UNITED NATIONS

CAT

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

Distr.
GENERAL

CAT/C/SR.355
6 October 1999

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

Twenty-first session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 355th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 16 November 1998, 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.355/Add.1.

GE.98-19691 (E)

The meeting was called to order at 3 p.m.

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

Third periodic report of the United Kingdom of Great Britain and Northern Ireland and dependent territories (CAT/C/44/Add.1) (continued)

1. At the invitation of the Chairman, the members of the United Kingdom delegation resumed their places at the Committee table.

2. Mr. BEETON (United Kingdom), referring to the situation in Northern Ireland, said that his delegation was already in a position to provide the Committee with a copy of the Human Rights Act and would send it a copy of the Northern Ireland Act as soon as it was promulgated by Parliament, i.e. within a few days. The latter Act, which embodied the provisions of the Belfast or "Good Friday" Agreement, would give Northern Ireland a written Constitution incorporating strong human rights protection. One of the tasks of the Northern Ireland Human Rights Commission to be set up under the new Act would be to consider the scope of a Northern Ireland bill of rights drawing, inter alia, on the international instruments to which the United Kingdom was a party. The British authorities were determined to turn the new circumstances in Northern Ireland to the best possible account with a view to improving all aspects of the human rights situation.

3. Ms. TODD (United Kingdom) said that the Government of the United Kingdom attached the greatest importance to the protection of persons held in police custody in Northern Ireland, especially those held under the legislation concerning terrorism. With regard to the possible closure of the Castlereagh Holding Centre, the Government had decided, in the light of the Chief Constable's advice, not to take any decision for the time being but to keep the matter under review. As the rules governing detention under the anti-terrorist legislation were different from those governing ordinary detention, it would be difficult to hold persons suspected of terrorism and ordinary detainees in the same premises. For example, the holding centres for terrorist suspects had to be equipped with silent video-recording equipment. Moreover, a number of statutory and administrative safeguards had been introduced to protect persons held in such centres: regular visits by doctors, the maintenance of detailed police custody records, a prohibition on questioning after midnight, a requirement for the detention of suspects to be reviewed every 12 hours, access to legal counsel and the right not to be held incommunicado. It should be noted in that connection that the independent Commissioner for holding centres had provided full assurances to the Government and the public regarding the treatment of detainees and full compliance with the safeguards to which they were entitled. The Commissioner, who reported each year to the Secretary of State for Northern Ireland, had stated that in 1997 no detainee had been injured or ill-treated. Of course, the proposed introduction of audio recordings - to be used in tandem with the silent video recordings - at the beginning of the following year would add to the safeguards in place for detainees. All persons arrested under the anti-terrorist legislation had the right of access to a lawyer of their choosing, the only restriction being that the exercise of that right could be delayed for up to 48 hours.

4. The Government was thinking of providing for judicial regulation of the existing possibility of extending detention for up to seven days. That would enable it to withdraw the de facto derogation from the provisions of the European Convention on Human Rights.

5. With regard to the admissibility of evidence, the Northern Ireland courts were obliged, under the Emergency Provisions Act, to exclude evidence obtained by subjecting a suspect to torture, inhuman or degrading treatment, or violence or threats of violence. Although the ordinary law rules governing admissibility seemed to set a stricter standard, it was interesting to note that, according to a report on the matter, all evidence declared admissible by the courts under the Emergency Provisions Act would also have been admissible under ordinary legislation.

6. The army and the police in Northern Ireland used plastic baton rounds (rubber bullets) only during serious rioting when demonstrators were using lethal weapons and life or property was therefore at risk. It should be noted that the number of such bullets used by the police was steadily declining: 6,900 in 1996, 2,500 in 1997 and 800 so far in 1998. Unfortunately, no satisfactory alternative method that would protect the lives of members of the security forces in Northern Ireland had been found to date.

7. Mr. RODGERS (United Kingdom), replying to the questions about police complaints, said that a number of senior police officers had been appointed to conduct an investigation into the David Adams case under the supervision of the Independent Commission for Police Complaints. The investigation was close to completion and its findings would be communicated to the Director of Public Prosecutions who would decide what criminal action should be taken.

