



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

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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 534th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 14 November 2002, at 9.30 a.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.534/Add.1.

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

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Estonia (CAT/C/16/Add.9, HRI/CORE/1/Add.50/Rev.1)

1. At the invitation of the Chairman, the members of the delegation of Estonia took places at the Committee table.
2. Ms. KALJURAND (Estonia), introducing her country's initial, second and third periodic reports, combined in one document (CAT/C/16/Add.9), said the report was one of a number submitted to various treaty bodies since early 2001. Estonia's backlog of reports had thus been eliminated. She expressed her Government's gratitude to the non-governmental organizations (NGOs) which had made a valuable contribution to that process.
3. In line with her Government's practice of full disclosure under the 2001 Public Information Act, the current report had been published on the Ministry of Foreign Affairs web site. The Government had taken note of NGO suggestions that such reports, and the treaty bodies' recommendations, should be translated into Estonian.
4. The issues raised in the report were based on the old Criminal Code, which had been replaced by a new Criminal Code in September 2002, the implementation of which would be dealt with in greater detail in Estonia's next periodic report. In the meantime, mention should be made of a number of aspects of the recent penal reform.
5. The aim of the reform was to develop a flexible and individualized penal system focusing on the causes of criminal behaviour and on rehabilitation through education, employment and social programmes.
6. The new Criminal Code defined torture as "continuous physical abuse or abuse which causes great pain", an offence punishable by a fine or up to five years' imprisonment. It also defined various other offences covered by the Convention, such as endangering life and health and offences against the administration of justice, including violations of individual rights in pre-trial or court proceedings, for example through unlawful interrogation or the use of violence against a suspect, an accused person, a defendant, a witness or an acquitted defendant.
7. The new Code provided for alternative, non-custodial, forms of punishment, such as the probation system, which had helped keep the prison population stable since 1997.
8. A new Code of Criminal Procedure was currently before Parliament. Its goal was greater economy and effectiveness in the administration of criminal justice, in part through the introduction of a simplified procedure similar to plea bargaining. Changes to the rules governing detention were envisaged: the maximum period of detention would be one year, during which time the pre-trial investigation would have to be carried out.

9. Turning to prison reform, she said the new Imprisonment Act had entered into force on 1 December 2000. It had been drafted taking full account of international legal practice and Council of Europe recommendations.

10. On 1 January 2002, there had been 3,049 adult male prisoners, 136 adult females prisoners, 83 juvenile male prisoners and 2 juvenile female prisoners. The Government paid considerable attention to improving prisoners' living conditions. A new prison conforming to international standards was due to be officially opened in Tartu on 15 November 2002 and two prisons had recently been merged with a view to ensuring similar improvements. In the juvenile prison in Viljandi, all inmates were currently enrolled in educational programmes. The women's prison in Harku had facilities for education, vocational training and basic employment, and children of up to four years of age could stay with their mothers. Measures had been adopted to bring prison education into line with general school education, facilitate prison officials' work through the introduction of an electronic database of prisoners' records, and ensure prisoner employment.

11. Custodial sentences were implemented in three phases: a reception phase, which included a medical examination immediately upon entry and elaboration of a personal rehabilitation plan; a basic phase, in which measures designed in the individual sentence were carried out; and a release phase, in which the prisoner was prepared for life after release from prison.

12. The Ministry of Justice carried out regular prison inspections and produced recommendations that were binding on prisons within a set period of time. In cases of non-compliance, ad hoc inspections could be launched. In order to enhance professionalism, prison-official training courses had been introduced in vocational training schools, and recruitment for the new Tartu prison had been carried out through public competition.

13. Estonia welcomed the recent adoption of the Optional Protocol to the Convention and would give careful consideration to the possibility of accession thereto.

14. Her Government attached great importance to combating terrorism while protecting human rights, with due respect for democracy and rule of law. It welcomed the well-balanced documents produced by international organizations, particularly the United Nations Sub-Commission on the Promotion and Protection of Human Rights and the Council of Europe, and had acceded to 10 out of the 11 United Nations conventions concerning terrorism.

15. The CHAIRMAN, speaking as Country Rapporteur, said that, before asking questions about Estonia's implementation of articles 1 to 10 of the Convention, he had a number of basic queries regarding the criminal justice system.

