



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

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COMMITTEE AGAINST TORTURE

Thirty-seventh session

SUMMARY RECORD OF THE 738th MEETING

Held at the Palais Wilson, Geneva
on Wednesday, 15 November 2006, at 10 a.m.

Chairperson: Mr. MAVROMMATIS
later: Mr. GROSSMAN
later: Mr. MAVROMMATIS

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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 (agenda item 6) (*continued*)

Fourth periodic report of Hungary (CAT/C/55/Add.10; HRI/CORE/1/Add.11;
CAT/C/HUN/Q/4 and Add.1)

1. *At the invitation of the Chairperson, the members of the Hungarian delegation took seats at the Committee table.*

2. Mr. SZELEIKISS (Hungary) welcomed the opportunity for his country to engage in a dialogue with members of the Committee, whose comments were always useful for the adoption of new policies and revision of the current legislation. The Hungarian Government was firmly committed to combating torture, as evidenced by the various periodic reports submitted to the Committee and the efforts made at the regional level through the Council of Europe.

3. The protection of the basic rights of the individual were guaranteed by the Hungarian Constitution, which stated that no one should be subjected to acts of torture or cruel, inhuman or degrading treatment. No one could be deprived of liberty except in the circumstances and according to the procedures prescribed by law. All persons suspected of a criminal offence and held in custody had to be released or brought before a judge rapidly. Hungarian laws also guaranteed effective protection against acts of torture and cruel, inhuman or degrading treatment.

4. Ms. GARAI (Hungary), replying to the first question on the list of issues to be considered (CAT/C/HUN/Q/4), said that the definition of torture set out in the Convention had not been incorporated into the 1978 Criminal Code, but articles 226 (ill-treatment during official proceedings), 227 (forced interrogation) and 228 (unlawful detention) complied with the provisions of the Convention. In reply to question 2 she indicated that it was not the Government's intention to amend article 123 of the Criminal Code, under which a member of the military could not be punished for an act committed on the order of a superior unless he knew that he was committing an offence in carrying it out, as it seemed inconceivable that anyone would claim that they were unaware that an act of torture, as defined in the Convention, was an offence.

5. Mr. SZÜCS (Hungary), replying to question 3 relating to article 2 of the Convention, said that the Constitution prohibited torture and cruel, inhuman or degrading treatment, as well as scientific experiments on persons without their consent. Under Hungarian legislation, anyone unlawfully arrested or detained was entitled to compensation. Any deprivation or restriction of liberty authorized by the Constitution had to be governed by law. The Code of Criminal Procedure protected the rights of persons detained in conformity with the provisions of Convention. Several other texts guaranteed the basic rights of detainees, including Decree-Law No. 11 of 1979 on the execution of sentences and penal measures and Decree No. 19 of 1995 on places of police custody.

6. Article 3 of the Code of Criminal Procedure guaranteed the right of access to counsel at all stages of the procedure. That right could be exercised from the time of indictment. When the assistance of a lawyer was compulsory (article 48 of the Code of Criminal Procedure), he had to be appointed before the suspect's first

interrogation. Article 4 of Ministry of the Interior and Ministry of Justice Decree No. 23 of 2003, on the rules governing investigations carried out by bodies reporting to the Ministry of the Interior, provided that a person in custody was entitled to the assistance of a lawyer from the time of the first procedural act relating to him. Lastly, recalling that the European Committee for the Prevention of Torture (CPT) had considered that article 33 of the 1994 law on police forces did not clearly establish the right to legal assistance during custody, he said that, in an opinion handed down on 7 October 2004, the services of the Prosecutor-General had indicated that, under article 126 of the Code of Criminal Procedure, everyone in custody enjoyed the guarantees set out in the Code of Criminal Procedure, and therefore the right to legal assistance.

7. With respect to access to a doctor, article 17 of the decree on places of police custody stated that no one could be held in police custody without first having been examined by a doctor. Following various recommendations by CPT, the police authorities had adopted decision No. 17 in 2006, giving detainees the right to know the results of the first medical examination and, if they wished, to sign the medical certificate prepared by the doctor. That decision guaranteed a detainee's right to see his medical file and to obtain a copy. Those rights could also be exercised through a lawyer. Detainees – those in custody and on remand – had the right to correspond with members of their families and to be visited at least once a month. However, the exercise of those rights could be limited if so required by the criminal investigation. Under article 128 of the Code of Criminal Procedure, the friend or relative designated by the suspect must be informed of the reason for, and place of, detention within 24 hours. Police decision No. 17 of 2006 went even further by providing that the reason for, and place of, detention must be communicated to friends or relatives of the detainee immediately and the notification listed in a register.

