



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

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COMMITTEE AGAINST TORTURE

Twenty-eighth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)\* OF THE 508th MEETING

Held at the Palais Wilson, Geneva,  
on Thursday, 2 May 2002, at 10 a.m.

Chairman: Mr. BURNS

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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 7) (continued)

Fourth periodic report of Denmark (CAT/C/55/Add.2)

1. At the invitation of the Chairman, Mr. Lehmann, Mr. Faerkel, Ms. Axelson, Mr. Hindsberger, Mr. Isenbecker and Mr. Schiøler (Denmark) took places at the Committee table.
2. Mr. LEHMANN (Denmark), introducing the fourth periodic report of Denmark (CAT/C/55/Add.2), said that he was pleased to take part in the dialogue with the Committee against Torture, which for Denmark was an essential partner in the fight against torture and other cruel, inhuman or degrading treatment or punishment. The Committee's General Comment on article 3, its conclusions and recommendations and its views on complaints submitted by individuals were a source of inspiration and guidance to the Danish Government. Denmark attached great importance to its cooperation with the Committee and also with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Denmark had been the first country to be visited by CPT and CPT had continued to visit the country regularly. During the most recent visit - the third - the CPT delegation had made a number of recommendations, some of which had been implemented even before the delegation had left Copenhagen. The Danish Government strongly supported the proposal that the Committee against Torture should be empowered ex officio to visit places of detention and welcomed the adoption by the Commission on Human Rights, at its fifty-eighth session, of the resolution introducing a draft optional protocol to the Convention (resolution 2002/33), but regretted the fact that the resolution had not been adopted by consensus. Once again in 2002, Denmark had introduced a very comprehensive resolution in the Commission on Human Rights entitled "Torture and other cruel, inhuman or degrading treatment or punishment" (resolution 2002/38), which was intended to combat torture through a battery of preventive measures, address the issue of impunity for torturers and rehabilitate torture victims both socially and medically. The resolution, which had been adopted by consensus, differed from those introduced at previous sessions in that it contained a new paragraph (para. 22), whereby the Commission welcomed the work of the Committee against Torture and, among other things, urged States parties to take into account the Committee's conclusions and recommendations, as well as views on individual communications. The new paragraph represented a real advance.
3. In preparing the fourth periodic report, the Danish authorities had tried to follow up on the specific concerns that had been expressed by the Committee when it had considered the third periodic report (CAT/C/34/Add.3). Since the submission of the report in August 2000, a number of significant developments had taken place in Denmark. Over the years, the Committee had expressed some concerns about the standing of the Convention in Danish law. Accordingly, a committee formed by the Minister of Justice had recently studied the question of incorporating the six core human rights instruments of the United Nations directly into Danish law. The committee had concluded that there was no doubt that, under the present legal regime, the Convention against Torture could be invoked before the Danish courts and that the courts had the

power to apply its provisions *ex officio*, yet it had nevertheless recommended the formal incorporation of the Convention into domestic law. It was still too early to say whether a bill to that effect would be brought before Parliament.

4. In the health sector, it had been decided that regional authorities could henceforth offer multidisciplinary care to persons under their jurisdiction who were suffering from the after-effects of torture: psychotherapy, physiotherapy, medical treatment and nursing, and social counselling. Training would also be organized for social workers to enable them to identify persons needing such treatment. It was hoped that such an approach would improve the quality of life of torture victims and ease their integration into society.

5. Ms. AXELSON (Denmark) said that, on 16 May 2001, the Danish Parliament had passed the International Criminal Court Act with the object of incorporating the Rome Statute into domestic law. Moreover, in the bill passed by Parliament on 18 May 2001 amending the Administration of Justice Act and the Criminal Code, as mentioned in paragraph 105 of the report, it was envisaged that the amendments should be kept under evaluation: the Ministry of Justice had therefore requested the Director of Public Prosecutions to gather statistics on an ongoing basis and to inform it of developments once a year. As soon as detailed statistics on the enforcement of punishments became available, the Ministry of Justice would transmit them to the Committee against Torture. In addition, the Standing Committee on Administration of Criminal Justice had also been instructed to evaluate the effects of the amendments to the law; it was scheduled to give an opinion in 2005. The Commission on Greenland's Judicial System was due to hold its final session in the second half of 2002 and its report, which would be translated into Greenlandic, would be submitted in 2003. The Committee against Torture would receive a copy.

