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COMMITTEE AGAINST TORTURE

Eighteenth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 288th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 1 May 1997, at 3 p.m.

Chairman: Mr. DIPANDA MOUELLE

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.288/Add.1.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Third periodic report of Denmark (CAT/C/34/Add.3) (continued)

1. At the invitation of the Chairman, Mr. Bruun, Mr. Faerkel, Mr. Frederiksen, Mr. Kjølbro, Ms. Apostoli, Ms. Troldborg, Ms. Cohn and Ms. Skouenborg (Denmark) resumed places at the Committee table.

2. Mr. BRUUN (Denmark) said that, even though the Convention had not been incorporated into Danish national legislation as such, existing laws more than adequately covered every aspect of the Convention and it could be invoked before the courts.

3. Despite the fact that Denmark's Criminal Code did not include torture as a specific offence, any action which could be defined as torture under article 1 of the Convention would be punishable in a court of law. The requirement of a definition of torture in the interests of keeping statistics on cases of such treatment could be met, inter alia, by monitoring the number of complaints against the police and looking at each case to see whether the alleged ill-treatment could be classified as torture. The Committee's concerns and arguments would be passed on to the Danish authorities for their consideration.

4. Ms. SKOUENBORG (Denmark) explained that the regulations governing asylum were based on the 1951 Convention relating to the Status of Refugees, the only difference being that they afforded wider protection. Asylum could be granted on the basis of article 1.A of the Convention, in which case the person would be granted what was known as Convention status, or on the basis of the Aliens Act, section 172 of which provided for de facto refugee status.

5. Section 31 of the Act, which had been mentioned by members of the Committee, was also based on the Convention relating to the Status of Refugees. The provisions of section 31 should be looked at not in isolation, but as part of the system governing asylum and refugee status. A person threatened with expulsion who feared that he might be tortured on return to his country of origin could invoke that section either during asylum proceedings or later on, when the case would be referred to the Refugee Board for a ruling. In cases where a person did not meet the requirements for a residence permit, but information concerning a risk of torture if he were to return home came to light after the competent authorities had rejected the application, proceedings could be reopened.

6. Mr. BRUUN (Denmark) said that the Algerian citizen mentioned by the Committee had ultimately been sent back to his country with his family. The Refugee Board had considered the case on two occasions and could find no reason to believe that the applicant would be in any danger if he returned home.

7. The Chechen asylum-seekers had been granted leave to stay in Denmark on humanitarian grounds because they were in poor health.

8. Ms. APOSTOLI (Denmark) said that the rules on remand in custody in solitary confinement were set forth in the Administration of Justice Act (Retsplejeloven). Detention in solitary confinement was decided by the court, could not be extended by more than four weeks at a time and was allowed only for a period of eight consecutive weeks. That rule did not apply if the charge carried a sentence of six years or more. The court had to specify why a person should be kept in solitary confinement and inform the detainee of his right to appeal. The prisoner could complain to the prison governor, the Department of Prisons and Probation or the Ombudsman.

9. A special statute on the enforcement of sentences was being prepared in the Standing Committee on the Criminal Code. The aim of the statute was to regulate the legal position of persons given a custodial sentence, including in the case of disciplinary punishment and solitary confinement. Special appeal procedures in cases of solitary confinement were being considered by the Standing Committee on Administration of Criminal Justice in the light of a research project and reports on how such punishment affected a person's physical and mental state.

10. The Administration of Justice Act provided for compensation for undue remand in custody in solitary confinement. Mr. Wissum, whose case had been reported on the Cable News Network (CNN), had received compensation in February 1997.

11. Ms. COHN (Denmark) said that inmates on remand were housed in ordinary, furnished cells in which they were allowed to keep their own belongings. Security cells had only a bed and facilities for restraining a prisoner and observation cells had furniture that was fixed to the floor to prevent any unfortunate incidents. Special cells that were used as punishment cells, were like ordinary cells.

12. Prisoners were kept only for short periods in observation or security cells. A guard had to be present at all times in cases where it had been necessary to restrain a prisoner.

