UNITED
NATIONS

CAT

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

Distr.
GENERAL

CAT/C/SR.350
16 November 1998

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Twenty-first session

SUMMARY RECORD OF THE 350th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 12 November 1998, at 10 a.m.

Chairman: Mr. BURNS

CONTENTS

GE.98-19522 (E)

The meeting was called to order at 10 a.m.

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

Initial report of Iceland (CAT/C/37/Add.2)

1. At the invitation of the Chairman, Mr. Geirsson, Mr. Jónsson, Ms. Thorarensen and Mr. Ólafsson (Iceland) took places at the Committee table.

2. The CHAIRMAN invited the delegation to introduce the initial report of Iceland (CAT/C/37/Add.2).

3. Mr. GEIRSSON (Iceland) said that, since no major legal reform had taken place in fields covered by the Convention since Iceland's initial report had been submitted, he would simply clarify some important aspects of the Icelandic situation. Criticism regarding the absence of explicit provisions on fundamental human rights in the Constitution, which had remained practically unchanged since 1874, had prompted the introduction in 1995 of extensive amendments. Accordingly, article 68, paragraph 1, of the Constitution contained an unreserved and unconditional prohibition of torture or other inhuman or degrading treatment or punishment that drew on article 7 of the International Covenant on Civil and Political Rights and on article 3 of the European Convention on Human Rights; the latter had had the force of law in Iceland since 1994. The Constitution's interpretation of the term “torture” was based on those international instruments, as required by article 1 of the Convention against Torture. The constitutional provision in question had been invoked on one occasion, in October 1997, as mentioned in paragraph 56 of the report, when the Icelandic courts had decided to reject an extradition request from a foreign State on the grounds, in part, that the persons involved had been in danger of being subjected to inhuman treatment in the requesting State.

4. Various measures had been taken in the fields of legislation, public administration and law enforcement with a view to fuller compliance with international human rights obligations, including the prevention of torture. The Code of Criminal Procedure protected the rights of arrested persons and remand prisoners during police investigations of criminal cases, so as to prevent excesses of any kind by persons vested with public authority for investigative purposes. A recently-enacted Regulation on the Legal Status of Arrested Persons and Police Interrogations provided procedural guarantees for persons being held and questioned in police detention, including their unreserved right to consult with legal counsel at all times. The doctors attending arrested persons were not dependent on the police in any way.

5. In addition to providing for the protection of remand prisoners and convicted prisoners, two new Acts had been adopted to safeguard the rights of patients and persons committed to hospitals against their will. The Act on the Rights of Patients ensured respect for the personal dignity of patients, providing for the right of a patient to refuse medical treatment and requiring that he or she must give written approval for any participation in scientific tests, such as experiments with new drugs. The Legal Competency Act stipulated that a person could be committed to a hospital for a limited period

of time, subject to strict conditions, if he or she suffered from a serious psychiatric illness or was addicted to alcohol or drugs. A person so committed received the assistance of a specially appointed counsellor. Protection was also afforded for adolescents not responsible under criminal law, who had been committed to institutions against their will.

6. In the context of radical changes in the general organization of the Icelandic police force, the Police Act of 1997 had introduced a new specific procedure to be applied in the event of a complaint against a member of the police for an alleged criminal act committed in the exercise of his or her duties, so as to ensure a careful and impartial investigation from the outset. Under article 35 of the Police Act, the Director of Public Prosecutions, who was in charge of all such investigations and whose independence had subsequently been reinforced by Act No. 29/1998, was to be notified forthwith of any such complaint and he would directly appoint the police officers to investigate such cases.

7. In order more fully to comply with the requirements of article 5, paragraph 2, of the Convention, amendments had been made to the General Penal Code in 1995 that had extended Iceland's criminal jurisdiction in cases involving torture offences. Consequently, a person could be sentenced under Icelandic criminal law for an offence described in the Convention against Torture even if it had been committed outside Icelandic territory and irrespective of the perpetrator's nationality.

8. In response to concerns expressed by members of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment following their visit to Iceland in 1998, the Icelandic authorities were taking steps to improve prisoners' health care. The amendments that had been introduced in the human rights provisions of the Icelandic Constitution demonstrated the growing general concern for such matters in Iceland. The delegation looked forward to a constructive dialogue on the Icelandic situation in matters concerning the prohibition of torture and would be happy to provide any further information.

9. Mr. SØRENSEN (Country Rapporteur) thanked the Icelandic delegation for the initial report (CAT/C/37/Add.2) and for its oral statement. The Convention had come into force in Iceland on 22 November 1996 and declarations had been made under articles 21 and 22. The fact that the initial report had been received in June 1998, although it had been due in 1997, was doubtless to be attributed to a shortage of manpower, Iceland being a small country, and had been compensated by the fact that it was one of the longest initial reports ever received, conformed closely to the guidelines and answered virtually all potential questions. He welcomed the amendment to the Constitution whereby torture was prohibited under any circumstances, but the fact that domestic law contained no definition of torture and did not specify torture as being a crime ran counter to the provisions of articles 1, 2 and 4 of the Convention against Torture. Why had the Convention not been incorporated into Icelandic legislation, in contrast to other international instruments such as the European Convention on Human Rights?

