UNITED NATIONS

CAT

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

Distr.
GENERAL

CAT/C/SR.553
8 May 2003

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Thirtieth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 553rd MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 1 May 2003, at 3 p.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.553/Add.1.

GE.03-41495 (E) 050503 080503

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 4) (continued)

Second periodic report of Azerbaijan (continued) (CAT/C/59/Add.1)

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

2. Mr. KHALAFOV (Azerbaijan), replying to a question concerning the alignment of the Criminal Code of Azerbaijan with article 1 of the Convention, said that article 1 was already reflected in various provisions of the Criminal Code. The matter was under discussion, however, and it was possible that the Criminal Code would be revised in the future to reflect the provisions of article 1 more definitely.

3. On the question concerning an accused person's right to legal defence, he said that, under article 92 of the Criminal Code, the accused had the right to legal counsel from the moment of detention. Under articles 90 and 91, an accused person had the right to choose his or her defence counsel independently and also to change counsel at will.

4. With regard to the question of amendments to the Constitutional Court Act to enable citizens to submit complaints to the Court, he informed the Committee that a bill on the subject was currently before parliament.

5. Replying to the question concerning the grounds for handing over persons for extradition, he said that, under article 3.2.2 of the Surrender (Extradition) of Persons Committing Crimes Act, extradition could be refused if there were sufficient grounds to believe that an individual would be subjected to torture if returned to the State requesting his extradition.

6. With regard to the possibility of appealing against an extradition order, article 8 of the Surrender (Extradition) of Persons Committing Crimes Act provided that the Serious Offences Court considered the cases in question and took the necessary decisions which could be challenged by the parties involved. The Ministry of Justice informed the relevant authorities in the State requesting extradition whether their request had been rejected or approved.

7. As for the Ministry of the Interior regulations on establishing internal order in places of temporary detention and the accompaniment of persons into temporary detention by police forces (dated 6 November 2001), he explained that the regulations had been prepared by the Ministry of Justice, the Ministry of Health, the Ministry of the Interior and the Procurator's Office and were designed to apply to all aspects of procedure under the Criminal Code. In many remote parts of the country, there were no suitable temporary holding facilities where investigations could be carried out and the regulations currently allowed for persons to be detained for up to 10 days in exceptional circumstances. He stressed that the main aim of the provision was to ensure the security and protection of the accused persons in adequate detention conditions, given that many parts of the country were very remote. The Government was currently examining the matter with a view to finding a more appropriate solution.

8. As for the question concerning evidence obtained using inadmissible methods, articles 124 and 125 of the Criminal Code provided that evidence for a criminal prosecution had to be reliable and obtained by legitimate means without infringement of the constitutional rights of citizens. Any evidence obtained using threats, violence, torture or other means violating the rights of the accused would not be accepted by the courts. Over the past two years, the courts in Azerbaijan had acquitted in 10 cases where evidence had been wrongfully obtained from the accused.

9. In reply to a question on the existence of trial by jury in Azerbaijan he said that, while articles 359-380 of the Criminal Code provided for trial by jury, those articles were not currently being applied. It was hoped that that situation would change in the future once the law had been amended.

10. In response to a question on the report preparation process and whether members of the public were able to participate, he said that non-governmental organizations (NGOs) and lawyers from Baku University had been involved in the preparation of the report, together with other organizations such as the International Law Association and the Human Rights Resource Centre.

11. The procedure concerning visits by NGOs to places of detention was governed by the Penal Enforcement Code. According to its article 22, such visits took place in accordance with Ministry of Justice regulations. There were no limits placed on such visits and the mechanisms therefor were contained in the instructions for NGOs issued by the Ministry of Justice.

12. With regard to the conditions of detention, the Ministry of the Interior was making specific improvements to places of temporary detention. Every year, the State budget allocations for the repair and reconstruction of temporary places of detention were increasing. Funds had also been provided for the construction of new holding facilities and to date six regional centres had been built.

13. As for the question concerning the detention of suspects for over 48 hours, article 10.3 of the Criminal Code specified that suspects could not be detained for more than 48 hours. Once that time had elapsed, suspects had to be brought before a court which must consider their case immediately and rule as to their prosecution or release. There were no circumstances under which detention could be prolonged by any of the bodies involved.

