



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

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Chairperson: Mr. MAVROMMATIS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.726/Add.1.

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The meeting was called to order at 10.05 a.m.

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

Initial report of Tajikistan (CAT/C/TJK/1; HRI/CORE/1/Add.28)

1. *At the invitation of the Chairperson, the members of the delegation of Tajikistan took places at the Committee table.*

2. Mr. KHAMIDOV (Tajikistan) thanked the Committee for giving his delegation the opportunity to enter into a constructive dialogue, which he hoped would mark the beginning of a long and fruitful collaboration. He reaffirmed the commitment of Tajikistan to the protection of human rights and its adherence to the principles of international law, and in particular the prohibition on torture. Tajikistan had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1994, while its civil war was raging and the country was deep in an economic slump. That had been one of the first measures taken by the Government to steer the country progressively towards being a democratic State that was observant of human rights. Under the Constitution, the inviolability of the person was guaranteed by the State and no one could be subjected to torture or to cruel, inhuman or degrading treatment. Tajikistan was working on the reform of its justice system so as to strengthen the independence of the judiciary and to upgrade the status of the bodies responsible for the observance of the law in general, with the aim of ensuring respect for the rights and freedoms of all. Carrying out of the death penalty had been suspended pursuant to Acts No. 45 and 46, both of 15 July 2004, amending the Criminal Code. In December 2003, a four-year programme to reform the country's penal system had been adopted with the aim of making the imposition of penalties more flexible, guaranteeing observance of the rights of people who have been sentenced and improving conditions of detention. The prison system had been reformed, with the result that it no longer came under the Ministry of the Interior, instead being under the Ministry of Justice. Those few examples illustrated the efforts being made by Tajikistan to comply progressively with the rules of international law. The initial report submitted to the Committee covered the period 2000 to 2004. It had been drawn up in cooperation with a large number of non-governmental organizations and gave as realistic and complete picture as possible of Tajikistan's implementation of the provisions of the Convention against Torture.

3. Ms. GAER (Country Rapporteur) congratulated the delegation on the comprehensiveness of the initial report it was submitting to the Committee and on the concern for objectivity to which it attested. She sought more detailed information on the procedures by which the Government had collaborated with non-governmental organizations in drawing up the report. It was to be regretted that the report recorded only the events that had occurred since the year 2000 rather than 1995, the year in which the Convention against Torture had entered into force for Tajikistan. She took note of the many difficulties that the country had faced owing to the civil war and its consequences, also noting that the State party accepted that no circumstance whatsoever could be invoked as a justification of torture, as stipulated in article 2 of the Convention. She asked whether the amnesty that had been pronounced after the conflict had ended also applied to crimes of torture and, if so, how many perpetrators of such crimes had been amnestied.

4. In its core document (HRI/CORE/1/Add.128), the State party indicated that matters relating to the protection of human rights fell in particular within the jurisdiction of the Constitutional Court, the Office of the Procurator and the Ministry of Justice, but also of the Ministry of Security, which had the responsibility for ensuring the security and rights and freedoms of individuals guaranteed by the Constitution and the law of Tajikistan and the universally recognized norms of international law (para. 59). The initial report did not give any detailed information on the role played by the Ministry of Security in the implementation of the Convention against Torture, nor on its relationship with the other ministries having responsibilities in the area of human rights. It would be interesting to hear the views of the delegation on that subject. It was also said in paragraph 47 of the core document that judges were appointed and dismissed by the President at the recommendation of the Council of Justice. It would be useful to know how the members of the Council of Justice were appointed and how the independence of the Council was guaranteed.

5. It was said in paragraph 1 of the initial report that legislation was being improved in accordance with the constitutional principle that human rights are a priority. It would be interesting to know how that principle was translated into practice. Up-to-date information about the ongoing legislative reform would also be welcome. Article 10 of the Constitution, article 1 of the Criminal Code and article 4 of the International Treaties Act stipulated that in the event of a discrepancy between national laws and international legal instruments, the norms of the latter would apply (paras. 3, 24 and 97 of the report). Had those provisions ever been applied in practice?