8. In reply to question 4 (art. 2 of the Convention), he said that detention on remand was a matter for the courts. When it was ordered before indictment, it might last until the decision of the court of first instance but could not exceed one month. Pre-trial detention could be extended by the examining magistrate in periods of three months up to a total of one year. Thereafter, it could be extended by the judge dealing with the substance of the case in periods of two months up to a total of three years. Those on remand were usually placed in penitential establishments, but the authorities could order them to be held in police premises when the requirements of the investigation so required, for a period not exceeding 30 days. Beyond that time, the court could, at the request of the prosecution service, decide to extend the detention in police premises for a further period of not more than 30 days. There was no appeal against a decision to order detention in police premises. According to the national police authorities, 85 persons had been in police detention on 15 August 2006.

9. On the question of alternatives to pre-trial detention, he said that Hungarian legislation provided for a ban on the person concerned leaving his or her place of residence, house arrest, banning orders and bail. For more information, he invited members of the Committee to consult Hungary's written replies to the list of issues to be considered.

10. In reply to question 5 (art. 2), he said that under article 36 of the 1979 Decree-Law on carrying out punishments and penal measures, women and minors were entitled to special protection. In addition, article 39 of Decree No. 6 on provisional detention of 1996 specified that minors must be detained separately from adults, a

provision that was fully complied with in penal institutions. Juvenile delinquents in detention were also separated by age, the seriousness of their offence, the sentence handed down and their behaviour. Under the Code of Criminal Procedure, any person under the age of 18 at the time of the offence was considered a minor. A minor sentenced to prison could be detained with adults when he reached the age of 21.

11. In reply to question 6 (art. 2), he said that the prohibition of torture and “muscular” interrogation was based on general rules applicable to both men and women. Consequently, no data were available on the number of men and women who had been subject to that type of offence. The legislation covered various sexual offences, including rape, indecent assault and pimping. For further information, the Committee was invited to consult Hungary’s written replies.

12. Mr. TALLÓDI (Hungary), replying to question 7 (art. 2), noted that the Ombudsman for human rights and the Ombudsman for national and ethnic minority rights were responsible for investigating, respectively, violations of constitutional rights and the rights of national or ethnic minorities, and adopting measures to rectify them. Fifty persons were employed by the Ombudsman for human rights and 18 by the Ombudsman for national and ethnic rights. In addition, 37 persons were employed by the services of the Ombudsman for data protection and freedom of information.

13. The Ombudsmen had received 75,156 complaints between 1 July 1995 and 31 July 2006, of which 16.5 per cent had led to an investigation. The Ombudsman for human rights had carried out 2,725 investigations, of which violations of the prohibitions of inhuman or degrading treatment had constituted only 0.7 per cent of cases. In most cases, those violations had resulted from coercive measures taken by representatives of the police, but cases had also occurred in homes or social education establishments, and 12.45 per cent of complaints concerned the authorities responsible for criminal investigation. In some cases, the Ombudsman for human rights had considered that the constitutional right of respect for human dignity had been violated.

14. The Ombudsman for national and ethnic minority rights had received 4,991 complaints since 1995, 10 per cent of which were against police bodies and the criminal authorities. Most cases concerned not acts of torture but excessive force used by members of the police or law enforcement officers. Systematic investigations of each of those cases had been carried out and some had led to prosecutions. As the chief victims of ill-treatment by the police were Roma, projects had been initiated to improve relations between the Roma and the police, and the police had developed “official” relations with Roma organizations in order to facilitate access by Roma representatives to criminal files concerning the members of that minority. In addition, police officers were being made aware of the problem and receiving training based on the texts of laws prohibiting discrimination.

