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COMMITTEE AGAINST TORTURE

Ninth session

SUMMARY RECORD OF THE THIRD PART (PUBLIC)* OF THE 133rd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 18 November 1992, at 4.40 p.m.

Chairman: Mr. VOYAME

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* The summary records of the first part (public) and the second part (closed) of the meeting appear as documents CAT/C/SR.133 and CAT/C/SR.133/Add.1 respectively.

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The third part (public) of the meeting was called to order at 4.40 p.m.

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

Initial report of the United Kingdom of Great Britain and Northern Ireland: Dependent territories (CAT/C/9/Add.10) (continued)

1. At the invitation of the Chairman, Mr. Steel, Mr. Rankin and Mrs. Walsh (United Kingdom) took places at the Committee table.

2. Mr. BURNS (Rapporteur for the dependent territories of the United Kingdom) read out the Committee's conclusions concerning the initial report of the United Kingdom in respect of its dependent territories, as follows:

> "The comprehensive report on the dependent territories of the United Kingdom was received with pleasure by the Committee particularly as no cases of torture were noted to have occurred in the territories during the period reviewed.
>
> "The territories appear to be governed in accordance with the obligations in the Convention against Torture, and the Committee congratulates the United Kingdom Government in this respect.
>
> "The Committee is, however, interested in receiving more detail pertaining to cases of corporal punishment in the territories retaining it. The nature and incidence of such punishment together with details of the crime, and the characteristics of the offender should be forwarded to the Committee when the information is gathered.
>
> "The Committee also looks forward to receiving the other information that the British delegation agreed to forward to it."

3. He thanked the United Kingdom delegation for the comprehensive and most interesting information it had submitted to the Committee.

4. The CHAIRMAN, speaking on behalf of the Committee, associated himself with the gratitude expressed by Mr. Burns, Rapporteur for the dependent territories of the United Kingdom.

5. Mr. Steel, Mr. Rankin and Mrs. Walsh (United Kingdom) withdrew.

6. The meeting was suspended at 4.45 p.m. and resumed at 4.50 p.m.

Periodic report of Belarus (continued) (CAT/C/17/Add.6)

7. At the invitation of the Chairman, Mr. Dashuk, Mr. Kozlov, Mr. Mardovitch and Mr. Galka (Belarus) took places at the Committee table.

8. Mr. DASHUK (Belarus) said he would do his best to reply to the questions raised, hoping in that way to supplement the report (CAT/C/17/Add.6) and what had been said during its presentation. Belarus would pay the greatest possible attention to the views expressed by the experts of the Committee in drawing up its new legislation.

9. Mr. Mikhailov had requested more precise information as well as statistics on the action taken in Belarus against torturers. During 1992 five had been sentenced, four of them to deprivation of liberty for one to four years. Moreover, a preliminary investigation had been carried out in respect of three militia officers who were alleged to have made improper use of their truncheons during incidents. Disciplinary measures had also been taken against 300 officials of the Government Procurator's Office and the Ministry of the Interior after being found guilty of abusing their powers; they had not resorted to physical violence but had simply failed to respect the law in the course of an investigation or an arrest, for example. Disciplinary action had similarly been taken against at least 20 persons found guilty of counterfeiting files in police stations or judicial premises; such action was extremely important as a means of making officials understand that if they engaged in unlawful practices - and particularly torture - they were liable to sanctions and could be brought to court.

10. Again in reply to Mr. Mikhailov, who had also requested details of the measures taken in connection with threats against judges or people's assessors, he explained that, with a view to strengthening the authority and independence of judges, the three new provisions that had been embodied in the Criminal Code prohibited anyone from interfering with the work of judges and people's assessors, attempting to influence their decisions or bringing pressure to bear on them. Those found guilty of such acts were liable to fines and prison terms of up to one year; senior officials could be sentenced to up to three years' imprisonment. Lastly, article 172 of the Criminal Code stated that a person found guilty of threatening or using violence against a judge or a people's assessor or of causing damage to his property could be sentenced to two years' imprisonment or rehabilitative labour. Under another article of the Code, disrespect towards judges or people's assessors during a trial was punishable by a fine or rehabilitative labour. Those new provisions were rarely applied in practice since they had a deterrent effect, and it appeared that less and less pressure of any kind was being brought to bear on judges who could now perform their functions in a completely independent manner.

