



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

Distr.
GENERAL

CAT/C/LUX/CO/5
16 July 2007

Original: FRENCH

COMMITTEE AGAINST TORTURE
Thirty-eighth session
30 April-18 May 2007

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

Conclusions and recommendations of the Committee against Torture

Luxembourg

1. The Committee considered the fifth periodic report of Luxembourg (CAT/C/81/Add.5) at its 759th and 762nd meetings, held on 3 and 4 May 2007 (CAT/C/SR.759 and 762), and adopted the following conclusions and recommendations at its 773rd meeting, on 14 May 2007 (CAT/C/SR.773).

A. Introduction

2. The Committee welcomes the fifth periodic report of Luxembourg, which is in conformity with the guidelines regarding the form and contents of periodic reports, and notes that it was submitted on time. The Committee takes note with satisfaction of the written replies by Luxembourg to the list of issues and the additional information provided orally during consideration of the report. Lastly, the Committee welcomes the constructive dialogue with the high-level delegation sent by the State party and thanks it for its frank and direct replies to Committee members' questions.

B. Positive aspects

3. The Committee commends the State party for striving to comply with its obligations concerning the protection of human rights in general and those under the Convention in particular.

4. The Committee notes with satisfaction the following positive developments:
- (a) Adoption of the Act of 8 September 2003 on the prevention of domestic violence;
 - (b) Adoption of the Act of 22 August 2003 establishing the Office of the Ombudsman;
 - (c) The establishment, pursuant to the Act of 25 July 2002, of a children's rights committee;
 - (d) The introduction on 1 January 2006 of a new Charter of Ethical Values in the Grand Ducal police force;
 - (e) The announcement by the delegation of Luxembourg that a bill prohibiting all physical and sexual violence within the family, including genital mutilation, has been submitted to Parliament;
 - (f) The clarification provided by the delegation of the State party concerning the access of persons detained for preliminary police questioning to a lawyer;
 - (g) The guarantees contained in the Grand Ducal Regulation establishing a list of safe countries of origin within the meaning of the Act of 5 May 2006 relating to the right of asylum and the right to related forms of protection, which are in conformity with article 3 of the Convention;
 - (h) The excellent cooperation between the Luxembourg authorities and non-governmental human rights organizations, particularly in the context of assistance to aliens in administrative detention; and
 - (i) The regular support given by the State party since 1983 to the United Nations Voluntary Fund for Victims of Torture, as well as the increase in the State party's contribution to the Fund.

C. Subjects of concern and recommendations

Non-refoulement and treatment of persons at the disposal of the authorities

5. The Committee takes note of the statement by the delegation of Luxembourg that a bill concerning the construction of a centre for aliens in administrative detention on a site separate from the Luxembourg Prison has been submitted to Parliament. However, the Committee is concerned by the fact that, pursuant to article 10 of the Act of 5 May 2006, administrative detention can also be applied in some cases to asylum-seekers, who are then placed in a closed facility within the Luxembourg Prison for a period of up to 12 months to prevent evasion of any subsequent deportation order; this could constitute administrative detention without judicial supervision (arts. 3 and 11).

The State party should take the requisite legislative and administrative measures to clarify the situation of asylum-seekers for whom no deportation order has been issued in order to ensure that, in the absence of behaviour that might compromise security or public order, they are not detained and are properly treated. In particular, the State party should ensure that such asylum-seekers are brought before a judge so that he or she may rule on the legality of their detention. The State party should also guarantee that they have a right to effective remedies. It should also take appropriate measures to ensure that aliens at the disposal of the authorities are placed in a facility that is separate from a penal correction facility.

6. The Committee is concerned about the provisions of article 6, paragraph 12, of the Act of 5 May 2006, which stipulates that “the asylum-seeker may be handed over or extradited, where applicable, either to a State member of the European Union pursuant to the obligations arising from a European arrest warrant or, for other reasons, to a third State, or to an international criminal tribunal or court”; in some cases, this provision may be inconsistent with the principle of non-refoulement as laid down in article 3 of the Convention (art. 3).

The State party should take the requisite legislative measures to amend article 6, paragraph 12, of the Act of 5 May 2006 on asylum by including a provision stipulating that no person may be returned, expelled or extradited to a State where there are substantial grounds for believing that that person would be in danger of being subjected to torture.

7. While taking note of some of the clarifications provided by the delegation of Luxembourg regarding the circumstances surrounding the forced removal of Mr. Igor Beliatskii, the Committee regrets that the State party has not ordered an official investigation to ascertain why the officers responsible for the removal operation resorted to certain practices, such as the wearing of a mask and the use of a BodyCuff, which might constitute degrading treatment of the person being removed (arts. 3, 12 and 16).

The State party should take the necessary steps to order an investigation when there are grounds for believing that a person may have been subjected to torture or cruel, inhuman or degrading treatment, including during removal operations. The State party should also allow the presence of human rights observers or independent physicians during all forced removals. It should also systematically allow a medical examination to be conducted prior to this form of removal and whenever an attempted removal has been unsuccessful.

