels have been maintained and even increased.

Table 1: Access to health care in prison

	2001	2004
Number of hours of general medicine	1595/ month	1759/ month
Number of hours of dentistry	822/ month	874/ month
Number of hours of independent nurses	648/ month	866/ month
Statutory and contractual nurses	115 full-time equivalents	112 full-time equivalents
Number of hours of physiotherapy	No data available	Average 1h/ prisoner
Average prison population	8 600 prisoners	9 200 prisoners

I. Exceptional nature of the isolation of juvenile delinquents (CAT/C/CR/30/6, para. 7 *k*)

519. We refer to the information given in the second part of this report.

J. Improvements the system of prison supervision (CAT/C/CR/30/6, para. 7 *l*)

520. The Royal Decree of 4 April 2003 amending Royal Decree of 21 May 1965 on the general regulation of prison establishments (*Moniteur belge*, 16 May 2003) provided the Belgian State with a Central Supervisory Council for Prisons and Local Supervisory Commission. A Royal Decree of 29 September 2005 amended that decree and further increased the Council's and the Commissions' independence, transparency and professionalism.

521. The Council's tasks include carrying out independent monitoring of all aspects of the treatment of detainees, and respect for the rules in that regard. It also submits Opinions to the Minister of Justice either on its own initiative or upon a request from the Minister on the administration of sentences and the execution of penalties and custodial measures. It prepares an annual report for the Federal Legislative Chambers and the Minister of Prisons, the treatment of prisoners, respect for prisoner regulations and trends in the prison population. To help them in the performance of this task the members of the Council have free access to all prison premises and have the right to consult all books and documents related to the prison, including the register of disciplinary sanctions, and all documents containing personal information pertaining to prisoners, with the agreement of the prisoners concerned.

522. Supervisory Commissions have jurisdiction over one or more prisons and their task is to monitor all aspects of treatment of prisoners and respect for the prisoner regulations in the prison to which it is assigned. They submit Opinions and information in respect of the prisons within their remit to the Minister and the Central Supervisory Council for Prisons either on their own initiative or upon a request from the Council; these reports deal with all aspects of treatment of prisoners and respect for prisoner regulations; the Commissions also formulate any proposals they deem appropriate for the prisons within their remit.

523. There has also been an increase in references to the federal mediator. With the exception of the handling of complaints on a case-by-case basis, cooperation between the Federal Mediators' Association and the prison administrative authorities takes the form of meetings which allow the authorities to describe the difficulties it is encountering and to hear the mediators' recommendations and expectations with regard to better administration.

524. As regards the monitoring of prisons by external independent bodies, it should be noted that many authorities are empowered under supranational or national rules to carry out such monitoring; these include the CPT, the Federal Mediators' Association, the Centre for Equal Opportunities, the Federal Parliaments, the investigating magistrates, Province governors, Burgomasters, the Central Supervisory Council, and the Supervisory Commissions. These bodies have the necessary guarantees of independence and professionalism which cannot always be established for non-governmental organizations.

K. Training of prison administrative staff (CAT/C/CR/30/6, para. 7 *m*)

525. It should be noted that in its proposal for a resolution of 27 October 2004 on the establishment of initial and in-service training for prison officials (Doc.51-1416/001)[60], the Chamber of Representatives asked for:

a) A comprehensive plan reforming the training policy for prison administration staff to be drawn up as soon as possible;

b) The possibility to be examined of establishing one or more institutions offering initial or in-service training courses along the lines of the French National Prison Administration School or based on the training programmes created for police officers as part of the police reforms, namely basic training, further training or training for promotion;

c) The funding required to implement training worthy of the name to be identified.

526. Where the training of prison staff is concerned the direction taken has been towards education in human rights, which runs through all training programmes rather than training focusing on the prohibition of torture as such.

527. An important training plan on the management of conflict and violence in prison was launched in 2005: an awareness-raising session is proposed for prison governors, focusing on identifying situations likely to lead to conflict and violence; the programme will then expand to prison assistants (the highest-ranking supervisory staff) and heads of districts and in the latter stages will involve the other categories of prison officials.

528. In parallel with this, as from 2006 the initial training for officials will be increased from four to six weeks which should allow aspects related to respect for human rights to be gone into in greater depth from the very beginning of officials' time in post.

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[60] This proposal, which has not yet been adopted, was a response to the CPT recommendation to give high priority to developing initial and in-service training of prison staff.

