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Human Rights Committee

**Consideration of reports submitted by States
parties under article 40 of the Covenant**

Concluding observations of the Human Rights Committee

Belgium*

Addendum

**Information received from Belgium on the implementation of
the concluding observations of the Human Rights Committee
(CCPR/C/BEL/CO/5)**

[18 November 2011]

* 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.

1. On 14 and 15 October 2010, the Human Rights Committee considered the fifth periodic report of Belgium (CCPR/C/BEL/5), and on 26 October 2010 it adopted its concluding observations (CCPR/C/BEL/CO/5), which were made public on 18 November 2010. In paragraph 25 of the concluding observations, the Committee asked Belgium to provide, within one year, information on the current situation and the action taken to implement the recommendations made by the Committee in paragraphs 14, 17 and 21. Pursuant to this request, Belgium is providing the requested information below.

Reply to paragraph 14 of the concluding observations (CCPR/C/BEL/CO/5)

Legal conditions for the use of force

2. In the exercise of their duties, police officers may be required to use force, while strictly observing the relevant legal conditions. Any use of force must be fully in line with the domestic and international legal framework and respect for human rights, including the prohibition of ill-treatment and all forms of torture, regardless of whether they are based on any type of discrimination. Any violation of these principles may give rise to criminal or disciplinary proceedings.

3. The principle and conditions for the use of force are set out in the Police Functions Act¹ and the Police Service Code of Ethics.²

4. According to article 37 of the Police Functions Act, “in the exercise of their duties as members of the administrative or judicial police, any police officers may, taking into account the risks involved, use force to pursue a legitimate aim that cannot otherwise be achieved. Any use of force must be reasonable and proportionate to the aim. Any use of force shall be preceded by a warning, unless this would make it ineffectual.”

5. Article 38 of the Police Functions Act specifically addresses the use of firearms: “Without prejudice to the provisions of article 37, police officers may use firearms against individuals only in the following cases: (1) for legitimate self-defence ... (2) against armed persons ... when it is reasonable to assume that such individuals have a firearm at the ready and will use it against other individuals; (3) and (4) when absolutely necessary because the police officers cannot otherwise defend the persons, posts, transport of dangerous goods or places under their protection ... In such cases, firearms may be used only in accordance with the instructions and under the responsibility of an officer of the administrative ... or judicial police. Weapons may be used as provided for in (2), (3) and (4) only after a warning is given in a loud voice or by any other means available, including by a warning shot, unless that would make the use of force ineffectual.” Since 2007 article 37 bis of the same Act has specifically addressed the use of handcuffs.³

6. According to article 46 (on coercive force) of the Police Service Code of Ethics, “in all situations, and especially those requiring an infringement of the rights and freedoms guaranteed under the Constitution, the members of the operational unit shall ensure in advance that the orders they give and the actions they perform are based on a legal or regulatory framework and that the methods used in the operation are proportionate to the

¹ Police Functions Act of 5 August 1992, Official Gazette of 22 December 1992.

² Royal Decree of 10 May 2006 establishing the Police Service Code of Ethics, Official Gazette of 30 May 2006. See also the fifth periodic report of Belgium, CCPR/C/BEL/5, p. 42.

³ The Miscellaneous Provisions Act of 25 April 2007, Official Gazette of 8 May 2007. See also the fifth periodic report of Belgium, CCPR/C/BEL/5, pp. 50 and 51.

aim. They shall neither order nor commit arbitrary acts that may infringe such rights and freedoms, such as illegal arrests and detentions or violations of the privacy of the home.”

7. Article 49 of the Police Service Code of Ethics refers to article 37 of the aforementioned Act, stating that: “Service staff who are authorized to use force or coercion in accordance with the law shall ensure that: the objective of the operation is legal; this objective cannot be achieved in a less violent way, such as through persuasion or dialogue; and the means used are reasonable and proportionate to the aim and circumstances of the particular case. They must thus seek the appropriate methods of intervention involving the least possible violence, and must apply various distinctions and degrees of force in the methods used.”