15. Mr. ORDÖG (Hungary), replying to question 8 relating to article 3 of the Convention, said that no measures had been taken to bring the translation of article 3, paragraph 1, into line with the original text. That should not be a problem as in case of doubt the original text was authentic. Replying to questions 9 and 10, he said that article 43 of the law on the entry and residence of aliens, which had come into force in January 2002, complied with article 3 of the Convention. Article 43 stated that a foreign national could not be expelled, returned (refoulement) or extradited to a country where there were serious grounds to believe that he would be subjected to torture or to cruel, inhuman or degrading treatment or sentenced to death. In that

connection, it should be emphasized that the department responsible for considering requests for asylum was frequently called upon to make a decision on the application of the principle of non-refoulement. As to the number of asylum-seekers and persons returned, the Committee was invited to refer to Hungary's written replies. Those replies also contained data on the number of asylum-seekers who had been refused refugee status and the number of persons in the country illegally but who had not been deported, in the period 2002-2006, because that would have run counter to the principle of non-refoulement.

16. In reply to question 11 relating to article 4, he said that in 2005 six State officials had been convicted of using force in interrogations or inflicting ill-treatment during an official procedure. Each year the prosecution service verified whether prisoners were treated in compliance with the law and were not victims of offences such as violation of the right to life, ill-treatment, "muscular" interrogation, unlawful detention and abuse of authority.

17. Ms. GARAI (Hungary), replying to question 12 relating to article 5 of the Convention, said that no request for extradition from a third State relating to a person suspected of having committed an act of torture had been rejected, for any reason. In reply to question 13, she stated that under article 4 of the Criminal Code Hungarian courts were competent to hear cases of torture or ill-treatment involving aliens when the facts constituted an offence in Hungarian law and the law of the place where they had occurred. Hungarian courts were also competent in cases of crimes against humanity and any other offence liable to prosecution under international treaties, including the Convention. With regard to question 14 relating to article 10, she said that human rights instruction was a priority in the programmes of secondary police training schools and the Police School. Future police officers had to be capable of ensuring respect for human rights and the rights of minorities when intervening or in procedural acts. Training in human rights and the rights of minorities was also given during special courses for prison staff, with the goal of ensuring that respect for human rights was a natural part of their daily behaviour.

18. Following the visit of the European Committee for the Prevention of Torture (CPT) to Hungarian prisons in 1999, prison directors had been instructed to draw the attention of their staff, before taking up their duties, to the obligation to take proportionate measures and comply with the prohibition of torture, "muscular" interrogation and cruel, inhuman or degrading treatment. Two important training courses could be mentioned as examples. The first, organized since 2002 for police officers by the Police Training and Research Institute, was devoted to the Roma population and police activities with respect to them; it was focused on prevention and conflict management, and on combating unfavourable stereotypes of the Roma. The other course, financed by the Schengen Fund, was intended for the staff of migrant holding centres and immigration control services. In addition, judges, prosecutors, witness protection specialists and members of charitable organizations were regularly invited to give lectures. Lastly, the border surveillance service organized training courses on legal and psychological matters.

19. Mr. TALLÓDI (Hungary), replying to question 15, said that medical experts had to pass a specialist examination before taking up their duties. Ministry of Health Order No. 66/1999 stated that they had to have practised internal medicine, psychiatry and traumatology, and to have worked as prison doctors. Before a detainee was put in a cell, the doctor could ask him to make a statement regarding

the origin of any external signs of trauma noticed during the examination. If the person concerned said that the wounds stemmed from ill-treatment during official procedures, the doctor included that statement in the medical report, which the detainee was asked to sign; that report was subsequently communicated confidentially to the prosecution services. In addition, the legality of the detention was verified regularly, and at least once a month, at the same time ensuring that the rules prohibiting ill-treatment were being complied with. Lastly, all doctors were able, through their training, to spot signs of ill-treatment or torture on persons admitted to the central hospital or its subsidiary establishments. They were required to inform the police, through the hospital's administration, of such cases.

20. Mr. SZÜCS (Hungary), referring to article 11 of the Convention, stated that the points raised in question 16 were governed by Law No. 5 of 1972, which stipulated that magistrates responsible for carrying out sentences must ensure at least twice a month that the law was being complied with in the treatment of persons in all places of detention. With respect to question 17, there were no data concerning cases of arbitrary detention or ill-treatment of minors by the police. In fact, such occurrences did not seem common in Hungary. If the rules governing separation of the various categories of detainee were respected, it was quite impossible for adults to ill-treat young detainees in the same establishment. Lastly, in view of the constitutional principles governing data collection, the authorities were not able to verify allegations that the Roma were overrepresented in the prison population.

