UNITED NATIONS

CAT

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

Distr.
GENERAL

CAT/C/SR.329
14 May 1998

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Twentieth session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 329th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 11 May 1998, at 3 p.m.

Chairman: Mr. BURNS

CONTENTS

* The summary record of the closed part of the meeting appears as document SR.329/Add.1.

GE.98-16097 (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 7) (continued)

Second periodic report of Germany (continued) (CAT/C/29/Add.2)

1. At the invitation of the Chairman, the delegation of Germany resumed their places at the Committee table.

2. Mrs. VOELSKOW-THIES (Germany) said that the Basic Law forbade the infliction of any bodily or mental harm on anyone incarcerated. Article 1 of the Convention could be compared to sections 340 and 343 of the Criminal Code, according to which torture had to have been committed by either a public official or an official, which was basically the same thing. The one difference between the Convention and German law was that while the former defined torture by what the victim suffered, which was passive, the latter referred to active causation of suffering, whether physical ill-treatment, harm to health, threat or use of force or mental torture. She did not see any difference between the two as to the definitions of the purpose of torture.

3. Mr. MAUER (Germany) said that the Code of Criminal Procedure prohibited the use of tainted evidence and evidence obtained by certain methods, without any exceptions, even if the person concerned agreed to such methods. The basic premise was that a confession must not be obtained as a result of fatigue, medication, torture, deception or hypnosis. Coercion could be used only if the criminal procedure actually so stipulated. The threat of using a prohibited measure, and the illegal advantages to be gained therefrom, were prohibited as well, even if the person concerned agreed to its employment. When such interrogation methods were applied despite the prohibition, confessions so obtained could not be used. Furthermore, the use of tainted evidence automatically entitled the person to file an appeal, which frequently led to quashing the original sentence and to an acquittal. What was important was that both the sentence and the findings of the original court were annulled, along with all findings that could be traced back to unlawful methods of interrogation. The question whether the prohibition against the use of tainted evidence could also be applied to remote or consequential evidence, however, was hotly debated. Arguments against the use of such evidence included the fact that it was impossible to determine with certainty whether a confession extracted from a witness could not have been obtained in a legal manner.

4. In answer to questions concerning custody, the police had to let detainees see a magistrate without undue delay, and at the very latest the day after arrest. That did not mean that the police could simply wait until the next day, although certain conflicts of competence might warrant delays. There were organizational measures that had to be taken to ensure that detainees were brought before a magistrate as quickly as possible. In addition, detainees had a right to see a lawyer immediately and to be informed of that right, together with the reasons for their detention, during their initial interrogation. If they were not so informed, no confession they made could be used against them. The same applied if the detainee's attempts to reach legal counsel were frustrated by the police. To ensure that nobody

could vanish without trace, a member of the detainee's family or a person close to him must be informed of the detention, whether or not he wished anyone to be told. There were no special provisions concerning the right of foreign detainees to remain silent, but it was not always possible immediately after an arrest to conduct an interrogation in the detainee's language. The courts had to ensure that an interpreter was present, and no interrogation could take place without one. If the magistrate understood the detainee's language, he must inform him of his rights in that language.

5. Regarding the response of general prosecutors to allegations of ill-treatment by the police of detainees and other persons, under the Code of Criminal Procedure there was an obligation to investigate criminal offences and observe due process, and there were no limits on that principle. Inquiries must be continued until such time as the general prosecutor was reasonably sure either that the police authorities would have to be charged, or that the accusation was groundless. The alleged perpetrator had to be interrogated. Usually, general prosecutors had the possibility of transferring detainees to different police stations or prosecutors, which they did whenever there was evidence that the prosecutor assigned was not conducting the inquiry with due diligence. Prosecutors had no objection to that regulation, as it was in line with their concern to dispel any suspicion of collusion.

6. The person alleging ill-treatment could not himself take on the role of prosecutor or accuser, but if the prosecution clearly indicated that there would be no complaint he could turn directly to the general prosecutor and have the matter brought before a district court.

7. The principle of proportionality must be observed at all times and was constitutionally guaranteed. Measures deemed disproportionate either to the gravity of the act or to the kind of punishment it carried were prohibited, and pre-trial detention was not allowed if the accused was not strongly suspected of the act or if detention was disproportionate to its gravity.