6. Article 117 of the Criminal Code prohibited torture, which it defined as the infliction of physical or mental suffering with a view to coercing a person to testify or perform any other action against that person's will, or as a form of punishment or for any other purpose (para. 12). Thus the article did not limit torture explicitly to acts committed by State officials in the exercise of their official functions. However, in practice, it appeared that State officials were penalized only for acts committed while carrying out their official functions. In that context, it did not appear a certainty that State officials could be held criminally liable for acts of torture under article 117 of the Criminal Code. It would therefore be useful to know whether penalties had been imposed on State officials under that article and, if so, in how many cases. In addition, it would appear that in several cases penalties had been imposed on State officials under article 316 (having to do with abuse of authority) and under article 354 (having to do with use of coercion by a person carrying out a initial inquiry or a pretrial investigation or by a person administering justice, with a view to obtaining testimony) (para. 29). It would be useful to know in how many cases those provisions had been relied upon by the courts in order to penalize State officials as well as, as relevant, the different penalties that had resulted from the infringement of those articles. In addition, the definition of torture given in the Criminal Code did not cover all the reasons underlying torture cited in article 1 of the Convention, in particular that of discrimination. How was that aspect taken into consideration by the State party in the implementation of the prohibition on torture?

7. The Constitution guaranteed the right of detainees to the services of a lawyer from the moment that they were placed under detention (para. 8 of the report). Accurate information concerning the precise moment at which a person was considered to be in detention and the procedure by which access to a lawyer was

guaranteed in practice would be useful. According to the report (para. 44), the judicial authorities had to react within a period of three days starting from the date of receipt of the report of an initial inquiry or, in exceptional cases, within a period of 10 days. What were those exceptional cases in which the procedure could be delayed in that way? In addition, the expressions “initial inquiry “ and “pretrial investigation” were used in the report. Were they two distinct procedures? If that were the case, detailed information about the procedures by which they were applied would be welcome.

8. Paragraph 29 of the report contained a list of the offences in relation to which measures intended to prevent torture and other inhuman punishment or treatment were provided for. It would be interesting to know, for each of them, how many persons, and within that number how many State officials, if any, had been prosecuted and had been found guilty.

9. Noting that under article 70 of the Code of Criminal Procedure, a confession of guilt by the accused could be the basis of an indictment only if corroborated by all the available evidence in the case, Ms. Gaer wished to know how that provision was applied in practice, given that accusations were apparently sometimes based only on the confessions of the suspect. She also wished to know how the judicial authorities verified whether admissions of guilt had been obtained illegally, whether State officials had ever been prosecuted for acting only on the basis of confessions and whether accused persons had been acquitted for that reason.

10. With regard to the training of the medical personnel dealing with detainees and suspects, Ms. Gaer requested the delegation of Tajikistan to indicate whether the eight training seminars organized by the Swiss Cooperation and Development Agency to remedy shortcomings in this area (para. 163 of the report) had given satisfactory results and whether the authorities planned to take the necessary steps to have such training enshrined in law and given on a systematic basis. In addition, the Rapporteur asked whether there were any statistics showing how often medical examinations were carried out in places of detention, which detainees were examined and whether those examinations had ever revealed traces of mistreatment or torture. It would be interesting to know whether the judges halted the proceedings when they determined directly or on the basis of a medical examination that the suspect had been subjected to illegal interrogation practices.

11. In addition, Ms. Gaer requested clarification of the way in which the State party used the electronic media and the traditional press to expose torturers and stigmatize illegal acts, as mentioned in the report (para. 65). She asked the delegation to describe the cases which had been cited as examples to that end. Also, she wished to know whether suspects placed in police custody had prompt access to a legal adviser, a doctor or to the members of their family if they requested it, and whether the criminal law provided for penalties against State officials who impeded such access. Examples of the application of such penalties, if there were any, would be welcome. It would be also interesting to know whether the police stations drew up registers containing comprehensive information on the persons placed in police custody.

12. According to the report of the State Department of the United States of America on the human rights situation in Tajikistan, the number of deaths in police custody appeared to be extremely high. Given the lack of information on that subject in the report of the State party, Ms. Gaer requested the delegation to indicate

whether official statistics on deaths in police custody had been drawn up, whether investigations had been undertaken to determine the causes of those deaths, and what the results of such investigations had been. In that connection, she also wished to know whether Tajikistan planned to adhere to the Optional Protocol to the Convention against Torture, which authority was empowered to specify the non-governmental organizations entitled to go into prisons and what were the criteria on which that selection was made. Furthermore Ms. Gaer inquired whether international institutions such as the Special Rapporteur on torture or the Working Group on Arbitrary Detention had ever requested the Tajik authorities to permit them to inspect the prisons. Additionally, she asked whether Act No. 46 of 2004 amending the Criminal Code contained a definition of torture in line with the one given in article 1 of the Convention. She also wished to know whether the domestic legislation contained an article specifically stating that an order from a superior could not be invoked as a justification of torture.

