



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

Distr.
GENERAL

CAT/C/5/Add.11
3 January 1989

ENGLISH
Original: RUSSIAN

UNISA COLLECTION

COMMITTEE AGAINST TORTURE

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

Initial reports of States parties due in 1988

Addendum

UNION OF SOVIET SOCIALIST REPUBLICS

[6 December 1988]

I. Information of a general nature

1. The basic legal norms on which the prohibition and eradication of torture, and of other cruel, inhuman or degrading treatment and punishment undoubtedly rest are to be found in the Constitution (Fundamental Law) of the Union of Soviet Socialist Republics.

2. In particular, it is laid down in article 4 of Part 1 of the Constitution of the USSR that the Soviet State and all its bodies function on the basis of socialist law, ensure the maintenance of law and order, and safeguard the interest of society and the rights and freedoms of citizens. Respect for the individual and protection of the rights and freedoms of citizens are the duty of all State bodies, public organizations, and officials.

3. Citizens of the USSR have the right to protection by the courts against encroachments on their honour and reputation, life and health, and personal freedom and property (article 57 of the Constitution of the USSR). They are guaranteed inviolability of the person, the home, and private life, and privacy of correspondence, telephone conversations, and telegraphic communications (articles 54, 55 and 56). Citizens of the USSR have the right to lodge complaints against the actions of officials, State bodies and public bodies. Complaints shall be examined according to the procedure and within the time-limit established by law. Actions by officials that contravene the law or exceed their powers, and infringe the rights of citizens, may be appealed against in a court in the manner prescribed by law (paras. 1 and 2 of article 58 of the Constitution of the USSR).

4. On the basis of the foregoing constitutional provisions the specific norms of Soviet criminal law, the law of criminal procedure, the corrective labour law and other branches of Soviet law directly prohibit the use of cruel or degrading behaviour and punishment.

5. Thus, in the investigation and legal examination of criminal cases, article 14 of the Fundamental Principles of Criminal Legislation of the USSR and Union Republics (article 20 of the codes of criminal procedure of the RSFSR and the other union republics) prohibits the obtaining of statements from the accused and from other persons involved in a case by force, by threats and other illegal measures. Article 179 of the criminal codes of the RSFSR and of the Byelorussian SSR, article 180 of the Criminal Code of the Ukrainian SSR, and similar articles in the criminal codes of the other union republics establish the legal liability of officials who extract statements by the use of threats, force or humiliation of the person being questioned, or by other illegal acts.

6. Persons suspected of or accused of committing a crime may, if the legally defined grounds exist, be held in detention for a specified period before a judicial decision. The detention system is laid down in the Statute on the system of short-term detention for persons suspected of committing a crime, and the Statute on preliminary confinement under guard. These normative acts do not contain any provisions prejudicial to the honour and dignity of detained and arrested individuals; for example, article 15 of the Statute on preliminary confinement under guard, which defines punishment measures applicable to persons detained under guard for infringements of the detention regulations, specially emphasizes the impermissibility of the use of measures, the purpose of which is to cause physical suffering or to degrade.

7. In setting out the aims of the use of punishment for offences committed, article 20 of the Fundamental Principles of Criminal Legislation of the Soviet Union and the Union Republics specifies that it is not the purpose of punishment to cause physical suffering or to degrade. A similar regulation relating to the giving of punishment is to be found in article 1 of the Fundamental Principles of Correctional-Labour Legislation of the USSR and the Union Republics. The content of the types of punishment and of the system for their administration laid down in the above-mentioned fundamental principles of the criminal legislation and the correctional-labour legislation of the union republics also leads to the same conclusions.

8. The USSR is not a party to any international agreement having provisions with a broader scope than the provisions of the present Convention although the crimes formulated in articles 170, 171, 179 and 183 of the Criminal Code of the RSFSR and in the corresponding articles of the criminal codes of the union republics do cover a wider range of acts that constitute cruel, inhuman or degrading behaviour.

