



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

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COMMITTEE AGAINST TORTURE

Thirty-fourth session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 652nd MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 11 May 2005, at 3 p.m.

Chairperson: Mr. MARIÑO MENÉNDEZ

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* No summary record was prepared for the closed part of the meeting.

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The public part of the meeting was called to order at 4.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (agenda item 6) (continued)

Initial report of Albania (continued) (CAT/C/28/Add.6)

1. At the invitation of the Chairperson, the members of the delegation of Albania resumed their places at the Committee table.
2. The CHAIRPERSON invited the members of the delegation of Albania to reply to the questions put by Committee members at the 649th meeting.
3. Mr. NINA (Albania), responding to the remarks on the non-compliance of the Albanian report with the reporting guidelines, said the delegation regretted that the report had not been more informative. Given that Albania's initial reports to the United Nations human rights treaty bodies had been overdue, when the process of compiling the reports had been initiated in 2002, the objective had been to prepare them as quickly as possible in order to comply with its obligations as a State party. His Government was of the view that the report conformed to the guidelines and, in response to the observation that there was insufficient practical information, he drew the Committee's attention to the fact that Albania had already submitted lengthy initial reports to other United Nations human rights bodies, some of which had included information on torture and the practical implementation of the Convention against Torture.
4. Detailed information on the State party's judicial system had been included in the written replies, which gave an overview of the courts and judiciary.
5. On the question of inspections, in conjunction with the inspectorate of the High Council of Justice and the General Prosecutor's Office, the Ministry of Justice carried out inspections of the courts, identifying cases of violation of the law which constituted non-fulfilment of duties. Consequently, the Ministry of Justice's responsibilities included ensuring respect for fundamental human rights and freedoms in criminal and civil proceedings. Inspections were also carried out in prosecutors' offices, focusing on the observance of detention and investigation deadlines, human rights and fundamental freedoms, the accuracy of investigation procedures, the obligation of the prosecutor to initiate criminal proceedings, and the advancement of criminal and sentencing policy. Inspections were also carried out in bailiffs' offices, and in detention centres and prisons. As a result of court inspections in 2004, disciplinary proceedings had been initiated against nine judges, and the High Council of Justice had taken eight disciplinary measures, four of which had involved dismissal. Further disciplinary proceedings were continuing. In addition to disciplinary measures, concrete recommendations had been made in respect of identified problems relating to the improvement of court administration procedures. Further inspections were planned for the following year.
6. On the question of the courts, the Constitution outlined the requirements that must be met for the Supreme Court to be vested with powers and independence. Members of the Court were appointed by the President of the Republic, with the approval of the Assembly, and held office

for nine years without right of reappointment. Other judges were appointed by the President on the nomination of the High Council of Justice, and the conditions and procedures for their selection were defined by law.

7. There had been some attempts to introduce the jury system, but the prevailing opinion of the majority of the preparatory commission, led by Council of Europe experts, had been that the Albanian system should follow its historical roots. Thus Albania had adopted the Italian model of the 1990s.

8. As to the training of law enforcement officials, the Higher School of Magistrates was a government-subsidized institution which enjoyed administrative, academic and financial autonomy. Its professional training programme included the mandatory initial training of prospective magistrates, the further education of magistrates and the professional training of judicial administration officials. The initial training of prospective magistrates consisted of a one-year theoretical programme, one year of practice under the supervision of a well-qualified judge or prosecutor, and a final year of intensive practice dealing with cases of lesser importance, again under the supervision of a judge or prosecutor.

9. A European Commission Community Assistance for Reconstruction, Development and Stabilization programme was currently assisting the School of Magistrates in organizing various seminars, round tables and conferences which would lead to improved standards. Similarly, the Ministry of Justice organized training for judges and prosecutors through the School in national and international human rights. Human rights and the respective obligations of law enforcement officials were among the most important aspects of the professional training of judges and prosecutors.

