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COMMITTEE AGAINST TORTURE

Twenty-first session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 353rd MEETING

Held at the Palais des Nations, Geneva,
on Friday, 13 November 1998, at 3 p.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.353/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 5) (continued)

Second periodic report of Croatia (CAT/C/16/Add.6; HRI/CORE/1/Add.32/Rev.1)

1. At the invitation of the Chairman, the Croatian delegation took places at the Committee table.

2. The CHAIRMAN invited the Croatian delegation to reply to the questions put by the members of the Committee at the preceding meeting.

3. Mr. ðIDOVEC (Croatia), replying first of all to the question on the existing machinery providing protection against misuse of authority and illegal acts by police officials, said that, in accordance with the Internal Affairs Act, which established the procedure and the disciplinary sanctions applicable in the police forces, in February 1994, the Ministry of the Interior had created an internal supervision service consisting of 15 persons responsible for ensuring that police officers did not engage in unlawful activities or exceed their powers in the performance of their duties. When such cases were brought to its attention, the service conducted an inquiry to establish the facts with a view to punishing the culprits, where necessary, in accordance with the law. It proceeded on the basis of allegations of maltreatment or abuse by the police made by private individuals or reported in the media and other sources. The Internal Affairs Act required the competent services of the Ministry of the Interior to act within 30 days on any complaint submitted to them by an individual.

4. The statistical data on disciplinary measures taken against police officers had been verified and were correct. The disciplinary tribunals of first and second instance could not influence in any way the conduct or outcome of criminal proceedings. Furthermore, the information in question was regularly published, in legal publications and elsewhere.

5. As soon as the Minister of the Interior had been informed of the tragic death of an Italian national, Riccardo Cetina, in a hospital in Split as a result of maltreatment at the hands of police officers, he had set up a special commission to investigate it. The inquiry had revealed that seven police officers had committed acts subject to criminal sanctions (torture and acts of violence) under the Penal Code and that their direct superiors had failed in their duty by not ordering an inquiry when the hospital had informed them that Mr. Cetina was in a critical condition. Nor had they warned the administration, contrary to the law. The seven police officers had been charged with torture, removed from their posts and imprisoned. Their case was still before the courts. Their direct superiors at the police station where the acts had taken place and the head of the police administration and his deputy had been dismissed from their posts.

6. With regard to the accusations made by some NGOs of manipulation of the statistics on abuses committed by the army and the police, the statistics published by the Ministry of the Interior were compiled using clearly defined methods, different from the ones used by the Ministry of Justice for

statistics on arrests and criminal proceedings. There could therefore be discrepancies due to the use of different methods, but there had never been any manipulation and the Croatian delegation would transmit to the Government the request for concrete and accurate information on all the allegations made.

7. Turning to the question about the inefficiency of the procedures for investigating serious criminal offences, he said that, despite the recommendations made by the Committee on the subject following its consideration of Croatia's initial report, the Government still thought that there was no need to create a special body to investigate such allegations because all the existing organs of executive and judicial power were already required to do so. The Ministry of the Interior was in close contact with national and international NGOs and always replied in writing to their requests, which were always followed up. Furthermore, within the framework of the monitoring mission established in 1997-1998, the observers of the Organization for Security and Cooperation in Europe (OSCE) had unrestricted access to police stations to attend interrogations, monitor the conduct of criminal investigations and supervise any police activities in any place. Since 1995, information about the situation in Croatia had regularly been given to all the NGOs and other organizations requesting it. It could thus be confidently confirmed that an answer would be given in the near future to the requests for information submitted by Amnesty International in October.

8. Unfortunately, he could not comment on the statement made by the President of the Supreme Court of Croatia. He could merely confirm that the police services of the Ministry of the Interior collected information about all offences committed in the country and that no offence, whatever its nature, was tolerated or could go unpunished in Croatia.

9. Lastly, more detailed information would be given in Croatia's third periodic report on the outcome of the cases of murder mentioned in paragraph 30, which had not yet been tried.

10. Mr. KRAPAC (Croatia), replying to the question about the status of public prosecutors, said that they were totally independent of the Executive, as prescribed in two basic acts adopted in 1996, one on the organization of the courts and the other on the organization of the prosecution services. Public prosecutors were appointed in the same way as judges in accordance with the Constitution and those two acts; they could not be moved or dismissed from their posts except for one of the four reasons stated in the Constitution and by decision of the Higher Council of the Judiciary. The Council was a special constitutional organ established on the model of similar organs in other European countries; it had the power of appointing and dismissing judges in accordance with the procedure provided by law. It had 14 members appointed for eight years. Following the adoption of the new Croatian Constitution, fresh appointments had had to be made to all posts of judge and public prosecutor, numbering 1,800 and 400, respectively. It had taken the Higher Council four years to complete that enormous task, but all the posts were now filled. The judges and public prosecutors appointed in that way were all independent and did not receive instructions of any kind from the Government; they acted only pursuant to the Constitution and the law, which meant that they were required to prosecute all persons committing acts which were automatically punishable, including the crime of torture, perpetrators of

which could be sentenced to eight years' imprisonment, and all illegal acts such as the extraction of statements by force by police officers in the performance of their duties.