8. It is clear from these rules that the use of force can never be automatic, since it always requires the judgement of the official or police officer and must always meet the conditions of legality, proportionality and necessity. The police training system ensures that officers have a good knowledge of these principles throughout the course of their careers.⁴ They are also subject to Circular No. GPI48, which addresses instruction and training on controlling violence. In addition to presenting techniques for arrest, immobilization and the use of methods of restraint,⁵ the Circular also emphasizes the legal aspect of the use of force and the relevant principles. Since the 1998 reform of the Belgian police, the police service has given pride of place to the principles of sharing and communicating with the communities. When a problem arises, the police take action in a more proactive and communicative way. Among other things, this new framework leaves less room for reactionary and repressive policing that uses methods of restraint. These new principles are also included in the training provided to police officers.

9. Lastly, any use of force must be systematically and specifically reported. According to Circular No. GPI62, “any event involving acts of violence, with or without the use of service weapons or operational techniques or tactics, shall be reported. In addition to reporting to the relevant administrative and judicial authorities and the local prevention services ... a more developed and detailed report shall be sent to the Directorate-General of Support and Management. This report shall be written to facilitate the supervision, management and qualitative and quantitative analysis of the events by the relevant police services, such as the Directorate of the Internal Unit for In-Service Prevention and Protection, the Dangerous Situations Unit of the Training Directorate and the Inspectorate-General of the Federal and Local Police.”⁶

Follow-up on complaints of ill-treatment (investigation, prosecution and punishment)

10. Any violation of the above rules may give rise to legal and/or disciplinary proceedings in accordance with the law.⁷ With regard to internal monitoring, according to information from the disciplinary council, the number of disciplinary measures imposed on police officers for excessive use of force in the period 2006–2010 was as follows: 9 measures in 2006, 12 measures in 2007, 12 measures in 2008, 13 measures in 2009 and 8 measures in 2010.

⁴ See also the fifth periodic report of Belgium, CCPR/C/BEL/5, pp. 42–43, on the measures taken to train police officers on principles such as diversity and combating discrimination and racism.

⁵ Ministerial Circular No. GPI48 of 17 March 2006 on instruction and training in controlling violence among police officers in the operations division of the police force, Official Gazette of 14 April 2006.

⁶ Ministerial Circular No. GPI62 of 14 February 2008 on the weaponry of the integrated police force, classified into two levels, chapter IV, Official Gazette of 29 February 2008.

⁷ See also the fifth periodic report of Belgium, CCPR/C/BEL/5, pp. 40–41.

11. In order to ensure that policing is conducted properly, and in particular that the rules on the use of force and the protection of human rights are respected, the State also has mechanisms and bodies that are independent of the police, known as external monitoring mechanisms: (1) The Inspectorate-General of the Federal and Local Police,⁸ which is under the authority of the executive branch (the Ministry of Home Affairs and the Ministry of Justice); (2) the Standing Committee on the Supervision of the Police Services, or Committee P, which is under the authority of the legislative branch;⁹ and (3) the judiciary, which is competent to prosecute crimes and offences.

12. These bodies function on an ad hoc, regular or systematic basis, as the case may be. They are accessible to individuals in the event of a declaration of duty and also make it possible to evaluate police interventions (see below, for example, the report of Committee P on the demonstrations of 29 September and 1 October 2010) and to take corrective measures, as appropriate.

13. Once an incident is reported, an acknowledgement of receipt is sent to the complainant and the internal monitoring service conducts a preliminary investigation. At the end of the investigation, the complainant is systematically informed of the results and the available remedies. If the acts are subject to criminal proceedings, the case is brought before the competent judicial authority, which designates a body to conduct the investigation. There is very close cooperation with the bodies responsible for external monitoring of the police force (see information on Committee P and the Inspectorate-General, above), whether it be during investigations of the way the police force itself operates or during judicial investigations involving individual police officers.