10. The delegation had also stated that all forms of torture, both physical and mental, were covered by criminal law. However, some practices not

classified as torture ought to be, and so warranted harsher sentences. Just because torture was not mentioned in the law did not mean that it did not take place. He therefore asked for more convincing proof that there was no torture in Iceland. It would greatly simplify the Committee's work if Iceland did have a definition of torture and if torture was made a crime under criminal law.

11. According to paragraph 53 of the report, the risk of oppression or persecution was taken into account in deciding whether to extradite someone. Did Iceland specifically consider, as required under article 3, whether there were substantial grounds for believing that the person concerned would be in danger of being subjected to torture?

12. As to article 10, the report and the comments by the delegation had focused primarily on inhuman and degrading treatment. What was being done to ensure that police and prison personnel received education and information regarding the prohibition of torture? How long was the theoretical training? Apparently, a formal description of the education of prison wardens was under preparation. Had that work been completed and could a copy be sent to the Committee for information?

13. According to paragraph 105, a person could be committed to a hospital for a limited period of time, subject to strict conditions, if he or she suffered from a serious psychiatric illness or was seriously addicted to alcohol or other drugs. Was it sufficient for a person to be a drug addict or an alcoholic to be committed to a mental institution? Other countries had additional conditions for taking such action: for example, the individual must be dangerous to himself or others. Surely, it was not enough that he had been drinking heavily. In his opinion, that amounted to interference with free will. Could the delegation indicate whether any other conditions must be met before a person could be committed? Furthermore, just how long was “a limited period”? Was the relevant decision regularly reviewed? For instance, could someone be committed for as long as a year without any review?

14. With reference to the professional conduct of members of the medical profession, paragraph 106 stated that a prohibition of torture was not expressed, as it was regarded as self-evident. His own personal experience over the past 15 years had in fact been that it was not self-evident. Hence the paramount importance of an express provision.

15. As far as article 11 of the Convention was concerned, Iceland was to be commended for so closely following the recommendations of the Council of Europe's Committee for the Prevention of Torture (CPT). However, paragraph 117 said there was no systematic, overall control of places in which persons deprived of liberty were accommodated. It should be remembered that, under article 11, States parties were duty-bound to perform systematic reviews. Although it was gratifying that in the past the CPT had had an unrestricted right to visit, it would be useful for Iceland to have its own inspection system, one that would allow judges or non-governmental organizations (NGOs) to visit prisons freely. So much could happen between two CPT visits, which only took place every four years.

16. He would like more information about solitary confinement for prisoners in pre-trial detention and referred to the statistics Iceland had given to the CPT on the number of prisoners and the amount of time spent in solitary confinement in 1992 and 1993. The figures were somewhat alarming, showing a rise from 35 prisoners in 1992 to 83 in 1993 - a considerable increase. One person had spent more than 30 days in solitary confinement in 1992, but six had done so in 1993. As the punishment could have an adverse impact on health, it should be used as sparingly as possible and under very strict conditions. Iceland was to be commended for following the CPT's suggestion about rules, and he therefore requested the relevant statistics for 1997 on solitary confinement, above all for periods of 30 days or more. Was the trend towards using solitary confinement on the rise or on the decline?

17. In connection with article 14, on rehabilitation, the report mentioned in paragraph 131 that compensation was not limited to torture, but did not actually state that compensation could be obtained for torture. Presumably that went without saying. Lastly, according to paragraph 141, Icelandic legislation did not expressly prohibit the invocation in evidence of a statement obtained by torture. It was imperative for that law to be changed in order to prevent such evidence from being so used.

18. He wished to thank Iceland for its generous donations in recent years to the United Nations Fund for Victims of Torture. The Fund was of crucial importance to torture victims the world over.

19. Mr. MAVROMMATIS (Alternate Country Rapporteur) said it was gratifying that Iceland's report had so closely followed the Committee's guidelines and the Manual on Human Rights Reporting. Iceland had been improving what had already been a satisfactory situation. He would nonetheless like to know why Iceland had delayed ratifying the Convention for such a long time. Why had the report been a year overdue?