11. With regard to remand in custody, the new Criminal Procedure Act stipulated that detention in police premises could not exceed 24 hours, following which the suspect must be brought before a judge, who determined whether all the conditions were met, including the existence of sufficient evidence to justify remand in custody. The period of remand could not exceed 48 hours, following which the person concerned must be released or kept in detention by order of an examining magistrate issued at the request of the State Attorney. However, that detention measure could be replaced by an order for the person concerned to perform community service work or to give an undertaking not to commit any illegal or dangerous act for the maximum duration of the investigation. The maximum period of detention had been limited, not only for the investigation phase (six months), but also for the whole proceedings, but it varied according to the seriousness of the offence, as stipulated in the Penal Code. As a result, even the period of detention following indictment was at present limited in Croatian law. That constituted considerable and noteworthy progress.

12. Unfortunately, the situation had not changed so favourably with regard to constitutional remedies, which were authorized only when a right stated in the Constitution had been infringed by a decision of a public authority and not by an individual act. That meant that there was no remedy of habeas corpus in practice. The principle of habeas corpus was stated in the Administrative Litigation Act, but it was not applied in practice.

13. Article 9 of the new Penal Code marked an advance over article 29 of the Constitution on the inadmissibility of evidence obtained by unlawful means, in the sense that it included a definition of what should be understood by unlawful means. It referred to evidence obtained in a way constituting a violation of the fundamental rights to defence, dignity and honour or of the inviolability of private life or a violation by means of other illegal evidence of the criminal procedure provisions established by law.

14. Turning to the question about the cooperation between the Croatian justice system and the International Criminal Tribunal for the Former Yugoslavia and other international bodies, he said that the Republic of Croatia was the only State resulting from the former Yugoslavia to have adopted very detailed legislation on cooperation with the International Tribunal. As a result, the Tribunal could carry out whatever investigations it wished in Croatian territory and secure the “extradition” of any Croatian citizens it intended to try. For example, 11 persons had already been handed over to the Tribunal. Furthermore, the Croatian judicial authorities took cognizance of the evidence collected by the Tribunal or other international bodies provided that it was transmitted to the prosecutors through the normal official channels; it was not sufficient to announce such evidence in the press or to send it to the Government.

15. Prosecutors did indeed have an obligation to institute an investigation automatically when they learned of cases of torture. They were also required to bring criminal proceedings whenever there were grounds for thinking that a

serious violation of human rights or acts of torture had been committed. There were procedures providing protection against the risk of the discriminatory application of the provisions of the Penal Code when acts of torture were reported. In fact, the judicial proceedings legislation provided that a senior official who was informed that one of his subordinates had committed or was committing discrimination of that kind must take effective action to correct the situation. He could decide either to instruct the subordinate in question to act in accordance with the law or himself initiate the necessary proceedings. It was thus sufficient for the victim to apply to the superior of the person who had not discharged his obligations correctly.

16. The right of wrongly convicted persons to obtain compensation was provided for in article 475 of the Code of Criminal Procedure. Furthermore, under article 480 of that Code, persons detained without trial were also entitled to compensation.

17. In addition, under the Criminal Procedure Act, accused persons who were unable to provide for their own defence had access to a very comprehensive legal aid system, which could include the services of a lawyer for the whole duration of the proceedings. Furthermore, victims of torture could take the initiative of instituting proceedings themselves within a time limit of three months if the State Attorney had not done so and had informed them that he did not intend to do so. If such victims were unable to institute proceedings themselves, they could request the court to appoint counsel to act on their behalf.

18. Mr. VEJI„ (Croatia), replying to several questions on the content and scope of the General Amnesty Act, said that the Act covered all persons who had committed offences between 17 August 1990 and 23 August 1996. Amnesty was not available to perpetrators of violations of international law assimilated to war crimes such as genocide, crimes against civilians, the wounded, sick or prisoners of war, unlawful execution of enemies, robbing of the wounded and sick on the battlefield, use of prohibited weapons, slavery and the taking of hostages, or State terrorism. Nor was amnesty available for persons who had committed crimes outside the areas of armed conflict in the Republic of Croatia. The main purpose of the Amnesty Act was to restore confidence and encourage tolerance among all the inhabitants of Croatia, whatever they had done during the armed conflict. Its provisions had prompted some dissatisfaction in many persons and they had decided to take justice into their own hands, provoking sporadic incidents. However, the authorities were proceeding against all persons, whoever they might be, who did not respect the law and committed crimes.

19. The scope of application of the provisions on the compensation of persons who had been subjected to torture or other treatment prohibited by the Convention was very broad, for it covered not only persons deprived of their freedom following a conviction by a court, but also persons deprived of their freedom by unlawful means, arrested without due cause or kept in detention beyond the period specified in their sentence. Victims could obtain compensation in pre-established amounts ranging from DM 30 to DM 50 a day, depending on the duration of the unlawful deprivation of freedom, by applying to the Ministry of Justice. A recourse procedure was available for persons

seeking higher compensation. Victims could also request compensation for the loss of such allowances as retirement benefits as a result of unlawful deprivation of freedom.