8. Mr. GROHMANN (Germany) noted that the question had been raised of whether the general prosecutor and the police were not basically “on the same side of the fence” when it came to investigating allegations of ill-treatment by police. In 1995, 16,000 persons had been the subject of investigations but only 2,000 had been brought before a court. That was a very sensitive area, as even the slightest suspicion could lead to someone being taken into custody, and it must be ascertained whether that was being done illegally. There was some disparity between the number of cases ultimately brought to court and the number of persons taken into custody. Only 15 per cent of those accused of punishable acts were actually prosecuted.

9. As to how many of the complaints filed between 1995 and 1997 concerned ill-treatment by the police, there was no central pooling of such data, which must be considered separately for each Land. In Hessen, for example, in 1995, 120 persons had been deprived of their liberty, 260 police officers and departments had been the subject of investigations, and 11,000 persons had

been subjected to blood and alcohol tests. That same year in Hessen, 240 police officers had been accused of ill-treatment, but proceedings against 190 of them had been terminated, while some cases were still pending. In all, 6 police officers had been convicted.

10. Regarding the events in the Hamburg police department, about 1,200 cases were being investigated for possible disciplinary measures, but many of those cases were documented with only one piece of paper, and such evidence could not necessarily be trusted. Changes were being introduced in Hamburg: all complaints were being centrally pooled and examined in order to identify problem cases as quickly as possible. An office had been set up specifically to deal with such cases. The idea was to avoid any police office investigating cases involving its own officers.

11. Regarding how police officers could be identified, in principle all the Länder had rules requiring officers to identify themselves on sight, or later if that was not possible. The rule on the use of name badges had been changed, and police officers could now choose whether to identify themselves by their badges. The idea was to protect them from possible retaliation against themselves or their families. Discussions were continuing within the Länder as to whether those regulations should be changed.

12. The report on xenophobia and racism commissioned by the Police Academy had been produced by a social science research group at the University of Triers, and then discussed by the Conference of Interior Ministers, which had set up a subcommittee on criminal prosecution to draw the appropriate conclusions. The police chiefs of the various Länder had been represented on that subcommittee, whose 1997 report was available and had been submitted to the Länder for implementation. There were three main topics: organization and personnel; leadership and continuing training; and education. Emphasis was laid on coping with stress, and guidelines were to be drawn up in each Land on police responsibility and respect for basic human rights. The report had concluded that some infringements were more than just isolated cases, but that police officers often worked under stress. Recommended solutions included rotation, discussion of problems and counselling. Leaders had to be trained as well, and would be selected on the basis of how well they coped with stress. Measures were needed to identify mistakes before any damage was done, and when mistakes were found the necessary investigations must be instituted.

13. Training and continuing education were provided in criminal, procedural and civil law, sociology, psychology and professional ethics. Although the curriculum varied between the Länder, in all of them it included conflict training and crisis management, which was even a part of basic training, lasting from three to five days.

14. Mr. SCHNIGULA said that the Ministry of Justice held responsibility for matters relating to custody, imprisonment and deportation, and that its approach was based on the primacy of individual rights over security considerations. The procedure governing criminal proceedings was laid down in article 104 of the Basic Law. Anybody taken into custody was immediately given a 10-page brochure in German and, where appropriate, in one of 23 national languages into which it had been translated, outlining detainee's rights and responsibilities. Priority was given to protecting persons in

custody from ill-treatment and to guaranteeing contact with relatives and with legal counsel, appointed where necessary. The provision of the Vienna Convention requiring that any foreign national taken into custody must be permitted to contact his embassy was applicable whether or not the country of origin had acceded to the Convention. Detainees also had access to the petition committee of Parliament, which reviewed cases regularly and expeditiously. The courts could also be petitioned, and complaints submitted to ministries, which must follow them up. A prisoner's ombudsman, himself a prisoner, could discuss complaints by inmates with the prison director or with the appropriate parliamentary commission.

15. The detailed statistics requested regarding prisoners would be provided later. Meanwhile, by way of example, the total prison population of 80 per 1,000 citizens compared favourably with the proportion in the United States of America of 600 prisoners to every 100,000 citizens. Thirty-nine individuals were serving prison sentences for offences committed in office, of which no more than five related to torture.