529. See the comments by the Flemish Community annexed to this report.

L. Automatic inadmissibility of evidence obtained under torture (CAT/C/CR/30/6, para. 7 *n*)

530. We refer to the comments made in relation to article 15 of the Convention (paras. 472 to 476 above).

M. Dissemination of the Committee's conclusions and recommendations (CAT/C/CR/30/6, para. 8)

531. As far as the issue of public access is concerned, the United Nations is not alone in providing such access to Belgium's initial report and the Committee's observations on its Internet site: SPF Justice also makes it publicly available. Indeed the SPF site contains several human rights reports. For example, the report by Belgium submitted to the Committee on the Rights of the Child, the report by Belgium submitted to the Committee on Human Rights and of course the initial report by Belgium submitted to the Committee against Torture along with the Committee's conclusions and recommendations on that report, can be found on the site.

532. It should also be noted that several Belgian NGOs were involved in the exercise. Their assistance in the drafting stage also provided a degree of public access for the initial report by Belgium on the application of the Convention. Indeed, the draft report by the Belgian Government was notified to them in good time and as a result they drafted a counter-report. One delegation from an NGO also went to Geneva to be questioned by the Committee just before the initial report by Belgium was submitted.

PART TWO: ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE (CAT/C/CR/30/6, para. 9)

I. Functioning and supervision of prisons

532. The prisons administration does not currently have any statistics "on the functioning and effectiveness of the prison supervision system, prison violence and the effectiveness of the measures taken in that regard" requested by the Committee. However, as part of the Principles of Administration Act, various initiatives have been taken to improve this situation, including establishing a working group with responsibility for proposing mechanisms to measure the effectiveness of the Act on the ground. Moreover the Act provides for various registers to be kept which should allow an objective view of data to be taken. Similarly, the reports drawn up by the Supervisory Commissions and the record of complaints and action taken will give a more accurate idea of the situation.

II. Information on juvenile delinquents

In the French Community

Young people admitted to public institutions

533. The five public youth protection institutions in the French Community accommodate young people prosecuted for acts categorized as offences who are remanded there by the Youth Court pursuant to article 37, paragraph 2, indent 4, of the Youth Protection Act of 8 April 1965, as amended by the Act of 2 February 1994, and in accordance with article 16, indent 2 and article 18 of the Decree of 4 March 1991 on Young People, as amended by the Decree of 19 May 2004.

534. There are three public institutions (or IPPJs) which operate under a closed regime: one for girls, in Saint Servais, and two for boys, in Fraipont and Braine-le-Château.

535. Since 1 March 2002 these five public institutions have been joined by the Everberg Centre which is co-managed by the Federal Justice Service, the Flemish Community and the French Community. The teaching staff – management, administration, care, psychosocio-medical staff, are recruited by the Communities. The breakdown of capacity of the institutions is as follows:

a) Boys:

   (i) Braine- le- Château (closed institution) has 30 places (3 x 10 places) plus 3 emergency places in the care sections. Since 9 April 2004, a new, short-stay section with ten extra places has been set up;

   (ii) Fraipont (closed section: SOORF) has 10 places plus one emergency place;

   (iii) Everberg: 26 places;

b) Girls:

   i) Saint Servais has four places plus one emergency place.

Table 2: Number of young people remanded to closed institutions

	2000	2001	2002	2003	On 30 October 2004
Braine-le-Château	56	63	90	69	122
Fraipont	39	37	37	31	31
Saint Servais	32	39	39	35	29
Everberg	0	0	121	303	256

Age of the young people.

536. Pursuant to the final subparagraph of article 37(2) of the Youth Protection Act of 8 April 1965, access to public youth protection institutions (IPPJ) is reserved for young people aged over 12 years except in very exceptional circumstances.

537. The educational projects of the IPPJ also state that:

a) Under the Youth Protection Act of 8 April 1965 access to supervised public observation and care institutions is except in very exceptional circumstances reserved for young people aged over 12 years .

b) The full significance of the phrase "except in very exceptional circumstances" which allows a judge to remand a young person aged under 12 years to an IPPJ must be considered. It is clear that the legislator wished to prevent the formation of groups of young people who were too disparate in terms of their ages. It is not appropriate for children to be placed in groups with youths well into adolescence.

538. Finally, the educational projects of the closed institutions (or sections) also recommend against young people aged under 14 years being placed there.

