



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

Distr.: General
19 May 2006
English
Original: French

COMMITTEE AGAINST TORTURE

Thirty-sixth session

SUMMARY RECORD (PARTIAL)* OF THE 702nd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 4 May 2006, at 3 p.m.

Chairperson: Mr. MAVROMMATIS

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (*continued*)

Third periodic report of Georgia (*continued*)

* No summary record was prepared for the rest of the meeting.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

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 7) (*continued*)

Third periodic report of Georgia (CAT/C/73/Add.1 and CAT/C/GEO/3) (*continued*)

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

2. Mr. CHECHELASHVILI (Georgia), responding to a question on ill-treatment, thanked the Committee for noting that laws and mechanisms had been put in place to prevent its occurrence. The growing number of complaints was a sign that institutions were discharging their obligations under those laws. Procedures had been simplified and data were increasingly precise, even though wrongful complaints by detained persons hindered the smooth operation of the system. The question asked by the Committee in that connection raised the problem of collaboration between the authorities and non-governmental organizations. In Georgia, NGOs were protected by the law and in practice they played an important role in the prevention of ill-treatment. They had the right to request from the authorities any information deemed necessary. The Government regularly invited them to participate in the implementation of plans of action and seminars on human rights protection. The Office of the Procurator-General kept them informed of developments affecting human rights issues, as it did for Government officials.

3. With regard to the independence of the judiciary, the new Government had undertaken an in-depth reform of the entire judicial system, taking care in particular to eliminate corruption, promote specialization of judges and improve their status so as to ensure their independence and impartiality. In addition, the courts had been modernized and streamlined.

4. The composition of the High Council of the Judiciary had been modified pursuant to the recommendations of the Council of Europe. Henceforth, disciplinary matters were considered under an adversarial procedure in which all the rights of the persons appearing before it were guaranteed and the decisions taken were subject to appeal before the Supreme Court. Concerning the cases of the three judges referred to by the Committee, Mr. Turava and Ms. Gvenetadze had been removed from office and Mr. Sulaqvelidze, who had committed less serious offences, had received a reprimand. Georgia was willing to provide the Committee with any useful information on those three cases and other criminal proceedings instituted against judges in 2005.

5. On the question of the right to damages, article 42, paragraph 9, of the Constitution provided for compensation for all persons having sustained harm through the action of bodies or agents of the State, while the Code of Criminal Procedure contained provisions covering cases of arbitrary detention (articles 73 and 76), unlawful conviction and unlawfully imposed medical treatment (article 219). Under article 30 of that Code, a civil action could be brought for material, physical or moral injury and, as from January 2007, compensation could be obtained even if the perpetrator of the violation was not identified (article 33). So far, notwithstanding all the facilities offered, no application for compensation had been made. Lastly, he said that he had no knowledge of a law on reparation said to be under consideration in Parliament and asked Mr. Grossman to tell him the source of his information.

6. Ms. TKHESHELASHVILI (Georgia), referring to the measures to raise salaries, said that they could only truly bear fruit if they formed part of an overall reform. The minimum salary in the police force was five times higher than the guaranteed minimum salary and the number and level of candidates reflected widespread interest in the police career. As for the possibility of legal representation for persons without resources, Georgian law guaranteed free legal assistance financed by the Ministry of Justice.

7. On the matter of the effectiveness of training for law-enforcement agents and officials of the Procurator's Office, that was reflected in the performance level of the persons trained, which was constantly subject to detailed statistic analysis. It was also evaluated by means of various internal and external oversight mechanisms.

8. With regard to the penalties imposed on the police officers mentioned by the Chairperson, the figures provided did indeed relate to dismissals and not to suspensions.

9. On the question whether the "independent monitoring board" responsible for identifying and preventing human rights violations was truly independent, since it came under the Ministry of the Interior, she explained that it was not an autonomous body but a special division of the Ministry of the Interior, set up to ensure internal oversight.

10. Concerning collaboration with the Ombudsman, a memorandum of understanding had been signed that allowed NGOs to have unrestricted access to temporary detention cells; they frequently availed themselves of that right. The Government's goal was to facilitate the emergence of a vast NGO network to ensure external monitoring of officers responsible for temporary detention cells.

