



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

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Forty-seventh session

Summary record of the 1035th meeting

Held at the Palais Wilson, Geneva, on Thursday, 10 November 2011, at 3 p.m.

Chairperson: Ms. Gaer (Vice-Chairperson)

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

Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Combined fourth and fifth periodic reports of Bulgaria (continued)
(CAT/C/BGR/4-5; CAT/C/BGR/Q/4-5 and Add.1; HRI/CORE/I/Add.81)

1. *At the invitation of the Chairperson, the delegation of Bulgaria took places at the Committee table.*
2. **Mr. Tzantchev** (Bulgaria), referring to Bulgarian legislation on torture, said that the Criminal Code established the offences and punishment of all the acts targeted by the first article of the Convention. Among the relevant provisions of the Criminal Code was article 287 addressing bodily injury, which punished a public official's use of unlawful means of coercion to obtain information or a confession; article 143, which addressed coercion more generally; and article 131, which provided that aggravating circumstances could be found when bodily injury was inflicted by a public official in the performance of his or her duties. The procedural guarantees relating to the prohibition of torture were established in the Code of Criminal Procedure, as well as in the Enforcement of Penalties and Detention Act and in secondary legislation. Article 9 of Guideline No. Iz-2451 of the Minister of the Interior on the procedure followed by police when detaining persons in Ministry of the Interior establishments, regarding the furnishing and internal rules of premises for the accommodation of detainees and provided that "the actions of police authorities shall exclude the commission, provocation or toleration of any act of torture, inhuman or degrading treatment or punishment whatsoever ...".
3. A working group from the Ministry of Justice was currently drawing up a new draft Criminal Code. The Committee's observations regarding the definition of torture would be duly considered when drafting the section of the Code that could provide such a definition.
4. Regarding the situation of stateless persons, the relevant authorities were considering the matter and a decision was expected shortly.
5. Lastly, the Constitution of the Republic of Bulgaria stipulated that the laws and provisions relating to human rights could not be abolished or suspended, whatever the circumstances, which adequately ensured observation of article 2, paragraphs 2 and 3, of the Convention.
6. **Mr. Petrov** (Bulgaria), replying to questions about detainees' access to a lawyer, said that in April 2011 the Prosecutor General had published a directive that detainees must be allowed to meet with a lawyer in private within two hours of their arrest. The directive also stipulated that the lawyer must be allowed to meet the detainee within 30 minutes of arrival at the place where he or she was being held, such as a police station.
7. **Ms. Makeva-Naydenova** (Bulgaria) said that a scheme for civilian oversight of the police force had been operating since 2005 and had been the subject of a report by the NGO Open Society Institute, to which the Bulgarian Helsinki Committee had referred in a report to the Committee. Regarding the statements made in that report, she emphasized that the project had the full support of the Ministry of the Interior and that the authorities had been working for a number of years to implement the Bulgarian Helsinki Committee's recommendation regarding access to a lawyer for persons under arrest. Steps had been taken to address the gaps identified during the scheme's implementation, notably the introduction of disciplinary measures for failing to observe the provisions regulating the right of access to a lawyer, or requiring a daily supply of information on the number of persons that had requested the services of a legal counsel and the response to those requests. Furthermore, the recommendations outlined in the Open Society Institute's report

had been examined in detail in order to plan their implementation. Also, the NGO responsible under the project for monitoring the maintenance of records had indicated that the recommendations made in that regard had been taken into consideration and that the records were now adequately maintained and accessible.

8. The independence of the Ministry of the Interior Inspectorate was guaranteed by law. It was not subordinate to any agency and its inquiries were fully independent. The Inspectorate ensured that any complaint of violence made against a police officer was investigated and that the findings were publicized. Once it had been established that human rights had been violated or that a police officer had failed in his or her duty, disciplinary measures were taken. Indeed, contrary to the statements of the Bulgarian Helsinki Committee, data on police officers who had been subjected to disciplinary measures had been submitted to the Committee. In that regard, between 2005 and 2011, the Inspectorate had investigated 37 complaints against police officers, and disciplinary measures had been taken against 35 police officers, and 2 of them had been relieved of their duties. In four cases the results of the investigation had been forwarded to the relevant prosecutor.