14. The age of criminal responsibility was 16, but persons of 14 or over were considered to be criminally responsible for premeditated murder and other particularly serious crimes, a list of which was to be found in the Criminal Code. In Azerbaijan, there was only one correctional establishment for minors and 54 minors were currently held there. As a general rule, there were no cells and the establishment resembled a camp in which the minors lived in hostels. Under current legislation, and in exceptional circumstances, a minor could be detained in such an establishment up to the age of 20.

15. On the question regarding “disciplinary battalions” and the Ministry of Defence’s role in supervising detention facilities, he explained that the disciplinary battalions were for military personnel who had committed crimes but did not present a grave danger to the public and the emphasis was consequently on correction and rehabilitation. The battalion members were

provided with food and proper living conditions and were paid like other members of the armed forces. Once released from the battalions, military personnel were considered to have purged their convictions.

16. In reply to a question about the existence of cells without windows and inquiries about prisoners serving life sentences, he said that the issue of windowless cells had been dealt with and that all persons serving life sentences were visited by the International Committee of the Red Cross (ICRC), representatives of NGOs, family members and lawyers. They also had the right to receive newspapers, watch television and listen to the radio.

17. In response to a question concerning medical care at Gobustan prison, he explained that that prison had a small hospital offering a limited number of medical services and therapies for the care of a prisoner's health. If more specialized medical care was required, prisoners were sent to the central prison hospital.

18. With regard to the audio-technology used in preliminary investigations, under article 151 of the Criminal Code, he said that the results of preliminary investigations were kept in the form of records and documents and supplemented by photographic evidence, audio-recordings of interviews and videotapes, all of which were made available to all the participants in the process and which could be used as evidence in court.

19. In reply to the question concerning the investigation of accusations of torture, he said that, when complaints had been lodged, some members of the law-enforcement bodies had been prosecuted and sentenced, as shown in the examples cited in the second periodic report (CAT/C/59/Add.1, paras. 183-186).

20. Under Azerbaijani law, the State guaranteed medical care for all, including prisoners. According to article 10.25 of the Penal Enforcement Code, prisoners had the right to receive medical care and first aid, either as inpatients or outpatients. According to article 93.6 of the same Code, a prisoner was also entitled to request medical attention in the event of having a health problem.

21. In reply to a question concerning the deaths of persons doing their compulsory military service, he explained that the Procurator's Office had carried out investigations into the deaths of Ms. Zulfugarov and Ms. Novruzov and the systematic humiliation of Mr. Gasanov, who had committed suicide. The persons responsible had been brought to justice and sentenced under the Criminal Code.

22. As for the treatment of persons in psychiatric institutions and homes for the elderly, he explained that the former were under the jurisdiction of the Ministry of Health and the latter under the Ministry of Labour and Social Welfare. There was one special children's home that came under the jurisdiction of the Ministry of Education. Any complaints regarding such institutions would be considered by the local authorities. There were no limitations on access or visits to such institutions by NGOs or ICRC.

23. In reply to the question regarding the appointment of an ombudsman, he said that a constitutional act establishing a human rights ombudsman in Azerbaijan had been adopted in December 2001 and Ms. Elmira Suleymanova had been appointed to the post. She had the right to visit detention facilities and remand centres and to address the courts and other bodies freely in connection with complaints received. In 2003, she had visited all the temporary detention centres and holding facilities.

24. In reply to a question concerning Mr. Zeinalov and his wife, he said that they had been involved in human rights activities. As a result of their public statements, a number of public organizations and political parties had picketed the NGO headed by Mr. Zeinalov. Some private television companies had covered the events. On its own initiative, the Ministry of the Interior had issued an official warning to certain participants in the picket. No statements had been made on public television connection with the events.

25. With regard to sexual violence in women's prisons, he said that over 90 per cent of workers in such prisons were women and that the security personnel attached to the institutions could not enter them. No incidents of sexual violence in women's prisons had been recorded.