13. With regard to the situation in the prisons, Ms. Gaer asked the delegation to describe the role played by the different ministries in the area of monitoring of prisons and to state which authority had responsibility for inspection of places of detention. She said she would also welcome information on acts of sexual violence committed in prisons, in particular the prisons for women referred to by the delegation. It would be useful for the Committee to have detailed information on the number of complaints and to be informed of the results of procedures undertaken. Finally, she asked whether domestic violence and trafficking were classified as offences under domestic law.

14. With regard to article 3 of the Convention, Ms. Gaer did not understand how the international legal instruments ratified by Tajikistan could be directly applicable without enabling legislation, as was stated in the report (para. 97). If that were indeed the case, she wished to know on what basis the courts determined whether there was a violation of article 3 of the Convention or not. She asked the delegation to give examples of cases in which that article had been invoked to reject a petition for extradition and to state whether the Tajik authorities had ever had occasion to give or request diplomatic assurances, in particular in the case of Muhammadruzi Iskandarov, a Tajik citizen who was said to have been tortured after being secretly transferred from Moscow to Tajikistan. In that connection, the Rapporteur asked on what criteria the list of “safe” countries had been drawn up and, additionally, whether the risks of torture had been assessed in 2005 when several Afghan citizens had been returned to that country pursuant to a decision by the Ministry of Security. Had those persons had an opportunity to contest the legality of that measure before the Tajik courts? Finally, Ms. Gaer asked how the Tajik authorities collaborated with the Office of the High Commissioner for Refugees in the sphere of accommodating refugees in the frontier areas and what measures were being taken in order to guarantee that the provisions of article 3 of the Convention were observed with respect to such persons.

15. Turning to article 4 of the Convention, the Rapporteur wished to know whether the acts of hazing committed within the army fell under the scope of article 354 of the Criminal Code or whether they were punished by other provisions, and which authority had the responsibility to monitor such practices and take action against those responsible. She also asked why, in the cases referred to in paragraph 115 of the report, the perpetrators were accused of having infringed articles 314 and 316 of the Criminal Code, which had to do with abuse of authority, whereas their actions

would appear, instead, to fall under article 117 of the Code, having to do with cruel treatment. Referring in particular to the case of *S. K. Chalishev*, Ms. Gaer asked the delegation to clarify under what article of the Criminal Code that individual had been sentenced to 25 years' deprivation of liberty.

16. Observing that article 354 of the Criminal Code only had to do with investigating judges, the Rapporteur asked the delegation to indicate what provisions of domestic law applied to other public officials. It would be useful to know whether law enforcement personnel were systematically reviewed by an independent body when it was time for their appointment to be renewed. Statistics would be welcome on the number of cases of violation of the articles of the Criminal Code referred to in paragraphs 106 and 107 of the report and the number of prosecutions undertaken, together with their results and, where appropriate, the type of penalties imposed. With reference to the three cases that had been studied by the Human Rights Committee when the report of Tajikistan had been considered, in which members of the militia had been prosecuted for making use of force in order to extract confessions from suspects (see CCPR/C/TJK/CO/4/Add.1, paragraph 11), Ms. Gaer wished to know what the outcome of the procedures undertaken had been, and whether the victims had received compensation.

17. Turning to article 5 of the Convention, the Rapporteur asked whether the Tajik courts had made use of its provisions to exercise their universal jurisdiction. With regard to articles 6 to 9, she requested the delegation to give examples of cases of extradition of individuals to countries with which Tajikistan had concluded bilateral extradition agreements and to indicate whether the risks of torture had been assessed before those individuals had been sent back. In the area of judicial cooperation, it would be interesting to know whether guarantees were in place in order to protect the persons placed in police custody and what type of assistance Tajikistan requested from, or provided to, the countries with which it had concluded agreements on mutual judicial assistance.