6. Mr. HINDSBERGER (Denmark) said that, since the submission of the report to the Committee, the Ministry of Justice had revised its instructions on the rights of detainees, specifically in the light of the recommendations of CPT and after consultations with the Prosecution Service, the police and the Danish Bar. The circular containing the ministerial instructions now explicitly indicated that a detainee must be informed of his rights as soon as he was brought to a police station; that he must be so informed in a language that he understood; and that he must receive a succinct and comprehensible statement of his rights, set out in writing. Statements of detainees' rights were currently available in seven languages; even if the detainee did not understand any of them, the police were nevertheless obliged to inform him of his rights without delay, for example by summoning an interpreter. The circular further specified that the person under arrest should be permitted to notify his close relatives of the place where he was being held at the earliest opportunity. The circular detailed the circumstances in which the transmission of such information could be delayed. The right to communicate with a lawyer was guaranteed immediately upon arrival at the police station, and no longer, as before, with effect from the initial interrogation. The circular also made express provision for the right to consult a lawyer in private and to have a lawyer present throughout the interrogation. As to the right to be examined by a physician of the detainee's own choosing, the circumstances in which the duty police officer could refuse the detainee permission to see a particular doctor were also specified in detail. Provision was also made for the medical examination to be conducted without the presence of the police if the detainee so desired. For each right listed in the circular, the

arresting officer or the duty officer was obliged to record in the register of arrests whether the circular had been complied with. Any decision which tended to delay the effect of the rights set out should be recorded in the register, giving the reason. The National Commissioner of Police had drawn up new rules covering the detention in cells of intoxicated persons. The most important innovation was that it was now mandatory to summon a physician as soon as possible after the arrival of the detainee at the police station.

7. The Committee would doubtless agree that the amendments listed above were important developments.

8. Mr. EL MASRY, speaking as Country Rapporteur, welcomed the Danish delegation and commended it on a concise report, submitted on time and in conformity with the guidelines. The six annexes to the report were also highly useful and the Committee had noted the fact that the Danish authorities intended to forward the report of the Commission on Greenland's Judicial System in due course. He paid tribute to the Rehabilitation and Research Centre for Torture Victims (RCT), which had shared its precious experience with the Committee through Mr. Rasmussen. The Danish Government's strong commitment to the financing of the Centre (the grant-in-aid had been increased to 90 million kroner in 1999) should be emphasized. Denmark was also a regular and generous contributor to the United Nations Voluntary Fund for Victims of Torture.

9. With reference to article 1 of the Convention, the delegation had stated that plans were being made to incorporate the six international human rights instruments into Danish law, and that was a welcome development considering that the issue had caused difficulties for the Committee in the past. The conformity of certain provisions of Danish law with the Convention, and also the issue of the definition of torture, had now been resolved.

10. The drafters of the report had devoted considerable space to article 3 and explained the various amendments to legislative and administrative provisions on aliens, especially the introduction of the de facto clause (paragraphs 6 and 7 of the report), which, it was stated, had to be administered in conformity with articles 3 and 16 of the Convention against Torture. The Committee had heard from other sources that a wide-ranging debate on asylum was currently taking place in Denmark; could the delegation supply more details?

11. Denmark had not thought it helpful to include a definition of torture into its Criminal Code, contending that the Code was broader in scope and better defined than the corresponding provisions of the Convention; consequently, in certain circumstances, a person could be prosecuted under the Criminal Code for committing violence in cases where, according to the Convention, it was not possible to claim that an act of torture had been perpetrated, for example, because it was not possible to prove that violence had been used to obtain information or confessions from victims or third parties. Nevertheless, the inclusion of a separate crime of torture in the Criminal Code would have the advantage of giving the prosecution greater room for manoeuvre: either it would be impossible to prove that torture had occurred (within the meaning of article 1 of the Convention), in which case the accused's action would automatically fall within the scope of existing articles of the Criminal Code, or torture could be proven, thereby allowing the imposition of a punishment commensurate with the gravity of the offence.

12. Regarding article 5 of the Convention, paragraph 32 of the report stated that 15 Danish residents of Chilean origin had asked the Danish authorities to institute proceedings against Augusto Pinochet and had submitted a request that he should be extradited to face trial in Denmark. It would be interesting to know whether any of those individuals held Danish citizenship. Following a detailed consideration of articles 5, 6 and 7 of the Convention and, in particular, article 5, paragraph 1 (c), the Ministry of Justice had confirmed the view of the Director of Public Prosecutions that Denmark had no jurisdiction in the matter. The delegation should provide the Committee with a detailed summary of the Ministry's reasoning on those articles.