10. Within the framework of the improvement of service to citizens in the courts, and respect for human rights, a study on the reorganization of district courts and a master plan on judicial infrastructure had been drafted. The master plan, completed in 2004, identified the physical needs of Albanian courts, including equipment and information system requirements for a 15-year development period, and focused on the formulation of a realistic assistance plan for investment required from the State budget and foreign investors.

11. The prison staff training college provided two-week courses for new employees, and ongoing training for other employees, which included modules on human rights providing information on domestic and international human rights legislation, particularly as it affected detainees. In the context of overall prison reform, the college's curricula had been revised to convert it into a professional centre for the whole prison system. The prison system's education service also organized regular seminars on the treatment of prisoners, and issued periodic anonymous questionnaires to prisoners, aimed at identifying problems and complaints relating to their treatment by prison staff.

12. In cooperation with local NGOs, two training sessions for officials and jurists in the prison system had been conducted in 2004 to ensure better understanding of the right of complaint and to establish uniform practice. Long-term training of police officers, educators and administrators had commenced in two prisons in 2004, covering the rights of the child in the framework of the European Convention on the Exercise of Children's Rights, international standards and best practice in the penitentiary field. That training would be extended in 2005.

13. The Directorate-General of the State Police, in cooperation with NGOs, international police missions and other organizations, had organized various local and national activities in 2004, including training programmes on awareness and protection of human rights while carrying out police activities at all levels. The curricula of the Academy of Public Order and the Police Academy included specific courses on domestic legislation and international instruments which dealt with respect for fundamental human rights. Seminars, short training courses, workshops, and institutional and regional courses had been held on the subject of human rights, with the participation of judges, prosecutors and judicial police officers.

14. Mr. BELE (Albania), responding to questions about the legal aid system, said that the advocacy system had been re-established in 1990, some 23 years after its abolition during the communist era. By the end of 2003, 11 chambers of advocates had been functioning, with a total of 1,826 registered advocates. Chambers of advocates were independent, although their work could be supervised by the Ministry of Justice, and granted advocate licences in addition to taking disciplinary measures, which could extend to exclusion from the profession. In order to obtain an advocate's licence, a person must hold a law degree, have work experience in a law firm, State institution or juridical body, and have passed the chamber's bar examination. Although their independence was fully guaranteed, according to a 2004 report by the Organization for Security and Co-operation in Europe on the legal system in Albania, there were concerns regarding the non-existence of a proper code of ethics and the failure of chambers to impose disciplinary measures.

15. On the question of violence within the family, statistics were scarce. However, in 2002, the Ministry of Health, in cooperation with a number of international organizations, had conducted a survey on reproductive health, and its findings represented the first data available on the issue of violence against women nationally. Further details had been submitted in writing for the Committee's consideration.

16. Responding to the question on free legal aid, he said it was guaranteed by law but was granted only in criminal cases. The legal profession functioned well apart from the fact that it was difficult to control cases where lawyers abused their client's rights. The Government was aware that there was still room for improvement in terms of the quality of assistance provided.

17. On the definition of the criminal offence of torture in the Criminal Code, the delegation understood the Committee's concerns, but pointed out that article 86 on torture and article 87 on torture causing serious damage to a person's health were constructed as blanket provisions. The legislation was aimed at punishing all kinds of ill-treatment which amounted to torture, whether carried out by public officials or by private individuals. Articles 248, 250 and 314 of the Criminal Code and article 70 of the Military Criminal Code were applied for other violent acts that did not amount to torture. The protection of the legal interests of citizens, including physical and psychological protection in cases of abuse in the exercise of duties by State employees, was guaranteed.

18. A detailed definition of torture could be derived from Albanian jurisprudence and from the definition contained in the Convention in cases where public officials were involved. Under the Constitution, ratified international treaties constituted part of the internal judicial system and

were implemented directly. Such norms theoretically took precedence over domestic legislation in the event of conflict if the treaty expressly provided for its direct applicability, although the situation was not so straightforward in practice.

19. There was an increasing awareness of international instruments such as the European Convention on Human Rights. Nonetheless, the Government remained open to the suggestion of introducing amendments to the Criminal Code relating to torture, or drafting a specific law on the subject.

