



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

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COMMITTEE AGAINST TORTURE

Thirty-ninth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 790th MEETING

Held at the Palais Wilson, Geneva, on Friday, 9 November 2007, at 3 p.m.

Chairperson: Mr. MAVROMMATIS

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

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The first part of the meeting (public) 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) (*continued*)

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

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

2. Mrs. MEDINA (Latvia) said that the provisions of international instruments could be invoked before the courts provided they were directly applicable, which was the case with the first article of the Convention against Torture. However, acts of torture could be prosecuted only on the basis of the pertinent provisions of the Penal Code, in particular article 317, which prohibited all abuse of power on the part of persons vested with public authority, and article 48, which made cruelty and humiliation aggravating circumstances. These provisions of the Penal Code, taken together with the articles of the police law and the Code on the Execution of Criminal Sanctions, which prohibited torture and any illegitimate use of force against suspects or prisoners, established a legal framework that guaranteed application of the first article of the Convention. Moreover, the restrictive interpretation of the word “torture” given by the Supreme Court, to which a Committee member had referred, did not have the force of law and was not binding, being merely an opinion to which the courts might refer.

3. The Constitution guaranteed access to justice for all without any distinction based on ethnic origin or nationality. This principle of fundamental law applied to stateless persons and their children, who were protected by the Constitution on the same basis as Latvian citizens in their relationships with the justice system.

4. Under Latvian law, no one could be extradited to a country where he risked torture. To date the Latvian authorities had never received a request to extradite a person facing such a risk in the requesting country. They had received and examined 26 European arrest warrants in 2005 and 22 in 2006.

5. A number of questions had been raised about acts of violence by police officers or penitentiary staff against prisoners. The law on the procedure for investigating complaints established the right of prisoners to submit complaints to the competent authority, which was obliged to examine them and pursue them according to law. Depending on the severity of the alleged infractions, the competent authority could issue a warning to the official concerned, reminding him of his rights and duties, or it could open an internal investigation that could lead to disciplinary or criminal action. In the case of the penitentiary administration, the current system of recording and processing complaints did not produce statistics disaggregated by the nature of the infraction. It could be said, however, that in 2005 and in 2006 no penitentiary staff member had been subjected to disciplinary sanctions or any other condemnation on the grounds of violence against a prisoner. The Ministry of Justice was currently preparing a bill to improve the techniques used by the competent authorities in recording and handling complaints and to institute effective interagency cooperation among those authorities.

6. One Committee member asked about sexual violence in the prisons. Official statistics reported no case of this type. A case of sexual assault at a correctional school had however resulted in prosecution, and the offender had been sentenced to eight years' imprisonment.

7. No personal data were collected on prisoners, for the penitentiary administration currently lacked the means to guarantee the confidentiality of such data. At the proposal of the Ministry of Justice, Parliament had earmarked funds for creating a secure database, so that in the future it would be possible to collect the necessary information on prisoners while ensuring its protection.

8. Responding to a question on the training of prison staff, she said that all penitentiary administration staff members received continuing legal and technical training. To make that training more effective, the Ministry of Justice had commissioned a study in 2007 on current training policy for penitentiary staff and its results; the conclusions of the study would be used to prepare draft reforms, which it was planned to submit to the Government in 2009. In February 2007, the Government had adopted draft guidelines on the execution of prison sentences and the detention of juveniles for 2007-2013, which called for specific training together with regular practical assessments of persons working with juveniles in detention.

9. A Committee member referred to the poor conditions of detention in the Cēsis juvenile correctional institute and the need to remedy them. Renovation works had been carried out on the premises in 2007, within the limits of available resources. The penitentiary administration had adopted a comprehensive renovation project that had received the backing of the Ministry of Justice and the Ministry of Finance and had been submitted to the Norwegian Government, which had agreed to provide part of the financing. The budget allocated to the penitentiary administration had increased but prison maintenance costs had risen as well. It would not be possible to resolve all the problems at the same time, and priorities would therefore have to be established. The absolute priority over the past two years had been to complete construction of the Latvian prison hospital, which opened its doors in July 2007. The Ministry of Justice intended to pursue the renovation of Latvian prisons and, over the long term, build new ones, in partnership with the private sector.