11. As for the hotline of the General Inspectorate of the Ministry of the Interior, it was used intensively and allowed a great deal of information to be received from citizens about violations committed. All information received was analysed by the competent services of the Ministry of the Interior. A computerized data bank was currently being set up which would in future serve to provide detailed information on the subject.

12. Detained persons enjoyed a fully guaranteed right to an independent medical examination during pretrial detention; they were encouraged by guards to exercise that right in the interests of the transparent management of any incidents that might arise. Medical personnel came under the Ministry of the Interior division responsible for monitoring the human rights situation and were thereby ensured some independence. Detained persons underwent a compulsory medical examination not only at the beginning of the detention but also each time that they left their cells for the purposes of the investigation and returned to them. That was why the total number of medical examinations far exceeded the number of detainees, which was 8,799 in 2005.

13. On the question of the length of temporary detention, the human rights division issued precise instructions to law-enforcement agents that any detained person on whom a decision had not been reached should be released from custody within 72 hours. The 72 hour time-limit broke down into an initial 48-hour period in which the detainee had to be informed of the charges and brought before a judge, followed by a 24-hour period in which the judge had to decide whether there were grounds for keeping the person in custody or order the person's release. If the

human rights division found that those rules had not been observed, it referred the matter to the Office of the Procurator-General. Persons concerned could themselves have recourse to either one of those bodies.

14. Only special forces wore masks or hoods and solely for security reasons. Aware that the anonymity of the special forces could create problems in cases of allegations of ill-treatment or torture, Georgia, in collaboration with competent non-governmental organizations, was looking into ways of easily identifying officers participating in a special operation. As crime was becoming increasingly widespread in the country, law-enforcement services had stepped up repression and sometimes used more forceful methods. People had indeed been killed during police raids but the raids had been anti-mafia operations in which the use of force had been unavoidable. The situation should greatly improve with the restoration of the rule of law and security in the country. Moreover, with the help of the Organization for Security and Cooperation in Europe (OSCE), Georgia was drawing up guidelines for the police on the use of force and the adoption of other methods to restore order.

15. Mr. MIKANADZE (Georgia) said that Georgian prisons were in the hands of a few crime bosses who laid down the law and ransomed other prisoners, as had already been the case in the days of the former Soviet Union. In order to control the situation in penitentiary institutions more effectively, the Government had decided to isolate the bosses from the rest of the prison population and to renovate the prisons or build new ones more in line with international standards. Accordingly, four prisons had been built and one had been renovated in the previous two years.

16. The riots and disturbances that had affected Georgian prisons since December 2005 had begun with the transfer of crime bosses to Tbilisi prison No. 7. There, stripped of their privileges, they had tried to organize a hunger strike and put out a call for disobedience throughout the prison system. In view of the situation, one prison authority chief had introduced a special regime temporarily restricting access by all, including lawyers, to prisons.

17. The crime bosses had spared no effort to recover their privileges and their control over the prisons. The prison authority had decided to establish a video-surveillance system in the cells, as had been done in many democratic countries. On 25 March 2006, bosses in the Tbilisi prison hospital had called on the prisoners to foment disturbances and to fight with one another in order subsequently to blame the prison authority for their injuries. The rioting had continued the next day and the prison authority had decided to transfer the troublemakers to other prisons to avoid any worsening of the situation. On 27 March 2006, in the middle of the night, the bosses had refused to obey the guards, had put up resistance and urged the other prisoners to rebel. The transfer had finally been made, but the prisoners had started breaking windows and lighting fires. The rioting had spread in particular to Tbilisi prisons nos. 5 and 1. The situation had taken a worrying turn in prison no. 5, where hundreds of prisoners had been threatened by fire. Under the circumstances, the prison authority had decided to use force to restore calm. Some prisoners had wounded two prison authority chiefs with firearms, while seven prisoners had died and 22 had been injured. Riots had also broken out in Tbilisi prison no. 1, but it had not been necessary to resort to force. Preliminary investigations were being carried out by the Ministry of Justice under the supervision of the Office of the Procurator-General, in order to determine responsibilities for the rioting. On 13 April 2006, the troublemakers had had to answer for their acts before the Tbilisi Court.