8. In reply to a question about statistics concerning police complaints in Northern Ireland, in particular the infrequency of disciplinary action against police officers, he said that the system for registering complaints differed substantially from one jurisdiction to another, so that there was some inconsistency in the published data. A new system of recording complaints to be introduced shortly in Northern Ireland would facilitate more accurate interpretation of the available statistics. Of the 5,500 complaints filed in 1997, a large number had been withdrawn or informally resolved and 35 per cent had led to a full investigation. Of the total number of complaints received, 1.4 per cent had been found to be substantiated and only one had resulted in formal disciplinary action. In the same year, informal disciplinary action (admonishment, constructive discussion, etc.) had been taken in about 100 cases. The new complaint recording system should lead to greater efficiency in terms of disciplinary action. A forthcoming change in the rules governing the admissibility of evidence should also bring about an improvement in the processing of complaints.

9. Turning to England and Wales and, more specifically, the regional differences noted by some members of the Committee in respect of action taken on police complaints, he said that the Committee would be provided with the necessary clarifications as soon as possible.

10. Replying to a question concerning the criteria used to measure serious injury, he said that the 1984 Police and Criminal Evidence Act provided the

legal basis for such assessments. Under section 87 of that Act, the chief officer of a police force was required to refer any complaint alleging death or serious injury to the Police Complaints Authority. He referred the Committee for further details on police rules and discipline to paragraphs 141 to 152 of the initial report of the United Kingdom (CAT/C/9/Add.6 and Add.10), remaining at their service to reply to any questions that were not covered there. The delegation would also provide the Committee with a copy of the Home Secretary's response to the report of the House of Commons Home Affairs Select Committee, in which it had called for a reform of police disciplinary procedures and of the processing of complaints. In his response, the Home Secretary had urged chief police officers to make more frequent use of outside forces in addressing complaints.

11. Mr. HARBIN (United Kingdom) said he would try to answer the questions concerning immigration and applications for asylum. All applications for asylum were considered by the Asylum Directorate, which was independent of the immigration services and came under the authority of the Home Office. The officials of the Directorate and the appellate authority were fully aware of their obligations under article 3 of the Convention. An independent unit, the Country Information Policy Unit, was responsible for informing caseworkers about the situation prevailing in the countries of origin of applicants. The fact that all decisions, whether taken by the Executive or the independent appellate authority, could be reviewed in the courts was, of course, an additional safeguard. The Dublin Convention, whose signatories were also parties to the Convention against Torture, established a procedure for determining which European Union country was best placed to consider an initial claim. The procedure fully respected the provisions of article 3 of the Convention.

12. It went without saying that nobody was detained solely on account of having filed an application for asylum. Those who were had all breached the immigration legislation in one way or another. About 100,000 people were generally subject to detention under the Immigration Act at any one time, but only about 900 detention spaces were available. It followed that only 1 per cent of those liable to detention were actually detained. Obviously, persons enjoying refugee status under the Convention relating to the Status of Refugees were never detained. The main difficulty for the immigration services lay in distinguishing, at the time of entry into British territory, between bona fide candidates for refugee status and criminals, terrorists and economic migrants. In many cases, they were not carrying proper identity papers, so that a person might sometimes be detained for a few hours for an identity check.

13. One Committee member had mentioned a figure of 50 per cent of asylum seekers in detention. The percentage varied from year to year; in 1997, for example, it had been 15 per cent. The figure related to persons awaiting an initial decision on their application for asylum.

14. It was indeed regrettable that asylum seekers and persons who had breached the immigration law could be detained in prisons on the same footing as ordinary offenders. Unfortunately, there were not enough detention cells available. The Government was actively engaged in increasing the number of

places in detention centres and organizing the return of rejected asylum seekers to their countries of origin so as to reduce the dependence of the administrative authorities on the prison authorities for premises.

15. With regard to the detention of children, a number of situations warranted a derogation from the law (which prohibited the detention of minors), for example in order to return minors to their countries, to prevent the separation of children from their parents, or to provide temporary assistance to unaccompanied minors until they were looked after by the social welfare services (in the absence of natural accommodation: parents, friends). Of course, the immigration services also had to unmask bogus minors who tried to exploit the more lenient provisions by lying about their age.

16. Mr. PEARSON (United Kingdom), referring to the question of special secure units, said that Whitemoor was the only one left; the other two were now used for more conventional purposes. In October 1998, none of the seven prisoners in Whitemoor was being held for terrorist offences in Northern Ireland. All were being held, pursuant to the regulations in force, for very serious offences and necessitated particularly strict security arrangements. The prisoners were out of their cells for eight and three quarter hours on weekdays and for eight hours on weekends for work, recreational activities, meals, etc.