10. Mrs. JUHNĒVIČA (Latvia) said that, under the education law which guaranteed the right of any person resident in Latvia to receive instruction in the form best suited to his needs, educational programmes were being offered to persons deprived of their liberty, in particular juveniles. These programmes involved basic general education, but vocational training was also provided in some prisons to ease the social reintegration of prisoners upon their release.

11. A question was raised about psychological assistance to juveniles in correctional institutions. Those juveniles benefited from personalized care, in light of their needs, provided by social workers, physicians and educators with the goal of creating an environment that was as reassuring as possible.

12. Mr. ŠVIKA (Latvia) said that the right of a prisoner to consult a physician was guaranteed by article 9 of the detentions law. The regulations governing police custody and provisional detention also called expressly for the availability of medical assistance.

13. To date, there had been no complaint or report about acts of torture committed on orders from above. Statistics had been requested about the handling of

complaints alleging violence by police officers. There had been 183 enquiries in 2003, with 12 officers sanctioned; 193 enquiries and 13 sanctions in 2004; 187 enquiries and 4 sanctions in 2005; and 102 enquiries and 6 sanctions in 2006. A brochure summarizing the procedure to be followed in depositing and processing complaints about infractions committed by police officers had been prepared by the State police in collaboration with a Latvian NGO and made publicly available, via the State police website. The small number of allegations of torture at the hands of the police was a sign that these were isolated cases, and not systematic practice, but they were nonetheless subject to rigorous measures: in such cases, a criminal enquiry was opened and any officer suspected of having committed acts of torture was suspended from duty.

14. The question was raised as to whether there was a statute of limitations for acts of torture committed by State agents. Latvian legislation provided a 10-year period within which acts of violence could be prosecuted, and that provision had been applied in several cases.

15. With respect to the expulsion of foreign victims of trafficking who risked falling once again into the hands of traffickers in their countries of origin, he said that in 2007 there had been no case of foreign victims of trafficking recorded on Latvian territory. Latvia had a broad legal provision for combating this phenomenon. Apart from the pertinent articles of the Penal Code, it gave full implementation to the provisions of the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime. The Government had also instituted specific programmes to prevent trafficking. The national police had had a specialized anti-trafficking unit in place since 2003. Latvia had also undertaken to bring its legislation into conformity with the provisions of the Council of Europe Convention on Action against Trafficking in Human Beings, which it hoped to be in a position to ratify 2008. In 2005 and 2006, eight cases of trafficking had been prosecuted, compared to three in 2007. In three cases in 2006 and in one case in 2007 the victims had been juveniles.

16. Investigating officers of the State Police Bureau of Internal Security received full information concerning the Istanbul Protocol and the provisions of the Code of Criminal Procedure were consistent with that protocol. Since the adoption of the Code of Police Conduct, every officer was expected to be familiar with the Code, which was posted in all police stations as well as on the State police Internet site. Moreover, the police training school curriculum included the provisions of the Code. In 2003 there had been 149 enquiries into violations of the Code, as a result of which 94 officers had been disciplined; there had been 175 enquiries and 117 sanctions in 2004, 280 enquiries and 143 sanctions in 2005, and 143 enquiries and 156 sanctions in 2006.

17. The police right to use force was governed by the National Police Law, which made any police officer resorting to the unjustified or disproportionate use of force liable to criminal or disciplinary penalties. If such acts were committed at the orders or with the tacit consent of a superior officer, that officer would also be prosecuted and the victim could hold the State liable for reparations. Finally, if a police officer were accused of torture he would be suspended from duty during the enquiry and dismissed if his guilt were established.