20. With regard to the status of torture and other inhuman or degrading treatment or punishment in the new Penal Code, Croatia had incorporated the crime of torture in its legislation on 1 January 1998, complying in so doing with most of the recommendations made by the Committee following its consideration of Croatia's initial report. That constituted progress because, previously, Croatian law had covered only the extraction of confessions by force and the misuse of power by agents of the State. Those older provisions retained some usefulness in that extraction of confessions and misuse of power were often committed in conjunction with other criminal offences such as homicide, murder, battery and criminal wounding. However, the coexistence of the old and new legislation created a complicated situation in which legal uncertainties could occur. Croatia would like the Committee against Torture to help it resolve that difficulty for the better. It might perhaps be necessary to repeal the old legislation and retain only the definitions of torture and other cruel, inhuman or degrading treatment or punishment within the meaning of the Convention, thereby covering the cases referred to in the old legislation. It was impossible to say for the moment how the courts would apply the new Penal Code because no legal precedents had yet been established.

21. Turning to the question about the training of prison doctors and warders, he said that Croatia had given very serious study to the recommendation made on that subject by the Committee during its consideration of the initial report and had taken action to provide its medical personnel with the necessary training and knowledge to apply the Convention properly. Prison doctors and other personnel took a university course on “Medical ethics” and received the relevant publications and other documents issued by the United Nations and the Council of Europe, which were distributed to them by the authorities, together with appropriate comments. Prison doctors also took a six-month training course on the protection and promotion of human rights, which was based on the Convention against Torture, the Standard Minimum Rules for the Treatment of Prisoners and the relevant European rules. In addition, doctors were obliged to report to the competent authorities any cases of physical injury caused by torture which came to their attention. Article 300 of the Penal Code characterized the failure of a doctor to fulfil that obligation as an offence. Lastly, prison warders preparing for an examination for promotion had to study the provisions of the Convention and other international human rights instruments.

22. Mr. NAD (Croatia), replying to the questions asked about five specific persons, said that Mr. ðidovec had already given the Committee information about the case of Riccardo Cetina and that Croatia had submitted a detailed report to the Committee for the Prevention of Torture of the Council of Europe. The second case concerned Šefik Mujkiæ, who had been interrogated on suspicion of espionage by two police officers at a police station and had died during his interrogation. The autopsy had revealed that he had been suffering from heart problems before his arrest and that he had been subjected while under interrogation to mental and physical ill-treatment which had caused his death. The two police officers in question had been charged with extraction of a confession by force and causing serious physical injury leading to death; they had been sentenced to terms of imprisonment of five and a half years. The Supreme Court had admitted the appeal lodged by the defence and had

ordered the case to be retried. In the case of the Kalemberg couple who had been found murdered, the two perpetrators of the crime had been sentenced to 8 and 15 years' imprisonment, respectively. The fourth case concerned Mario Barišić, who had been taken to a police station in Zagreb for having disturbed the peace and public order. The three police officers who had inflicted serious physical injuries on him during his interrogation had immediately been suspended from duty by the head of the police administration. The Minister of the Interior had instituted disciplinary proceedings against them, following which they had been dismissed from their posts. The State Attorney had subsequently requested the opening of a judicial investigation, which was currently being carried out. The last case concerned the ill-treatment of Bogdan Brkić. The trial of the suspects was to take place shortly.

23. He cited figures showing that the number of police officers charged with disciplinary offences had declined between 1995 and 1997. In 7 to 10 per cent of the cases, they had been charged with the use of force, misuse of power or obtaining statements by inappropriate means. Detailed information on disciplinary proceedings against police officers would appear in Croatia's third periodic report.

24. Mrs. DRAGI, (Croatia) gave details of the situation of women prisoners in Croatia. The conditions of their detention were governed by the Execution of Penal Sanctions Act and by the internal regulations of each penal institution. Prisoners were examined by doctors, psychologists and psychiatrists and monitored by social workers. There were three types of penal institution - closed, semi-open and open - which differed, among other things, in terms of the duration of the sentences served there and by the extent of the rights enjoyed by the prisoners.

25. Pregnant women prisoners enjoyed special protection: six weeks before delivery, they were transferred to the maternity section of a civil hospital. After six weeks, they returned to prison, but did not follow the same work routine as the other prisoners; in addition, they spent their free time with their child until he or she reached the age of three. The child was then taken over by members of the family. There were also institutions for female minors. Female prisoners were kept separate from men.

26. Mr. ðIDOVEC (Croatia) said he hoped that the Croatian delegation had replied to all the questions which had been put to it. He accepted Mr. Sørensen's suggestion that Croatia might contribute to the United Nations Voluntary Fund for Victims of Torture.

27. As had already been pointed out, the submission of statistics did not solve the problem of torture and other forms of degrading treatment. But Croatia did not tolerate the commission of such crimes and he stressed that his country's legislation had made great progress in that regard. The Croatian authorities would study the Committee's recommendations closely with a view to providing detailed information in the third periodic report.

28. The Croatian delegation withdrew.

The first part (public) of the meeting rose at 4.55 p.m.