26. Although the country's legislation did not establish criminal liability for trafficking in human beings as such, the laws which banned slavery and the recruitment into prostitution by force, threats or blackmail, accounted, inter alia, for human trafficking. Women who had been enticed into prostitution were not subject to criminal liability for conspiracy.

27. Foreign and stateless persons wishing to receive refugee status were instructed at border crossing checkpoints to lodge an application through the government committee on refugees and forced migrants. Lack of authorization to cross the border had no bearing on the final decision as to refugee status. The individuals applying for refugee status were placed in distribution centres and acquainted with the relevant legislation. Three months were required to process an application.

28. In connection with the events at Nardaran village on 3 June 2002, 18 people had been charged, inter alia, with inflicting bodily harm on 77 police officers, burning 11 cars and causing 275 million Manat worth of damage to a government building. The persons in question had been found guilty on 1 March 2003 of the above-mentioned charges and had been sentenced. Four of the accused had been sentenced to terms of imprisonment. Dzhabrail Alizada had been convicted of organizing the disturbances, using firearms and explosive substances and causing bodily harm to police officers. An investigation had failed to confirm allegations that he had been treated in an unauthorized manner.

29. Under the Code of Administrative Offences, foreign and stateless persons could be evicted only by a court. Under the Surrender (Extradition) of Persons Committing Crimes Act of 15 May 2001, requests for extradition had to be sent to the Ministry of Justice. Once the person concerned had been arrested, the Ministry of Justice handed the relevant documentation over to the Serious Offences Court, which proceeded to consider the case.

30. Several laws restricted the rights of foreign nationals residing in the country. For instance, they were not permitted to occupy top government posts or to be employed as judges.

31. Under article 92 of the Code of Criminal Procedure, only persons qualified to practise as advocates could act as counsel for the defence in a criminal case. Accused persons were allowed to have several counsel.

32. Punishment of persons who had committed a crime outside the country could not exceed the heaviest punishment provided for by the legislation of the State on whose territory the crime had been committed.

33. Rules of detention with regard to people serving life sentences were laid down in article 120 of the Penal Enforcement Code. The Government was preparing legislation to ensure an individual approach to such cases.

34. A special programme of tuberculosis treatment in detention facilities had been developed in cooperation with ICRC and the World Health Organization (WHO). A specialized hospital for tuberculosis sufferers had been established and over 1,300 people had received inpatient treatment. The number of deaths from tuberculosis had decreased threefold since 1996. Technical and secondary education was also provided in detention facilities.

35. Under articles 12.2, 48 and 157 of the Code of Criminal Procedure, a person suffering from the effects of a crime had the right to request that the crime be prosecuted, to participate in the trial as a victim or an accuser, and receive compensation for the mental, physical and property-related damages suffered.

36. Under article 8 of the Courts and Judges Act of 1997, legal proceedings ensured, inter alia, the independence and impartiality of judges. Article 7 of the Procurator's Office Act banned limitations on and unauthorized interference with the Procurator's work. The legal profession was based on the principles of independence, autonomy, confidentiality and the supremacy of the law. Government officials were not authorized to interfere with the work of lawyers.

37. Medical staff working in prisons and temporary detention facilities were independent of the authorities involved in investigations. Convicted persons and persons in custody had the right to choose their doctors. If signs of torture were detected, the doctors passed the necessary information on to the relevant bodies. Special training was provided to doctors in that regard.

38. Ms. GAER wished to know whether NGOs were free to visit prisons and any other institutions or whether instructions and legislation had not yet been introduced to that effect.

39. She wondered whether the fact that the 48-hour detention period could not be prolonged by anyone had been the result of the enquiry in that regard by the Special Rapporteur on the question of torture or whether that regulation had already been in force at the time of his visit.

40. With reference to paragraphs 183 to 185 of the second periodic report (CAT/C/59/Add.1), she said that she would like to know what sentences had been imposed on the offending police officers, whether they were still serving their sentences or whether they had been reinstated in their posts.

41. It would be interesting to know at what point detained persons had the right to request medical attention and to whom they should apply. That was an issue of great importance, since the right to have a prompt medical examination was essential to substantiating and allegation that torture had been used.