21. Turning to question 18 relating to articles 12 and 13 of the Convention, he said that the text to which the question referred was probably article 190 of the new Act on criminal proceedings. The relevant provision of that article stated that the prosecution services should terminate the investigation of acts of torture if the act concerned was not a criminal offence, if the criminal offence had not been committed by the suspect or if there was a reason why the act was not punishable. It was true that in most cases in which no prosecution had been brought, the reason had been that it was impossible to prove that the offence had actually been committed. It could also happen that the investigation had been closed because there had been no offence.

22. On questions 19 and 20, he said that the military and other offences committed by prison officers in the exercise of their duties were investigated by military justice bodies and judged by the military justice division, which were part of the general judicial system. In 2004, 16 members of the prison service had been the subject of criminal prosecution because they had been seriously suspected of inflicting ill-treatment in the exercise of their duties; only one of those cases had come to court, which had decided that in view of the low degree of severity of the act, the defendant should not be convicted but merely reprimanded. Nine officers had had their cases stopped, in six cases because it had become clear during the investigation that no offence had been committed and in the three other cases because it had not been possible to establish the facts. There was a current procedure against six persons. The number of criminal proceedings had doubled in 2005, but only one person had been sentenced to a fine by the military court. More than half the investigations started in 2005 had been halted, in 7 cases because no offence had been committed and in 10 cases because of lack of evidence. The investigation started in 2005 against 14 persons seriously suspected of ill-treatment was ongoing. No data were available on the sex or age of complainants, and the law prohibited the recording of a person's ethnic origin.

23. With regard to offences committed against fellow detainees, decisions had been taken in respect of 13 cases of indecent assault in 2005. Available data suggested that offences of that kind were relatively rare: there had been 9 cases in 2004, 21 in 2003, 10 in 2005 and 6 in 2001. Incidents causing visible trauma were apparently very frequent. Statistics on those cases (brawls, ill-treatment of fellow detainees, etc.) were given in the delegation's written replies.

24. Mr. TALLÓDI (Hungary), referring to article 14 and question 21, said that under Hungarian law all victims of crimes received the same kind of assistance and there was no separate form of help for victims of ill-treatment during official procedures or forcible interrogations. Law No. 135 of 2005 covered the case of an intentional violent crime committed against an individual. In that case the victim was entitled to compensation by the State, which also provided him with support services. Those services had no data on the number of victims of ill-treatment or "muscular" interrogation or on the financial assistance they had received. Between July 1999 and January 2006, the Hungarian Security Foundation had received 1,900 requests for compensation and had provided financial assistance to 1,146 persons. Since 1 January 2006, decisions on requests for compensation in administrative matters had been taken by the Office for Assistance to Victims, part of the judicial services in Budapest. In the first half of 2006, 276 requests had been considered and 55 persons had been compensated.

25. The medical and psychosocial rehabilitation of victims, which was referred to in question 22, was provided by the National Social Security System. The staff of the Office of Assistance to Victims helped them to obtain the necessary care rapidly. With respect to the measures taken to implement the views of the Committee on the Elimination of Discrimination against Women, the subject of question 23, he referred the Committee to the written replies submitted by the delegation.

26. Replying to question 24 relating to article 15 of the Convention, he said the admissibility of evidence was governed by the Act on criminal procedure, under which all evidence had to be gathered and used in accordance with its provisions, which set out the procedures for preparing and examining evidence. During the procedure for gathering the items of evidence, the dignity and individual rights of the persons concerned had to be respected and any unnecessary disclosure of details of their private lives was prohibited. Article 78 stated that no facts derived from the details obtained by the court, the prosecution service or the examining magistrate by means consisting of a criminal offence, other unlawful methods or in restriction of the rights of the persons concerned could be admitted as evidence. The Act on criminal procedure, as amended, obliged police officers to record the replies of a suspect during the investigation verbatim, failing which his testimony was systematically excluded from the evidence to be put forward. Article 4 provided that the onus of proof rested with the prosecution. Under article 76, the facts had to be fully established during the investigation, but the court did not have to examine the means by which evidence to support the accusation had been obtained, unless the prosecution service requested it to do so. In 2005, a large number of criminal proceedings had been brought because of allegations of confessions which had allegedly been obtained through ill-treatment. The CPT had not, however, considered that the treatment meted out in those cases could be described as torture.