18. Mr. ZAKIS (Latvia) said, in response to a question about legal aid for asylum-seekers held in detention, that under the immigration law any alien had the right to contact the consulate of his country and to receive legal aid. He must be informed of his rights at the time of his arrest and could meet with his legal counsel in private. To date, no alien arrested in Latvia had requested legal aid. In 2006, the legal aid budget was set at more than 282,000 lati, while for each of 2007 and 2008 it was 1 million lati. Since 1998, 11 aliens had been granted refugee status, and 18 had received another type of status.

19. The right of foreign detainees to communicate in a language they understood was effectively guaranteed: the border guards and the managers of shelter facilities were required to see that asylum-seekers received the necessary information in a language they understood, if necessary through an interpreter. The European Court of Human Rights had found Latvian provisions in this regard compatible with international standards.

20. The amendment to the asylum law extending the appeal deadline granted asylum-seekers had been adopted by Parliament in June 2006 and had come into force the following month. Since that time, foreign detainees had seven days within which to appeal rejection of their application. As to the new asylum law currently in preparation, which was intended to conform with the most recent European Union standards, it was to receive second reading in Parliament in December 2007.

21. Between 1998 and August 2007 there had been 43 asylum-seekers under the age of 18. Three of these were unaccompanied minors; they were still in Latvia, where they had been placed in the care of an NGO and were attending primary school. Although there were very few unaccompanied minors, Parliament had just adopted an amendment to the asylum law broadening and reinforcing their rights. A question had been raised about the situation of children and parents housed in the Mycenieki asylum centre. That centre, opened in 1999 and designed to accommodate 200 persons, offered fully satisfactory conditions: sufficiently spacious quarters, a kitchen, laundry, a playroom for children, etc. Various activities were organized and Latvian language courses were offered three times a week. Residents received medical care and hospitalization if required. The centre, which was managed in collaboration with several national NGOs, had recently been visited by inspectors of the national child protection services and the United Nations High Commissioner for Refugees. As to the ethnic origin of persons facing expulsion orders and rejected asylum-seekers, detailed data on the number of aliens expelled between 2000 and 2007 were to be found in the updated information provided by Latvia. As a general rule, rejected asylum-seekers were returned to their country of origin.

22. Mrs. GARSVĀNE (Latvia), addressing the question of domestic violence, said that, under the law on social services and social protection that came into effect in January 2003, reintegration services were available at the local level (personalized social assistance, daytime shelters, etc.). Article 19 of the law provided that those services were intended to prevent or attenuate the social consequences of imprisonment, domestic violence, etc. Local authorities were required to offer protection adapted to the specific needs of their charges and to help them re-enter society. Latvia had several shelter centres managed by local authorities and NGOs with central Government financial support. Between the beginning of 2003 and the end of 2005, the central Government had helped with the reintegration of 4,247 victims of domestic violence. During that same period, it had financed rehabilitation

services, including legal aid and psychological counselling, four 1,182 individuals, and had provided housing for 302 victims of domestic violence. National NGOs were engaged in support and prevention activities on behalf of these victims, again with State support. Moreover, the Government had recently addressed the issue of support and reparations for female victims of domestic violence and, in follow-up to a request by the Council of Ministers in May 2007, the Ministry of Youth and Family Affairs had prepared a report on domestic violence, in cooperation with other ministries and interested agencies, and was presently drafting a policy document for combating this scourge, for submission to the Council of Ministers in early 2008. Finally, in April 2007, the Ministry of Social Protection had launched an awareness campaign on the problem of domestic violence for the period 2007-2010.