13. In August 2000, the Danish authorities had accredited Mr. Karmi Gilon as the Ambassador of Israel to Denmark. Mr. Gilon was the former chief of the Israeli intelligence service who had publicly acknowledged his involvement in at least 100 cases in which Palestinian detainees had been subjected to "moderate physical force", which he claimed had been necessary to combat terrorism. In 1997, the Committee had expressed the view that those practices were a violation of article 15 of the Convention and could be likened to acts of torture within the meaning of article 1 of the Convention. Moreover, according to article 2 of the Convention, no circumstance could be used to justify torture and articles 5 to 7 of the Convention imposed a duty on States parties to take proceedings against anyone suspected of having committed acts of torture or to seek their extradition. Furthermore, Denmark had ratified the Rome Statute on the International Criminal Court, article 27, paragraph 1, of which stated that official capacity as a State agent could in no case exempt a person from criminal responsibility under the said Statute.

14. In connection with articles 8 and 9 of the Convention, the Committee had noted with satisfaction that the Danish Parliament had adopted a bill amending the Act on prosecution by the International Criminal Tribunal for the Former Yugoslavia, which was necessary in order for Denmark to conclude a general agreement with the Tribunal to transfer convicted offenders from the Tribunal to Denmark for the enforcement of their punishment.

15. After the Committee had requested Denmark, following the consideration of the third periodic report, to abolish solitary confinement or at least to place it under stricter controls, the Danish authorities had in fact reduced the amount of time that a detainee could spend in solitary confinement. The delegation should indicate whether there were any plans to abolish solitary confinement altogether.

16. Mr. CAMARA, speaking as Alternate Country Rapporteur, said that he fully endorsed Mr. El Masry's remarks about the quality of the oral presentation and the report itself, which was in all respects satisfactory in form and content and commendable for its sincerity.

17. The State party had communicated very detailed information about the implementation of article 10. However, despite the importance of the means deployed, including by the European Union, only 156 police officers, and only in Copenhagen, had benefited from a police training programme (para. 40). Could the delegation offer any explanations? Specifically, was it envisaged that officials would in turn train their colleagues? As to the statements made in paragraph 43 of the report, what judicial or disciplinary steps had been taken and what was meant by the phrase "how the intake of alcohol can influence the threshold of pain"?

18. On the ethnic composition of the police force (paras. 44-46), the Committee wondered whether it would be possible to introduce preferential recruitment measures for young people from minority backgrounds. The work done by the Immigration Service and the Refugee Board was admirable and it was good to learn that the Board was obliged to prepare an annual report. That said, the meaning of the term “assigned counsel” was not clear: was it a lawyer chosen by the asylum-seeker or a defence lawyer assigned by the authorities? If the latter, how independent was the appointee?

19. The Committee would be grateful for information about the case of Mr. Hans Enrico Nati, whose counsel had written to the Committee stating that his client had been kept in solitary confinement in a Danish prison for 1,500 days and that the Danish authorities had refused to investigate the allegation that he had been systematically tortured.

20. In the light of the assertion in paragraph 58 that detainees could file complaints with the courts concerning certain disciplinary punishments, why was solitary confinement not included among those punishments, as indicated in paragraph 88? The issue had already been broached by the Committee during its consideration of the third periodic report of Denmark and it was good to hear that solitary confinement as a punishment for refusal to work was applied less frequently than before (para. 91), thanks among other things to the introduction of new legislation on the enforcement of penalties. The Committee would like to know, however, why the coercive measure of solitary confinement, which was often an arduous and dangerous punishment, was still not considered a disciplinary punishment. The delegation should also explain the difference between solitary confinement (para. 121) and solitary confinement for refusal to work (para. 124).

21. The report stated that there was no new information about articles 12, 13 and 14. Should that be interpreted to mean that no complaints of torture had been received and no new legislative or regulatory measures on the implementation of those articles had been introduced during the reporting period? The same applied to article 16.

22. Ms. GAER said that she would welcome statistics on the prison population disaggregated by age, ethnic origin, nationality, sex and geographical origin, as well as updated information on the use of force by the police against demonstrators and detainees.