27. Mr. BEREZKI (Hungary), referring to article 16 and question 25, said that recent statistics disaggregated by sex and age, on the number of persons imprisoned

and occupation rates for prisons in 2002-2005 were set out in the written replies submitted by the delegation. Measures had been taken, and others were planned, to reduce overcrowding in Hungarian penitentiary establishments. The number of inmates of the Budapest remand centre was now 1,517, against 2,000 in the second half of 2002 and 1,652 at the end of 2003. In the long term, the situation could only be improved by the building of new facilities by the public authorities and the use of other forms of punishment.

28. Ms. GARAI (Hungary) said, in reply to question 26, that following its visit in 2003 the CPT had returned to Hungary in 2005. Within the limits of their financial capability, the police were doing all they could to improve their detention centres. The beds, which the CPT had deemed too narrow, had been replaced in 2006. Other current or planned modernization work, some of it financed by the European Union, was described in the written replies. A new detention centre for migrants conforming to European Union standards had been built, and 24 hour medical services were available in the premises used by the border surveillance service. That service also planned to undertake new renovation and reconstruction work, which was also mentioned in the written replies.

29. Screening and medical care were provided in accordance with the relevant legislation and professional regulations. For example, detainees were placed in a cell only after having undergone a preliminary medical examination intended to identify persons whose health might deteriorate despite the medical treatment given at the place of detention. If the doctor considered that they could not be cared for in a cell, he arranged for their admission to an appropriate institution.

30. The competent division of the prosecution service closely monitored the legality with which sentences were carried out, and the Prosecutor-General had noted a positive trend in this area in his report of 2005: detainees were treated in a manner that was in conformity with international standards and the legislation. Available data suggested that detainees' lives had improved considerably for the past two years as a result of faultless supervision by the prosecution services and the stated will of prison directors.

31. The Minister of Justice, who was very aware of the problems caused by overcrowding, had undertaken a study of ways of improving the lives of detainees, as a result of which their daily food rations had increased by 10 per cent; their diet was now more varied and included fruit and vitamin rich foods, and they had more money for personal purchases. Prisoners could also visit the gym more often, and outdoor sports facilities had been established. Lastly, more telephone booths were now available.

32. So far as the improvement of care services at the Budapest remand centre was concerned, three dentists working for 30 hours a week were providing care for about 1,500 detainees. The CPT had requested details of the situation of HIV-positive detainees: it was true that, for medical reasons, they were all held together at a single institution where they received appropriate treatment. Once they had been transferred to the Tököl centre they could enjoy a calmer atmosphere and the services of a specialist. When their condition deteriorated they were transferred to a civilian hospital. The prison employees looking after them had the skills required by the health authorities, and the detainees had the same rights in health matters as other members of insurance schemes.

33. Mr. BEREZKI (Hungary), replying to question 27, said that the judicial authorities had taken a number of measures to reduce overcrowding in prisons, in accordance with the recommendations of the Council of Europe. The Criminal Code had recently been amended to increase the possibilities of conditional discharge and the number of persons who had benefited from it had risen from 6,372 in 2002 to 8,803 in 2003. In addition, judges no longer had to pronounce a minimum sentence, which in the long term would reduce the total length of prison sentences. The use of alternative punishments should also help to reduce overcrowding in prisons. The prison population had fallen by 7.4 per cent compared with the previous year. Despite the fact that renovation work had led to a temporary reduction in capacity, the prison occupation rate had fallen from 160 per cent to 145 per cent. A special unit of the national prison service was responsible for allocating prisoners to the various institutions according to occupation rates. Lastly, it should be noted that the Ministry's budget did not permit it to build any new premises but merely to continue existing work to provide prisoners with more decent conditions. In reply to question 28, he said that a regional institution for minors had been established within the remand centre of the county of Borsod-Abaúj-Zemplen in 2002. Mother-and-child facilities had been built at the remand centre of the county of Bács-Kiskun: they consisted of 20 cells, each of which was equipped for the needs of the detainee and her child. In the same institution, a section had been set aside for 10 young detainees. Lastly, as a preventive measure, the frequency of supervisory visits by the prosecution service had been increased.

34. Ms. TOTH (Hungary) said in reply to question 29 that an agreement had been signed with the Hungarian Foundation for Women concerning a project for prison support and treatment for victims and perpetrators of domestic violence; details were given in then written replies regarding that project, which was financed by the European Commission.