13. Punishment was decided by the prison administration. Prisoners in solitary confinement could have their belongings with them, could read in their cells or be given work to occupy their time. In Copenhagen, they also had access to teachers, chaplains and social workers, for example, to ensure that their physical and mental welfare did not suffer. They had exercise periods and access to a range of leisure facilities. Conditions and services varied from prison to prison. Prison staff were given full training in how to deal with prisoners in solitary confinement and establish contact with them.

14. Work was compulsory for convicted prisoners, but persons on remand could choose whether they wanted to work or not. Copenhagen complied fully with the International Labour Organization Forced Labour Convention.

15. Mr. BRUUN (Denmark) said that prison inmates could lodge a complaint with the prison authorities and, as a last resort, with the Ombudsman, whose powers were relatively limited in legal terms, but formidable in terms of

moral authority. Although he could not change a decision or practice, his status as Parliament's watchdog against administrative abuses meant that his criticism and recommendations were taken very seriously.

16. Ms. TROLDBORG (Denmark) said that the Ministry of Justice had no plans to make substantial changes in the regulations relating to access of detained persons to a lawyer. A person who obtained legal assistance and was subsequently convicted continued to be liable for the lawyer's fees, but ability to pay was certainly not a prerequisite for obtaining legal assistance.

17. Each regional police complaints board was made up of a lawyer and two laymen, who were appointed by the Ministry of Justice on the basis of recommendations by the General Council of Lawyers in the case of the lawyer appointee and by the counties and municipalities in the case of the two laymen. The boards continuously monitored the processing of complaints against police personnel by the District Public Prosecutors. They could issue statements on how particular complaints should be dealt with and appeal against what they viewed as unsatisfactory decisions to the Director of Public Prosecutions. Decisions could also be appealed by the complainant. According to the first report by the Director of Public Prosecutions on the handling of complaints under the new system, 1,013 formal complaints had been made to the District Public Prosecutors. Of the 526 cases that had already been decided, 260 concerned police behaviour and 250 alleged criminal offences committed by police personnel. Ten cases had been appealed to the Director of Public Prosecutions by the police complaints boards. In 36 of the cases of alleged criminal offences, the District Public Prosecutors had established that there were grounds for indictment. Those cases had not yet been decided. The new system had led to an overall increase in complaints, but the statistics were not really comparable inasmuch as the complaints boards had not been competent to deal with complaints involving alleged criminal offences under the previous system.

18. The use of fixed leg locks had been abolished by the Ministry of Justice in 1994 in response to reports by Amnesty International and the Danish Medical Legal Council.

19. In March 1996, the National Commissioner of Police had requested a medical review and assessment of police self-defence holds and techniques. A team of physicians appointed by the Danish Board of Health had recommended, inter alia, that truncheons should not be used on the front of a person's body. The Medical Legal Council, commenting on the assessment, had stated that no use of physical force was completely without risk and that tight handcuffs, particularly in the event of sudden jerks, could damage the nerves in a prisoner's hands. The National Police Commissioner had also undertaken a comparative study of handcuffs and of police training in handcuff use in a number of European countries and in Canada and had concluded that the Danish police used appropriate and suitably designed handcuffs and that their training in the use of handcuffs was satisfactory. The Minister of Justice had instructed the National Police Commissioner to implement the conclusions of the two studies, taking into account comments by the Board of Health and the Medical Legal Council, in a new training manual for the Danish police.

20. Mr. BRUUN (Denmark) stressed that fixed leg locks had been illegal since 1994. When the term leg lock was currently used, it referred solely to a grip used to restrain a person on the ground.

21. There was no perfect solution to the problem of controlling unruly, hostile and sometimes violent crowds. Any means used by a police force in such circumstances was liable to have undesirable consequences. In the Danish view, there was a legitimate use for police dogs to control unruly crowds, provided that the principle of proportionality was observed and the dogs were kept under tight control.