16. Mr. SCHMÄINS, in response to Mr. Zupan□i□'s question on the transposition into national legislation of article 3, paragraph 1 of the Convention, said that under article 53 of the Aliens Act, no alien could be deported where there was a real danger of his being subjected to torture. The administrative courts examined such cases very thoroughly. The asylum law stated that if an asylum application had been filed, deportation could not be ordered before it had been processed; where no application had been submitted, the case must be throughly investigated before a deportation order could be issued. Appeals could be lodged in court against decisions by the Ministry of Foreign Affairs or the Office of Foreigners.

17. The circumstances of the 10 suicides of individuals awaiting deportation had been very thoroughly investigated in 1996 by the appropriate parliamentary bodies and by the Public Prosecutor's Office, which had concluded that no criminal conduct or dereliction of official duties had occurred. While every case of suicide was extremely serious, the numbers should be seen in proportion to the total of 32,000 deportation cases pending, and the 19,700 individuals in detention awaiting deportation. Furthermore, it was not known whether the suicides were motivated by their impending deportation.

18. No figures were available regarding Mr. Yu's question on compensation to individuals who had been subjected to ill-treatment by members of the police. With the exception of claims under the Victim Compensation Act, it was irrelevant whether complainants were legally resident in Germany.

19. Mrs. MÄDRICH said that six inquiries had been conducted into the death of the Nigerian national in question and outside experts had been consulted. The case against the doctor had been dropped when a settlement had been agreed with the victim's brother of payment of DM 5,000 to Amnesty International. The court had ruled on the police ill-treatment case on 22 September 1993, rejecting the applicant's compensation claim for injury allegedly sustained when police had ordered her to pull over after going through a red light. The alcohol content in her blood had registered in excess of the legal limit when she had finally been stopped and breathalysed. The European Court of Human

Rights had upheld the ruling of the German court that it was not possible to ascertain whether the applicant had injured herself while avoiding arrest or whether she had been ill-treated by the police.

20. Mrs. VOELSKOW-THIES informed Mr. Sørensen that the Ministry of Health would obtain information on the human rights content of training courses for doctors and nurses, which would be forwarded at the earliest opportunity. A brochure on the lines suggested by Mr. Sørensen would certainly be published, and would draw attention to the celebration on 26 June. In addition, an appropriate frank might be designed for use by post offices, and a press release on the event would be issued.

21. Mr. HÖYNCK explained that Germany's contribution to the United Nations Voluntary Fund for Victim of Torture was relatively modest because Germany had also made sizeable contributions to other United Nations funds, such as the Trust Fund for Human Rights Field Operations, which included torture among their concerns.

The public part of the meeting was adjourned at 4 p.m. and resumed at 5.05 p.m.

22. Mr. ZUPANČIČ (Country Rapporteur) read out the conclusions and recommendations of the Committee concerning the second periodic report of Germany:

"1. The Committee considered the second periodic report of Germany (CAT/C/29/Add.2) at its 328th and 329th meetings, held on 11 May 1998 (CAT/C/SR.328 and 329), and has adopted the following conclusions and recommendations:

A. Introduction

2. Germany signed the Convention on 13 October 1986 and deposited its instrument of ratification on 1 October 1990. The Convention entered into force on 30 October 1990. Upon ratification, Germany made declarations concerning its understanding of article 3 of the Convention and the presumptive concordance of German law with the Convention. Germany has not declared in favour of articles 21 and 22. Both the initial report submitted by Germany on 9 March 1992 and this second periodic report submitted on 17 December 1996 were prepared in accordance with article 19 of the Convention and in accordance with the general guidelines concerning the form and content of reports. The second periodic report covers the period from 9 March 1992 to 17 December 1996. Important information concerning the State party is also included in the basic document prepared by Germany on 8 August 1996.

B. Positive aspects

3. The Committee is encouraged by the fact that the Domestic Affairs Committee of the German Federal Parliament, the Permanent Conference of Interior Ministers and Senators of the Länder and the Conference of Ministers of Justice of the Länder have addressed

Amnesty International's report on the 70 alleged cases of police ill-treatment, especially against foreigners, between January 1992 and March 1995.

4. The Committee is satisfied that no cases of torture within the strict meaning of article 1 of the Convention have been reported, and that tainted evidence has not been reported as having been used in any judicial proceedings.

5. The Committee is encouraged by the establishment of 12 torture rehabilitation centres and welcomes the fact that the German Government contributes to the United Nations Voluntary Fund for Victims of Torture.