20. Although Albania had some difficulties implementing the Convention against Torture, acts of torture were punishable by law, and the Government appreciated the role of NGO reports in criminal investigations of torture cases. The delegation had not been able to verify the status of the case mentioned by Mr. Rasmussen, which had been included in the Amnesty International report of February 2005, since the identities of the victim and the perpetrator were unknown. The case had been brought to the attention of Amnesty International by an Albanian NGO, which should have named the accused police officers. The Klodian Yzeiri case had been closed, since the allegations of torture had not been substantiated, the investigation of the Merita Kola case had been halted due to a lack of evidence, and the Beqir Kaba case had been substantiated by photographic evidence of physical abuse and was currently before the courts. The investigations of such cases proved the public prosecutor's increased awareness of the need for thorough investigations of allegations of violence by police officers. Some previously closed cases had recently been reopened for further investigation.

21. Mr. NINA (Albania) said that the Albanian Constitution and domestic legislation on extradition were in line with international norms, such as the European Convention on Extradition, which could be invoked directly. Although Albania was a party to the European Convention for the Compensation of Victims of Violent Crimes, the full and proper implementation of that Convention was problematic owing to the need to update domestic legislation and difficulties in calculating the funds required. Requests for compensation could currently be filed during criminal proceedings through a civil suit.

22. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) had made five visits to Albania between 1997 and 2003, and had approved Albania's report on the implementation of its recommendations. The Albanian authorities continued to cooperate with the CPT on specific issues that required further action. The CPT would carry out its sixth country visit in 2005. Since 2001, considerable changes had taken place in the conduct of police officers towards detainees as a result of legislative reforms and personal changes. Since 2003, the majority of district chiefs of police had been replaced by better-qualified police officers. Until 2004, there had been insufficient legislation on investigation techniques, and evidence was traditionally based on confessions. The amended Code of Criminal Procedure provided for a greater range of investigation methods, and fewer opportunities for force to be used against suspects.

23. Paragraph 88 of the State party report was a direct quotation from the annual report of the People's Advocate. Alleged cases of violence had been sporadic and did not represent the institutional policy of Albanian law enforcement agencies. Albania had accepted the general principle that an unlawful order did not exempt a person from criminal liability. Such unlawful orders included an order to open fire against an unarmed person or to perpetrate torture or rape.

Kidnapping was governed by article 109 of the Criminal Code, which had been amended in 2001 owing to the increase in the number of kidnapping cases. The kidnapping or holding hostage of children under the age of 14 was punishable by a minimum sentence of 15 years' imprisonment and a fine of 3 to 7 million leks. Kidnapping accompanied by physical or psychological torture carried more severe sentences. Torture was punishable under the Albanian Criminal Code whether committed by Albanians or foreign citizens in Albania.

24. New detention regulations had been approved in 2004 and were currently being implemented. Although they provided that there should be no impediment to meetings between detainees and lawyers, certain difficulties had arisen in the duration of such meetings owing to overcrowding and lack of facilities in detention institutions. All detainees entering Tirana prison were seen by a doctor or nurse, who carried out an initial medical examination, and medical files were opened for each prisoner. Although doctors had access to all detainees, lack of medical supplies continued to be a serious problem. Detainees were allowed family visits three times a month, for 30-minute periods. The only obstacles to such meetings were caused by overcrowding in detention facilities. Detainees had daily access to written and visual media, and literature. Legal deadlines for accompanying detainees to court hearings were largely respected, although problems could occur owing to the unavailability of the necessary vehicles and personnel at the time specified by the court. Albanian judges and prosecutors generally respected procedural deadlines, and defendants and their counsel were particularly sensitive to detention deadlines. Albanian judicial practice had not identified cases of prolonged pre-trial detention. The criteria for arrest and pre-trial detention periods were specified in detail in the Code of Criminal Procedure.