18. There was no denying that the prison system was suffering from numerous problems, including overcrowding in the pretrial detention facilities which housed some 11,500 persons. In March and April 2006, in an effort to improve the situation, the Ministry of Justice had taken the following measures: the period of pretrial detention had been reduced from nine to four months; persons convicted by a court of first instance had been immediately transferred to facilities reserved exclusively for convicted persons; the 100 vacancies for judges would be filled as soon as possible; the Office of the Procurator-General had started to review the situation of persons in pretrial detention and had already applied for the release on bail of 50 of them; the number of releases on bail had considerably increased in the preceding few months.

19. At the same time, measures had been taken to continue building and renovating penitentiary institutions and improve the quality of healthcare given to detainees. Detailed information on those points was provided in replies 24, 38 and 40 to the list of issues. In 2005, the International Committee of the Red Cross (ICRC) had examined some 1,800 detainees and arranged for 300 of them to be treated.

20. In 2005, 49 deaths had been recorded in prisons, including 11 cases of violent deaths and five suicides. All the prisoners who had died violently had been killed by other prisoners, usually after a brawl. The delegation would transmit a detailed written reply to the Committee subsequently.

21. In April 2006, Parliament had adopted a law on domestic violence, marking a significant step forward in the protection of women. The police force had been informed of the new legislation and had received training, with particular reference to international experience. No woman prisoner had complained of rape. In women's prisons, most of the staff were women; in accordance with the Prisons Act, women prisoners were always separated from men; and women's penitentiary institutions complied with prevailing international standards.

22. In 2005, a pretrial detention centre for juveniles had opened in Tbilisi. There was also a penitentiary institution for juveniles in Avchala, near Tbilisi, where 19 minors were held. Imprisoned juveniles enjoyed advantages over other detainees: they could receive more visits from their families, they each had a living area of 3.5 square metres and they were better fed. They could also continue their education and follow computer courses organized by local NGOs.

23. The prison authority, which comprised the central office and 17 penitentiary institutions, came under the Ministry of Justice. In April 2006, the Prisons Act had been amended in the interests of greater decentralization. The new Penitentiary Code, which was expected to be adopted in late 2006, would accordingly give greater power to penitentiary institutions, while the prison authority would confine itself to coordination functions and the Ministry of Justice to supervisory and policy guidance functions.

24. Ms. TOMASHVILI (Georgia) said that the definition of torture set out in the Penal Code formed part of the broader definition of violations of human rights and fundamental freedoms. It included both acts of torture committed by public employees and those committed by individuals; however, when the perpetrator of such acts had the status of a public official that was considered an aggravating circumstance punishable by up to 15 years' imprisonment, as against a maximum of

10 years for a private individual. The broader definition of torture allowed non-State actors to be prosecuted for acts of torture committed in the context of armed conflict.

25. On the question whether the Constitution provided for exceptions to the prohibition of torture, he reaffirmed that torture and inhuman or degrading treatment or punishment were expressly prohibited by article 17 (2) of the Constitution and that article 46 of the Constitution, concerning the state of emergency, provided for no exception to that principle. The fact that the state of emergency could be invoked to waive the provisions of article 18 (4) of the Constitution on the prohibition of the use of physical or psychological violence against detained persons or persons deprived of freedom should not bother the Committee unduly, since the prohibition of torture was a *jus cogens* norm and article 6 (2) of the Constitution explicitly stipulated that all legislative texts must be in accordance with the general principles of international law.

26. The prosecution of persecutors of religious minorities was one of the main priorities of the Procurator's Office. All hearings of such cases were conducted by a procurator. Furthermore, officials of the Police Inspectorate had met with representatives of the Ministry of the Interior to exchange guidelines on how to address such issues.

27. In reply to the request for further information on the situation of Mohamed Mahaev, she said that representatives of the Procurator's Office had obtained from the person concerned a confirmation that he had not been subjected to any form of physical or psychological violence. As for the 1,100 cases of tortured persons referred to by Amnesty International in its report based on the report of the Ombudsman, clarifications were in order. The 1,100 cases referred to in the Ombudsman's report concerned persons in pretrial detention presenting bodily injuries; at no time had it been explicitly established that those injuries had resulted from acts of torture. In practice, any allegation transmitted by the Ombudsman's Office was followed by a visit by representatives of the Procurator's Office to the prisoner concerned in order for them to ascertain the cause of the injuries and an investigation was immediately launched if they proved to have been inflicted by police officers.