11. Referring to the changes that had been made in article 179 of the Criminal Code, he explained that, in the case of statements obtained under duress, the Code provided that a guilty party could be sentenced to rehabilitative labour for up to four years if, for example, a witness had been bribed or beaten or his property damaged. Unfortunately, incidents of that kind still occurred. The Ministry of Justice had conducted an investigation into the matter and 12 persons were being prosecuted for violating that article of the Criminal Code.

12. Further information had been requested concerning the period of police custody and pre-trial detention. In the case of police custody, a person who had not been charged within 72 hours of his arrest must be immediately released; if charged, he was remanded in custody. Article 92 of the Code of Criminal Procedure on the subject had been extensively amended, and under its new provisions, pre-trial detention could not exceed two months. Statistics on the matter were analysed each year by the Ministry of Justice and they indicated that investigations were completed within that time in 98 per cent of all cases. In the case of serious offences entailing long and complex investigations, the period of pre-trial detention might have to be extended to three months; in the most delicate cases the extension might even be up to six months. In 1992, a person who had been charged was - exceptionally - detained for more than six months; the offence had obviously been serious and the investigation particularly tricky. Had it been necessary to do so, he could have been detained for a total of 18 months, and had his case not been elucidated during that period, he would have been released. No person had been held in pre-trial detention for more than one year since 1976. Under the draft legislation being prepared, a maximum pre-trial detention period of six months was authorized.

13. Under the new provisions of article 49 of the Code of Criminal Procedure, any person who was arrested was authorized to contact a lawyer as soon as he was charged and, in any event, within 24 hours of his arrest. He had the right to meet his lawyer as often as necessary and to be heard only in his presence.

14. The constituent republics of the Community of Independent States (CIS) were at present drafting an extradition convention. If there was compelling evidence that, in the event of extradition a person would be tortured, he was obviously not extradited. Cases of that nature had already arisen and were settled at the governmental level. One concerned a Lithuanian citizen who, having been accused of an offence in his country, had said that he would be tortured if he was extradited. When approached, the Lithuanian authorities had stated that that was not so but the person concerned, repeating his affirmations and producing witnesses who confirmed his fears, had not been extradited.

15. It had been asked whether the people of Belarus were familiar with the provisions of the Convention and other human rights instruments; the reply was yes. When the Parliament had ratified the Convention against Torture, the text as well as that of the ratification decree had been published and widely disseminated. Furthermore, when Belarus had submitted its initial report in 1989 the event had been a subject of a long article in the Literary Gazette which was read throughout the country. Furthermore, the third edition of the compendium of all international instruments of which Belarus was a signatory had been published and was to be found in the bookshops and libraries anywhere in the country. The anniversary of the adoption of the Universal Declaration of Human Rights was celebrated with considerable fanfare each year. Lastly, seminars on the international human rights norms to be respected were organized for officials and particularly for judicial officials, parliamentary representatives and members of the militia.

16. Mr. Gil Lavedra had asked for details of the draft law at present before Parliament, on the establishment of a constitutional court. That court would consist of 10 judges elected by Parliament who would be responsible for ensuring that laws and regulations were in conformity with the Constitution. Should the court detect any irregularity or incompatibility, it could amend the instruments in question and would even be empowered to annul any unlawful decisions of the Supreme Council of the Republic.

17. It had been asked why the legislation of Belarus did not contain a definition of torture. That was a point to which a working group, of which he was a member, had given a great deal of thought, but no decision had yet been reached. The definition set out in the Convention against Torture was used in Belarus, but it had been pointed out that it did not cover all possible cases. For example, the Convention defined torture as the infliction of severe pain, and yet the infliction of slight pain could also constitute an act of torture. The isolation of a person could also be regarded as torture, but it was not explicitly covered by the Convention any more than were certain types of blackmail directed against a detainee in order to obtain his confession. Personally he did not feel the need for specific legislation defining torture more precisely, and in his view the courts could be called upon themselves to determine, on a case-by-case basis, whether certain acts constituted torture. However, the question remained open and all the arguments presented on the subject would be examined with attention.