9. There is nothing in Soviet legislation to prevent the invoking of the provisions of the Convention or of other international agreements in force in the courts and in various judicial and administrative proceedings. The provisions of the Convention may be applied in the USSR by the implementation of the norms of Soviet legislation that secure the provisions of the Convention. In accordance with articles 4 and 5 of the Fundamental Principles of Criminal Legislation of the USSR and the Union Republics, all persons who have committed crimes in the territory of the USSR (except for persons possessing diplomatic immunity) are liable to prosecution under the criminal legislation in force in the Union Republic in which they are arraigned or brought to trial. For offences committed outside the USSR, foreign citizens are liable under Soviet criminal legislation in cases covered by international agreements. The codes of criminal procedure of the union republics specify that, irrespective of where a crime is committed, criminal proceedings are conducted in accordance with the code of criminal procedure of the union republic concerned (see, for example, articles 1 and 33 of the Code of Criminal Procedure of the RSFSR, article 3 of the Code of Criminal Procedure of the Ukrainian SSR, and articles 1 and 21 of the Code of Criminal Procedure of the Byelorussian SSR).

10. Consequently, the general principles and the rules for the treatment of persons indicted, accused, tried and convicted, reflected in the Constitution of the USSR and in Soviet criminal, criminal procedural and correctional-labour legislation, are regarded in Soviet legal theory and practice as guarantees of the protection of the individual against illegal infringements in the course of criminal proceedings.

11. Nevertheless, proposals are being made in the preparation of legal reform in the USSR for increased requirements regarding the professional qualifications of law enforcement officers, their knowledge of and respect for the law and their ethical conduct, since it is precisely these traits in an individual that are sometimes appraised as ignorance of the legal prohibitions considered above.

12. Depending on the nature of an offence that falls under the heading of cruel, inhuman or degrading behaviour, the measures applied to the offender may be criminal, administrative or disciplinary. Criminal proceedings are

pursued by internal ministerial bodies, by the Procurator's Office and by the court, which pronounces the final verdict. Cases of administrative infringements are within the competence of administrative organs. Cases of breaches of discipline are dealt with in accordance with subordinate status.

13. One important means of ensuring and protecting the rights of the individual is the right of citizens to lodge complaints with State bodies and public bodies. This right is assured by article 58 of the Constitution of the USSR. The general procedure and the time limit for the examination of complaints are laid down in the Edict of the Presidium of the USSR Supreme Soviet of 12 April 1968 "Procedure for considering proposals, applications and appeals of citizens" (as embodied in the Edict of 4 March 1980). Should a citizen maintain that a public official has made him the victim of illegal acts enumerated in paragraph 1 of article 1 of the Convention, he has the right to lodge a complaint with a procurator. In accordance with articles 26, 28 and 29 of the Law on the Procuracy of the USSR, articles 3 and 218-220 of the RSFSR Code of Criminal Procedure and similar articles in the codes of criminal procedure of the other union republics, the procurator has to examine the complaint within a period of three days; should there be indications of a criminal offence he initiates a criminal case and investigates it or hands over the investigation to an investigator and, when the fact of perpetration of an illegal act has been established, sends the case for trial. The court considers the case received from the procurator and decides on the guilt of the accused and the penalty. Should evidence of cruel behaviour on the part of a public official become known during the examination of a case in court, the court initiates a case against that individual and forwards the information required for investigation of the case and a decision on prosecution (article 256 of the RSFSR Code of Criminal Procedure and articles of the codes of criminal procedure of the other union republics). The person subjected to cruel treatment may lodge complaints to a higher procurator or a higher court against the actions and decisions of the procurator and the court.

14. It should be noted that the law embodies an important guarantee of the rights of individuals subjected to any form of deprivation of liberty to complain about any illegal actions affecting them, namely the provision that the complaints, statements and letters of such persons addressed to the procurator shall not be subject to examination and shall be sent to the addressee within one day (article 26 of the Fundamental Principles of Correctional-Labour Legislation, article 13 of the Statute on preliminary confinement under guard, and article 17 of the Statute on the system of short-term detention for persons suspected of committing a crime.