14. The number of complaints of police violence lodged directly with Committee P between 2007 and 2009 was as follows (the database does not distinguish between allegations of police violence against individuals and against property): 179 in 2007, 136 in 2008 and 161 in 2009.¹⁰ The number of judicial investigations into allegations of police violence (once again, against either individuals or property) conducted by the Police Investigation Service on behalf of the judicial authorities during the same period was as follows: 81 in 2007, 48 in 2008 and 51 in 2009.¹¹

15. According to the database of the Inspectorate-General of the Federal and Local Police, the number of legal cases (assigned to an investigating judge or crown prosecutor) involving allegations of police violence (excessive use of force) handled by the individual investigations department in the period 2006–2010 was as follows: 106 in 2006, 135 in 2007, 98 in 2008, 148 in 2009 and 121 in 2010. These figures represent 11.6 per cent of the cases handled by the Inspectorate-General and do not include the above-mentioned cases initiated or handled by Committee P or by the internal monitoring bodies of the police districts and the federal police.

16. After it issues its opinion, the Inspectorate-General is generally not kept informed of the judicial action taken in cases of alleged police violence (withdrawal of the proceedings, prosecution or decisions to discontinue criminal proceedings). The database managed by the Criminal Policy Unit of the Ministry of Justice does not provide the number of

⁸ The Inspectorate-General Act of 15 May 2007, which includes miscellaneous provisions on the status of certain members of the police force, Official Gazette of 15 June 2007.

⁹ Organic Act of 18 July 1991 on monitoring the police and intelligence services, Official Gazette of 26 July 1991.

¹⁰ The total number of complaints lodged directly with Committee P was as follows: 2,219 in 2007, 2,339 in 2008 and 2,401 in 2009.

¹¹ The total number of judicial investigations conducted by the Police Investigation Service was as follows: 281 in 2007, 279 in 2008 and 259 in 2009.

convictions either, because there is no specific coding for acts of police violence. On the other hand, article 14, paragraph 1, of the aforementioned Act of 18 July 1991 on monitoring the police, the intelligence services and the Coordination Agency for Threat Analysis provides that the prosecutor-general and the auditor-general shall send, ex officio, to the president of Committee P a copy of any judgements or decisions relating to crimes or offences committed by members of the police force or the Coordination Agency for Threat Analysis. However, despite this legal obligation, not all data are systematically sent to Committee P, and therefore the information provided in the table below is not necessarily complete.

Information communicated to Committee P in implementation of article 14, paragraph 1, of the Act of 18 July 1991, regarding criminal convictions of police officers in 2009–2010 for acts of “police violence”

	2009			2010				
	<i>Illegal violence</i>	<i>Assault and battery</i>	<i>Murder/ homicide</i>	<i>Inhuman/ degrading treatment</i>	<i>Illegal violence</i>	<i>Assault and battery</i>	<i>Murder/ homicide</i>	<i>Inhuman/ degrading treatment</i>
Dismissal: statute of limitations		2						
Dismissal: other		9	2		14	21	3	
Acquittal: statute of limitations								
Acquittal: other	4	5		1	4	5		
Social protection measure								
Deferment of sentence	2	3			3	2		
Conviction	1					1		
Fully suspended community service order								
Partially suspended community service order								
Community service order with full effect					1			
Fully suspended prison sentence/fine	2	2				3		2
Partially suspended prison sentence/fine		3				3		
Prison sentence/fine with full effect								

Comments

(a) Prosecutions for illegal violence involve the acts referred to in article 257 of the Criminal Code (namely, the use, or collusion in the use, of violence against persons in the exercise, or in connection with the exercise, of one’s duties as a police officer, without a legitimate reason). The 14 dismissals pronounced in 2010 related to 5 case files, and the 8 acquittals pronounced in 2009 and 2010 related to 6 case files. It was established that acts of illegal violence were committed by 5 police officers in 2009 (in 5 cases) and 4 police officers in 2010 (in 3 cases). Four of these 8 cases were particularly clear, as testimony was given by other police officers in support of the cases;