17. Elaine Moore had been held in a special secure unit for high-risk women prisoners in Woodhill Prison from 15 July to 5 August 1998 and then released on bail. She had subsequently spent one night in Holloway women's prison because she had apparently abused the conditions of bail; at all events, no charges had been laid and she was now at liberty. Róisín McAlisky had been taken into custody in Holloway on 27 November 1996 on the basis of serious allegations in connection with terrorist activities in Germany. As high-risk prisoners were not normally held at Holloway Prison, she had been transferred on 30 November 1996 to a prison for men, where she had been held in an entirely separate section. She had subsequently been returned to Holloway, chiefly on account of her pregnancy, and had remained there until her release on conditional bail in May 1997. After delivery of her baby, while she was still on bail, the Home Secretary had decided, in March 1998, not to return her to Germany. She had then been released unconditionally. Any future high-risk women prisoners would normally be held in a special secure unit at Woodhill Prison. In special cases, for example where medical attention was required, the authorities could decide to transfer them to Holloway, which had good medical facilities. Special security measures would then be necessary, but such cases were a rare occurrence.

18. With regard to restraint arrangements in prisons, he said that leg-locks had never been used in the United Kingdom.

19. He had been asked why there had recently been such a sharp rise in the prison population. Several factors were involved, particularly longer sentences and increased resort by defendants to higher courts. Of course, the prison authorities had no business telling the courts how to dispense justice. The present Government had established two priorities: protection of the population and reducing the number of reoffenders: it was difficult to strike a balance between the two. It would probably be necessary to continue

imprisoning the perpetrators of serious and violent offences and reoffenders. The recently promulgated Crime and Disorder Act, which included specific provisions concerning juveniles, demonstrated the Government's intention to "nip repeat offending in the bud". In early 1999, a Home Detention Curfew scheme would be introduced for prisoners regarded as presenting a low risk of repeat offending. They would be sent home before their normal date of release with an electronic tagging device. At the same time, a very costly programme to prevent repeat offending would be implemented in prisons to enable prisoners, on release, to settle back into their families and to find accommodation and a job. Substantial funding would also be provided for the bail scheme for detainees.

20. Mr. CARTER (United Kingdom), referring to the ongoing extradition proceedings against Senator Pinochet, observed that the question had been raised how the United Kingdom reconciled the principle of immunity for Heads of State under the State Immunity Act with its obligations under articles 5 and 6 of the Convention, whereby a State party had respectively to establish its jurisdiction over acts of torture when the alleged offender was present in its territory and to ensure the alleged offender's presence there. Mention had also been made in that context of article 27 of the Vienna Convention on the Law of Treaties.

21. The first point to be noted was that the House of Lords' decision was not yet known and it was unclear whether the Lords would hold that the State Immunity Act applied to Senator Pinochet. Perhaps Spain's contention to the United Kingdom judicial authorities that immunity did not apply to the acts of which Mr. Pinochet was accused would be accepted. Even if it was not, there was no foretelling what, if anything, the House of Lords might say about the effects of international law in the matter. It would, therefore, be easier to answer the Committee's questions when the decision by the House of Lords was known. The Committee would be provided with a copy of the decision.

22. What could be said for the moment was that the United Kingdom had complied fully with its obligations under articles 5, 6, 7 and 8 of the Convention. The fact was that Mr. Pinochet had entered the United Kingdom on 22 September 1998 for a private visit; on 16 October, London's Metropolitan Police had received, through Interpol, a request from the Fifth Central Magistrates Court in Madrid for his provisional arrest. Pursuant to the European Convention on Extradition, which governed extradition between Spain and the United Kingdom, the judicial authorities had issued two warrants for Senator Pinochet's provisional arrest and he had been arrested in a private hospital on 16 October; on 30 October, he had been released on bail, on condition that he remained hospitalized under police guard. Invoking the principle of the immunity of Heads of State, Senator Pinochet had challenged in the courts the validity of the warrants served on him. The United Kingdom had not yet taken any decision on the matter.

23. On 26 October 1998, in parallel with the extradition proceedings, lawyers acting for persons claiming to have been tortured in Chile during the Pinochet regime had, under section 135 of the Criminal Justice Act 1988, sought permission from the Attorney-General to bring proceedings for torture against Mr. Pinochet under section 134 of that Act. In deciding whether or not to agree to proceedings, the Attorney-General applied two tests laid down

in the Code for Crown Prosecutors. The first was objective: was there sufficient admissible evidence to suggest that guilt could be established? If it was satisfied, the Attorney-General applied the second test: would proceedings be in the public interest? In the case of Mr. Pinochet, the Attorney-General had, after very thorough examination of the evidence, concluded that it was insufficient for there to be a chance of establishing guilt. He had therefore refused to consent to the opening of proceedings for torture against Senator Pinochet.