15. It must also be emphasized that when there is information to indicate that acts have been committed that fall within the definition of torture, criminal proceedings are initiated by specific bodies independently of a complaint from the victim.

II. Information concerning articles 2-16 of Part I of the Convention

Article 2

Paragraph 1

16. As already noted in paragraphs 1-7, 9-11, 12 and 13-15 of this document, the Soviet State has taken and is taking a number of effective legislative, administrative, judicial and other measures to obviate the violations of legality that were committed in the past, to eradicate them decisively in the

present and to prevent them in the future. A special commission of the Politburo of the CPSU Central Committee has been set up to deal with the rehabilitation of victims of repression from the period of the personality cult; the commission is working in conjunction with the Office of the Chief Procurator of the USSR and the Supreme Court of the USSR. The results of this Commission's work are published in the press. Measures are being taken to cleanse the ranks of law-enforcement bodies of those who allowed unauthorized methods to be used in the investigation of crimes, and to remove judges who were irresolute in opposing the illegal actions of these persons when examining the criminal deeds committed by them.

17. The central bodies of the party and the State have recently adopted a number of important decrees with the aim of ensuring reliable protection for the constitutional rights and legal interests of citizens: a Decree of the CPSU Central Committee "On the further strengthening of socialist legality and law and order, and increased protection for the rights and legal interests of citizens" (1986); a decree of the CPSU Central Committee "On measures to increase the role of procuracy supervision in the strengthening of socialist legality and law and order" (1987); an Edict of the Presidium of the USSR Supreme Soviet dated 16 June 1987 "On the amending and supplementing of the USSR law on the USSR procuracy"; a Decree of the USSR Supreme Soviet dated 3 July 1985 "On the report of the Procurator-General of the USSR on the supervisory activity of the USSR procuracy on fulfilment of the requirements of Soviet laws on the strengthening of law and order, and protection of the rights and legal interests of citizens"; a Decree of the Presidium of the USSR Supreme Soviet dated 27 March 1987 "On progress in the fulfilment of the decree of the USSR Supreme Soviet on the report of the Procurator-General of the USSR on the supervisory activity of the USSR procuracy on fulfilment of the requirements of Soviet laws on the strengthening of law and order, and protection of the rights and legal interests of citizens"; and a Decree of the USSR Supreme Soviet dated 26 May 1988 "On the report concerning the activity of the USSR Supreme Court".

Paragraph 2

18. Soviet legislation does not contain any clauses on the possible use of torture under exceptional circumstances.

Paragraph 3

19. Pursuant to the legislation of the USSR an order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

20. Pursuant to article 38 of the Constitution of the USSR and article 6 of the Law on the legal status of aliens in the USSR the Soviet State grants the right of asylum to aliens who are being persecuted for defending the interests of the working people and the cause of peace, for participation in a revolutionary or national liberation movement, or for progressive socio-political, scientific, or other creative activity. Naturally, such persons cannot be deported, returned to any State or extradited. The Soviet Union has concluded agreements with a number of foreign powers on legal assistance, including extradition arrangements.

Article 4

21. Public officials and other individuals who obtain statements by force or coercion may be prosecuted under articles 170, 171, 179 and 183 of the RSFSR Criminal Code and the similar articles of the criminal codes of the other union republics, depending on the nature of their acts. The punishments provided for such offences are, on the whole, quite severe. For example, the punishment for an ultra vires act by a person, i.e. the deliberate committing by an official of acts that clearly exceed the rights and powers legally conferred on that official, shall, if accompanied by force, the use of a weapon, or actions that persecute and degrade the victim, be deprivation of freedom for a period of up to 10 years (article 171 of part 2 of the RSFSR Criminal Code). Pursuant to articles 15 and 17 of the Fundamental Principles of Criminal Legislation of the USSR and Union Republics punishment is also provided for by the appropriate article of the special chapter of the Criminal Code for persons guilty of complicity or participation in a crime (organizers, instigators, accomplices).