16. First of all, he would like to know in what circumstances police officers could make arrests without a warrant, how long a person could be detained before being brought before a judicial officer and what the nature of such detention was: whether a person could be held incommunicado or whether he or she had the right of access to a lawyer and doctor of his or her

choice and to relatives. He would also like to know whether Estonia had a remedy such as habeas corpus, whereby anyone believing that he or she had been unlawfully detained could obtain immediate access to a judge to resolve the issue.

17. On the basis of the information available to the Committee, Estonia appeared to have made some impressive reforms to the judiciary. He would appreciate information, however, regarding the appointment of judges: who nominated and appointed them and what were the procedures for their removal?

18. The report stated that international treaties signed by Estonia were incorporated into, and prevailed over, domestic law (para. 19). He wondered, however, whether Estonia's definition of torture was in fact subject to the definition in article 1 of the Convention: since the report did not deal specifically with article 1, it was not clear whether the offence of torture described in the 2002 revised Code of Criminal Procedure would encompass all the circumstances of the article 1 definition.

19. The Committee generally recommended that countries should consider specifically adopting article 1 and specifically incorporating it into their domestic legislation. Such incorporation made it easier to collect statistical data on the incidence of torture within each country and to compare implementation and practices across countries.

20. Paragraph 33 of the report gave some cause for concern, insofar as it implied that the interests of national security might be invoked as a reason for derogation from the Convention and that was totally prohibited under article 2 of the Convention. He wondered whether the orders of a superior officer might be invoked as a defence of torture under the circumstances mentioned in paragraph 33. He would appreciate some clarification in that regard.

21. Paragraphs 41 and 43 of the report seemed to indicate that Estonia's legislation was in compliance with its obligations under article 3 of the Convention and the Convention relating to the Status of Refugees respectively. While praising Estonia for going beyond its requirements under the Convention against Torture with regard to the refoulement of aliens present on Estonian territory, he asked whether foreigners would be refused entry into Estonian territory by immigration or customs officers even if there was evidence that they might be subject to torture if they returned to their country of origin.

22. Turning to article 4, he asked for confirmation that its provisions were comprehensively covered by the legislation referred to in the report. It would be useful if the Committee could receive a detailed explanation of articles 113 and 114 of the Estonian Criminal Code which were referred to in paragraph 50 of the report. It was unclear whether table 1 of the report, concerning the number of convictions for bodily harm between 1996 and 1999 (para. 50), referred to the general population or to public officials alone. If the latter, the numbers were surprisingly large for such a small country.

23. With reference to article 5, he asked for a clear statement about the universality of Estonian jurisdiction. It would be useful to know whether universal jurisdiction related also to crimes against humanity, genocide and war crimes, and whether Estonia had ratified the Rome Statute of the International Criminal Court.

24. In connection with article 7, he noted that, unlike some other European States, Estonia was not unwilling to extradite its citizens. He wondered, however, whether Estonia's extradition arrangements, which were mostly with other European States, covered the crime of torture.

25. Stressing the importance of article 10 of the Convention, he wondered whether police, customs and correctional officials were given specific training concerning their obligations under international instruments, particularly the human rights instruments. He wished to know exactly how those instruments, when applied domestically, imposed obligations on the State infrastructure. Since the report made no reference to the training of medical personnel, he asked whether they were specifically instructed how to diagnose the effects of torture and whether medical school curricula included specific forensic training in recognizing the signs of torture.

26. The material received from NGOs referred to allegations of maltreatment of detainees by police officers and fellow-prisoners. The most striking illustration was that of officers at a police station who, over many years, had obliged prisoners to perform violent acts against their fellow prisoners: two police officers had been prosecuted. He asked the delegation what evidence the Estonian authorities had of police violence against detainees and what steps they had taken to ensure that it was minimized or eradicated. If it was systematic, it was important to know whether steps had been taken to address the problem.

27. Ms. KALJURAND (Estonia) replied in the affirmative to the Chairman's questions as to whether universal jurisdiction applied in Estonia and whether Estonia had ratified the Rome Statute of the International Criminal Court.

28. Ms. GAER, speaking as Alternative Country Rapporteur, welcomed the announcement that, in response to suggestions by Estonian NGOs, all reports and other relevant written materials would be translated into Estonian and asked whether there were plans to make them available in Russian for the Russian-speaking minority in the country.

