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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)

[20 July 2012]

* 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. In March 2012, the Human Rights Committee considered the information provided by Belgium on the follow-up to three of its concluding observations (CCPR/C/BEL/CO/5) in the framework of the fifth periodic report of Belgium (CCPR/C/BEL/5). By letter of 29 April 2012 (annex 1), the Special Rapporteur for follow-up on concluding observations requested Belgium to provide additional information. This document is thus submitted pursuant to that request.

Additional information concerning paragraph 14 of the concluding observations (CCPR/C/BEL/CO/5)

2. It is important to emphasize that the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990) are set out almost in full and in identical language in Belgian law. The entire wider legal framework (laws, royal decrees, ministerial orders, circulars, etc.) applicable to the police services and the performance of their duties sets the same rules for the use of force (principles of appropriateness, proportionality and subsidiarity, advance warning, allowing for sufficient time before action is taken, detailed reporting, thorough and continuous training of members of police services using firearms, availability of a wide range of firearms or other means in order to respond to situations in a suitable manner, etc.). The Criminal Code, Police Functions Act (arts. 37 et seq. and 41), Weapons Act, Royal Decree on Weapons of 26 June 2002 and Royal Decree on Arming of the Police Services of 3 June 2007 and others are notable examples. The principles set forth in these laws have already been elaborated on in previous reports (specific principles and procedures for the use of force and firearms by the police).

3. These principles are disseminated to all police officers, of course, given that force is among their main courses of action and the police are consequently liable to use it in the performance of all their essential duties. Dissemination of the principles comes in many forms, above all through training: Every police officer must undergo recruitment and training and refresher courses throughout his or her career covering both theory and practice, i.e. the legal framework for and principles of the use of force and the specific use of various weapons, ammunition and control and restraint techniques. The trainers and training programmes are accredited. Accreditation is strictly regulated by decrees and circulars.

4. The principles of the use of force are also found in the Code of Ethics, the values of the police, internal legal memorandums, the Law Enforcement Field Guide (or the police “bible”, which includes a very useful compilation of fact sheets carried everywhere in the field by responding police officers), good practices, manuals, study reports and study days in Belgium and abroad, which are available to the entire staff on the police website.

5. The United Nations Principles, therefore, have been integrated for several years now in all Belgian regulations and are applied every day in the field. According to the Committee, the information in the replies provided by Belgium in November 2011 is not updated, but this in fact is normal as Belgium set out the mechanisms and safeguards for determining the scope of the use of force, in other words the theoretical aspects of the use of force. For they are not subject to change; the regulations remain in place and are applied when necessary. The “new” measures consist especially in continuing efforts at training and dealing with incidents according to existing principles.

6. It should be stressed that training sessions are devised according to very specific criteria and are subject to approval and continuous assessment, which requires taking developments in the law (international and domestic) and other developments involving the use of force and firearms into account in the programmes.

7. The State would like to add to the figures that it previously made available to the Committee concerning penalties imposed on police officers. They involve detailed statistics

collected during the preparation of the third periodic report on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (annex 2). The first table shows complaints of alleged acts of torture or ill-treatment by law enforcement officers for the 2005–2011 period submitted directly to the Standing Committee for Police Monitoring (Committee P). It is worth underlining that the complaints of alleged acts of police violence filed directly with Committee P have been included in this document. The figures provided concern allegations of police violence both against property and persons. The second table provides information on the judicial inquiries conducted by the investigation service of Committee P for the same type of allegation over the same period. Lastly, the third table shows the criminal convictions of police officers for acts of torture or ill-treatment for the period 2009–2011, as communicated to Committee P by the judicial authorities, in accordance with article 14, paragraph 1, of the Act of 18 July 1991 on Monitoring of the Police and Intelligence Services and the Coordination Agency for Threat Analysis. The data was last updated on 15 March 2012. It must also be stressed that the judicial authorities fail to meet the obligation to notify Committee P of all convictions involving such acts. The figures, therefore, are not exhaustive. Finally, the State is also including six specific examples of convictions obtained in 2011 (annex 3). They mostly involve unlawful violence (assault and battery) against persons who had been brought under control and no longer posed a particular danger.