Article 5

Paragraph 1 (a)

22. As already noted, pursuant to article 4 of Part I of the Fundamental Principles of Criminal Legislation of the USSR and Union Republics, all persons who commit crimes in the territory of the USSR are liable to prosecution under the criminal law in operation where the crime is committed. Despite the lack of direct reference to that effect in internal legislation, the USSR proceeds in practice on the assumption that the criminal jurisdiction of the State of registration also extends to aircraft registered in airports in the territory of the USSR and outside the boundaries of the USSR; to (a) warships registered in ports in the territory of the USSR and under the flag of the USSR on the high seas, and in the territorial waters or ports of other States and (b) to non-naval vessels under the flag of the USSR on the high seas.

Paragraph 1 (b)

23. Pursuant to article 5 of Part I of the Fundamental Principles of Criminal Legislation of the USSR and Union Republics, citizens of the USSR who have committed crimes abroad are liable to prosecution under the criminal law applying in the union republic in whose territory they are indicted or committed for trial.

Paragraph 1 (c)

24. There is no general norm in the existing Soviet legislation establishing the criminal jurisdiction of the USSR in cases in which an offence is committed abroad against the life, health, honour, dignity or other rights and legal interests of Soviet citizens (including the offences referred to in article 4 of the Convention).

Paragraph 2

25. Pursuant to article 5 of Part IV of the Fundamental Principles of Criminal Legislation of the USSR and Union Republics, foreign citizens are

liable under Soviet criminal law for offences committed outside the boundaries of the USSR in cases covered by international agreements. Consequently, when a person has reputedly committed one of the offences referred to in article 4 of the Convention and, being present in the territory of the USSR, cannot be extradited to any of the States referred to in paragraph 1 of article 5 of the Convention, he will be proceeded against under Soviet criminal law.

Article 6

26. As already pointed out, irrespective of where an offence is committed, criminal proceedings in the territory of a union republic are conducted in accordance with the criminal procedural code of that republic. The procedural jurisdiction of a union republic applies to citizens of the USSR, to foreign nationals (apart from persons enjoying diplomatic immunity), and to stateless persons (articles 1 and 33 of the Code of Criminal Procedure of the RSFSR and the codes of criminal procedure of the other union republics). The court, the procurator, the investigator and the investigating body are required, within the limits of their competence, to instigate criminal proceedings in every case of the discovery of indications of an offence, and to take all measures provided for under the law to establish the events of the offence and the individuals guilty of committing the offence and to ensure their punishment (article 3 of the Fundamental Principles of Criminal Procedure Legislation and the corresponding articles of the codes of criminal procedure of the union republics). The investigation of cases under articles 170, 171, 172, 179 and 183 of the Criminal Code of the RSFSR is carried out by the investigators of the procurator (article 126 of the Code of Criminal Procedure of the RSFSR). In their investigation they have the obligations stated in article 3 of the Fundamental Principles. These obligations include detention of the accused under guard with the approval of the procurator (articles 6 and 34 of the Fundamental Principles of Criminal Procedure Legislation) or the adoption of other measures of preventive restriction to ensure that the person does not escape investigation and trial (article 33 of the Fundamental Principles). On the basis of article 12 of the Statute on preliminary confinement under guard, persons confined under guard may be allowed visits from relatives or other individuals by the administration of the place of preliminary confinement only with the permission of the individual or body handling the case.

27. In addition, the consular conventions to which the USSR is a party do, as a rule, give a consular official the right to visit and communicate with a citizen of the State that he represents at a specified time from the date of arrest or detention in other form.