(b) With regard to assault and battery, a distinction must be made between events that took place while officers were “on duty” and “off duty”. With regard to the figures for

2009, the 11 dismissals related to 4 cases, all on duty; the 5 acquittals related to 3 cases, including 2 on duty; the allegations were found to be proven in 8 cases (including 1 case that occurred with officers on duty) against 8 members of the integrated police force. Concerning assault and battery cases in 2010, the 21 dismissals related to 6 cases, all of which involved officers on duty; the 5 acquittals related to 4 cases, including 2 involving officers on duty; and lastly, the allegations were found to be proven in 9 cases (including 4 involving officers on duty), against 9 police officers;

(c) With regard to cases of murder/homicide: in 2009 and 2010, five police officers were prosecuted in five separate cases after they used their service weapons in the line of duty, producing fatalities. All the cases were dismissed;

(d) Inhuman/degrading treatment: in a single case in 2010, two police officers were acquitted of inhuman treatment but convicted of degrading treatment against a detainee. The 2009 acquittal related to acts committed in the private sphere.

17. Lastly, reference should be made to article 257 of the Criminal Code, referring to article 266, which states that if a public official uses or orders violence to be used against persons in the exercise, or in connection with the exercise, of his or her duties without a legitimate reason, the minimum sentence shall be doubled, and increased by 2 years if it is a sentence of 15 to 20 years' imprisonment or detention or a shorter sentence.

Follow-up on complaints during the demonstrations of 29 September and 1 October 2010

18. From 27 September to 3 October 2010, the "No Border Camp" was set up at the Tour and Taxis site in the centre of Brussels. The "No Border" network, founded in 2000, works to promote freedom of movement among different countries and, more specifically, to oppose immigration control policies within the Schengen area. It also campaigns for the regularization of foreigners in irregular situations and the closure of administrative holding centres. A European trade union demonstration was held the same week in Brussels, on 29 September 2010, attracting tens of thousands of demonstrators. On the margins of the "No Border Camp", the activists called a rally just outside the Gare du Midi train station early in the evening of 1 October 2010. At both of these demonstrations, the police were forced to intervene and to make many identification checks and arrests.

19. Committee P received various complaints relating to these demonstrations. These led to an oversight investigation, which Committee P assigned to its Investigation Service. Because the allegations in the various complaints were often vague, imprecise and general and did not include sufficient information to identify the parties involved (except in the case of the minors arrested on 1 October 2010), the investigation focused on the overall handling of the two demonstrations, including: the measures taken by police to prepare as best possible for the event, the measures taken by the administrative authorities, the number of officers assigned to the events and the policing measures used.

20. This oversight investigation was completed in early June 2011. The results were compiled in a final report, which was sent along with general and specific recommendations (see annex I) to the Minister of Home Affairs and the different police services concerned.

21. For its part the Inspectorate-General has not received any complaints concerning the demonstrations of 29 September and 1 October 2010. To our knowledge, no complaints have been lodged before the Belgian judicial authorities.

Reply to paragraph 17 of the concluding observations

Right of access to a lawyer and a doctor from the time of arrest

22. On 13 August 2011, Belgium adopted the Act amending both the Code of Criminal Procedure and the Act of 20 July 1990 on pretrial detention, with a view to conferring rights on all persons heard by a court and on all persons deprived of their liberty, including the right to consult and be assisted by a lawyer (see annex II).¹² Belgium has thus complied with the case law of the European Court of Human Rights (Salduz) and with several recommendations made by the United Nations and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment with regard to the following rights of persons deprived of their liberty: the right to consult a lawyer prior to questioning, the right to be assisted by a lawyer during questioning, the right to inform someone they trust about their deprivation of liberty, and the right to medical care. These rights had already been partially incorporated into Belgian law in relation to administrative arrests (see articles 33 bis to 33 septies of the Police Functions Act of 5 August 1992). On 23 September 2011, the Belgian College of Prosecutors General issued a circular on providing the assistance of a lawyer, from the time of the first hearing, as part of the Belgian criminal procedure (COL 8/2011, see annex III).