C. Factors and difficulties impeding the application of the provisions of the Convention

6. The Committee is aware of the State party's problems with the integration and management of large numbers of refugees and other minorities of non-German descent and of the problems deriving from the State party's attempts to maintain fair and equitable asylum and immigration procedures.

D. Subjects of concern

7. The Committee is concerned that the precise definition of torture, as contained in article 1 of the Convention, has still not been integrated into the German legal order. While Section 340 of the German Criminal Code and the Act on the Suppression of Crime, dated 28 October 1994, would seem to cover most incidents of torture, statistical coverage of the incidence of torture, aggravated forms of torture with specific intent (dolus specialis) and incidents causing severe mental pain or suffering ('mental torture' insofar as not covered by article 343 of the German Penal Code) are not covered by present legislative provisions as required by the Convention. Likewise, it is not absolutely clear that all exculpation by justification and superior order is categorically excluded as required by the Convention.

8. The Committee is concerned at the large number of reports of police ill-treatment, mostly in the context of arrest, from domestic and international non-governmental organizations in recent years, as well as at the conclusions of the study 'The Police and Foreigners', commissioned by the Conference of Ministers of Internal Affairs in 1994 and presented in February 1996, to the effect that police abuse of foreigners is more than 'just a few isolated cases'.

9. The Committee is concerned about the incidence of suicide of persons in detention while awaiting deportation.

10. The Committee is particularly concerned about the apparently low rate of prosecution and conviction in the alleged incidents of ill-treatment by the police, especially of people of foreign descent.

11. The Committee is concerned at the existence of certain open-ended legal provisions permitting under certain circumstances the discretionary but significant reduction of the legal guarantees of those detained by the police, such as provisions permitting the police in certain cases to refuse permission to someone detained at a police station to notify a relative of his arrest. Likewise references to 'the principle of proportionality', unless with respect to specific and binding decisions of the German courts, may lead to arbitrary reductions in such guarantees.

E. Recommendations

12. The Committee recommends that the State party adopt the precise definition of the crime of torture foreseen by the Convention and integrate it into the internal German order (article 4, paragraph 2, of the Convention).

13. The Committee requests the German Government to envisage the possibility of making the necessary declarations so that Germany is bound by articles 21 and 22 of the Convention.

14. The Committee recommends that both internal disciplinary measures against offending police offers and external prosecutorial and judicial measures be significantly strengthened to ensure that in future all police officers accused of ill-treatment of domestic and foreign nationals alike are brought to justice. In order to ensure that in cases of alleged ill-treatment by police officers such conduct is open to the fullest scrutiny, the Committee recommends, without prejudice to ordinary State procedures, that German criminal procedures be open to subsidiary prosecution by the victims of ill-treatment and that adhesion procedures (Adhäsionsprozesse) and civil procedures for damages be made more widely applicable and possible. Adequate legal assistance by competent German legal counsel should be made available. Furthermore, the length of the investigation of complaints of police ill-treatment should be shortened.

15. The Committee recommends that further legislative attention be paid to the strict enforcement of article 15 of the Convention and that all evidence obtained directly or indirectly by torture be strictly prevented from reaching the cognizance of the deciding judges in all judicial proceedings.

16. The Committee recommends that police and immigration officers of all ranks, as well as medical personnel, receive compulsory training concerning human rights in general and especially concerning the Convention against Torture; in view of the fact that most reports of ill-treatment come from foreigners, the Committee recommends that these officers also receive compulsory training in the areas of conflict management and ethnic minorities.

17. The Committee further recommends that Germany continue its efforts to ensure that all detainees, at the outset of their custody, be given a form in a language they understand, outlining their rights, including

the right to be informed of the reason for their arrest, to contact a relative and a lawyer of their choice, to submit a complaint about their treatment and to receive medical assistance.

18. In order to make future judicial proceeding against those suspected of ill-treatment possible, police officers should be required to wear a form of personal identification that makes them identifiable to those who allege ill-treatment."

23. Mr. HÖYNCK (Germany) said that he wished to examine the conclusions and recommendations carefully before responding in detail. His first impression, however, was that further discussion would have clarified misunderstandings on some issues and enhanced the credibility of the recommendations.

24. The delegation of Germany withdrew.

The public part of the meeting rose at 5.20 p.m.