23. Mr. MUCINS (Latvia) said that seminars and training sessions were regularly organized on medical-legal issues for psychiatric and neurological hospital staff. The Office of the Ombudsman and several national NGOs were often involved in these activities, which covered the broad range of questions relating to human rights. In 2006, for example, a seminar had been held on respect for human rights and the evaluation of patient needs in psychiatric hospitals, while another seminar in 2007 had dealt with the handling of aggressive patients and the risk of suicide. The seminars were followed by an evaluation. There was no training directly related to the Istanbul Protocol, but hospital personnel were informed about the principles established in the European Convention on Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

24. On the question of compulsory treatment of patients, the amendments to the medical treatment law drafted by the Ministry of Health had come into force in March 2007, allowing for judicial review of hospitalizations in psychiatric institutions to determine whether they were voluntary or not. Henceforth, the courts would have the final say on compulsory hospitalization and treatment of patients, who would always have the right to be represented by counsel. Patients hospitalized against their will must be examined by a panel of psychiatrists within 72 hours. If that panel considered hospitalization necessary, the hospital must so inform the competent judge within 48 hours, who would ask the Bar Association to appoint counsel if the patient had no legal representative. Within the next 72 hours, the judge must examine all elements of the case and hear the parties, after which hospitalization could be ordered for a maximum of six months. One week before the expiry of that period, the panel of psychiatrists would re-examine the patient to decide whether treatment should be continued. A decision to continue treatment must once again be reviewed by the judge, who could authorize another six months of treatment, after which this procedure would be repeated every six months.

25. Latvia had signed the Council of Europe Convention on Human Rights and Biomedicine, and Parliament was now considering its ratification. There were a number of questions in this regard that must be examined in depth, taking into account all the pertinent elements relating to biomedicine.

26. Mrs. REINE (Latvia) said, with respect to the definition of torture, that the Latvian Penal Code contained no article devoted to this matter, but that the crime of torture was covered by various provisions that would be applicable depending on the circumstances of each case. With respect to the concerns expressed by several Committee members over article 34 of the Penal Code (execution of an unlawful order or instruction), they seemed to be groundless, as this article was applicable

only to misdemeanours and could in no case absolve the perpetrator of an act of torture from criminal liability.

27. As to the measures taken by Latvia to combat domestic violence, it should be noted first that offenders were subject to penal code provisions relating to bodily injury. The penal code also contained a provision specifically criminalizing acts of cruelty and violence against children. To date, 95 cases had been brought before the courts on the basis of that article. With respect to sexual offences covered by Latvia's penal legislation, the Penal Code made rape as such a crime and there were specific provisions covering the rape of juveniles and indecent assault.

28. She reported that proceedings had been reopened for ratifying Protocol 13 to the European Convention for the Protection of Human Rights and Fundamental Liberties concerning the Abolition of the Death Penalty in All Circumstances. The problems encountered in ratifying this instrument were essentially of a technical nature, and once the necessary amendments were made to Latvian penal legislation, accession to that protocol should no longer be a problem. As to creating a mechanism to receive and examine complaints about acts of violence committed against prisoners by penitentiary personnel, she stressed that the question was under examination but that allowance must be made for the country's limited human resources. Consideration was also being given to ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

29. With respect to compensating members of the Jewish community who had lost their property during the Holocaust, she noted that this question, which had been debated at the national level in the context of the examination of minority rights, was not of direct concern to the Committee. A question had been raised about measures taken to give effect to the provisions of the Council of Europe Framework Convention for the Protection of National Minorities, which Latvia had ratified in 2005. She said that any person belonging to a national minority who was involved in either civil or penal proceedings would now enjoy the services of an interpreter, paid by the State.

30. Details had been requested on the *Kononov* affair, but the Latvian delegation did not wish to comment at this stage because, as the European Court of Human Rights had not yet rendered a verdict, any comments might be interpreted as an attempt to influence the course of justice. The delegation confined itself to noting that the case had no bearing on acts of torture, but related to war crimes committed during the Second World War.

31. On another issue, the Latvian authorities had drawn the appropriate lessons from the incidents that occurred during the Gay Pride march in 2006. All the required security measures were now in place to guarantee the rights of sexual minorities to demonstrate peacefully.

