



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

Distr.: General
24 January 2008
English
Original: French

COMMITTEE AGAINST TORTURE

Thirty-ninth session

SUMMARY RECORD (PARTIAL) OF THE 788th MEETING*

Held at the Palais Wilson, Geneva,
on Thursday, 8 November 2007, at 3 p.m.

Chairperson: Mr. MAVROMMATIS

CONTENTS

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

Second periodic report of Latvia (*continued*)

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

This record is subject to correction.

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

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

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 5)

Second periodic report of Latvia (CAT/C/38/Add.4; CAT/C/LVA/Q/2; HRI/CORE/1/Add.123 (*continued*))

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

2. Ms. REINE (Latvia) stated that her delegation was made up of representatives of a large number of national institutions concerned with matters of interest to the Committee. In 2003 the consideration of the initial report (CAT/C/21/Add.24) by the Committee had opened the way for discussions at national level which had led to genuine progress in both the legal and practical spheres, making for greater respect for the provisions of the Convention,. In May 2007 the Government of Latvia had submitted a report on the effect given to the Committee's recommendations, and it had recently transmitted its written replies to the list of issues. Thus the Committee had available to it information covering the period November 2003 – July 2007. Promotion of greater respect for the standards concerning the prevention of torture had continued since the latter date. In replying to questions from the Committee, the delegation would endeavour to supply information on the most recent developments.

3. Substantial progress had been made in every sphere, particularly as regards prison conditions, medical assistance, education and victim protection. The new Code of Penal Procedure, which came into force in October 2005, introduced radical reforms in the rules governing pretrial detention and its extension. The times allowed for the judiciary to investigate and try cases had been shortened. The rights of suspects, defendants and defence counsel had been strengthened. Implementation of the provisions of the new code had led to a reduction in the numbers of persons in pretrial detention, from 2,662 on 1 January 2005 to 1,670 on 1 August 2007. As a result of the adoption of laws governing respectively the procedure for placing in pretrial detention and procedures for arrest, defendants and arrested persons now enjoyed specific protection. In 2006 a legal aid system was established to provide State-guaranteed legal aid to persons of modest means. In addition, the amendments dated 29 March 2007 to the Medication Act now offered the possibility of demanding judicial review of all non-voluntary internment measures.

4. Latvia had improved its system of supervision of detention centres. The required supervision was provided by representatives of the Ministry of Justice, the new ministry responsible for matters concerning children and the family, the Ministry of Health, the Mediator, the State Control Service, the Office of the Prosecutor-General and the Internal Security Bureau, which forms part of the national police, cases of violations of rights of detainees were referred to those bodies. The courts were now playing a greater role in that field, ruling on complaints against the authorities concerning conditions of detention and the treatment of persons deprived of liberty. Mention also needed to be made of the adoption of an Act on the disciplinary responsibility of officials of the Ministry of the Interior and the prison administration with special duties, which came into force on 1 October 2006. In August 2007 an office for statistics and analysis was set up within the internal security bureau of the national police; its tasks included the processing of data on offences committed by police officers. Progress had also been

made in data collection in other areas. Finally, as a result of the creation of the ministry responsible for matters concerning children and the family and the National Service for the Protection of the Rights of the Child, the conditions of detention of minors had improved considerably.

5. Thanks to economic growth and international aid, Latvia had been able substantially to increase the credits allocated for the renovation of prisons and the creation of new ones. On 30 July 2007 the national prison hospital was moved to newly-equipped buildings in Olaine; As the Council of Europe Commissioner for Human Rights had been able to see for himself when he visited the country, defendants and convicts now received all necessary medical assistance. In 2006, with financial assistance from the European Social Fund, Latvia had initiated a project on the development of new education programmes for young offenders, teacher training programmes and the renovation of classrooms. In addition, in order to comply with the most recent European standards on asylum, the Latvian authorities had elaborated a draft law on the right of asylum; it had recently been considered in first reading by the legislature. Also, Latvia had completed the process of professionalization of its army on 1 January 2007.