24. Those events showed clearly that the United Kingdom had established its jurisdiction in the case as provided for in article 5 of the Convention by giving effect to section 134 of the Criminal Justice Act 1988. Furthermore, the Attorney-General had considered whether proceedings were warranted - in which respect it should be noted that his decision was open to review if fresh evidence came to light. Lastly, Senator Pinochet had been under arrest or on bail throughout the period in question.

25. The Police and Criminal Evidence Act 1984 made it compulsory for the courts to reject all evidence that might have been obtained by constraint, a broad term that included torture. Whenever the defence asserted that any piece of evidence had been, or might have been obtained by constraint, it had to be set aside unless the authority in charge of the proceedings could prove that the assertion was false. Scots law, while not containing the same provisions, had the same effect. Moreover, should a jury become acquainted with evidence so ruled out and that fact be discovered during a trial, the judge had discretion to order, as he probably would, a fresh trial with a fresh jury; should the jury's familiarity with the evidence only come to light after conviction, it would be grounds for appealing the conviction.

26. The definition of torture given in section 134 of the Criminal Justice Act included all severe pain intentionally inflicted; the reason why the pain was inflicted was immaterial. Section 1 of the Criminal Law Act 1997 provided that colluding in acts of torture was equivalent to consenting to them and was punishable accordingly.

27. Article 16 of the European Convention on Human Rights, which had come into effect in the United Kingdom under the Human Rights Act 1998, authorized States parties to restrict the political activity of aliens – and not merely of asylum seekers and refugees – providing the restrictions did not extend to other aspects of their freedom of expression, assembly or association or their other rights.

28. Regarding the Director of Public Prosecution's discretionary powers, it should be noted that Crown Prosecutors enjoyed full freedom of action. When deciding whether to open proceedings they applied the two tests set forth in the Code for Crown Prosecutors that had already been referred to with respect to Mr. Pinochet.

29. Mr. PEARSON (United Kingdom) said he wished to address two cases raised by members of the Committee. The first was that of Amer Rafiq, who had been injured while being arrested by the Manchester police and had lost the sight of an eye. The Manchester police had spontaneously requested the making of an inquiry by another police force. That inquiry, completed in July 1996, had

resulted in the disciplining of three police officers for negligence on the ground that they had failed to care adequately for a detainee under their authority, and proceedings for compensation were in hand. Regarding Diarmaid O'Neill, shots had been fired during a police search in London in September 1996; Mr. O'Neill had been injured and had been taken to hospital, where he had died. The Metropolitan Police had immediately opened an inquiry under the authority of a high-ranking officer. The inquiry had been suspended during the trial of other persons involved in the incident, but was now almost complete, and the findings were expected to be transmitted shortly to the Police Complaints Authority and the Crown Prosecution Service.

30. The members of the working group referred to in paragraph 63 of the report, which had been set up under the aegis of the Home Office to examine police practice regarding race and community relations, included the Association of Senior Police Officers, the Black Police Association and the Commission for Racial Equality. The relevant report by the Inspectorate of Constabulary, which had been issued in October 1997, showed that, while efforts had been made, the results were inconsistent. The Home Secretary had therefore given his personal support to action in all police forces to eliminate racial discrimination. The Inspectorate of Constabulary would be making a follow-up investigation of the matter in the near future.

31. The United Kingdom Government did not, perhaps, interpret article 10 of the Convention as broadly as Mr. Sørensen: it did not feel that all medical staff in the United Kingdom should be given specific training on matters of torture. Notwithstanding, all law enforcement personnel, both civilian and military, and all officials who had to deal with detainees in one way or another were trained in, and made aware of, the issues in question. In addition, his Government maintained close contacts with the Medical Foundation for the Care of Victims of Torture. The Foundation being a private charitable organization, the Government did not subsidize it, but it had made an increased contribution of £30,000 to the United Nations Voluntary Fund for Victims of Torture.

32. The United Kingdom authorities were currently examining the feasibility of making the declaration referred to in article 22 of the Convention. The Committee would be informed of the results of that review in due course. Regarding corporal punishment of children (para. 131 of the report), the United Kingdom Government had acknowledged that the rights of the minor in the case brought before the European Commission on Human Rights had been infringed. It intended to take steps to make it perfectly clear that violence against children was inadmissible, it being understood that parents could lawfully punish them. Alteration of the law in order to afford children better protection was under consideration.