22. Ms. TROLDBORG (Denmark) said that a draft new set of regulations on the use of police dogs contained such provisions as the mandatory warning of crowds of the intention to use dogs, specifications as to length of leash, mandatory notification of the local chief of police of the proposed use of dogs and the subsequent submission of a report on their use both to the local chief and to the National Commissioner of Police.

23. With regard to the representation in the Danish police force of officers with a different ethnic background, only Danish citizens were allowed to join the police force and it was felt that it might be considered discriminatory to inquire into candidates' ethnic origins. However, in view of the importance attached by the National Commissioner of Police and the Ministry of Justice to ensuring that the police force reflected the composition of Danish society and to improving relations between the police force and ethnic minorities, statistics had been compiled at the Danish Police Academy in 1996. Of 128 new entrants, 7 were of non-Danish ethnic or cultural origin, a ratio of 5.6 per cent. In cooperation with the Board for Ethnic Equality, the Ministry of Justice had published a brochure on the police to facilitate the recruitment of persons of different ethnic origins and, in cooperation with the Documentation and Advisory Centre on Racial Discrimination, a leaflet for members of ethnic minorities having some form of permanent connection to Denmark concerning their rights and obligations vis-à-vis the police. In January 1997, the Copenhagen Commissioner of Police had introduced a new strategy for relations between the police and ethnic minorities.

24. Mrs. ILIOPOULOS-STRANGAS, referring to paragraph 23 of the report (CAT/C/34/Add.3), asked whether the exception from the prohibition against refoulement pursuant to section 31 of the Aliens Act in the case of aliens who presented a risk to national security or an immediate danger to other persons was a restriction on the scope of article 3 of the Convention.

25. Mr. BRUUN (Denmark) said that there were no restrictions on the scope of the article and that even persons who presented a serious risk to the security of the State were not expelled.

26. Mr. PIKIS, referring to the case of Mr. Wissum reported on the Cable News Network, asked on what grounds financial compensation had been paid. Had the Danish authorities acknowledged that the damage to his health had resulted from solitary confinement? Were there any other cases of compensation for

victims of solitary confinement and, if so, what compensation had been awarded? Such information was of enormous importance for assessing the implications of solitary confinement in the light of article 16 of the Convention.

27. Ms. TROLDBORG (Denmark) said that, pursuant to paragraph 1018 (a), section 1, and paragraph 1018 (b) of the Administration of Justice Act, persons arrested or remanded in custody as part of a criminal procedure had a right to compensation for economic damage, general distress and damage to their career if no charge was brought or if they were acquitted.

28. Mr. BURNS said that the fundamental question was whether Mr. Wissum had obtained financial compensation because, in the view of the Danish Government, his detention had been unlawful from the outset or because his detention had been prima facie lawful, but rendered unlawful by the damages sustained. A third possibility was that the compensation had been paid solely on account of the detainee's acquittal.

29. Ms. TROLDBORG (Denmark) said that there was no question of unlawful detention, since the Administration of Justice Act had not been breached. The police were authorized to detain suspects during an investigation if there were sound reasons for believing they had been involved in a crime. Any suspect who was later proved innocent must be compensated.

30. Mr. PIKIS said that his question whether the Danish authorities had acknowledged that Mr. Wissum had suffered physical or mental damage as a result of solitary confinement had not been answered.

31. Mr. BRUUN (Denmark) said that he was unable to give a precise answer because he was not familiar with the details of the judgement and a number of factors could have been involved in the decision to award compensation. He assured Mr. Pikis that further information both on the case of Mr. Wissum and on the wider implications of the issue would be provided in due course.

The public part of the meeting was suspended at 4.25 p.m. and resumed at 5.45 p.m.

32. The CHAIRMAN informed the delegation of Denmark that, in accordance with the Committee's jurisprudence, Mr. Sorensen, a Danish citizen, had not participated in the Committee's deliberations.