6. There were several institutions with responsibilities for the training of judges, prosecutors and interior ministry officials. The Judicial Training Centre organized courses for judges and court clerks on different aspects of domestic law and human rights matters. There was no specialized centre for the training of prosecutors; the latter attended the courses for judges and seminars specially organized for them. Legal and medical training (comprising the subject of human rights) was organized on a regular basis by the Ministry of Health; the personnel of psychiatric institutions also attended those courses. Lastly, seminars on human rights were organized by Latvian non-governmental organizations or the faculty of law.

7. In conclusion, the speaker stated that Latvia had always worked to promote respect for recognized international standards on human rights. It participated fully in activities in that field organized by the Council of Europe, the Organization for Security and Cooperation in Europe and the United Nations and in the latter's special procedures. That participation had enabled the authorities to cast a critical eye over the situation within the country and to identify the areas in which improvements were required. It had also enabled the international organizations to obtain a better understanding of the particular context in which Latvia had gained independence and the efforts it was currently making to preserve that independence and to consolidate democracy. Latvia was proud of having finally succeeded in freeing itself from the shackles of its totalitarian past, in particular by adopting a new approach to persons deprived of liberty and to prisons generally. However, much still remained to be done to ensure greater respect for international standards. Latvia was convinced that consideration of its second periodic report would not only permit an assessment of the current situation but also open the way for further progress in the field of human rights.

8. Mr. GROSSMAN (Rapporteur for Latvia) welcomed the enriching dialogue engaged with a strong and competent delegation. In recent years Latvia had made great progress in the discharge of its obligations; however, the Committee did not have an entirely clear view of the situation regarding the implementation of article 1 of the Convention.

9. In its initial report (CAT/C/21/Add.4) the State party had affirmed that the definition of torture contained in article 1 of the Convention was directly applicable in Latvia, since ratified international agreements were binding under the Constitution. However, in view of the diversity of standards in force in the Latvian legal system, it was difficult to see how the definition of torture given in the Convention could in fact be of direct application.

10. The Committee systematically asked States parties which had not already done so if they contemplated express incorporation of the definition of torture contained in article 1 in their national legislation, since that single definition would improve the legitimacy, simplicity and clarity of the legal system. In the case of Latvia the question had particular relevance, since in a decision dated 1 March 1993 the Supreme Court gave an interpretation of the term “torture” defining it as “multiple or prolonged acts, causing particular pain or suffering”, and committed by persons “being fully aware of it”. In article 1 of the Convention there was no mention either of multiple or prolonged acts or of awareness. In view of those restrictive elements it was doubtful whether that article was “directly applicable” in Latvia. It would be useful to know whether that Supreme Court decision was still valid or whether there had been a change in case-law since 1993.

11. With reference to article 2 of the Convention, it was important to know whether the Latvian Code of Penal Procedure guaranteed the right of every detainee to consult a physician and under what material conditions. Referring to the same article, the speaker asked whether foreign detainees had already made use of the opportunity to obtain legal aid offered by the law and whether there were any statistics on the subject covering the period 2002-2005. It would also be useful to know the amount of the budget credits allocated to the financing of legal aid and the proportion of those credits actually used for the purpose. Finally, he asked whether any applications for legal aid had been refused.

12. The Committee was continually pointing out that the prohibition of torture admitted no exceptions. The speaker therefore asked why Latvia was not contemplating amendment of article 34 of its Penal Act, particularly as that Act did not excuse a person committing acts of torture on the grounds that that person had been obeying orders from a superior. The fact that in Latvian legislation torture was defined as an intentional act raised a different problem. The State party had explained that persons committing crimes against humanity, war crimes or genocide could not plead ignorance of the criminal nature of the orders they had received. However, in the view of the Committee acts of torture fell within the category of crimes against humanity and could not be treated differently, as any differential would in fact undermine the absolute nature of the prohibition of torture. In that connection it would be useful to know how many criminal investigations had been opened since 2002 concerning orders to commit acts of torture given by a hierarchical superior. It would also be desirable to have confirmation that the absolute nature of the prohibition of torture was enshrined without the slightest ambiguity in the domestic law of the State party.