32. With respect to the questions raised by Committee members about the function of the examining magistrate, she said that the appointed magistrates had begun work in October 2005, when the new Code of Penal Procedure had come into force. The holders of these positions were full judges who had received in-depth training in the various international human rights instruments they were responsible for upholding as guardians of the rights of the defence. Latvia currently had around 40 examining magistrates who were empowered to order provisional detention or its extension and

to decide the reasonableness of any restriction on a prisoner's exercise of certain rights, such as the right to receive visits from family and friends or the right to secrecy of correspondence.

33. With respect to creating the position of a mediator of children's rights, she said that the authorities were not planning such a move for the moment and that, for considerations of effectiveness and economy, they were thinking instead of setting up a specialized unit for children's rights within the Ombudsman's office.

34. With respect to compensation for victims of torture, she indicated that the example provided by the delegation in presenting the report was not unique, but that the country was not currently equipped to produce statistics of this kind. Since 2004, the administrative courts had been empowered to compensate the victims of any act or omission attributable to a State agent. The administrative judges, who were properly trained in constitutional law and human rights, were competent to rule on the legality of detention conditions and, if necessary, to compensate the victims. In response to a question about violations by military personnel, she informed the Committee that such violations were the purview of the ordinary courts, and that the Army had only investigatory powers in this field. As well, she noted that Latvian legislation contained no provision granting blanket jurisdiction to the Latvian courts to judge the perpetrators of acts of torture. As to the absolute ban on torture, there was no doubt that this principle, which was an imperative rule of *jus cogens*, was fully respected in Latvia. Finally, she referred to the report from the Latvian Centre for Human Rights according to which a Roma man had been arrested in 2002 by 4 police officers and tortured before being taken to the police station, where he subsequently died of his injuries. She reported that this case was now before the Court of Appeals and that for the time being she had no further information about it.

35. Mrs. SVEAASS (Rapporteur for Latvia) praised the quality of the dialogue that had taken place with the Latvian delegation on means for moving forward the fight against torture. She noted that in domestic law the crime of torture was covered by several articles of the Penal Code, which were applied in light of the circumstances, and she invited Latvia to define torture as a separate crime and to provide specific punishment for its perpetrators. She welcomed the many provisions that had been adopted on domestic violence and violence against children. The fact that Latvia did not consider it useful to create a position of children's rights mediator did not pose any particular problem, as there was no obligation in this respect under international law and there were other institutions, such as the ombudsman's office, responsible for protecting these rights. She was also pleased to see that personalized re-education plans were available to juvenile delinquents in correctional institutions.

36. Given the very low number of refugees and asylum-seekers granted residency permits, the Rapporteur asked for supplementary information on measures taken by the State party to ensure full respect for article 3 of the Convention with respect to expulsion or extradition. On this point, information on application of the readmission agreement concluded by Latvia with Uzbekistan would be welcome. It would also be interesting to know whether the Istanbul Protocol, which contained guidelines for detecting and reporting medically determined signs of torture, were being systematically applied in the processing of asylum requests, and to have details on the possibility for asylum-seekers to receive effective legal counsel. Information on the time allowed torture victims to file complaints and on the statute

of limitations concerning criminal violations would also be welcome. Finally, while the adoption of a manual on the conduct of interrogations was an encouraging development, supplementary information on the measures taken to enforce respect for its rules would be useful. It appeared that charges had been laid against police officers on the basis of that manual, and it would be interesting to know the nature of the accusations against them and the penalties imposed, if any.

37. Mrs. GAER asked whether police officers who had been subjected to disciplinary sanctions as described in paragraphs 10 and 12 of the State party's comments on the conclusions and recommendations of the Committee (CAT/C/CR/31/RESP/1) had continued to exercise their functions or had been dismissed.

38. On another point, having read in the press that former Latvian SS officers were organizing neo-Nazi rallies in the State party, she wondered whether some of these individuals might have been torturers in the past and, if so, wherever they had been investigated and prosecuted.

39. Mrs. BELMIR, noting that the Latvian delegation had provided only partial answers to some of her questions, recalled that she had expressed concern that extradition decisions were taken exclusively by the prosecutor, rather than a sitting magistrate, and that appeals against extradition decisions could be lodged only with the Supreme Court. She asked the delegation to indicate whether such decisions could be challenged before the ordinary courts.