33. All occurrences of death during police custody or in prison were taken very seriously and were submitted to a coroner for thorough investigation. In the event of a complaint or suspicious circumstances, the investigation was independently supervised by the Police Complaints Authority. Since 1996, it had been compulsory for police forces in England and Wales to state the ethnic origin of anyone who died on police premises: 57 persons (47 whites, 7 blacks and 1 Asian) had died in such places in 1996-1997. The Home Secretary had just published a report on deaths in police custody since 1990. The report,

the aim of which was to find better ways of reducing such fatalities, could be communicated to the Committee. It showed that in 34 per cent of cases the deceased persons had attempted suicide, that 29 per cent of them had had a health problem and that drug or alcohol abuse had been involved in a quarter of cases. It was noteworthy that over a period of seven years there had only been 16 deaths for 11.8 million arrests.

34. Mr. STEEL (United Kingdom) recalled that the Committee had exhorted the British Government to have the Crown dependencies bring their practice regarding corporal punishment and the death penalty into line with that of the United Kingdom. The Government was trying to do that, but what real power did it have in the territories in question, namely certain Caribbean territories and Bermuda? Formally, the United Kingdom had power to legislate by Order in Council in the Caribbean territories, but not in Bermuda, which had long had a parliament; only the United Kingdom parliament could disregard it and legislate. All the territories, however, had an elected legislature and executive and the United Kingdom Government did not consider it desirable to impose on them measures to which their populations were strongly opposed. It was, nonetheless, aware of its responsibility to the international community for the observance of human rights in those territories and it did not rule out the possibility of imposing legislation if it appeared that that was, in the final analysis, the only means of remedying the situation. Persuasion had, however, produced good results regarding corporal punishment: it was now permitted only by the law of two of the territories and had not been applied in them for several years. His Government intended to act firmly with regard to territories which had not yet abolished the death penalty.

35. The CHAIRMAN, speaking as Country Rapporteur, said that useful information had been given concerning the case of Mr. Pinochet. Could Mr. Carter say at what point the Attorney-General had investigated the possibility of instituting proceedings in the United Kingdom against Senator Pinochet and whether he had done so on his own initiative?

36. Mr. CARTER (United Kingdom) said that the Attorney-General had taken up the case when, in October 1998, a number of private persons had petitioned him for permission to open proceedings. He was unaware whether the Attorney-General had taken an interest in the case before that, but would try to provide more information at a later stage.

37. Mr. ZUPANČIČ (Alternate Country Rapporteur) asked whether the rules of evidence also applied to Northern Ireland and whether the courts could take into account other evidence than confessions if it had been obtained by torture.

38. Mr. PEARSON (United Kingdom) said that the rules of evidence did also apply to Northern Ireland and that trial judges had discretion to reject any evidence that they felt circumstances made it unfair to admit. There was substantial case law concerning the exercise of that discretionary power and judges had to take into account all the relevant factors.

39. Mr. YAKOVLEV observed that it been reliably asserted that there were far more blacks than whites in detention in British prisons and that institutionalized racism was rampant in the police force. In 1998, Amnesty

International had reported that an investigation based on an autopsy report had concluded that a black man, Kenneth Severin, had probably been asphyxiated in prison by warders who had used excessive force in trying to restrain him. That was all very disturbing when put together with the corroborating information in paragraphs 63 and 113 of the report (CAT/C/44/Add.1). There was also room for doubt about the efficacy of the educational and institutional measures taken to combat racism in police forces and about the thoroughness of the coroners' inquests in certain cases.

40. Mr. PEARSON (United Kingdom) said that his Government rejected racism and was taking steps to ensure it was eradicated. Regarding the cases mentioned by Mr. Yakovlev, his delegation preferred to wait for publication of the findings of the inquiries ordered by the British authorities. Meanwhile, the Committee could be assured that the competent authorities took steps whenever they heard of improper conduct by prison officers or police. Moreover, all the departments and agencies concerned cooperated with coroners investigating deaths of prisoners, whether they were natural or suicides, and the coroners did all they could to meet the needs for information and help of victims' families.

41. The CHAIRMAN thanked the representatives of the United Kingdom for the information they had provided the Committee.

42. The United Kingdom delegation withdrew.

The first part (public) of the meeting rose at 4.40 p.m.