29. Referring to paragraph 78 of the report, which stated that prison officers were required to have completed the obligation to serve in the defence forces, she asked whether that obligation was regardless of gender, and whether the persons concerned would have received training related to the prohibition of torture and ill-treatment.

30. In connection with the issue of certification, mentioned in paragraph 79 of the report, she asked whether awareness of the requirements of the Convention was included in the assessment of prison officials' skills and abilities, and whether the records of individual officials, in respect of their treatment of detainees, were subject to review.

31. She was also interested in hearing how the Government monitored its penitentiary system with a view to preventing abuse. It appeared that the authorities permitted prison visits by independent NGOs, but she would like some clarification. The information she had received indicated that the latest visit had taken place in 1999. If that was so, she wondered why no such visits had taken place since that date. On the subject of detention conditions, the recently

published exchanges between the Estonian authorities and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) were encouraging, since they indicated plans to close or refurbish all the old prisons and to open new ones. She asked whether the recommendation by the CPT that Tallinn Central Prison should be closed by the end of 2002 had been accepted.

32. Information regarding the length of pre-trial detention and custody in Estonia, would be welcome, since it was missing from the report.

33. Paragraph 84 of the report referred to the separate requirements established under the Code of Criminal Procedure for the interrogation of an accused or a witness who was a minor. She wondered whether that meant that adults were not entitled to assistance similar to that described.

34. Paragraph 85, subparagraph (g) of the report said that the Prosecutor's Office had the authority to sanction searches. She wondered whether it also had authority to review the correctness of those searches or whether that authority belonged to an independent, external agency.

35. According to information made available to the Committee, the authorities received 20 letters of complaint from prisoners every day. She would like more detailed information about the nature of those complaints and the way in which they were analysed and followed up. The Committee had also received information concerning the misuse of power by some employees of the Tallinn public transport system. She asked how those activities had been addressed by the legal system and what measures, if any, had been adopted to control and prevent them.

36. According to paragraph 96 of the report, petitioners were warned of their liability for knowingly submitting a false complaint. She requested clarification of that liability, and asked how many charges of false complaints had arisen and what had been the outcome of them.

37. Referring to paragraph 100 of the report, concerning anonymity in criminal proceedings, she would like to know whether there had been any cases involving that process, whether it was found to protect the accused, whether it seemed to generate more complaints and how serious those complaints were. She also wished to know whether a balance was established between the rights of the complainant and the rights of the person accused.

38. She asked if the delegation could supply the approximate number of cases heard within the criminal justice system that had been resolved on the basis of confessions by the accused.

39. According to the latest CPT report recent legislative changes meant that a person taken into custody had immediate access to a lawyer, doctor or relatives. It would be useful for the Committee to know whether such access was automatic or whether a given official had authority to accept or reject that request.

40. She asked the delegation whether the Ombudsman appointed by the Estonian Parliament to monitor the prison system had produced any reports to date.
41. She requested the official definition of compensation under Estonian law and asked whether the authorities made any provisions for the rehabilitation of torture victims.
42. Paragraph 110 of the report gave figures for the number of criminal cases brought on the basis of articles 171 and 172 of the Criminal Code in 1998 and 1999. She asked the delegation to update those figures and to indicate the fate of the persons convicted in the cases mentioned.
43. The representative of Estonia had informed the Committee that upwards of 4,000 people were in detention, of whom 3,270 were convicted prisoners. It would be interesting to learn what proportion of the remainder were illegal aliens awaiting expulsion. Moreover, the delegation should give an explicit account of the legal status of such persons, indicating where were they being detained and in what conditions.
44. NGO reports stated that there were currently between 30,000 and 80,000 persons with “illegal” or “irregular” status in Estonia and she wondered exactly how many people fell into that category, according to the official estimates. By all accounts, they were an extremely heterogeneous group, including as they did pensioners, persons in employment, and a group of people who had never been permanently registered as residents of the Estonian Soviet Socialist Republic. It was alleged that persons in the last group had been refused residence permits since independence. She asked the delegation whether that was so and the reason for any such refusal. The delegation should also confirm or deny reports that asylum-seekers who had arrived in Estonia in the late 1990s were held in the same facilities and under the same conditions as illegal aliens. More generally, the meaning of the term “external illegals” was unclear; the Committee would like clarification of the reasons why those people were in Estonia and the safeguards that were in place to protect them from expulsion and ill-treatment. The delegation might also wish to comment on NGO reports that unaccompanied children in that category were doomed to “endless detention” in expulsion camps, in effect to life imprisonment without trial.
45. She welcomed the fact that the statistics provided by the Estonian Government were broken down by gender, but it would also be useful to have a breakdown by age. She would like to know whether any steps had been taken to guard against the possibility of sexual violence and abuse in psychiatric institutions, whether there was a mechanism to monitor sexual violence at such establishments and how any such complaints would be dealt with.
46. The Committee would also appreciate information on what steps, if any, had been taken to combat the culture of bullying and hazing of conscripts in the armed forces.
47. It appeared from the information received that the bulk of police violence in Estonia was fairly low-level, involving threats, beatings, deprivation of food and denial of the opportunity to wash or use the lavatory. Measures had, presumably, been adopted, however, to deal with police