25. The Albanian Constitution provided for the independence of the ombudsman (known as the People's Advocate), which was fully guaranteed. In April 2004, a children's department had been established within the Office of the Peoples' Advocate. That department was mandated to investigate cases of violence against children and to recommend compensation for victims. By the end of 2004, no cases had been brought to the department's attention. The department received financial support from the Swedish International Development Cooperation Agency and would focus on capacity-building, proposing changes in legislation pertaining to children, raising public awareness of the rights of the child, and establishing regional offices. A decision was yet to be taken on whether the department would continue to function within the Office of the People's Advocate or become a separate ombudsman's office for children.

26. Mr. BELE (Albania) said that, in accordance with Albanian legislation, the right to due process included the right to be judged and kept in pre-trial detention for a reasonable period, as set forth in the European Convention on Human Rights. The maximum period of pre-trial detention was three years. Any person who claimed to have suffered injuries was permitted, on request, to undergo an independent medical examination. In some cases, that right had actually been abused. The medical reports of general practitioners or other doctors were admissible as evidence before the courts.

27. Albania had ratified the Optional Protocol to the Convention on 1 October 2003. It had organized a series of seminars to raise public awareness of the Optional Protocol and to identify possible actors for the national mechanisms to be put in place once it entered into force.

28. No police officers wore masks while on duty. They were identified by visible insignia on the left arm of their uniform.

29. The Law of 25 February 1998 on special forces and rapid intervention units, as amended by the Law of 26 March 2001, stated that the mission of the forces in question, namely ensuring rapid intervention and security, required special training and equipment. Their identity remained secret during and after such missions, which included the release of kidnapped persons in circumstances calling for high security, and the seizure, arrest and neutralization of members of criminal and terrorist organizations and armed criminal groups, or of any other armed person who had committed a crime involving the use of a weapon. In criminal proceedings, special forces personnel could be identified in the event of allegations of abuse while participating in police operations or performing other police duties.

30. With regard to human trafficking, Albania's geographical location meant that it was often used as a last country of transit for trafficking to western European countries. Thanks to determined action by the Albanian State police in October 2002, trafficking by sea to Italy had been virtually brought to a halt, a fact that had been acknowledged by the Italian Minister of the Interior. The Albanian police continued to cooperate with the police forces of Greece, Italy, Serbia and Montenegro, and The former Yugoslav Republic of Macedonia, with the United Nations Mission in Kosovo (UNMIK) and with the police forces of other countries in the region to prevent, detect and combat all forms of illegal trafficking and terrorism.

31. There was no record of any border police officers being involved in illegal activities in 2004. The border police were being trained in the context of the European Union (EU) Integrated Border Management Strategy.

32. Mr. NINA (Albania) said that in March 2003 the Ministry of Health, in cooperation with the World Health Organization, had drafted a policy document on mental health services in Albania and subsequently an operational plan (2005-2009) for the development of those services. Detailed activities had been planned for the first two years. Activities during the following three years would depend on the findings of a progress report. The first phase of the plan involving the establishment of a technical service and department of mental health within the Ministry of Health had almost been completed. By the end of 2005 it was hoped to lay the normative basis for the implementation of the Mental Health Law. A draft medium-term budget for the mental health services was being drawn up. The process of de-institutionalization and the establishment of new community-based structures had begun.

33. An Internal Control Service Directorate had been operating within the Ministry of Public Order since 2001. Its mission was to investigate and detect illegal activities by State police officers. In 2003, the law had been amended to align the responsibilities of State police officers with those of the judicial police. In November 2004, telephone numbers had been installed in 12 district police headquarters to enable members of local communities to report illegal or arbitrary acts by State police officers. Police inspectors were required to investigate all complaints and to collect data and evidence on the officers concerned. For the time being, no statistics were available on the number of complaints filed.