35. Ms. GARAI (Hungary), noting that time was running out, referred the Committee to the written replies to question 30, in particular concerning the articles of the Criminal Code relating to the trafficking of human beings. She drew attention to the emphasis placed in them on aggravating circumstances, which established various levels of responsibility – for example the fact that a victim was under 18, subjected to forced labour, etc.; an accumulation of those factors made the offence still more serious. The information requested on question 31 could be found in the written replies.

35. Mr. TALLÓDI (Hungary), replying to question 32, said that a programme of grants enabling disadvantaged young people of Roma origin wishing to become police officers to have all costs associated with their police training paid for them had been in place for 10 years. Ten young Roma had been beneficiaries of the programme in 2004. Furthermore, a programme for the social integration of the Roma population, as set up under Government Decree No. 1021/2004, had entered into force. To ensure its implementation, the head of the national police had issued harmonized guidelines on dealing with issues relating to then Roma population which provided, in particular, that complaints of discrimination made by members of that minority must be given special attention. Regular cooperation had also been established between the police and the Roma community, in the form of joint programmes.

36. Mr. SZELEIKISS (Hungary), replying to question 33, said that Hungary had undertaken to ratify the Optional Protocol to the Convention against Torture when it

had proposed its candidacy for membership of the Human Rights Council and it would not go back on its word. The Ministry for Foreign Affairs was currently working, in conjunction with the Ministry of Justice, on bringing the legislation into line with the provisions of the Optional Protocol with a view to its ratification. With respect to the designation of the national mechanism mentioned in the Protocol, it should be pointed out that the prosecution services carried out regular inspection visits to places of detention to prevent torture and other cruel, inhuman or degrading treatment or punishment.

37. Mr. GROSSMAN (Country Rapporteur) thanked the delegation for the quality of its report and the breadth and sincerity of the replies it had submitted to the questions on the list of issues to be considered. Concerning the reply to question 1, he said that articles 226 (ill-treatment in official proceedings) and 227 (forced interrogation) of the Criminal Code were too narrow in relation to the definition of torture contained in article 1 of the Convention and that the resulting legal vacuum, particularly with regard to reasons other than obtaining confessions and the concept of express or tacit consent, was a potential factor for impunity. He therefore urged the State party to reflect the entire definition, as set out in the Convention, in its Criminal Code.

38. With regard to the implementation of article 2 of the Convention, it was stated in paragraph 10 of the written replies (CAT/C/HUN/Q/4/Add.1) that the right to correspond and receive visits could be restricted for procedural reasons. Had there been any complaints from detainees about restrictions of that kind? Paragraph 18 of the written replies stated that 85 persons awaiting trial were currently being held in remand cells. How long had those persons been detained? What was the average time that pre-trial detention was possible in police premises? The Code of Criminal Procedure provided that in certain exceptional cases the judge could order pre-trial detention in a remand cell for a maximum of 30 days, renewable once. What was meant by “exceptional cases”?

39. On the issue of access to counsel, the Code of Criminal Procedure guaranteed the right to a lawyer at all stages of the procedure. However, under article 33 of the Police Act, 12 hours could elapse from the time of arrest before the person arrested could have access to a lawyer. It would be interesting to know exactly at what time that right could be exercised and whether the person arrested was informed of it. In the case of access for the most disadvantaged, it would be useful to know the total number of lawyers available for legal aid. In addition it would appear that persons detained in police premises or by border guards could be examined only by doctors designated by the authorities. Some non-governmental organizations had stated that those doctors had tried to dissuade detainees from filing complaints against the police. Was that true? If so, had enquiries been initiated? Had detainees submitted requests to be examined by an independent doctor? The report of the European Committee for the Prevention of Torture suggested that medical examinations took place in the presence of a police officer or border guard. It would be useful to hear the delegation’s view on that matter. In addition, was an investigation procedure started in cases of body lesions found during the medical examination on entry?

40. The Code of Investigation Procedure established by joint Ministry of the Interior and Ministry of Justice Decree No. 23/2003 had been a significant advance. It would be interesting to know whether the Code expressly prohibited torture and other cruel, inhuman or degrading treatment or punishment and whether it provided

for disciplinary measures to be taken against police officers whose behaviour was contrary to its provisions. Had any proceedings been brought against a police officer for non-compliance with the Code? Several NGOs had raised the question of the wearing of badges by police officers. Was there any regulation that required a badge to be worn?