officers who committed such offences and she wondered why there was nobody to gather and analyse the data on such occurrences. The Committee would be grateful for statistics of prisoner-on-prisoner violence, and an indication of what steps had been taken to improve the training of prison officers.

48. Lastly, it would be interesting to learn whether the Estonian Government had made any special efforts to investigate past war crimes.

49. Mr. RASMUSSEN said that the Committee would like to have an update on conditions in “police arrest houses”, specifically with regard to matters such as personal hygiene and outdoor exercise. The delegation should also inform the Committee whether administrative detention, which according to the law should not exceed 10 days, could in actual practice last up to a month. What procedure was followed when a doctor found evidence that detainees in arrest houses or prisons had been ill-treated? Was a medical certificate issued and subsequently transmitted to the detainee and his lawyer? In such cases, was an investigation undertaken as a matter of course or only if the detainee lodged an official complaint? Were lesions recorded in an official register?

50. Mr. MARIÑO MENÉNDEZ said that clarification would be welcome on the status of international instruments in the Estonian legal order. It was decidedly odd that judges did not have the power to set aside internal rules on the grounds that they contradicted an international treaty to which Estonia was a party. The delegation should clarify whether decisions taken by the Legal Chancellor in his capacity as an Ombudsman were binding on the State agencies which he supervised, or whether he merely had the power to make recommendations.

51. He would be grateful if the Estonian delegation would define the precise legal status of a person who was neither an Estonian nor a foreign citizen and inform the Committee whether the Government of Estonia had a policy to reduce statelessness. That question must have been touched upon in the course of Estonia's negotiations to join the European Union. Under European Union rules, it would seem that such persons would acquire “European citizenship”. It would be useful to hear more about specific provisions or plans to deal with asylum-seekers and the granting of citizenship on grounds of family reunification. In that connection, he would like to know how long unaccompanied minors unlawfully in Estonia could be held in detention.

52. Lastly, the delegation should inform the Committee whether there were any plans to reform the judiciary. It should indicate, in particular, the extent to which the Government was involved in the appointment of judges and explain why there was no constitutionally enshrined body to represent the judiciary.

53. Mr. MAVROMMATIS said that, although the report had been submitted late, it reflected the considerable progress made by the Estonian Government since independence in 1991. Additional details would be welcome on the various safeguards in place to guarantee the independence of the judiciary, for example with regard to the appointment, dismissal, promotion and transfer of judges. The reporting State should also provide assurances that the Ministry of Justice was unable to exert pressure on the courts through budgetary means, and that judges were immune from prosecution for both acts and omissions in the course of their duties. More information about lay judges would also be appreciated.

54. The exact status of international instruments in Estonian law needed to be clarified. Paragraph 21 of the report stated that international rules of procedure took precedence over domestic procedures but it was surely more important to ensure that international substantive law - i.e. the legal definition of crimes such as torture - took precedence over the definitions contained in the national criminal code.

55. The Committee would appreciate some further information about the remit of the Legal Chancellor, since at first blush it appeared that he would require superhuman powers to combine the roles of law commissioner and ombudsman.

The public part of the meeting rose at 11.50 a.m.