Reply to paragraph 21 of the concluding observations

Monitoring of the removal of foreigners

23. In a memorandum issued by the Minister of Home Affairs on 10 March 2003,¹³ the Inspectorate-General of the Federal and Local Police was tasked with regularly monitoring forced repatriation operations. This mission was further reinforced by another memorandum, dated 5 October 2009.¹⁴ As indicated in the fifth report of Belgium,¹⁵ this monitoring may take the form of “low-profile” monitoring, monitoring operations with “preventive” advance notice, or monitoring aboard “special” flights. The monitoring operations may be conducted at various points in the procedure: when the persons to be deported are handed over at refugee centres, when they are in the federal police facilities at the national airport, when they are being taken out to the aircraft, during the flight itself, or also upon their arrival and reception in the country of return. Reports are written on all the monitoring operations carried out and are sent to the authorities concerned. The number of monitoring operations varies, as the monitoring cannot be systematic.

24. The latest figures on flight monitoring operations conducted by the Inspectorate-General of the Federal and Local Police are as follows: 8 monitoring operations on special flights and 28 on commercial flights in 2007, 5 operations on special flights and 13 on commercial flights in 2008, 5 operations on special flights and 12 operations on commercial flights in 2009, and 11 operations on special flights and just 1 on a commercial flight in 2010.

25. The following is extracted from the 2010 annual report of the Inspectorate-General of the Federal and Local Police on the monitoring of repatriation operations: “In implementation of Directive No. 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for

¹² Official Gazette of 5 September 2011.

¹³ Ministerial Note No. B7/GW/PM/00478/D-12 of 10 March 2003.

¹⁴ Ministerial Note No. SAT/OPS/MAD/2009/QPV/4-3792 of 5 October 2009.

¹⁵ See the fifth periodic report of Belgium, CCPR/C/BEL/5, p. 55, for the number of monitoring operations carried out between 2004 and 2007.

returning illegally staying third-country nationals,¹⁶ in 2010 the Inspectorate-General of the Federal and Local Police monitored repatriation operations carried out by the airport police at Brussels National Airport. We have sent our findings to the Minister of Home Affairs and the competent authorities. Boarding procedures were monitored on 16 commercial flights, 7 of which were cancelled. Our department also monitored 11 secure flights (special flights) throughout the entire operation, that is, from the time the persons to be deported were briefed or removed until they were handed over to the authorities of the destination country. We also participated in one repatriation by commercial flight, throughout the entire process. No irregularities were found in the conduct of the airport police in the course of the monitoring operations. The Inspectorate-General of the Federal and Local Police did, however, make a number of recommendations and comments, to which appropriate follow-up was given.”

26. As part of the final stages of incorporating into Belgian law the aforementioned European Directive, article 8.6 of which deals with removal and stipulates that “Member States shall provide for an effective forced-return monitoring system”, the plan is for the King to appoint, by a royal decree discussed in the Cabinet, the body responsible for monitoring forced returns and that the decree will determine how best to conduct such monitoring. This body will be independent of the authorities competent to take decisions on removal. The bill finalizing the incorporation of the Directive into domestic law was submitted to the House of Representatives on 19 October 2011.¹⁷

27. In addition, as called for in the aforementioned European Directive, on the ground monitoring at airports and participation in flights between member States have been strengthened since 2011.¹⁸ Thus, as at 2 November 2011, monitoring had been conducted on 9 special flights (with 4 more scheduled in November), on 33 removals up to the time of boarding and on 8 commercial flights as far as the destination country. Lastly, a Belgian project is now under way with funding from the European Commission to strengthen the monitoring system for forced returns. Under the project, the two members of the Inspectorate-General of the Federal and Local Police responsible for monitoring will be joined by two additional officers (members of the operations division of the integrated police force) until June 2013. The recruitment process is has now begun. The project may be extended if necessary. This increase in the number of monitoring staff from two to four will undoubtedly result in more frequent and effective monitoring.