18. Since 1975, the number of capital offences had declined considerably; capital punishment was rarely carried out and was regarded above all as a deterrent. Personally he favoured its abolition, although neither public opinion nor even Parliament were prepared to take that step. Under the draft criminal code at present being examined, capital punishment would be retained for a total of four major crimes, namely, homicide with aggravating circumstances, high treason, genocide and acts of terrorism. The general tendency was to retain capital punishment as a deterrent but not to apply it. It went without saying that executions were not public, that they could not be collective, and that the Government Procurator had to be present in order to prepare a report for the file.

19. It had been asked whether, in certain cases, the presence of a lawyer was not necessarily required. If a detainee refused to be assisted by a lawyer, he would obviously not be forced to accept his assistance. Nevertheless, the participation of a lawyer was mandatory when the accused was liable to a death sentence and in a few other cases. If the accused or detained person was without means, legal aid costs were defrayed by the State.

20. It had also been asked in what circumstances a detainee had to undergo a medical examination, and he explained that if a person requested a medical examination because he alleged torture or ill-treatment he was immediately examined. On the other hand, if he showed no signs of bodily injury he would not be examined by a physician.

21. In reply to a question put by Mr. El Ibrashi, he explained that international law took precedence over domestic law. In the event of a conflict between international norms and the provisions of domestic law, international law prevailed. As regards the compensation of victims, redress

could be obtained only through the State, which could bring an action against the offender regardless whether he was a member of the police or of another body. Specifically, the request for compensation was addressed to the judge trying the offence involving torture or ill-treatment. The judge granted redress for material injury and also for any moral wrong suffered by the victim and, if necessary, he might decide to grant assistance in kind (treatment in a sanatorium, housing, etc). Personally he knew of no cases where compensation requested by a torture victim had been refused or substantially reduced.

22. A person could, if necessary, be detained incommunicado for 72 hours if he was accused of a serious offence. A detainee guilty of violating prison regulations could be placed in solitary confinement for a maximum of two months, in other words, he was placed in a cell by himself as a punishment or to prevent his behaviour having a negative affect on the other detainees. That form of isolation was not contrary to international norms.

23. In reply to Mr. Sorensen, who had raised a question about the training of medical and prison personnel, he explained that in 1988 a training and advanced training centre for medical personnel had been established at Minsk where instruction was given in the standards contained in international instruments and, of course, in the obligations implicit in the Convention against Torture. Among other things, doctors were informed of the procedure to be followed in treating a person who had allegedly been subjected to ill-treatment. In addition, representatives of the Ministry of Foreign Affairs and the Ministry of Justice attended a large number of meetings with medical and law enforcement personnel at which they emphasized the requirements contained in various international human rights instruments such as the Standard Minimum Rules for the Treatment of Prisoners. As for the rehabilitation of torture victims, he explained that a specialized hospital had been established on the outskirts of Minsk in 1990 for disabled ex-servicemen but also for victims of Stalin's repressive policies, as well as for persons who had recently been victims of torture or ill-treatment. The cost of treating victims was borne by the State. Torture victims were also entitled to free consultations and out-patient treatment.

24. The maximum punishment for persons found guilty of torture or ill-treatment was 10 years' imprisonment. It was important that persons who might be tempted to have recourse to violence or ill-treatment should be deterred. It was not always easy to change the mentality of judicial or police officers after what had happened under the old regime, but progress had nevertheless been made, and Parliament was doing commendable work in changing standards.

25. Belarus had three categories of courts. The system of people's assessors had been abandoned. Local judges were now responsible for handling relatively simple cases and, as far as possible, giving priority to conciliation procedures. In the past, certain decisions were not subject to appeal; that rule had now been done away with because it was contrary to the provisions of human rights instruments. The competence of the Public Security Committee had been strictly defined and limited, and measures were also being taken to restrict possibilities of intervention by the Ministry of the Interior. Lastly, the functions of the police and the militia had also been curtailed,

and were now confined to protecting the safety of citizens and providing a number of services, such as issuing passports. It went without saying that in practice not all those changes occurred from one day to the next. In judicial matters, an effort was being made to avoid a sudden break with the past and to emphasize the gradual reform of institutions, phased over a period of one or two years. At the present time judges were elected for life and their independence was guaranteed - which had not been the case in the past. The Government Procurator's Office was also being transformed into an independent organization that would no longer be able to bring pressure to bear on the courts. He noted, however, that the entire reform process was rendered difficult by the economic situation and its consequences (especially the increase in criminality). The people of Belarus also had to find its roots and its culture once again.