40. Referring to the State party's refusal to amend paragraph 1 of article 34 of the criminal law (para. 100 of the report), she reiterated that the wording of that paragraph was very ambiguous and that consequently persons guilty of torture could use it to win impunity. She also wanted to know who was liable when the police were authorized to use special restraining measures, such as electric shock devices, and in so doing caused death or irreparable harm to individuals.

41. Mr. MARIÑO MENÉNDEZ, noting that the statistics on foreigners expelled from the country were not broken down by nationality, suggested that a distinction between rejected asylum-seekers and illegal immigrants should be made and that the country of return should be indicated for each of these categories. He also wanted to know the national origin of persons expelled under the readmission agreement concluded with Uzbekistan and he asked whether the extradition treaty concluded between Latvia and the United States of America contained a clause referring to the International Criminal Court. Finally, he wanted to know, in the context of the new procedure for examining asylum requests, whether rejected applicants could appeal the expulsion order and, if so, whether that appeal had suspensive effect.

42. Concerning the divergent views between the Committee and the delegation over incorporation into Latvian law of the definition of torture set forth in the first article of the Convention, he recalled that the Committee considered that criminalizing the constituent elements of torture was not sufficient and that States parties must do whatever was needed to include in their penal legislation a definition of torture consistent with that in the first article of the Convention. As well, recalling that, under article 5 of the Convention, States parties were required to take measures to establish universal jurisdictions over the offence of torture, he wondered whether a non-Latvian suspected of torture abroad could be tried in Latvia.

43. Mrs. REINE (Latvia) said that Latvia was receiving extremely few asylum requests and that most of these requests were filed by nationals of member countries

of the Commonwealth of Independent States (CIS) who had nothing to fear in their home country, which explained the high number of rejections. Any person whose application was rejected could bring an appeal and, until that appeal was considered, the person could not be expelled. During the procedure, the applicant was entitled to legal assistance and the services of an interpreter. If a person was under an expulsion order, the administrative tribunal could order provisional measures, which had suspensive effect. When an expulsion order was issued and the person concerned invoked a risk of torture if returned home, the tribunal was required to take that argument into account. Similarly, any extradition order could be challenged before the courts and the person concerned was entitled to all the guarantees of due process.

44. With respect to incorporating into domestic law the definition of torture set forth in the first article of the Convention, she said that such a measure was not necessary, because the provisions of that article were already directly applied by the courts, notably in the case of examining requests for compensation submitted by victims of torture or by the prosecutors during the appreciation of evidence.

45. Latvia did not share the Committee's viewpoint concerning universal jurisdiction and, as did other countries, it preferred to decide case-by-case whether its courts were competent to hear a case. On the matter of rallies of alleged ex-SS officers, she said that these were former members of the Latvian Legion of Volunteers and she recalled that the men who had stood guard during the trial of Nazi leaders at Nuremberg were precisely the members of that Legion, a fact that spoke for itself. Finally, she stressed that article 34 of the criminal law was not intended to relieve torturers of their criminal liability but to provide an explanation for their conduct; the question that the judges must address was whether the alleged offender had been in full possession of his faculties at the time he committed the acts of which he was accused.

46. Mr. ŠVIKA (Latvia) said that the *Gulbis* affair was a very recent one and that consequently he had little information about it. Given the sensational nature of the case, considerable investigatory work was under way within the internal security services and some 40 witnesses had already been heard. As for the complaints filed against the police for mistreatment, the delay in handling those complaints was explained by the fact that the victims reported them to the police station a month after the fact, making the investigation especially difficult. He added that police officers subjected to disciplinary penalties for abuse of power were neither transferred nor dismissed, but their career prospects were severely limited. Finally, with respect to special restraining measures, he said that the Latvian police had no electric shock devices.

47. *The Latvian delegation withdrew.*

The discussion covered in the summary record ended at 5 p.m.