13. The State party had informed the Committee that between 1999 and 2002 no complaints concerning acts of brutality committed by members of the prison administration had been received and that no criminal or disciplinary proceedings had been instituted in respect of offences of that type. What had been the situation during the period 2003-2007? It was unusual for no complaints of that kind, whether

founded or not, to be lodged; one might therefore wonder whether detainees actually had an opportunity of making such complaints. As regards acts of violence committed by police officers, the Latvian Human Rights Centre** had stated that, in the years 2003-2004, 563 disciplinary investigations into allegations of brutality were opened; that violence was confirmed in 24 cases (4.3 per cent of the investigations); and that disciplinary action had been taken against 39 police officers. Could the delegation comment on those allegations and provide figures for the last two years? Since in cases of that kind it was often difficult to produce evidence, had there been cases in which a police officer had been given the benefit of the doubt but was subsequently involved in other cases; in such circumstances was the earlier case reopened? The Latvian Human Rights Centre had also stated that penal legislation authorized imposition of the death penalty for aggravated murder in wartime; was the State party contemplating ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty?

14. How many requests for extradition had the Latvian authorities rejected between 2002 and the beginning of the period covered by the report under consideration, in application of article 490 of its criminal code**, on the grounds that the charges against the person concerned were based on considerations of race, religion, membership of an ethnic group or political opinions? The European arrest warrant had been created to simplify and accelerate extradition procedures between members of the European Union; had Latvia made use of it during the period under consideration? It would also be useful to know how many asylum-seekers had obtained refugee status on humanitarian grounds. In cases of victims of trafficking in persons, were precautions taken to ensure that persons likely to fall into the hands of traffickers once again on their return to their countries of origin were not repatriated?

15. The disaggregated figures requested under article 4 of the Convention had been highly enlightening for the Committee. It would be useful to know whether there was a time-bar concerning acts of torture committed by State officials and whether there had been cases where an official had successfully invoked it. The speaker noted with considerable satisfaction that the State party had neither given nor accepted any diplomatic assurances in cases of extradition or applications for asylum. He also welcomed the fact that on 20 January 2005 the Asylum Act had been amended so as to remove the requirement of a written application for the opening of asylum proceedings.

16. The Government of Latvia had stated that it had not rejected any request for the extradition of persons suspected of acts of torture. In that connection, and to facilitate the work of the Committee, it had stated that it would provide updated information on the subject at the time of consideration of its second report. The State party had also affirmed that foreign detainees now had the right to ask to communicate in a language they understood and, where appropriate, to obtain the services of an interpreter. Had that measure come into force? The speaker had also noted the intention expressed by the State party to extend the period allowed for appeals by asylum-seekers and the fact that the new draft law on asylum had been approved by the Cabinet in March 2007. He asked when that important new draft law would come into force. Under the new Act on penal procedure judges were now required to ensure respect for human rights in criminal proceedings; that appeared to be an extremely positive measure. In April 2007 Latvia had signed the Convention

for the Protection of Human Rights and the Dignity of the Human Being with Regard to the Application of Biology and Medicine; it would be useful to know whether it intended to ratify that Convention in the near future. Latvia had also signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, having been since 2004 a party to the convention which that protocol supplemented. Those instruments were of vital importance, and it was important to ascertain whether they had actually been incorporated into Latvian domestic law.

17. In May 2006 Latvia had signed the Council of Europe Convention against Human Trafficking. Was the ratification process under way? In 2005, 23 cases of trafficking had been brought to the attention of the Latvian authorities, and in 2006, 24. It would be desirable to have statistics on such cases for more recent years.