9. **Ms. Nikolova** (Bulgaria) said that her legislation felt that victims of crime, particularly of torture or ill-treatment, had the right to effective remedies, including fair compensation at a level set by the courts. A torture victim could file a civil claim for compensation as part of criminal proceedings, and if the parties or members of their family had suffered damage as a result of the criminal offence before the court, they could file a civil claim for compensation and be constituted as complainants. If the aggrieved party sustained serious personal injury but failed to initiate either of the procedures described, he or she could request compensation under the Assistance and Financial Compensation to Crime Victims Act. Victims of crimes covered by the Convention were also able to initiate proceedings under the State and Municipal Liability for Damages Act, which imposed liability on the law enforcement authorities liable for harmful actions. In that case, the compensation conditions were those defined by the State and Municipal Liability for Damages Act. It should also be noted that in conformity with the Mediation Act, the National Association of Mediators had come up with various proposals and drafts for amendments to the Criminal Code and the Code of Criminal Procedure, aimed at making mediation an effective institution that would contribute to the swift and fair compensation of aggrieved parties including, where possible, victims of torture.

10. **Ms. Petrova** (Bulgaria) said that the prison overcrowding problem remained a complex one that was difficult to resolve. The authorities had adopted a programme for 2008–2015 to improve prison conditions; it had been updated through two additional action plans adopted in 2010. The programme allocated 20 million leva to prison system improvements and, while it was true that much remained to be done, good progress had been made. Furthermore, between 2008 and 2010, Lovech, Vratsa, Burgas and Pleven prisons had been renovated and modernized. In 2012, a new closed facility, with a capacity of 450, would start receiving inmates to reduce the pressure on Vratsa prison, and in 2013 the opening of a new facility would ease overcrowding in Varna prison. The authorities were also trying to resolve the problem by making increased use of conditional release, pardons and other alternatives to imprisonment. The year 2011 had seen 1,014 prisoners granted conditional release and 45 pardoned.

11. **Mr. Petrov** (Bulgaria) said that the main alternative to prison applied by the courts was probation. The number of persons who had been granted probation had increased substantially, rising from 2,000 in 2005 to 16,000 in 2009. Approximately 52 per cent of those found guilty during that period had been placed on probation, which had proved to be a very effective means of reducing the prison population.

12. **Ms. Petrova** (Bulgaria) said that in 2010, some 10,000 persons had been placed on probation, thus preventing worse overcrowding in prisons.

13. Incommunicado detention of prisoners was a disciplinary measure decided on by a court in cases where a prisoner posed a risk to the lives and safety of other detainees or prison staff, and could last from two weeks to two months. The conditions for incommunicado detention were determined by legislation compliant with international norms: those in such detention were separated from other detainees but were not deprived of mail, physical exercise or a daily walk. Incommunicado detention was, in practice, a measure rarely applied.

14. Management of prison staff was complicated and, owing to a dearth of candidates, it was difficult to fill positions. With regard to inter-prisoner violence, all incidents, including verbal abuse, were recorded by staff, which no doubt explained the high figures published. Prison governors were required to justify the disciplinary measures they imposed.

15. **Ms. Makeva-Naydenova** (Bulgaria) said that metal bars had long been removed from police stations and it was now illegal to handcuff prisoners to them.

16. The Ministry of the Interior had taken concrete steps against police misconduct by introducing a special system to record complaints of violence, making investigations obligatory and requiring that evidence collected during internal investigations were transmitted to the prosecutor. Once an offence had been established, the perpetrators, and sometimes their immediate superiors, were penalized. Regarding the independence of investigations, the Code of Criminal Procedure stipulated that accusations against police officers were to be investigated by magistrates and not by the police. All police officers received training in the regulations governing the use of force and firearms, based on international standards. Primary and secondary legislation stipulated that police officers could use firearms only in exceptional circumstances and as a last resort.

17. **Mr. Tzantchev** (Bulgaria) said that training for new prison staff focused in particular on detecting signs of ill-treatment and drug use, and included the participation of doctors. In addition, any death of a prisoner was immediately brought to the attention of the prosecutor.

18. **Mr. Petkov** (Bulgaria), referring to the accident at Katunitsa that had cost a young man his life and given rise to hate speech, said that criminal proceedings were under way. A suspect was being held and charges had been brought against him. Unfortunately, some people had tried to exploit the incident for political ends, but such attempts had been categorically condemned by the Government and civil society. An inquiry had been opened to ensure that such violent excesses did not recur, particularly with regard to incitement to hatred, racial violence and ethnic intolerance. The scope of legislation on incitement to hatred had been expanded and the dissemination of speech inciting hatred or discrimination, particularly through the media, was punishable by 1 to 4 years in prison and a minimum fine of equivalent to €2,500. Several of the hundred or so people who had demonstrated following the accident had been convicted and the police, while observing legal guarantees of the freedom of assembly and association, had intervened, notably among the Roma community, to prevent tensions from escalating. The Government had also launched a Roma integration framework plan for 2010–2020 focusing on education, health and housing.