539. The Act of 1 March 2002 establishing the Everberg Centre refers to young people aged over 14.

Table 3: Average age of young people remanded to a closed institution

	2000	2001	2002	2003
Braine-le-Château	16 years 6 months	16 years 6 months	16 years 4 months	16 years 11 months
Fraipont	15 years 8 months	15 years 8 months	16 years 7 months	15 years 3 months
Saint Servais	15 years 5 months	15 years 1 month	16 years 2 months	15 years months [sic]
Everberg	0	0	16 years 9 months	16 years 9 months

540. For Everberg, see in addition the data in the annex to this report.

Temporary isolation measures and the reasons for them

541. Pursuant to the French Community Decree of 4 March 1991 on Youth Support, as amended by the Decree of 19 May 2004, a measure to isolate a young person in specific premises may only be taken within an IPPJ where the young person concerned is a danger to himself or to the physical safety of other young people, staff or visitors.

542. The management must immediately inform the remanding authority or, in the absence of such an authority, the Crown Prosecutor of the isolation measure.

543. The isolation measure may not be extended beyond 24 hours without the agreement of the relevant court. The court must give reasoned confirmation in writing of the authorization to extend isolation for a period of time stipulated by it which may not exceed eight days.

544. One of the significant amendments introduced by the Decree of 19 May 2004 was to revoke the provision allowing isolation to continue beyond eight days.

545. The provision whereby the measure was able to be extended under the same conditions on the final day of the period initially provided for was revoked by the Decree of 19 May 2004 amending the Decree of 4 March 1991 on Youth Support; the new decree entered into force on 3 July 2004.

546. An isolation measure is lifted as soon as the situation giving rise to is discontinued. The Governor of the institution notifies the remanding authority and the competent administration that the measure has been lifted.

547. An isolation measure does not deprive a young person of his rights even if the exercise of those rights must be tailored to the circumstances.

548. The French Community Government Decree of 21 March 1997 regulates isolation procedures in IPPJs, organizes supervision of those procedures and lays down the rules which apply to isolation areas.

Table 4: Number of young people made the subject of an isolation measure in IPPJs

	2000		2001		2002		2003		On 30/10/04	
	-24 h	+24 h	-24 h	+24 h	-24 h	+24 h	-24 h	+24 h	-24 h	+24 h
Braine-le-Château	27	3	51	17	42	13	53	11	30	3
Fraipont	2	0	9	0	3	0	8	0	7	0
Saint Servais	32	5	22	5	23	3	36	4	38	3
Everberg	0	0	0	0						

N.B.: Decisions on isolation measures at Everberg and their implementation fall under the exclusive authority not of the French Community but of the Management Committee composed of the Federal Management and the Communities Management teams (see information in the annex).

549. For Braine-le-Château, bear in mind that:

a) Capacity in 2000 was 20 places, one section of which was under renovation until June 2000;

b) Capacity was increased by ten places in March 2001.

In the Flemish Community

Young people remanded to public institutions

550. The Community institutions department comprises a central unit in Brussels and two external services[61], namely:

a) The "De Kempen" community institution for special youth support, based at Mol, comprising the "De Hutten" and "De Markt" institutions (accommodation for boys).

b) The "De Zande" community institution for special youth support based at Ruiselede, comprising one institution in Ruiselede (accommodation for boys) and one in Beernem (accommodation for girls).

551. Additionally, since 1 March 2002, the Community Institutions Department has also been responsible for educational support for boys remanded to the closed "De Grubbe" centre in Everberg.

Capacity

Open/closed

552. Some of the available capacity in the Community institutions department operates under an open regime and some under a closed regime.

553. Capacity is currently divided over the various sites as follows:

Table 5: Capacity of Community Institutions for special youth support

De Markt	De Hutten	Ruiselede		Beernem	
boys open	boys closed	Boys Open	boys closed	girls open	girls closed
62	40	54	26	0	40

554. In terms of content, the educational model in the community institutions is the same under the closed regime as under the open regime.

555. The distinction between open and closed regimes is expressly provided for in the regulations on remand to a Community institution. It is a matter for the Youth Court to make a clear choice in its ruling.

556. The concept of a closed establishment is defined in the preparatory work for the Act of 2 February 1994 amending the Act of 8 April 1965. In the explanatory memorandum, an

[61] The external services of the Community institutions department were organized under article 31 of the Decree on administrative policy of 12 December 1990.

establishment (or a section of an establishment) referred to in article 37, paragraph 2, indent 4 is deemed closed:

> "where it fulfils its task of supervised observation and care in the presence of sufficient guarantees which prevent the minor concerned from leaving the establishment." Apart from the number of abscondments, which is determined to a great extent by the infrastructure of the institution, the open/closed distinction has a bearing on other aspects. These relate to the structured nature of the care regime, the number of staff per peer group and the option of leaving the institution at regular intervals, such as for extra-mural education, leisure pursuits outside the institution, leave, […][62]

557. The Flemish Government Decree of 12 October 2001 laying down the capacity of community institutions for special youth support (*Moniteur belge,* 12 December 2001), was amended by the Flemish Government Decree of 7 November 2003 and by the Flemish Government Decree of 7 November 2003 [sic].