8. Article 14 bis, paragraph 1, of the aforementioned law provides that: "The Federal Police Commissioner, the General Inspectorate of the Federal and Local Police and local police chiefs shall automatically forward to the Standing Committee P a copy of the complaints and reports of misconduct that they have received concerning the police services with a brief summary of the outcome of the inquiry on completion of the said inquiry." This procedure allows Committee P to have an overview of the complaints and reports of misconduct and the outcome of the handling that is in store for them internally. In accordance with article 14 bis, paragraph 3, this information may be handled by Committee P in order to carry out its mandate of monitoring the police services to assess their general and overall operation and/or the conduct of individual members of the police and to put forward proposals to the authorities to improve the running of the police services. Thus, for example, Committee P conducted an inquiry for the period 2004–2006 to monitor the running of the internal monitoring services, with a particular focus on the handling of complaints. The inquiry was relaunched in 2009 covering 30 local police areas. To date, however, Committee P does not have a comprehensive assessment of the system for handling complaints about members of the police services. Lastly, there is a circular relating to the internal monitoring system in the integrated, two-tier police force, circular CP3 of 29 March 2011 (*Moniteur Belge*, 21 April 2011, http://www.ejustice.just.fgov.be/loi/loi.htm), which provides in particular a frame of reference for the handling of complaints. Annex 2 of the circular provides a (minimal) procedure for dealing with (non-judiciary and non-disciplinary) administrative inquiries. The implementation of this circular could satisfy in several respects the recommendations put forward in the past by Committee P on the internal handling of complaints (Annual Report 2010, p. 120, http://www.comitep.be/2010/fr/rapport/2010fr.pdf). Committee P will be sure to verify how the internal monitoring services apply the new circular in practice for the aforementioned inquiry into 30 local police areas.

Additional information concerning paragraph 17 of the concluding observations

9. An ongoing scientific assessment by the Criminal Policy Unit of the Federal Public Service for Justice is made of the application of the Act of 13 August 2011 amending both the Code of Criminal Procedure and the Act of 20 July 1990 concerning pretrial detention, with a view to conferring rights, including the right to consult and be assisted by a lawyer, on all persons heard by a court and all persons deprived of their liberty (*Moniteur Belge*, 5

September 2011, entry into force on 1 January 2012). The Unit has submitted three reports since the Act entered into forced (http://www.dsb-spc.be/doc/pdf/Salduz_rapport_intermédiaire_januari_mars_juni.pdf) and it will submit a final report in late January 2013. It is important to note that the results of the assessment over such a brief period should be treated with caution. In addition, the new working methods imposed on numerous actors under the new law will continue to be developed in the field, and other measures are still required to support its implementation. Among other things, there is a major debate on the system of free legal assistance.

10. For more information about the Act, see the annexed explanatory text (annex 4), which was drafted for the third report of Belgium on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The new Act does not apply to administrative deprivation of liberty of persons residing without authorization subject to expulsion from the territory. Therefore, Belgium does not understand the observation made (in brackets) by the Human Right Committee, namely that it considers it necessary to submit additional information on the action taken [to ensure that the deportation of foreign nationals is monitored in an independent and objective manner]; Belgium believes that some confusion has been created between the observations on paragraph 17 and the observations on paragraph 21.

Additional information concerning paragraph 21 of the concluding observations

11. The application form for an extension of subsidies from the European Return Fund for the period 1 January 2013 to 30 June 2015 is being finalized and will be transmitted by the Aliens Office for introduction to the European Commission on 31 October 2012. The renewal of the agreement should not pose major difficulties. It is assumed that the two police officers seconded once again for this purpose will cover the same period as the European funding.

12. Pursuant to the adaptation of Directive 2008/115 of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals to Belgian law, the role of the Inspectorate-General of the Federal and Local Police as the body responsible for monitoring forced returns (Act of 19 January 2012, *Moniteur Belge*, 17 February 2012, and Royal Decree of 19 June 2012, *Moniteur Belge*, 2 July 2012) was confirmed, as the Inspectorate-General is independent from the authorities who make decisions on removals (Aliens Office) and police services responsible for their enforcement (Air Police Service, Brussels Airport). In addition, the jurisdiction of the Inspectorate-General as an organization will most likely be increased to enable it to monitor the entire process of forced returns with respect to all actors concerned, and not only police officers.

13. The number of checks conducted by the Inspectorate-General has continued to increase. For example, while there were 54 checks in 2011, 45 have already been conducted during the first third of 2012. The number of complaints filed remains fairly constant. To date, there has been a total of six complaints registered with the Inspectorate-General since 2006. Committee P, for its part, received six complaints in 2010 and four in 2011 (four in 2007, two in 2008 and five in 2009), and a single case was filed with the Committee by judicial authorities in the period 2010–2011. Lastly, it may be recalled that, in application of article 14 bis the Act of 18 July 1991 on Monitoring of the Police and Intelligence Services and the Coordination Agency for Threat Analysis, Committee P makes inquiries into the activities and methods of the Inspectorate-General and thus offers minimal supervision of the manner in which it fulfils its mission of monitoring deportation operations.