18. Mr. KOVALEV (Alternate Country Rapporteur), noting that a reading of the core document would indicate that matters of protection of human rights fell within the jurisdiction of the Constitutional Court (HRI/CORE/1/Add.128, paragraph 55), asked the Tajik delegation to give more detailed information on the role played by that body, and also concrete examples, backed up by data and statistics, of the appeals it had heard. Referring to paragraph 63 of the same document, he asked whether the provisions of the international instruments to which Tajikistan was a Party could be applied directly by the courts. More detailed information would be required on the way in which such instruments were incorporated into domestic law.

19. With regard to paragraph 33 of the State party's report, Mr. Kovalev wished to know in which cases a person was placed in custody pursuant to a judicial decision and in which ones that happened on the authorization of a procurator. According to information received from non-governmental organizations, it appeared that it was often the case that a judge would decide to release a suspect for lack of evidence and that implementation of that decision would be immediately suspended by the Office of the Procurator, which was empowered to take such steps by article 41 of the Constitutional Act. He asked the Tajik delegation to give its opinion on that allegation and to indicate whether all the parties to legal proceedings were truly treated equally in judicial practice.

20. According to article 49 of the Tajik Code of Criminal Procedure, every suspect had the right to be assisted by a lawyer as soon as he was placed under arrest. However, information provided by non-governmental organizations would seem to indicate that the provision of that assistance was in fact subject to the special authorization of the official in charge of the inquiry. He wished to know the exact details of that situation, the more so as the denial of the assistance of a lawyer to a person placed under arrest increased the risks of torture and cruel, inhuman or degrading treatment. With reference to article 16 of the Convention, Mr. Kovalev requested the delegation to describe the measures to prevent cruel, inhuman or degrading treatment adopted by the State party, in the light of the fact that the International Committee of the Red Cross had been refused access to places of detention.

21. Mr. GROSSMAN wished to know whether the definition of torture given in article 117 of the Criminal Code was applicable to State officials, and also whether sentences had ever been pronounced by the courts pursuant to that article. He also wished to know whether the delegation had any statistics on prosecutions undertaken pursuant to article 45 of the Criminal Code relating to offences committed following orders or directives given by superiors. In addition, he asked whether allegations of violence against women were investigated systematically or only in special cases. Emphasizing that a growing number of countries were devoting ever-increasing resources to the fight against trafficking in women and children, he asked the delegation to list all the measures adopted by Tajikistan to combat that phenomenon. Noting, with reference to article 4 of the Convention, that the victims of torture sometimes had to wait for years before obtaining redress, he wondered whether acts of torture perpetrated by State officials were subject to a statute of limitations.

22. Recalling that the Human Rights Committee had observed in 2003 that eight Tajik citizens had been victims of acts of torture committed by police officers, Mr. Grossman asked the delegation to indicate whether investigations had been pursued into those various cases, whether the officers concerned had been prosecuted and, if so, whether they had been sentenced. Mr. Grossman also wished to know whether the persons placed in detention or prosecuted pursuant to article 6 of the Convention were provided with the services of an interpreter. Furthermore, he asked the delegation to clarify whether it had been by virtue of an extradition agreement that the Russian Federation had handed Mr. Muhammadruzi Iskandarov over to the Tajik authorities in 2005. Also, since Mr. Iskandarov had claimed that he had been tortured, Mr. Grossman wished to know whether those allegations had been verified.

23. Stressing the importance of the medical examinations made of detainees (para. 169 of the report), Mr. Grossman asked whether such examinations had ever revealed the existence of mistreatment and whether those responsible had been prosecuted.

24. Noting that in the course of the period 2002-2004, procuratorial agencies had addressed more than 70 recommendations to law enforcement officers concerning violations of the law in cases of arrest and detention (para. 216 of the report), Mr. Grossman asked for detailed information on the action taken pursuant to those recommendations and, in particular, whether they had resulted in investigations, prosecutions and, if appropriate, sentences.

25. With reference to article 13 of the Convention, Mr. Grossman wished to know whether Tajikistan had established the necessary means to protect complainants and witnesses against any ill-treatment or intimidation, wondering whether the State party had encountered any difficulties in that area. Finally, he asked the Tajik delegation to comment on the observations of the Human Rights Committee and of the Special Rapporteur on the independence of judges and lawyers, to the effect that statements obtained by torture had been accepted as evidence in legal proceedings. Should the delegation confirm those observations, Mr. Grossman wished to know whether Tajikistan had taken any measures to ensure that such situations should never recur.