Article 7

28. Articles 34 and 156 of the Constitution of the USSR establish the equality of citizens before the courts and the law. Article 37 of the Constitution of the USSR guarantees the rights and freedoms provided by law to the citizens of other countries and to stateless persons, including the right to apply to a court and other State bodies for the protection of their personal, property, familial and other rights. Since the procedural jurisdiction of a union republic in which an investigation or court examination is taking place extends to the individuals referred to above, the provisions of the Code of Criminal Procedure that specify the rights and duties of the participants of the trial and that guarantee fair treatment in all stages of the examination are fully applicable to them.

29. Persons serving any form of sentence have the obligations and enjoy the rights established by legislation for citizens of the USSR, with some limitations strictly regulated by laws and other normative acts. The legal rights and interests of prisoners serving sentences are ensured by a whole range of guarantees of an economic, political and legal nature. Among the legal guarantees the most important role is that ascribed to the bodies of the Procuracy, the tasks of which are to detect and eliminate any infringements of the law (articles 1, 28, 31 and 42-44 of the Law on the Procuracy of the USSR).

30. Security measures are applied to those serving sentences strictly within the framework of the law, with certain limitations applying to women and minors. The permitted measures are clearly defined by law (handcuffs, straitjacket). The use of weapons is permitted only in exceptional cases, and is not permitted with respect to women and minors; every instance of the use of a weapon must be reported to the procurator.

31. A worsening of the conditions under which condemned persons are kept as a punishment measure is possible only in full accordance with the law. Pregnant women and nursing mothers are not kept as a punishment in solitary confinement or in cell-type rooms, and in prison they are not kept in punishment cells or on a restricted diet.

Article 8

32. The bilateral extradition agreements concluded by the USSR with other States do not contain lists of extraditable offences. The range of offences subject to extradition is determined by the punishment that the court may impose for committing them (under the legislation of both contracting parties). As a rule, this punishment is deprivation of freedom for the period of more than one year or a heavier sentence. Penal sanctions under articles 170, 171, 172, 179 and 183 and under the similar articles of the criminal codes of the other union republics testify that the offences covered by them are extraditable offences.

Article 9

33. Legal assistance to foreign powers on criminal cases, including cases connected with the acts enumerated in article 4 of the Convention, is rendered in accordance with the international agreements concluded by the USSR.

Article 10

Paragraph 1

34. One of the practical conditions for observing the Convention is a system for the training of law-enforcement personnel, teachers, and doctors concerned with the detention under guard and the questioning of individuals subjected to any form of arrest, detention or imprisonment, or who have dealings with them. The curricula of schools of law and medicine that provide training for the key staff of law-enforcement bodies and for the personnel of criminal medical and psychiatric establishments include the topics of observance of legality and rules for the treatment of persons concerned in criminal proceedings. Almost all teaching establishments give instruction in the principles of Soviet law. The Procuracy of the USSR has an all-union research institute that researches the strengthening of legality and law and order,

provides a scientific basis for the activity of law-enforcement bodies, and examines theoretical aspects of the protection of the rights and legal interests of citizens.

Paragraph 2

35. Standards for the humane treatment of offenders are embodied in the criminal, criminal-procedural and correctional-labour legislation of the USSR and the union republics. They are given detailed treatment in the departmental orders and instructions of the Procuracy of the USSR, the Ministry of Internal Affairs of the USSR and the Committee of State Security of the USSR, in the guidelines produced by the plenum of the USSR Supreme Court and the plenums of the supreme courts of the union republics, and in training programmes and training manuals for the personnel of law-enforcement bodies. These normative statutes and departmental sources prohibit public officials from carrying out acts covered by article 1 of the Convention. The observance of these rules is continuously monitored by the judicial authorities, the Procurator's office and government departments.

Article 11

36. Soviet legislation ensures the observance of article 11 of the Convention by the practical implementation of the USSR Law on the Procuracy of the USSR (chapter 2, Supervision of observance of the law by bodies responsible for investigation and preliminary inquiry; chapter 3, Supervision of the observance of the law in court proceedings; chapter 4, Supervision of observance of the law in places of detention and in places of preliminary confinement, and the carrying out of punishments and other measures of a coercive nature ordered by the court).