20. Paragraph 63 of the report said that section 131 of the General Penal Code provided that a judge or other public servant entrusted with public authority under criminal law who employed unlawful methods in order to make a person confess was liable to imprisonment. That was rather strange. One of the main factors which secured the independence of the judiciary was immunity from criminal and civil prosecution. Admittedly, judges could be dismissed as a disciplinary action, but that was an entirely different matter. A judge who utilized such unlawful methods should not be on the bench in the first place. Could the delegation comment? Finally, in connection with the most recent visit by the CPT, he would like more information about its criticism regarding health-care arrangements.

21. Mr. ZUPAN„I„ said he joined in the favourable comments by the Rapporteur and the Alternate Rapporteur. As stated in paragraph 113 of the report, Icelandic law regulated accommodation for untried prisoners. He would be interested to know whether comparable regulations governed both the procedure for commitment of the mentally ill and the use of force to restrain such persons once they were committed to hospitals. He would also like to find out whether asylum seekers were legally enabled to present their cases to the authorities. What authorities were competent in that matter and what was the procedure?

22. Paragraph 114 said that an untried prisoner could always refer matters relating to his imprisonment, including his treatment, to a judge. Procedural details would be welcome, particularly with regard to such questions as accommodation and treatment. Were untried prisoners able to lodge complaints about their treatment? Finally, in many countries solitary confinement was used only as a disciplinary measure and it was not applied to untried prisoners. Reports indicated that there had been several cases of suicide in Iceland's prisons, including that of a young man who had died while in solitary confinement during pre-trial detention. Detailed information on those cases would be appreciated.

23. Mr. CAMARA observed that there were two approaches to accommodating international instruments to domestic legal regimes, one which posited that international law took precedence over domestic law, and the other which posited that it stood on an equal footing with domestic law. Paragraphs 54 and 55 of the core document (HRI/CORE/1/Add.26) indicated, first, that Iceland adhered to the legal doctrine that international treaties did not assume the force of domestic law even if ratified, and second, that in cases of disagreement between domestic and international law, domestic law generally took precedence. Since Iceland evidently subscribed neither to the monistic nor to the dualistic system, the Convention in fact lacked legal meaning. Explanations would be welcome.

24. The CHAIRMAN commended Iceland for its handling of the essential elements of the Convention. He agreed with Mr. Sørensen that the State party should be urged to incorporate in its General Penal Code a definition of torture that directly reflected the terms of the Convention, particularly since its failure to do so undermined the ability of the Committee to encourage other States with lesser human rights records to do the same. Furthermore, without the existence of a crime per se, the burden of determining whether excessive force had been used fell to police officers. If, on the other hand, torture was a crime, police officers, prosecutors and judges could all advocate prosecution. Furthermore, it was unquestionably difficult to determine to what extent torture was practised if it was not specifically defined as a crime under the law.

25. The report acknowledged in paragraph 141 that Icelandic law - contrary to the terms of article 15 - did not expressly prohibit the invocation in evidence of a statement that was obtained by torture, and left the evaluation of evidence to the judge. The drafters of the Convention had felt that such an exclusionary rule was necessary in order to protect the accused during interrogation. It was preferable, in his view, entirely to exclude tainted evidence, rather than to rely on the discretion and sensibilities of individual judges.

26. On a point of lesser importance, he noted that the core document usefully explained the historical evolution of the relationship between the three branches of the Government as well as how the judiciary had operated throughout the country prior to recent reforms. It also indicated that, as from July 1992, administrative and judicial powers had been totally separate. However, the core document stated that the Director of Public Prosecutions handled serious criminal matters, but that the magistrates and the Commissioner of Police in Reykjavik were empowered to sanction violations of

the Alcoholic Beverage and Traffic Acts by fines, confiscation and imprisonment. Did the Government of Iceland in fact regard the application of such sanctions as an executive rather than a judiciary function? Did it indeed mean to indicate that the Commissioner of Police was empowered to imprison a person? Clarifications would be helpful.

27. Mr. ZUPAN„I„ pointed out that article 4 required States parties to ensure that all acts of torture were offences under their criminal law. Many States assumed, however, that their legislative arrangements prohibited torture under criminal provisions governing other crimes. But the definition of torture included in article 1 was a sophisticated one, establishing torture as a crime in its own right with a set of specific and distinct elements, including, for example, the fact that it must be committed by a person operating in an official capacity. The Committee therefore strongly urged all States parties to incorporate verbatim in their domestic criminal legislation the definition set out in the Convention.

28. Studies of comparative international law had shown that the exclusion of tainted evidence was, in practical terms, the most effective means of preventing torture. If evidence obtained through torture could not be used, there was less reason to commit such acts. An exclusionary rule not only influenced the conduct of police officers, but also protected the legitimacy of the legal process. Iceland, as a paragon of human rights protection, should consider enacting such a rule simply as an example to other countries.

29. The CHAIRMAN invited the delegation of Iceland to reply at the next meeting to the questions raised by members of the Committee.

30. The delegation of Iceland withdrew.

The meeting rose at 11.15 a.m.