18. Mr. Grossman asked whether it was correct that the definition of rape in Latvian law did not include spousal rape. Observing that Latvia was a party to the Council of Europe Framework Convention on the Protection of National Minorities, he asked whether any concrete measures to promote equality of rights between persons belonging to a minority and persons belonging to the majority population group had been taken in implementation of that instrument.

19. In an opinion dated 6 June 2003 the Latvian Constitutional Court had declared unconstitutional the provisions of the law on radio and television restricting the amount of air time allowed for programmes in the minority languages. The speaker asked whether there were other legislative provisions restricting the use of minority languages and, if so, whether their compatibility with the Constitution had been impugned.

20. On 23 November 2006 the Latvian Parliament had adopted a procedural motion which led to the rejection of a draft law providing for the payment of compensation to persons who had lost their property during the Holocaust. It would be interesting to know what had become of that draft law.

21. Turning to the subject of the incidents which had occurred during the 2006 Gay Pride festival, Mr. Grossman observed that the police should have been deployed to ensure the safety of the demonstrators and asked why that had not been done. Observing that Latvia had not made the declaration provided for in article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination recognizing the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals, he asked whether the State party envisaged making that declaration. He also asked whether the State party contemplated ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

22. He welcomed the spirit of cooperation shown by the State party in its report, its written replies to the list of issues and the information it had provided under the procedure for follow-up on the conclusions and recommendations of the Committee, the quality and breadth of which he had appreciated. He awaited with great interest the replies which the delegation would give on the matters he had just raised.

23. Ms. SVEAASS (Co-Rapporteur for Latvia) remarked that, since the consideration of its previous report in 2003, the State party had had a highly informative exchange of correspondence with the Committee on the effect given to the latter's conclusions and recommendations. That correspondence had been

complemented by the written replies and the second periodic report of the State party. All those documents, taken together, provided clear evidence that the State party had made considerable progress in the implementation of the Convention. However, certain points needed clarification, and an updating of some of the information provided by the State party could also be useful.

24. On the question of whether specific training on the Istanbul Protocol was given to law enforcement officials, medical personnel and other public officials (question 14), the State party had replied that that protocol had been widely distributed among the personnel concerned. That was certainly a positive step; but specific training in the use of the methods recommended by the protocol was nonetheless essential. Information on any measures of that kind taken would be useful. Ms. Sveaass particularly asked whether the protocol was taken into consideration in investigations of allegations of torture or ill-treatment of asylum-seekers.

25. Considerable effort seemed to have been devoted to awareness-raising among State officials on the subject of human rights in general, and the absolute prohibition of torture in particular, through seminars and other training activities. In view of the problems reported by international and non-governmental organizations regarding the situation in some hospitals, and particularly psychiatric hospitals, the speaker emphasized the need to include human rights and the prohibition of torture in the training of medical personnel. That recommendation also applied to law enforcement officials.

26. Ms. Sveaass asked whether specific training was provided to immigration officials and border police officers to enable them to identify children who were potential victims of trafficking or commercial sexual exploitation and direct them to the competent assistance services. She also asked whether there were special training programmes for supervisory staff in establishments housing minors. The State party had announced that a code of ethics for the national police had been adopted in December 2003. Four years had passed since that code had entered into force; it would be interesting to conduct a survey of its implementation, particularly as numerous cases of police violence during detention were still being reported.

27. Notwithstanding the efforts made by the State party to improve conditions in a number of prisons, the situation in some detention centres still appeared to be disquieting. This was particularly the case in the reformatory institution for minors in Cēsis, where several observers had reported that the conditions of detention were frightful. Could the delegation state if any steps had been taken to improve the situation?

28. The State party had made considerable efforts to strengthen the monitoring of places of detention, in particular by allowing access to non-governmental organizations. Additional information on the modalities of monitoring in reception centres for asylum-seekers (and especially the Mucenieki centre) and particularly on the situation of unaccompanied minors, would be very useful. The Committee would also be interested to know the conclusions of the bodies which had been able to visit those places. Information on the progress made with consideration of the draft law on the right of asylum would also be welcome.