42. She wished to know how articles 113 and 133 of the Criminal Code were linked and in what circumstances they applied. Article 133 did not seem to apply when an officer remained inactive or simply consented to violence. If it applied only in cases where physical and mental pain had been inflicted through systematic blows or violent acts it was unclear how the Convention, which prohibited other forms of punishment as well, would come into effect. She enquired whether the two articles applied to administrative detainees also or only to persons sentenced by a court.

43. With regard to the events in Nardaran village, clarification would be welcome as to whether the persons who had been arrested and who asserted that they had been ill-treated had been able to lodge complaints.

44. It was not unusual for prisoners' correspondence to be read before delivery, but she stressed the need to ensure that letters were not withheld as a result.

45. She was pleased to hear that the public authorities intended to provide protection, inter alia, against mob violence and criminal action. She encouraged such intentions and hoped that such protection would soon be introduced. It would be interesting to know whether the Government had considered the possibility of setting up an independent medical examiners' board, to which people could turn for added protection.

46. Mr. YAKOVLEV asked for statistics on or examples of the application of article 133 of the Criminal Code.

47. The CHAIRMAN said that there was a huge difference between legal standards and the facts on the ground. He would be interested in learning more about actual situations rather than about the institutions that had been established.

48. With regard to the case of Dzhabrail Alizade, he was surprised that there was no indication that the public investigation had determined how the man's injuries had been sustained. Had the investigation looked into that matter? If so, what were the results? If not, why had it not done so? He would appreciate it if the delegation, after returning to Baku, would ask the public authorities to get out the relevant file and provide the Committee with some accurate information about the case.

49. Mr. KHALAFOV (Azerbaijan) said that a lot of changes had taken place in Azerbaijan since it first began its dialogue with the Committee. The country was going through a transition period and, although a number of measures had been adopted to improve legislation, its implementation required time. In that regard, the cooperation of the authorities with the Committee, NGOs and human rights organizations was of great value.

50. Mr. GASIMOV (Azerbaijan) said that there were no legal restrictions on prison visits by NGOs and other interested organizations. However, in view of the fact that 96 per cent of all convicted prisoners were held in prison camps, prior notice of intention to visit was required so that the safety of the visiting delegations could be guaranteed.

51. Mr. RZAYEV (Azerbaijan) said that the provision in the Code of Criminal Procedure stipulating that an arrested person could be held for no more than 48 hours, after which only a court could decide whether to press charges or to release the detainee, had become law on 1 September 2000. Examples of sanctions against police officers who had breached the provisions of article 133 of the Criminal Code were prison terms of two or three years, together with dismissal from the force. The medical personnel responsible for examining detainees and prisoners were independent of procurators and judges, and it was likely that independent medical centres to assess alleged cases of torture would be established in the near future.

52. Mr. GASIMOV (Azerbaijan) said that all remand prisoners underwent a medical examination upon arrival at a remand centre, and were entitled to request an examination by a private doctor.

53. Mr. RZAYEV (Azerbaijan) said that the scope of article 133 of the Criminal Code was not limited to persons acting in an official capacity, and the concept of complicity was also applicable. Every instance of brutality was dealt with separately, according to the circumstances of the case.

54. Mr. KHALAFOV (Azerbaijan) said that he could hardly credit the allegation, in one case, that 10 policemen had been needed to arrest one man. Nevertheless, the allegation would be thoroughly looked into and the Committee apprised of the Government's findings.

55. Mr. GASIMOV (Azerbaijan) said that the rules governing prisoners correspondence were very specific. Complaints by prisoners, for instance, must be sent to the appropriate authority without delay. Correspondence with relatives must not be delayed either.

56. Mr. KHALAFOV (Azerbaijan) said he acknowledged that the situation in Azerbaijan was far from perfect and his Government's only wish was to hold an open and constructive dialogue with the Committee. Azerbaijan was endeavouring to move towards democracy and the rule of law after decades of totalitarianism, to transform itself into an open civil society and to become an integral part of the international community.

The public part of the meeting rose at 4.45 p.m.