33. Mrs. ILIOPOULOS-STRANGAS (Country Rapporteur) read out the Committee's draft conclusions and recommendations on the third periodic report of Denmark (CAT/C/34/Add.3):

"Conclusions and recommendations of the Committee against Torture

Introduction

The Committee thanks the Government of Denmark for its frank cooperation, demonstrated among other things by its third periodic report, which was submitted on time. Not only was the report prepared in accordance with the general guidelines regarding the form and

contents of periodic reports to be submitted by States parties under article 19 of the Convention, but it also contained abundant information which facilitated a constructive dialogue.

The Committee also thanks the Danish delegation for its frank replies to the questions raised by members of the Committee.

Positive aspects

The Committee notes with satisfaction the commitment of the Government of Denmark to the reforms of the judicial system in Greenland.

The Committee also considers the State party's efforts to ensure that the composition of the police corps reflects the diversity of the population to be another very positive aspect. It views as very important the fact that the subject of 'human rights' appears in the basic training of the police. The Committee can only welcome the fact that the Government grants subsidies to independent, private organizations involved with the rehabilitation of torture victims.

Factors and difficulties impeding the application of the Convention

The Committee notes the difficulties of Denmark in incorporating the provisions of the Convention into Danish law, given its commitment to the 'dualist' system.

Subjects of concern

The Committee is concerned by the fact that there may still be some doubts as to the legal status of the Convention in domestic law, particularly with regard to the possibility of invoking the Convention before the Danish courts and the competence of the courts to apply its provisions ex officio.

The Committee is also concerned that Denmark has still not introduced the offence of torture into its penal system, including a definition of torture in conformity with article 1 of the Convention.

The Committee is concerned about the institution of solitary confinement, particularly a preventive measure during pre-trial detention, but also as a disciplinary measure, for example, in cases of repeated refusal to work.

The Committee expresses its concern about the methods used by the Danish police both in their treatment of detainees and during public demonstrations, for example, the use of dogs for crowd control.

The Committee is further concerned about the real degree of independence of the mechanisms used to deal with detainees' complaints.

Recommendations

The Committee recommends that the State party should consider incorporating the provisions of the Convention into domestic law, as it has already done for the European Convention on Human Rights.

The Committee reiterates the recommendation it made during consideration of the first and second periodic reports of Denmark that is should incorporate provisions into its domestic law on the crime of torture, in conformity with article 1 of the Convention.

Except in exceptional circumstances where the safety of persons or property is involved, the Committee recommends that the use of solitary confinement should be abolished particularly during pre-trial detention, or at least that it should be strictly and specifically regulated by law (maximum duration, etc.) and that the possibility of judicial supervision should be introduced.

The Committee recommends that the State party should reconsider the methods used by police in their treatment of detainees or during crowd control.

The Committee recommends that the State party should ensure that complaints of ill-treatment lodged by detainees are handled by independent bodies."

34. Mr. BRUUN (Denmark) said his delegation had taken careful note of the Committee's conclusions and recommendations and would transmit them to the Danish authorities. He thanked the Committee for the opportunity to engage in a useful and constructive dialogue.

35. The Danish Government was endeavouring not only to fulfil its obligations as a party to the Convention against Torture, but also to make an active contribution to the prevention of torture. The Government attached great importance to the work of the Rehabilitation and Research Centre for Torture Victims and its International Rehabilitation Council for Torture Victims and would continue to provide them with financial and moral support. It remained committed to the preparation of a draft optional protocol to the Convention which would allow the Committee to make visits to places of detention similar to those carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and took the view that Governments would automatically give consent to such visits by acceding to the optional protocol. His Government welcomed the adoption by the Commission on Human Rights of a draft resolution on torture (E/CN.4/1997/L.51), of which Denmark had been a sponsor and which included provisions on corporal punishment, the responsibility of medical personnel and the proclamation of 26 June as a United Nations international day in support of the victims of torture and the total eradication of torture and the effective functioning of the Convention against Torture, which had entered into force on 26 June 1987.

36. The CHAIRMAN thanked the delegation of Denmark for its full and frank cooperation with the Committee.

The meeting rose at 6.05 p.m.