28. Regarding the report of the NGO Former Political Prisoners for Human Rights, the Procurator's Office would make use of the additional data it contained, particularly as to the names of victims, to continue the work of investigation undertaken on each of the cases of torture identified throughout the country.

29. On the question of extradition, both the Ministry of Justice and the Procurator's Office ensured that the related principles enshrined in the Convention against Torture and in the European Convention on Human Rights were respected. In the specific case of the Chechens, several of them had not been extradited as they had Georgian nationality. Moreover, other decisions on extradition had been quashed by the Supreme Court.

30. A bill was being prepared on the repatriation and compensation of Meskhetians and the Office for Refugees and Asylum-seekers was endeavouring to establish conditions conducive to their integration within Georgian society. The measures taken by the Government to encourage the return of Meskhetians included the automatic granting of Georgian nationality.

31. Georgia had ratified the Rome Statute of the International Criminal Court in 2003 and had adopted the corresponding implementing legislation. The question was whether so-called impunity agreements concluded by the Government with the United States of America were a violation of the Convention against Torture. The Government felt that they were not, first, because article 3 of the Convention dealt with extradition, while the bilateral agreements concluded with the United States of America related to extraordinary rendition, and, secondly, because no authority in public international law had declared those agreements to be contrary to the principles of international law.

32. To guarantee the objectivity of torture investigations, particularly in the provinces, such investigations were conducted exclusively by the Procurator's Office, without police interference. Preventive mechanisms were being introduced, notably in the form of internal guidelines for procurators, which summed up the constituent elements of the definition of torture within the meaning of the Convention against Torture and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as well as the related case law. Those guidelines also advocated non-imprisonment in the absence of aggravating circumstances and when the acts involved were of moderate seriousness. The Procurator's Office was also endeavouring to improve torture prevention by analysing possible gaps in the legislation in force and the mechanisms available to them and proposing modification to enhance their effectiveness.

33. Mr. NALBANDOV (Georgia), responding to the question concerning the Department for Human Rights and Intellectual and Humanitarian Security of the National Security Council of Georgia, said that it had originally been set up in 1997 to monitor, under the direction of the Under-Secretary for Human Rights, the human rights situation throughout the country, particularly in regard to the activities of the bodies responsible for law enforcement and security. Since the Rose Revolution, its role had changed on account of the transfer of responsibilities for human rights to the Procurator's Office and the Ministry of the Interior and the establishment of new coordinating mechanisms. In addition, the Ombudsman's Office had become considerably more effective and the work of reporting to United Nations treaty bodies, which had previously been in the hands of the Department for Human Rights and Intellectual and Humanitarian Security, had been entrusted to the Ministry of Foreign Affairs.

34. Continuing cooperation between the organs of the State and OSCE had been instrumental in the preparation and implementation of two plans of action, against torture and trafficking in human beings respectively. Several OSCE programmes were also being carried out in cooperation with the Ministry of the Interior, aimed in particular at enhancing the efficiency and transparency of the management of human rights resources, developing neighbourhood police and ensuring in-service vocational training for the police force.

35. Where trafficking in human beings was concerned, the situation had considerably improved, thanks in particular to the plan of action against trafficking, enabling Georgia to progress significantly in the special watch ranking established by the United States State Department in its 2005 Trafficking in Persons Report. A training programme for police and customs officers had been introduced, focusing in particular on methods for identifying victims of trafficking. Some of the activities carried out in that connection had benefited from the supervision of the International

Organization for Migration (IOM). Internships had also been arranged, notably in Belgium and Italy. An anti-trafficking Act, laying down the legal bases for protecting and helping victims of trafficking, was to come into force shortly and a national mechanism for protecting victims was currently being put in place.

36. There were no specific rehabilitation programmes for the victims of torture. Free medical care was offered to persons belonging to the most vulnerable population groups covered by public healthcare programmes, but for the time being no psychological support was provided. However, psychiatric assistance was available.