34. Article 43 of the Law on the Rights and Treatment of Prisoners allowed the People's Advocate or commissioners authorized by the Advocate to visit pre-trial detention and prison facilities at any time. NGOs were also free to inspect pre-trial detention facilities at any time. Police headquarters had issued a one-year access permit to human rights NGOs such as the Albanian Human Rights Group and the Albanian Helsinki Committee.
35. Details of cases involving minors in conflict with the law had been provided by Albania to the Committee on the Rights of the Child in its initial report (CRC/C/11/27) on implementation of the Convention on the Rights of the Child. In January 2005, the Committee had commended Albania for the progress it had made since ratifying the Convention.
36. With regard to the impartiality of police officers investigating misconduct by their colleagues, separate sections for such investigations had been established under the Judicial Police Law. Their members were appointed by the General Prosecutor and were under the administrative and procedural authority of public prosecutor's offices.
37. The right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment was guaranteed by article 25 of the Constitution, even in states of emergency.
38. The entire health-care system was free of charge and could be used by victims of torture for rehabilitation, for instance through the Albanian Trauma and Torture Centre.
39. Mr. BELE (Albania) said that the written replies circulated at that meeting to the members of the Committee contained detailed comments on the transfer of responsibility for pre-trial detention from the Ministry of Public Order to the Ministry of Justice, together with a list of actions taken under the master plan to improve conditions for detainees in police custody.
40. Action had also been taken in 2004 to improve conditions in prisons. Large sums had been invested in improving prison accommodation and alleviating overcrowding. New sections had recently been opened in the Rrogozhina and Burrel prisons, and in-cell toilets had been installed in three other prisons. Sanitary facilities had been improved and meeting rooms now existed in almost all facilities for family visits and consultations with counsel.
41. People with mental disabilities on medication were treated in a separate sector of the prison hospital. In cooperation with the Ministry of Health, a draft agreement was being prepared for treatment in specially-equipped premises in Durres, for which the Ministry of Justice would provide security personnel. Funds had been appropriated in the budget for conversion of the premises and the Directorate-General of Prisons had drawn up a security plan.
42. Mr. NINA (Albania) said that as of March 2005 a total of 3,319 persons, including 752 pre-trial detainees, were being held in Albanian prisons and other places of detention. As at 9 May 2005, 902 persons were being held at detention facilities run by the Ministry of Public Order.
43. His delegation would inform the relevant authorities of the Committee's concern that responsibility for medical personnel attached to prisons should be transferred to the Ministry of Health.

44. Albania had ratified, without reservations, the Council of Europe Framework Convention for the Protection of National Minorities of 1999 and had substantially amended its legislation to comply with the applicable international standards. A working group to review the legal framework for minorities in the light of EU recommendations had concluded that the level of incorporation of the Framework Convention in Albanian legislation was satisfactory.

45. The State Police Law did not prevent members of ethnic minorities from being recruited to the police. The Minister of Public Order planned to issue a directive on quotas for the admission of members of ethnic minorities to the Police Academy and the Police Institute. There would also be a joint directive by the Minister of Public Order and the Minister of Local Government and Decentralization on estimated percentages of ethnic minorities at the regional and district levels in order to assess corresponding proportions for State police forces.

46. With regard to progress in achieving the objectives of the strategy to improve the living conditions of the Roma minority, Decision No. 632 of the Council of Ministers of 18 September 2003 on a programme to promote the employment of women gave priority, inter alia, to women aged over 35, Roma women and young mothers. One hundred women belonging to the Roma minority had been employed under the programme in 2004. The Minister of Labour and Social Affairs had issued Order No. 394 (2004) under which vocational training for unemployed members of the Roma minority was to be provided free of charge. Fifty members of the Roma minority had benefited from the measure in 2004.

47. Minority groups participated in public life through their representatives in legislative and executive bodies at the national and local levels.

48. Mr. YAKOVLEV (Country Rapporteur) expressed appreciation for the detailed replies provided by the delegation.

49. He had put a question which had not been addressed. Paragraph 106 of the report, which stated that “persons subjected to the provisions of this law can be expelled from the country without regard to the above procedures when the expulsion is necessary for the interests of public order or national security”, appeared to contradict the statements made in paragraph 64, to the effect that Albania respected the principle of non-refoulement, and in paragraph 105, regarding important legal safeguards for asylum-seekers. If the procedures referred to in the latter paragraph could be set aside, he wondered what protection there was against erroneous or abusive decisions, which might lead to expulsion in breach of the very clear provisions of article 3 of the Convention.