23. The Committee would also like to know what measures were being taken to combat sexual violence in prisons and to ensure that patients in psychiatric hospitals were not subjected to treatment involving physical restraint.

24. On the matter of the composition of the police force, paragraph 45 of the report stated that evening classes had been organized to enable young people from non-Danish ethnic backgrounds to acquire the necessary qualifications to seek employment with the police, but to date no one had been enrolled on the course. Was that still true?

25. Mr. MARIÑO MENENDEZ said that he would like to hear more about Denmark’s position on the draft European directives regarding the status of asylum-seekers and the treatment of asylum-seekers. It would be interesting to know what sort of treatment was reserved for asylum-seekers who were held in custody for minor offences.

26. Paragraph 17 of the report stated that, under article 31, paragraph 1, of the Aliens Act, no alien could be returned to a country in which he would risk being subject to persecution. The delegation should explain how that provision worked in the case of aliens who were considered a particular threat to national security or a menace to society.

27. It would also be helpful to know whether the Danish authorities had concluded any agreements on asylum-seekers with other countries that had promised not to torture people who were due to be expelled from Denmark.

28. Regarding the Gilon case, the Committee would appreciate knowing whether Denmark thought that the 1961 Vienna Convention on Diplomatic Relations took precedence over the Convention against Torture. If it did, the possession of diplomatic status would be a means of benefiting from impunity in a given State, at least temporarily.

29. In the light of developments in international law, the Committee should consider the extent to which violations of economic, social and cultural rights could constitute degrading treatment within the meaning of article 16 of the Convention against Torture. Did the Danish Government consider that the indigenous people who had been expelled from their traditional hunting areas in Greenland to make way for the United States military base at Thule had been subjected to degrading treatment and, if so, had they been compensated?

30. Paragraph 144 of the report listed the cases in which detainees could ask a court to examine administrative decisions that were similar to criminal proceedings or were otherwise of an especially interfering nature for the inmate. Was that list exhaustive and would it be possible to add the following two cases: transfer from one prison to another and total isolation of a detainee who was exerting a very negative influence on other inmates (paragraph 75 of the report)?

31. Paragraph 88 said that a decision could be made to detain an inmate in solitary confinement for a certain period, for example, to prevent his escape. The severity of the measure seemed quite disproportionate unless the detainee was highly dangerous.

32. Instructions on the treatment of prisoners had been issued in the form of circulars. Considering the vital importance of such matters as access to medical treatment and counsel, it would perhaps be advisable to incorporate those instructions into instruments with a higher legal authority than a circular.

33. Mr. GONZÁLEZ POBLETE asked whether solitary confinement, the operation of which was described in paragraphs 117 to 123 of the report, could be abused by a judge to break the will of the accused or to prise information or a confession out of him. Was recourse to such a measure in keeping with due process? The delegation should indicate whether a person kept in solitary confinement had the right to communicate with his counsel or at least issue instructions to him.

34. The CHAIRMAN said how much he appreciated that, despite its diminutive size, Denmark had adhered so comprehensively to international human rights instruments, inter alia, by lending whatever moral and financial support was necessary to enforce the Convention against Torture: such commitment should be highlighted. He also congratulated the Danish Government on the steps it had taken to give effect to the Committee's recommendations on the third periodic report.

35. With reference to paragraphs 32 to 35 of the report, he inclined towards the view of the Director of Public Prosecutions, considering that, since the complainants, who affirmed that they had been tortured in another country, were not Danish and the torturer was not present in Denmark, Denmark would have no jurisdiction over the criminal offences referred to in the complaint unless it passed legislation similar to that adopted in Belgium.

36. On the other hand, the case of the Israeli Ambassador, Mr. Gilon, had given rise to a real problem prior to the judgment of the International Court of Justice in the case of Democratic Republic of the Congo v. Belgium. Formerly, the argument could have been made that the Convention against Torture had a narrower scope than that of the 1961 Vienna Convention on Diplomatic Relations, that it was more recent and that it provided for no immunity. However, since the above-mentioned judgment, it was clear that, if the International Court of Justice was asked to adjudicate, it would hold that a serving ambassador enjoyed legal immunity in the national courts. However, ambassadors possessed no such immunity in an international court.

37. He thanked the Danish delegation and invited it to attend a subsequent meeting to answer the Committee's questions.

38. The Danish delegation withdrew.

The public part of the meeting rose at 11.30 a.m.