41. According to public associations, only 32 of 560 cases of police brutality had led to prosecution. Were those figures accurate? The high number of investigations closed without follow-up gave rise to doubt about the integrity of the authorities in charge of them. In the case of Jakab Richárd, a young man of Roma origin found dead on 25 July 2004 after being chased by three policemen, the enquiry had concluded that there had been no offence, although according to some sources it had not even been possible for the body to be examined by an independent doctor. Could the delegation confirm that information? Statistics on the number of complaints alleging acts of torture and ill-treatment by police officers or border guards, disaggregated by age, sex, ethnic origin and, where appropriate, country of origin of the complainant would be useful. A number of cases had been referred to the European Court of Human Rights. It would be useful to know whether the decisions handed down by that court had had repercussions in the country. It was evident from the written responses that the Ombudsman for human rights and the Ombudsman for national and ethnic minority rights (question 7) were highly active and made a large number of recommendations. It would be interesting to know whether those recommendations were being followed up.

42. With regard to article 3 of the Convention, details of the way in which the risk of torture was assessed in decisions to deport, return or extradite would be useful. Had any persons threatened with return (refoulement) been granted the right of asylum following a determination that there was such a risk? It would be useful to hear the delegation's view on the compatibility of the readmission agreement concluded between Hungary and Ukraine with the principle of non-refoulement.

43. Ms. SVEAASS (Alternate Country Rapporteur) said it was not clear from the State party's reply that promoting awareness of the Convention was an express part of programmes for civil servants. Further information on that subject would therefore be welcome. It was interesting, on the other hand, to note that the instruction given to future police officers and border guards emphasized the legal, social and psychological aspects of those professions as well as investigation techniques. Programmes based on communication and conflict resolution, psychological support for officers themselves and their regular psychological assessment were also very positive initiatives. It would be interesting to know which categories of officers were targeted by those programmes, whether they were intended solely for new recruits or also for officers who had been in their post for a long time, and what measures were taken in relation to officers whose assessments were unsatisfactory. It was also stated in the written replies that training in the evaluation of medical evidence was a priority. That was indeed an essential aspect of training, because it required specific skills to distinguish between accidental lesions and lesions resulting from torture or ill-treatment. She would welcome details of the training given to State officials in that area.

44. Turning to article 11, she noted with satisfaction that the period during which border guards could detain illegal aliens had been reduced from 12 to 6 months. However, she would like to know whether aliens were entitled to legal aid, whether

particularly vulnerable persons such as pregnant women and those with post-traumatic stress symptoms were also detained in centres administered by border guards, and whether non-governmental organizations such as the Hungarian Helsinki Committee had access to those persons. She would also like to know how the State party ensured that the provisions of article 1228 of the Code of Criminal Procedure relating to defence rights were actually complied with and that persons in provisional detention had access to a lawyer and could contact their families.

45. With respect to the argument put forward by the State party that there was no way of knowing whether persons belonging to the Roma minority were overrepresented in prisons because the law did not permit the establishment of statistics disaggregated by religion and ethnic origin, she requested the Hungarian delegation to indicate whether measures could be taken to modify the relevant legislative texts.

46. Referring to articles 12 and 13 of the Convention, she noted from the written replies that half the investigations ordered in 2005 had been abandoned because it had not been possible to establish that an offence had been committed (para. 114). She would like to know why so many cases had been shelved in that way and whether it ever happened that no investigation was started following a complaint.

47. She would also like to know whether the State party had taken account of the recommendation made by the CPT in the report on its visit in 2005 to the effect that detainees should no longer be handcuffed to radiators or other fixed objects.

48. Noting that, according to information from non-governmental organizations, the police had apparently used excessive force during the protests of September and October 2006, she asked what body would be responsible for investigating those incidents, what method of investigation would be used and whether policemen suspected of having taken part in those offences would be suspended during the investigation.

49. According to statistics provided in the written replies to the list of issues to be considered (paras. 128 and 129), the annual average number of disciplinary punishments given to persons deprived of their liberty was markedly higher for young people under the age of 18 than for other age groups, and she would therefore like to know what those punishments consisted of.