26. Mr. MARIÑO MENÉNDEZ asked the delegation to state whether persons who had been arrested or sentenced could be placed in solitary confinement. With regard to the independence of the judiciary, he wished to obtain some information on the conditions under which a person could become a judge and also some more detailed information on the reform currently under way of the various phases of the criminal procedure. With regard to article 3 of the Convention, he noted that Tajikistan had ratified the 1951 Geneva Convention on the Status of Refugees and the New York Protocol to it of 31 January 1967 and that those instruments were an integral part of Tajik law. However, he wondered whether Tajikistan had a law on the status of asylum-seekers. In addition, he wished to know whether petitions for asylum submitted by groups of persons from neighbouring countries were examined case by case. Noting that a person being deported could challenge the legality of the decision to deport before the courts (para. 101 of the report), he wished to know whether such a challenge had the effect of suspending the deportation process. Mr. Grossman also requested the delegation to give information on the conditions of application of the Chişinău Convention on Legal Assistance in Civil, Family and Criminal Matters of 7 October 2002, referred to in paragraph 228 of the report. With regard to article 5 of the Convention relating to universal jurisdiction, he wondered whether Tajik law could be applied to a foreigner in Tajikistan who had committed acts of torture in another country. In that connection, he recalled that, under the terms of the Convention, when such a person is on the territory of a State party, that State is required to prosecute or extradite the person. Noting in addition that paragraph 169 of the report stated that detainees were medically examined only when there was a presumption that an act of torture had been carried out, he asked whether Tajik legislation provided for a systematic medical examination.

27. Ms. SVEAAS was pleased to learn that Tajik citizens suffering from mental troubles were provided with medical care and social services, pursuant to the Psychiatric Care Act. However, she asked whether the mentally ill in detention had access, like any other Tajik citizen, to complaint mechanisms in the event that their rights were violated. Noting also that because of the civil war, a large number of children had been placed in shelters, she wished to know whether there were still large numbers of them in such facilities and what their living conditions were like there. Referring to allegations that such children were subjected to humiliations and psychological violence, she asked the delegation to state whether Tajikistan had the intention of prohibiting corporal punishment or making it an offence. Referring to article 14 of the Convention, she was pleased at Tajikistan's intention to study attentively the issues relating to compensation for victims of acts of torture and asked whether such victims were also provided with rehabilitation services.

28. Ms. BELMIR sought clarification of the status and the role of the military courts. Noting that such courts in principle constituted extraordinary courts, she was surprised that they should be classified among the organs of the judiciary, given that according to the information provided in the core document, the creation of extraordinary courts was prohibited.

29. She also asked for detailed information on the responsibilities and powers of the procurator, who might be considered not to be an integral part of the judiciary since decisions taken by a procurator could be contested only before another procurator, of a higher level. She was concerned in particular with regard to the respect for judicial guarantees and to the right to a fair trial in the context of public prosecution.

30. The report stated that persons found guilty could not be subjected to torture or to medical or scientific experiments. Over and above that prohibition, might there be cases in which the fact of being found guilty could lead to infringements of a person's physical integrity?

31. The CHAIRPERSON thanked the delegation for the very complete overview it had given of the numerous measures taken to promote and protect human rights in Tajikistan. It would now be useful for the delegation to describe to the Committee what happened in practice, illustrating its statements with concrete examples. It would also be highly desirable for the delegation to cover in its oral responses the whole of the period under consideration (starting in 1995), as the information provided in the initial report related only to the years 2000 to 2004. The Committee would not be able to set a date for the second periodic report unless it received that additional information.

32. The delegation would have noted that many of the questions put by the members of the Committee had to do with the independence of the judiciary. It could in particular give some explanations concerning the appointments of judges, the limited duration of which might create an infringement to their independence, which was normally guaranteed by the principle that they could not be dismissed. A further important point had to do with the possibility of invoking the international instruments to which Tajikistan was a Party before the domestic courts. It would be interesting if the delegation could make reference to cases in which the Convention had been applied in precedence over domestic legislation.

33. The CHAIRPERSON observed that the delegation had 24 hours in which to prepare its responses, since the discussion on Tajikistan would resume the following day.

34. Mr. KHODJAEV (Tajikistan) thanked the members of the Committee for their comments and their questions and assured them that his delegation would do its utmost to match up to the task ahead of it and to provide the Committee with responses that would be as complete as possible.

The public part of the meeting rose at 12.25 p.m.