29. Statistics on the numbers of allegations of torture involving members of the police force or the prison service, and on the numbers of cases in which

prosecutions had begun and/or disciplinary measures taken, would be useful. Details of the nature of the sanctions inflicted would also be welcome. The Council of Europe Commissioner for Human Rights had stated in the report on his visit to Latvia that the number of sanctions inflicted was very small by comparison with the relatively large number of complaints. The delegation might wish to comment on that remark.

30. Since its establishment the office of the mediator had been extremely active in a number of areas, and especially that of protecting the rights of children. Was the State party contemplating the appointment of a special mediator for children of the kind found in several European countries?

31. On the subject of compensation for victims of torture or other cruel, inhuman or degrading treatment, the State party referred in its written replies to a judgment of the Supreme Court awarding compensation to a prisoner on whom the prison staff had inflicted serious bodily injuries. Several other cases before the courts were mentioned. It would be interesting to know more on the nature of those cases and their outcome. Other information referred to cases of police brutality tried in civil courts. More details on such cases would be useful.

32. Various psychological rehabilitation programmes were in use in hospitals and prisons, but none of them appeared to specifically designed for victims of torture. The inclusion of targeted measures in existing programmes was desirable. Considerable progress had been made, particularly in legislation, with the treatment of mentally deficient persons, facilitation of their integration into the community and their protection from discrimination of all kinds. On the other hand, it appeared that draft amendments concerning the procedure for non-voluntary internment in psychiatric hospitals had been rejected on first reading. Those proposals, which provided that any internment measure should be submitted to a judge within the 24 hours following the medical decision, were to have been reexamined in May 2007. It would be useful to know if any decision on the proposals had been taken.

33. Returning to the problem of cross-border trafficking mentioned earlier by the Rapporteur, Ms. Sveaass noted with concern that the traffic was still continuing in spite of the efforts of the State party to combat it and that, according to information received, the sentences pronounced against the organizers of the traffic were insufficiently severe.

34. She also asked why domestic violence had not yet been made an offence in domestic legislation and why the State party had not yet adopted a strategy to deal with the subject, even though cases of that kind were frequent in Latvia. The State party had a duty to take the necessary steps to repair these shortcomings and enable victims to seek compensation in the courts.

35. Lastly, she asked whether awareness-raising campaigns to promote tolerance towards homosexuals were being conducted in the State party, and what measures had been taken to prevent violent clashes on the occasion of events organized by homosexual and lesbian associations.

36. Mr. MARIÑO MENÉNDEZ asked whether there were military courts in Latvia and, if so, whether they were competent to try civilians. He also asked whether the State party possessed statistics disaggregated by nationality on asylum-seekers scheduled for return and whose applications had been examined under the new fast-track procedure. He noted that Latvia had concluded an agreement on

return with Uzbekistan and asked whether the irregular immigrants who the State party could return to Uzbekistan under that agreement were Uzbeks or nationals of other countries who transited through Uzbekistan before arriving in Latvia. He also asked the delegation of the State party to indicate whether the extradition treaty concluded between Latvia and the United States contained a clause concerning the International Criminal Court; whether penal law established the universal competence of Latvian courts to try persons committing acts of genocide or torture; and whether acts of terrorism were designated as specific offences in the State party. Finally, he asked the delegation whether the Convention applied in wartime as well as in peacetime.

37. Mr. KOVALEV referred to article 91 of the Latvian Constitution, quoted in the core document (HRI/CORE/1/Add.123, para. 31), which stated that: "All human beings in Latvia shall be equal before the law and the courts. Human rights shall be secured without discrimination of any kind." He pointed out that the rights of stateless persons were restricted in the State party and that persons in that group were often the object of discrimination. He therefore asked how many stateless persons there still were in Latvia; what the Latvian Government was doing to reduce their number; and what was the status of a child of two stateless parents born on Latvian soil.