50. With regard to article 14 of the Convention, it was clear from the written replies that in the case of compensation and rehabilitation assistance, domestic law made no distinction between victims of torture and victims of acts of violence generally (para. 135.). Torture, however, had particularly serious after-effects, and that was why it was essential for the State party take steps to enable the victims of torture to benefit from compensation and rehabilitation measures which took the specific nature of torture into account.

51. Turning to article 15 of the Convention, she asked what acts had been the subject of complaints filed in 2003 concerning the extraction of confessions by force. Were they ill-treatment or acts of torture? Lastly, in relation to article 16 of the Convention, she asked the Hungarian delegation to describe the situation of homosexuals in Hungary.

52. *Mr. Grossman (Vice-Chairperson) took the Chair.*

53. Mr. KOVALEV, noting that in 2003, under a readmission agreement with Ukraine, 140 asylum-seekers, including 32 Iraqis and 13 Afghans, had been returned to

the Ukrainian border, said that it was not for border guards to implement readmission agreements, because they had no competence to decide whether an asylum-seeker might be tortured in the country of refoulement or not. In that regard, Hungary was not complying with article 3 of the Convention. He would therefore like to know what had happened to those 140 persons and, in particular, whether the Ukrainian authorities had subsequently sent them back to their own countries of origin or had undertaken not to do so before they had been sent from Hungary to Ukraine.

54. Ms. BELMIR recalled that the Committee, in its conclusions and recommendations on the third periodic report of Hungary, had expressed concern regarding the provisions of article 123 of the Hungarian Criminal Code, which stated that torture was not punishable unless the soldier or policeman carrying out that act was aware that by doing so he would be committing an offence. It was therefore regrettable that the State party maintained in its written replies (para. 3) that the article did not need to be amended.

55. Referring to the maximum periods of provisional detention and remand, which could be three years and one month respectively, she asked whether the possibilities of extension were due to the slow pace of the judicial system or the deliberate desire to place the suspect in a position of psychological uncertainty. She also deplored the fact that the delegation had not provided any new element in response to that issue, although the matter had already been raised during the consideration of the third report.

56. She would also like the use in the report and the written replies of the term “ethnic group” to be explained. In her view, a person was either a national or a non-national. Was she to understand that there were two classes of citizens in the State party, Hungarians by blood and Hungarians belonging to a national or ethnic minority? Lastly, she would like to know if the legal personality of aliens was recognized in Hungarian domestic law.

57. Mr. MARIÑO MENÉNDEZ asked whether the Schengen Agreement was fully implemented by Hungary and whether provisions had been adopted to incorporate it into domestic law. He would also like to know whether the rules governing the harmonization of the asylum procedures of member countries of the European Union were implemented in Hungary. In that context, he requested the Hungarian delegation to state whether there was any accelerated procedure for considering the admissibility of asylum requests submitted by illegal aliens and, if so, how many days such consideration took. If an asylum-seeker was allowed to remain in the country, was he housed in a reception centre and how long did he have to wait before a final decision concerning his or her request was taken?

58. On the subject of the bilateral readmission agreements referred to by Mr. Kovalev, he asked whether the State party had drawn up a list of “safe” countries, in other words, countries to which a person could be sent back without risking torture there. He also asked whether legal action had been taken against foreign agents who had allegedly detained individuals on Hungarian soil illegally or States which had used Hungarian airspace to transport suspects as part of the struggle against terrorism.

59. With regard to the arrest of suspects caught in the act, he would like to know whether army personnel were authorized to carry out the arrest and, if so, whether the suspects were then sent to a police station or elsewhere. Lastly, he asked whether domestic law contained any provisions obliging the State party to grant diplomatic protection to those nationals who were subjected to inhuman or

degrading treatment in another country, such as women who were trafficked for the purpose of prostitution or were subjected to acts of torture.

60. *Mr. Mavrommatis (Chairperson) resumed the Chair.*

61. The CHAIRPERSON noted, from paragraph 109 of the written replies, that article 190 of the new Code of Criminal Procedure stated that force or the threat of force could be grounds for acquittal when the offender had been impelled to commit the offence for those reasons. He would like to know whether that article could be invoked in cases where an official was said to have committed acts of torture under pressure from a superior. Lastly, he thanked the Hungarian delegation and invited it to return at a later meeting to answer the Committee's questions.

62. *The Hungarian delegation withdrew.*

The meeting rose at 12.45 p.m.