26. Members of the Committee had pointed out that Belarus had not made the declarations provided for under articles 20 and 22 of the Convention, and he said he would not fail to raise that question with the competent authorities on his return home. In reply to Mr. Dipanda Mouelle, who had asked for information about rehabilitative labour establishments, he explained that they were used only for certain types of offenders, such as those who failed to pay alimony, and were being used less and less for various reasons.

27. Mr. KOZLOV (Belarus), replying to questions concerning the rehabilitation of victims of repression, said that a Standing Parliamentary Commission responsible for their rehabilitation had been established at the Belarus Parliament's first session in 1990. That Commission consisted of eight deputies of the Supreme Council, as well as experts and representatives of various ministries. In addition, a law on rehabilitation procedures for victims had been adopted. At its present session, the Supreme Council had before it two new draft laws, one on supplementary measures for compensating victims of repression and the other on the amount of such compensation. Within the next two or three years the statistics collected by the Ministry of Justice, Ministry of the Interior and the State Security Council would be examined, as well as the more than 120,000 cases connected with the rehabilitation of victims of repression. The Commission had already examined over 25,000 complaints. The provisions on the rehabilitation of victims fixed compensation levels (calculation of the amount of compensation on the basis of minimum salary, for example) which took into account the nature of the repression experienced. Members of Parliament were therefore endeavouring to get to the heart of the matter.

28. Referring to what Mr. Dashuk had said concerning international law taking precedence over domestic law, he said that that principle was embodied in the Republic's declaration of sovereignty. The law of 25 August 1991 contained a declaration stating that international instruments were applied directly. The courts were required to use international conventions as a model and to ensure that they were applied.

29. The substantive provisions of the Convention against Torture had been incorporated in domestic legislation, and the Belarus delegation had at the disposal of the Committee a draft text in which those provisions were reflected.

30. Mr. Dipanda Mouelle and Mr. Mikhailov had asked about the application of international norms in respect of the protection of persons who were being detained. The laws being elaborated were in line with international law norms in that respect. One year previously the Government had earmarked 18 million roubles for the improvement of the treatment of detainees (clothing, food, etc.). In May 1991 a group of international experts had visited certain prisons in Belarus and had found that the treatment of prisoners approximated international standards. The authorities were also trying to index the earnings of detainees to inflation.

31. It had been asked whether Belarus had a human rights commission, and he informed members of the Committee that at its first session, the Supreme Council had established a Standing Parliamentary Commission on transparency, the media and human rights. One of the first laws proposed by that Commission was a law on referendums, which were one of the most noteworthy manifestations of democracy. The Chairman of that Commission was now responsible for coordination with other CIS countries so that a new chairman had to be appointed. At the present time 22 members of Parliament sat on the Commission.

32. Lastly, the Chairman had asked how the Committee could help the young Republic of Belarus to improve its legislation, and in particular to adapt it to the requirements of the Convention. The Belarus delegation greatly appreciated the interest the Committee was showing in the matter. Parliament, which was drawing up the basic codes of the legal system, and the Belarus authorities, which were trying to work with States which already had experience, would appreciate the Committee's advice. The Belarus authorities were prepared to provide the Committee with the texts, translated as far as possible, of the main draft laws under discussion so that the Committee could examine them at its spring 1993 session; they would be most interested in the observations and comments of members of the Committee. They would also be extremely grateful to the Committee for any assistance it could provide in the creation of a State based on the rule of law. He thanked the Committee for the respect and tact it had shown him, and said he would inform Parliament of the reservations that had been expressed. Things were moving ahead slowly in Belarus but progress was certainly being made. The authorities had decided not to go too fast in order to avoid making too many errors. After the revolution and its consequences, they had decided to emphasize evolution in stages. The Committee's consideration of the report of Belarus constituted an important stage in that respect.

33. The CHAIRMAN thanked Mr. Dashuk and Mr. Kozlov for having provided the Committee with detailed replies and a more accurate idea of the situation of their country. He invited the Belarus delegation to attend the following meeting in order to hear the Committee's conclusions.

The meeting rose at 6 p.m.