28. In addition, in the context of its broader mission to monitor the police services (see the comments relating to paragraph 14, above), the Inspectorate-General of the Federal and Local Police may also, as an external oversight body, consider complaints about repatriation operations.¹⁹ There are, however, very few complaints of that sort.²⁰

29. Lastly, individuals can also lodge complaints about repatriation operations directly with Committee P. The number of complaints received during the period 2007–2009 was as follows: four in 2007, two in 2008 and five in 2009. In addition, the judicial authorities may also order the Police Investigation Service to investigate repatriation operations. The

¹⁶ See chapter II, article 8, paragraph 6, of the Directive, which states that Member States should establish an effective system to monitor forced returns.

¹⁷ See parliamentary papers No. 1825/001 and No. 1825/002.

¹⁸ In 2010, a total of 6,768 persons were removed, 858 of whom were escorted by the airport police.

¹⁹ Complaints can also be lodged directly with the federal police department responsible for deportations (the airport police).

²⁰ Number of complaints registered by the Inspectorate-General of the Federal and Local Police: one in 2007, one in 2008, one in 2009 and three in 2010. Complaints registered by the airport police: three in 2007, four in 2008, five in 2009 and four in 2010 as at 20 May.

number of such investigations was as follows for the period 2007–2009: two in 2007, none in 2008 and one in 2009.

Independence of monitoring bodies

30. The Inspectorate-General of the Federal and Local Police is independent of the police services responsible for conducting forced return operations (the airport police) and from the authority competent to take decisions on removal (the Immigration Office).

31. Contrary to what was erroneously stated in the fifth report of Belgium,²¹ the Inspectorate-General is an external monitoring body that is independent of the federal and local police. Indeed, the Inspectorate-General is not part of the police. It is under the authority of the Minister of Home Affairs and the Minister of Justice, who jointly establish the general principles governing its organization, operation and general administration and who make policy decisions. The Minister of Home Affairs is responsible for its daily management. In cases where the management of these matters directly affects the Directorate-General of the Criminal Investigation Service, the judicial services or the management of information, the Minister involves the Minister of Justice (see article 3 of the aforementioned Act of 15 May 2007). The Inspectorate-General is led and organized by the Inspector-General and the Deputy Inspector-Generals (art. 4, para. 2). Its staff is made up of the following categories: police officials from the federal police or a local police service and members of the administrative and logistics divisions of the federal police or a local police service (article 4, paragraph 3, of the same Act).

32. The mission of the Inspectorate-General, as a monitoring body that is independent of the police force and is under the authority of the executive branch, is to optimize the operation of the federal and local police and their constituent bodies, with respect for democracy and the protection of fundamental rights and freedoms. It investigates the operation, activities and methods of the police services. It verifies in particular the implementation of laws, regulations, orders, instructions and directives, as well as norms and standards. It is involved in defining, respecting and updating the police code of ethics. It regularly reviews the efficiency and effectiveness of the federal and local police forces, without prejudice to internal procedures (article 5 of the same Act).

33. The Inspectorate-General takes action either on its own initiative, on the orders of the Minister of Justice or the Minister of Home Affairs, or at the request of the judicial and administrative authorities, in accordance with the competencies of each (article 6 of the same Act). The members of the Inspectorate-General have an unrestricted and permanent right to conduct inspections in order to carry out their duties. They can freely interview individuals and, after notifying the responsible authority, enter their place of work. They can consult on the spot, make copies of, have access to and, if necessary, seize any documents, items or objects that are useful to their work. Except for matters concerning its judicial duties, the Inspectorate-General submits the results of its work to the Minister of Home Affairs and, when appropriate, to the Minister of Justice and the authority that requested the investigation. The Inspectorate-General also informs the competent disciplinary authorities, if applicable (article 8 of the same Act).

²¹ See the fifth periodic report of Belgium, CCPR/C/BEL/5, p. 53.