37. The Statute on procuracy supervision of observation of the law in correctional-labour establishments approved by the Procurator-General of the USSR on 15 January 1988 is an important additional guarantee of procuracy supervision of fulfilment of the requirements of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Article 12

38. Implementation of the stated requirements of this article of the Convention is inherent in the tasks of Soviet criminal procedure legislation for the rapid and full disclosure of offences and exposure of the guilty (article 2 of the Fundamental Principles of Criminal Procedure Legislation), in the duty of law-enforcement organs to initiate criminal proceedings within the limits of their competence in every instance of the discovery of indications of an offence and to take all measures provided for by law to establish the nature of the offence and the persons guilty of committing the offence, and to ensure their punishment (article 3 of the Fundamental Principles of Criminal Procedure Legislation), and in the obligation of these organs to ensure a thorough, complete and objective investigation of the circumstances of the case (article 14 of the Fundamental Principles of Criminal Procedure Legislation).

Article 13

39. A number of the norms of Soviet legislation guarantee implementation of article 13 of the Convention. In accordance with the criminal procedure legislation, an individual who alleges that impermissible methods of conducting an investigation, including rough treatment or torture, have been applied to him, has the right of complaining (in writing or orally) to the procurator either directly or through the person conducting the inquiry or the investigator. In the latter case, the complaint, together with the explanations of the persons against whose actions complaint is made, are sent to the procurator within 24 hours. On receipt of the complaint the procurator must examine it within three days and inform the complainant of the results of the examination. Complaints against the actions and decisions of the procurator are referred to a procurator at a higher level (article 219 of the Code of Criminal Procedure of the RFRSR and the similar articles of the codes of criminal procedure of the other union republics).

Article 14

40. The legal system of the USSR ensures the implementation of article 14 of the Convention on compensation to a victim of illegal acts (torture, etc.). The legislation of the USSR provides for full compensation for material losses and mental suffering caused both to the victims of torture and to citizens illegally prosecuted who have suffered from the illegal use of confinement under guard as a preventive restriction, and the illegal imposition of administrative penalties in the form of arrest or corrective labour, irrespective of the guilt of officials of the organs of inquiry and preliminary investigation, the procuracy and the court (Edict of the Presidium of the USSR Supreme Soviet dated 18 May 1981 on compensation for losses suffered by citizens as a result of illegal acts by State and public organizations, and also by officials in the execution of their duties). Paragraph 1 of article 58 of the Code of Criminal Procedure of the RFSFR and similar articles in the codes of criminal procedure of the other union republics also set out the obligation of the inquiring body, the investigator, the procurator and the court to take measures to compensate losses inflicted on a citizen by illegal acts.

41. In accordance with the Statute on the procedure for compensating damage caused to a citizen by the illegal action of agencies of inquiry, preliminary investigation, the procuracy, and the court, approved by Decree of the Plenum of the USSR Supreme Soviet dated 18 May 1981, the right to compensation in the event of the death of a citizen under these circumstances passes to his descendants.

Article 15

42. The categorical prohibition of the obtaining of statements from the accused and from other persons involved in a case by force, threats and other illegal measures (article 14 of the Fundamental Principles of Criminal Procedure Legislation) deprives a statement of this kind of any value as proof, except when used against a person accused of these illegal acts. A verdict based on proof obtained in such a way is quashed on account of the

serious breach of the law of criminal procedure (para. 3 of article 342 of the Criminal Procedure Code of the RFSFR; article 49 of the Fundamental Principles of Criminal Procedure Legislation).

Article 16

43. Soviet legislation and its practical application are also wholeheartedly directed towards the prevention of other cruel, inhuman and degrading treatment or punishment falling outside the definition of torture in article 1 of the Convention.