558. That Decree governs the capacity of the Community Institutions. That capacity is as follows:

a) Mol, open section: 62 places;

b) Mol, closed section: 40 places;

c) Ruiselede, open section: 54 places;

d) Ruiselede, closed section: 26 places;

e) Beernem (girls), closed section: 40 places.

559. The Ministerial Decree of 3 March 2003 regulating the use of the buffer capacity of the "De Kempen" and "De Zande" community institutions for special youth support (*Moniteur belge,* 27 March 2003).

560. In addition to regulating the capacity of the community institutions, the Ministerial Decree of 3 March 2003 states that some places must be kept free so that there is always one place available for an emergency placement. The closed sections in Mol and Ruiselede each have one buffer place and Beernem (girls) has two.

Isolation measures in the community institutions

561. A young person enters a community institution through an admission peer group, in other words a group whose task is to welcome new young people until they are ready to join an ordinary peer group. Arrival via this specially created group is a standard step in the reception

[62] Legal aid for young people: minors with difficult upbringings, regulations, Ministry of the Flemish Community, Family and Social Welfare Administration, Special Youth Support Section, p. 44-46.

procedure and at the same time a form of temporary isolation. The isolation is from other young people, not from the staff responsible for welcoming new arrivals.

562. The actual organization of the admission peer group varies slightly between sites and the extent to which reception goes hand in hand with strict isolation or involvement with the peer group depends among other factors on the attitude of the young person concerned and the risk assessment made by staff.

563. In any event, arrival in a community institution necessarily involves some degree of isolation, if only for security reasons; it also involves the beginnings of acceptance and becoming part of the institution, something which is necessary after a restraining measure which is usually imposed abruptly by the courts.

564. In a community institution, partial or full isolation is part of day-to-day life. The custody obligation means that the population cannot be determined or known in advance and staff must be prepared for everything in their work with the young people. That is also why each institution has isolation rooms, rules on confinement to a room, isolation in time-out rooms and isolation in isolation cells.

565. Generally, the duration of isolation is short, usually between a few hours and one day; the maximum duration of isolation in an isolation cell (the harshest measure) is five days, under the arrangements which apply individually. If, exceptionally, a longer period of isolation proves necessary, the institution must obtain authorization from the central authorities for an extension.

566. The community institutions have specially equipped rooms and cells available for the purpose and the trend is towards cells which meet modern needs in terms of facilities (soft walls, sound-proof doors, etc) to increase the comfort of the young person while there, the options for supervision by staff and everyone's' safety.

Procedures

567. Partial and full isolation in a community institution is to be conducted using specific procedures and methods. This guidance, however, leaves some room for interpretation and implementation with regard to the young person concerned and his experience of life. Moreover, isolation is subject to daily consultation and monitoring and must be justified to the education team.

568. A number of behaviours such as absconding, fights, assaults or threats against staff, drug-taking or drug-dealing, result in partial and/or full isolation. In other situations the degree of escalation in a dispute is the factor which leads to the decision to impose partial or full isolation

Young people's rights

569. The rights of young people within Community institutions are based on the general principles of human rights and the rights of the child. Where the ultimate measure of full and/or partial isolation is taken, the young person individually does not have the right to express an opinion but is consulted regarding his return to try and find solutions to problems and possibly tackle aspects of redress.

570. The possibility of using isolation chambers as an educational tool within community institutions is closely linked to the specific nature of the position, the task and the target group of the institution. Given the special nature of community institutions as a public service with a custodial obligation which provides residential support within a very structured framework to a very diverse population [sic].

Isolation measures as the teaching tool of last resort

571. An isolation measure is an exceptional protection measure which may be taken only in situations where the safety of the young person concerned or that of others is seriously endangered.

572. In view of the radical nature of isolation measures they are only used where it is impossible or inappropriate to react differently and adequately to an undesirable or negative behaviour. Other reactions are contemplated before isolation measures are taken.

Need for a procedure

573. Use of a standard procedure is considered a necessity as well as adding value for various reasons:

a) A procedure provides assistants with clarity and support, allowing them to use isolation measures professionally and educationally on the basis of a shared vision.

b) A procedure also provides significant safeguards and clarity (security) to the young people in the institutions.