38. Ms. BELMIR observed that the office of the Public Prosecutor was empowered to take decisions on extradition matters (report, paras. 121 and 122) and to authorize the security services to resort to certain special methods of constraint (listed in paragraph 114 of the report). She asked whether the office informed the Ministry of Justice of its decisions on extradition and whether its officials were held responsible when they ordered the use of special methods and when those measures caused death or serious injury.

39. Referring to paragraph 1 of article 34 of the criminal law, quoted in paragraph 100 of the report, the speaker emphasized that the officials responsible for law enforcement were presumed to be able to distinguish between lawful and unlawful acts and could not be excused from their criminal liability on the grounds that they were unaware of the unlawful character of the order received from a superior at the time when they carried the order out. She considered the fact that the State party had no intention of amending that provision a matter of considerable concern, particularly as the number of complaints of ill-treatment by the security services during arrests and questioning was extremely large. Finally, she asked if the State party had established permanent machinery enabling immediate assistance to be given to women victims of conjugal violence.

40. Mr. WANG Xuexian said that, according to information received from the Latvian Human Rights Centre in 2002, a Rom had been arrested by four policemen, who had beaten him up before taking him to the police station, where he had died as a result of his injuries. It appeared that in 2003 the case had been brought to court but that the four policemen implicated had been acquitted on the grounds that the cause of death could not be determined with any certainty, since the victim might have died as a result of blows received before he was arrested. The prosecutor had appealed against that decision, but the Latvian courts had still not taken up the case. He asked the delegation to explain that inaction.

41. Ms. GAER noted with satisfaction the establishment of the post of investigating magistrate, whose incumbents had the task of monitoring respect for

human rights during legal proceedings and with powers to order detention in police custody or an extension thereof. She asked how any investigating magistrates had been appointed, whether the incumbents received special training, how often they recommended extensions of detention, if they had already observed cases of violations of the right of suspects of access to a medical doctor or legal counsel and their right to contact their relatives, and whether machinery enabling them to report such violations had been established.

42. On the subject of the reasons advanced by the State party for not collecting personal data on victims and authors, she said that, while understanding that the reason for that attitude was a desire to protect the private lives of individuals, the lack of that data was to be regretted, since it would have helped the Committee to obtain a clearer picture of the situation and to establish whether some persons were more exposed to violations than others. She therefore asked the State party to reconsider its position on the question.

43. According to the information provided by Latvia on the recommendation in subparagraph (g) of paragraph 7 of the conclusions of the Committee (CAT/C/CR/31/3), the disciplinary sanctions taken against members of the police forces found guilty of torture or ill-treatment consisted merely of warnings or reprimands. It would be useful to know whether the persons concerned were dismissed from their functions and whether the State party considered that those sanctions were commensurate with the gravity of the offences committed.

44. On the subject of the absence of complaints of violence among detainees, she observed that, according to the experience of the Committee, violence of that type was encountered in all places of detention. She asked whether the State party intended to take steps to enable victims to complain. Finally, since the *Ansis Igars* case (CAT/C/CR/31/RESP/1) had been brought before the European Court of Human Rights in May 2007, she asked the delegation to provide information on the follow-up on the case.

45. The CHAIRPERSON welcomed the considerable efforts made by the State party to cooperate with the Committee as demonstrated by the fact that it had submitted, not only its periodic report and its written replies to the list of issues, but also its observations on the previous conclusions and recommendations of the Committee and the replies to the Rapporteur responsible for follow-up. He thanked the Latvian delegation and invited it to reply to the questions put to it at a later meeting or, if already able to do so, at the present meeting.

46. Ms. REINE stated that she was already able to inform the Committee that the European Court of Human Rights had not yet begun consideration of the *Igars* case.

47. *The Latvian delegation withdrew.*

The discussion ended at 5 p.m.