37. The CHAIRPERSON, Country Rapporteur, commended the delegation for its comprehensive replies and looked forward to receiving the additional information to be provided on cases involving former political prisoners. He invited the delegation to remind senior Government officials that respect for human rights took precedence over the war on crime and terrorism and to draw their attention to the fact that practices inherited from the past did not vanish overnight and that continued efforts were needed to eradicate them.

38. On the subject of diplomatic assurances, he pointed out that, if a State requested such assurances from another State, it was because it was not certain that there was no risk of torture. The State party should therefore consider carefully any decision to send a person back to his or her country, especially in the light of article 3 of the Convention. As for the distinction between special laws and general laws, the former could not be invoked to waive the latter in regard to torture and ill-treatment. A decision on the matter by a higher judicial body such as the Supreme Court would be welcome.

39. Mr. WANG Xuexian, Alternate Court Rapporteur, welcoming the clear and precise replies of the delegation, said that he had taken due note of its explanations concerning the use of force in cases where the police were faced with armed persons. However, in the case of the prison mutiny on 27 March 2006, he wondered whether the means used on that occasion had not been disproportionate. Lastly, although the State party was demonstrating significant political will in combating torture, it had to be acknowledged that the considerable efforts made to improve legislation and the judicial system had not yet had much effect in practice; he hoped that they would bear fruit in the near future.

40. Ms. SVEAASS asked whether there existed in the State party a mechanism for considering applications for asylum by refugees and torture victims from other countries.

41. Ms. BELMIR wished to know whether judges enjoyed freedom of expression and association, considering that the European Court of Human Rights had been seized of an allegation by Georgian judges that they had been wrongfully accused of corruption, which according to them had been a means of intimidation employed against judges who refused to yield to certain pressures.

42. Mr. GROSSMAN, responding to a question from the delegation as to his sources, said that the non-governmental organization whose report he had referred to earlier was the World Organization against Torture (OMCT). He asked whether the international treaties to which Georgia was party, including the Convention against Torture, were directly applicable in domestic law and whether a private individual could invoke them before the courts.

43. Ms. GAER wished to know whether persons belonging to the Meskhetian minority who did not have Georgian nationality and were frightened of being tortured in their country of origin benefited from the protection provided for in the 1951 Convention relating to the Status of Refugees.

44. Ms. TKHESHELASHVILI (Georgia) said that Georgia had been faced for the first time in its history with a massive influx of refugees following the outbreak of the conflict in Chechnya. The Office of the United Nations High Commissioner for Refugees (UNHCR) had given the Government valuable assistance in drawing up legislative texts and putting appropriate mechanisms in place. The Geneva Convention relating to the Status of Refugees and its Protocols were thus fully applied in Georgia and any person who considered himself or herself to be a victim of persecution in a particular country could apply for asylum there. Persons who had obtained the status of refugees enjoyed all the rights guaranteed in those instruments, including access to healthcare. UNHCR had unfettered access to asylum-seekers or refugees in pretrial detention under prosecution; they enjoyed all the rights of defence, including free access to the services of counsel.

45. Concerning the place of international treaties in domestic law, she explained that the Conventions ratified by Georgia were directly applicable and that in the event of a conflict between *jus cogens* principles or international treaties and the Constitution, the former prevailed over the latter. In addition, international conventions could be directly invoked before the Georgian courts and, over the previous few years, those courts, including the Supreme Court, relied largely on the norms of international law in their decisions.

46. Ms. TOMASHVILI (Georgia), taking up the question of the proportionate use of force raised by the Alternate Rapporteur, said guidelines on the issue were currently being drawn up for members of the police. Drafted in clear and accessible terms, they comprised a description of the means used for that purpose, from lethal to non-lethal weapons, and examples of situations and the conduct to be adopted according to circumstances.

47. As for allegations that charges of corruption were brought against judges in order to restrict their freedom of expression, she stressed that in Georgia complaints of corruption directed against judges were taken very seriously and prosecutions were always based on material evidence, such as fingerprints and the findings of investigations carried out by the scientific police department; they never relied solely on oral statements.

47. The CHAIRPERSON, Country Rapporteur, welcomed the constructive exchange of views with the members of the delegation of Georgia and invited them to return at a subsequent meeting to hear the conclusions and recommendations of the Committee.

49. *The Georgian delegation withdrew.*

The discussion covered in the summary record ended at 4.50 p.m.