50. Mr. RASMUSSEN (Alternate Country Rapporteur) congratulated the State party on its strenuous and successful efforts to provide answers to what had been a very large number of questions.

51. A number of points had not been addressed, however. He wondered whether the delegation could clarify, for example, whether doctors were receiving appropriate training. He would also like to know whether police officers under investigation for torture were suspended from duty during the inquiry, and whether the Public Prosecutor’s Office carried out such investigations or delegated them to the police force itself.

52. In addition, he would like clarification on whether newly arrived prisoners were examined by a doctor within 24 hours; whether there had been any cases of compensation for torture; and whether any investigation had been opened into the hunger strike at prison 202.
53. The replies had referred to two of his own comments inaccurately. Firstly, in relation to kidnapping (replies, p. 35), he had not been referring to article 62 of the Convention but to paragraph 62 of the State party's report. Secondly, on the subject of psychiatric hospitals (replies, p. 44), he had been quoted as saying there was "a lot to do on this issue", whereas he had actually said "much could be said on the subject"; he had not expressed a view on the situation in Albania's psychiatric institutions.
54. Mr. BELE (Albania) said each district prosecutor's office included a judicial police section. Administratively, the judicial police was organized in part under the Ministry of Public Order and in part under the Public Prosecutor's Office. It consequently had the independence to carry out inquiries without the pressure of investigating colleagues from the same service.
55. There had been no case to date of compensation being paid for torture, but any person was entitled by law to request civil compensation during a criminal trial.
56. His delegation would try to provide official information on the hunger strike mentioned, but his own understanding, based on reports to a recent Council of Europe conference on Albania's justice reform, was that the underlying reason for the strike had been discontent at the actions of the serious crime squad.
57. Mr. GROSSMAN said the delegation's replies were of a high standard for a dialogue between the Committee and a State party. He particularly welcomed the due recognition given to the issues raised.
58. He wondered if there was an error on page 28 of the replies, where reference was made to the prohibition of extradition to a State whose "legislation provided for" cruel or inhuman treatment. Not many States made legal provision for such treatment. The question under the Convention was whether there was a risk of torture in a State.
59. Further to Mr. Yakovlev's comments, he wished to emphasize that the principle of non-refoulement was absolute, and he sought reassurance that return under such circumstances was not possible under the State party's legislation.
60. The report referred to certain persons who had been removed from the country, and he would like to know who they were, where they had been sent and whether they had been monitored following expulsion.
61. Mr. PRADO VALLEJO, referring to paragraph 38 of the report, asked what justification there could be for the limitations on the rights and freedoms referred to. He also asked for clarification regarding the functioning and organization of the military courts (report, para. 46).

62. The reply given on domestic violence (replies, p. 21) needed to be much more specific on the question of how to fill the gaps in the law in that area. On the question of violence against women, he said that studies begun in 1990 had not progressed very far. He urged the Albanian authorities to clearly state what procedures existed in order to deal with violence against women and what compensation was available to them.

63. The CHAIRPERSON said he would appreciate clarification of paragraph 114 (c) of the report, which implied that “military necessity” could be used as an excuse for a wide range of serious and violent crimes.

64. Mr. BELE (Albania) said he realized that the constitutional provision quoted in paragraph 38 might seem ambiguous. However, the Constitution was a modern document, drafted in consultation with a number of eminent experts, and he believed it provided full guarantees for human rights and other judicial instruments. He would try to obtain a comment from a constitutional expert.

65. The military courts were organized as stated in paragraph 46 of the report and provided the same rights and guarantees as the civil courts.

66. His delegation had given the best information available on domestic violence, but since it was based on a survey and not on statistical data, it could admittedly be flawed.

67. Mr. KAJA (Albania) said police officers under investigation were suspended from duty during the investigation.

68. The CHAIRPERSON thanked the members of the delegation for their work and contribution to a fruitful dialogue with the Committee.

The meeting rose at 5.55 p.m.