A few basic principles on the procedure

a) Isolation as an educational tool

574. Isolation measures are expressly used as an educational tool. This means among other things that as soon as it is used, an intensive search for a solution must begin.

b) Information for young people

575. As soon as he is remanded to an institution the young person is expressly informed of the use of isolation measures.

576. Within a few hours of his arrival the young person receives a document which sets this information out in an accessible way. Others in the welcome peer group discuss the document with the young person during the first few days of his stay.

577. The young person is informed of the possibility of an interview with the educational director. During the interview, the young person may raise complaints and/or questions about the isolation measure.

c) Radical measure for the minor

578. For a minor, placement in an isolation cell is usually an emotionally charged moment of crisis. That is why we also wish to give the young person a (limited) period of time to "calm down", and reflect on what has happened.

d) Transparent record-keeping and reporting

579. Apart from use in the first two hours of the admission stage (applied to all young people for security reasons) all use of the isolation cells must be meticulously recorded.

580. Records must be made in the book allotted for that purpose which is always in the same place close to the isolation cell.

581. Where an isolation measure is used, the following points must be carefully noted down:

a) Surname;

b) First name;

c) Young person's peer group;

d) Date and time of commencement of isolation;

e) Cell number for special isolation;

f) Instigator;

h) Name of the person who placed the young person in the cell;

i) Reason;

j) Date and time of the end of isolation;

k) Guidance after the isolation measure;

l) Outside contact with the youth court;

m) Over five days: application for approval from Brussels.

582. On the section for the following day the instigator must note on the appropriate form the reason/context, the aim and future goal for the young person.

583. Each contact with a minor by a visitor must also be recorded. Visitors are supposed to make a report on each significant interview.

584. The isolation report and the statement on each visit for each minor are collated in an attached file (attached to the isolation book). When he returns to his peer group the isolation reports are attached to the minor's case-file.

Table 6: Isolation measures in the community institutions at Mol and Ruiselede / Beernem in 2004

	De Zande-Beernem (girls)	Mol- campus De Markt-boys - open	Mol- campus De Hutten-boys - closed	De Zande-Ruiselede – boys – open	De Zande-Ruiselede – boys – closed
< 1 hour	0	0	1	5	4
1-6 hours	4	11	2	47	17
6-24 hours	28	13	7	112	33
24- 48 hours	33	5	3	53	31
> 48 hours	30	2	3	108	29
Total	95	31	16	325	114

Table 7: Isolation measures in the community institutions at Mol and Ruiselede / Beernem in 2005

	De Zande-Beernem (girls)	Mol- campus De Markt- boys - open	Mol- campus De Hutten-boys - closed	De Zande-Ruiselede – boys – open	De Zande-Ruiselede – boys – closed
< 1 hour	0	1	0	1	2
1-6 hours	13	10	2	26	13
6-24 hours	62	24	16	87	50
24- 48 hours	49	5	1	83	45
> 48 hours	33	3	2	100	57
Total	157	43	21	297	167

585. The principal reasons for isolation are:

a) Physical and verbal aggression towards staff and fellow students;

b) Drug-related incidents (drug-taking and dealing);

c) Attempts to abscond and abscondments;

d) Smoking in rooms.

586. Additionally, a large number of girls are placed in isolation as a measure to protect them from self-harm.

CONCLUSION

587. Since 2000, many legislative initiatives have been taken at both federal and community levels. The creation of the closed centre in Everberg in 2002 marked an important step for the Community Institutions Department. The centre is the result of a cooperation agreement between the federal authority and the three communities.

588. It goes without saying that the interests of minors are still central. The Decree of 2004 which better protects the legal status of minors and the amendment to the Constitution in 2000 guaranteeing the integrity of young people bear witness to this.

589. Where education is concerned, various new working methods have been brought in. A uniform model of education is being drawn up within the institutions and emphasis is also placed equally on parental guidance and follow-up. These initiatives should help increase the likelihood of minors reintegrating into society.

590. Mixed support is another new aspect of the education process. This means specifically that men and women are employed in almost all peer groups.

591. Solitary confinement of a minor in community institutions must continue to be exceptional. Placement in an isolation cell is standard procedure for a minor only upon arrival while he is initially being accommodated. All the community institutions have a procedure for isolation as part of their disciplinary or criminal procedure. The procedure should, on the one hand, support social contributors and on the other hand, act as a safeguard to the minor. A record of any isolation procedures must be made (duration, grounds, etc.) which means periods of isolation can be assessed subsequently.