Provisions concerning the detention and treatment of arrested persons

8. While noting that the Charter of Ethical Values of the Grand Ducal Police stipulates in appendix 4 that “(a police officer) shall have absolute respect for persons, without discrimination of any kind”, the Committee is concerned about reports that foreign detainees are subjected to arbitrary behaviour and racist or xenophobic insults by law enforcement and prison personnel (arts. 11 and 16).

The State party should take the necessary steps to:

- (a) Provide law enforcement and prison personnel with more training in respect for the physical and psychological integrity of detainees, regardless of their origin, religion or sex;**
- (b) Make such behaviour a criminal offence;**
- (c) Order systematic investigations and, in all confirmed cases, bring the accused before the competent courts.**

9. While taking note of the explanations provided by the delegation of Luxembourg regarding solitary confinement, the Committee regrets the persistence of this disciplinary practice and Luxembourg's intention to maintain it despite the earlier recommendations of the Committee against Torture (CAT/C/CR/28/2, paras. 5 and 6) and those of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment¹ (arts. 11 and 16).

The Committee urgently reiterates its recommendation that solitary confinement be strictly and specifically regulated by law and that judicial supervision be strengthened. The State party should take the necessary steps to put an end to this disciplinary practice and change the relevant regulations accordingly.

Treatment of minors in conflict with the law and minors at risk

10. The Committee takes note of the information provided by the State party in its written replies, according to which negotiations have been held between the Ministry of the Family, the Ministry of Public Works and the municipality of Wormeldange with a view to reaching an agreement on completion of the project to build the Dreibern closed security unit for minors. It also notes that, at the time of consideration of this report, the municipal council had yet to issue a construction permit. However, the Committee continues to be concerned about the placement of minors in the Luxembourg Prison, which cannot be regarded as a suitable environment for them, especially as it cannot be guaranteed that there will be no contact whatsoever between minors and adult detainees. The Committee is also concerned that minors in conflict with the law and those with social or behavioural problems are placed in the same facilities and that minors aged between 16 and 18 may be brought before ordinary courts and tried as adults for particularly serious offences (arts. 11 and 16).

The Committee urgently reiterates its previous recommendation that minors should not be placed in adult prisons for disciplinary purposes (CAT/C/CR/28/2, paras. 5 and 6). The State party should also take the necessary steps to build the Dreibern security unit as soon as possible and, in the interim, to ensure that minors are kept strictly separate from adult detainees.

¹ CPT Inf (2004) 12, para. 86.

The State party should also keep children in conflict with the law separate from minors with social or behavioural problems, do everything possible to ensure that minors are never tried as adults, and set up an independent monitoring body to inspect juvenile facilities regularly (CRC/C/15/Add.250, para. 61 (c), (d) and (e)).

Impartial investigation

11. The Committee is concerned about the system which gives the public prosecutor discretion to decide not to prosecute perpetrators of acts of torture and ill-treatment involving law enforcement officers or even to order an investigation, in blatant violation of the provisions of article 12 of the Convention (art. 12).

In order to respect the letter and spirit of the provisions of article 12 of the Convention, the State party should consider departing from the system which gives the public prosecutor discretion to decide whether to prosecute so that there can be no doubt as to the obligation for the competent authorities to launch impartial investigations immediately and systematically in all cases in which there are reasonable grounds for believing that an act of torture has been committed anywhere in the territory under its jurisdiction.

Human trafficking

12. The Committee is concerned by the continued trafficking of human beings in the State party and the inadequate nature of the checks made when artists' visas are issued, which entails the risk that these visas might be used for the purposes of this illegal activity (art. 16).

The State party should strengthen existing measures to combat human trafficking in such a way as to make it possible, on the one hand, to conduct more effective checks when artists' visas are issued and to ensure that they are not used for unlawful purposes and, on the other, to protect the witnesses and victims of such acts. In addition, the State party should prosecute persons committing and instigating them.

Next periodic report

13. The Committee invites the State party to include in its next periodic report detailed statistical data, disaggregated by offence, age, ethnic origin and sex, on complaints of acts of torture and other cruel, inhuman or degrading treatment or punishment allegedly committed by law enforcement officials as well as on investigations, prosecutions and relevant criminal and disciplinary sanctions, if relevant. The State party is also invited to include data disaggregated by age, sex and ethnic origin on:

- (a) The number of asylum applications registered;
- (b) The number of successful asylum applications;

(c) The number of asylum-seekers whose applications were accepted because they had been tortured or might be tortured if returned to their country of origin;

(d) The number of refoulements or expulsions.

14. The State party is encouraged to consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

15. The State party is encouraged to disseminate widely the reports submitted by Luxembourg to the Committee, as well as the Committee's conclusions and recommendations, in the appropriate languages, through official Internet sites, the media and non-governmental organizations.

16. The Committee invites the State party to present its core document in accordance with the requirements concerning the common core document contained in the harmonized guidelines on reporting under the international human rights treaties, adopted by the Fifth Inter-Committee Meeting of the human rights treaty bodies (HRI/MC/2006/3 and Corr.1).

17. The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 8, 9, 10 and 11 above.

18. The State party is invited to submit its seventh periodic report by 30 June 2011.