19. The Ombudsman was elected by the National Assembly and operated independently and in conformity with the Constitution, domestic legislation and the international treaties to which Bulgaria was party. The Office of the Ombudsman was responsible for protecting the best interests of the child, monitoring respect for fundamental rights and offering certain groups protection from intolerance and discrimination. It could also appeal to the Constitutional Court and visit places of detention. Having filed a request for accreditation as a national human rights institution in accordance with the Paris Principles, the Office

was awaiting the decision of the International Coordinating Committee of National Human Rights Institutions.

20. **Mr. Petrov** (Bulgaria) said that he would attempt to provide an insight into the structure of the Bulgarian judicial system. Its independence had been strengthened, particularly by the establishment in 2007 of the Inspectorate of the Supreme Judicial Council, mandated to monitor magistrates' performance without affecting their independence. The Inspectorate acted on its own initiative or at the request of citizens or the authorities, rendering it a valuable tool for civil society.

21. Magistrates, judges and prosecutors were not immune from justice; they could be charged for offences without the approval of the Supreme Judicial Council or the National Assembly. Apart from the establishment of the Inspectorate, worthy of note was the strengthening in 2008 of the powers of the Ministry of Justice, which had from then on administered the budget and managed the judiciary's assets, and could propose the appointment, promotion or dismissal of magistrates. In 2011, the most recent amendment to the Judiciary Act had established the principle of open recruitment and competitive promotion; any lawyer could submit an application, which was assessed by a committee before being forwarded to the Supreme Judicial Council. Furthermore, all the Council's decisions were subject to effective checks by the Supreme Administrative Court.

22. Regarding the admissibility of confessions obtained through torture, article 116 of the Code of Criminal Procedure stipulated that neither charges nor convictions could be based on the statements of the defendant alone. Despite the absence of statistics, it was a fact that the Bulgarian courts observed article 15 of the Convention. Indeed, the Supreme Court had acquitted a former Prime Minister accused of conspiracy at the end of the 1990s, once it had been established that he had been the victim of violence on the premises of the Ministry of the Interior.

23. **Ms. Makeva-Naydenova** (Bulgaria) said that the 2005 Protection against Domestic Violence Act fully conformed to all relevant and applicable international norms and had made for significant advances, notably owing to the reversal of the burden of proof in favour of the victim and the recognition of all forms of domestic abuse, including psychological abuse. In 2009, the Act had been amended to establish the offence of emotional abuse, particularly as perpetrated against children within the family. Each court held a special register in which all cases of domestic abuse were recorded. In 2009, the courts had issued 1,271 protection orders, lasting from 3 to 18 months, compared to 1,408 in 2010. The Act stipulated that a protection order could be awarded on the sole basis of a victim's statement, without need of further proof.

24. **Ms. Nikolova** (Bulgaria) said that the action plan, for Vision Children's Deinstitutionalization, was based on a new approach to child placement and to children's care and services. Bulgaria would endeavour in future to favour family-type environments when placing children, focusing on individual evaluation of children's needs and helping them to integrate into society in adulthood. The first project implemented under the action plan focused on placing children with disabilities in foster families, whereas before they had been systematically placed in institutions. Bulgaria also aimed to place the great majority of children with disabilities in larger cities, where they would have better access to high-quality care and services.

25. **Ms. Andreeva** (Bulgaria) said that the National Strategy on Migration, Asylum and Integration 2011–2020 aimed to strengthen cooperation between the State Agency for Refugees, the Ministry of Foreign Affairs and the Border Police in order to accelerate the processing of asylum applications, introduce more transparent asylum procedures and put an end to the detention of asylum seekers in closed centres. She emphasized that all asylum seekers received the same medical care and had access to the same social services as

Bulgarian citizens. Contrary to the allegations transmitted to Committee members, the State had not suspended free legal aid for asylum seekers.

26. **Ms. Kleopas** (Country Rapporteur) said that she was not satisfied with the delegation's explanations of the definition of torture and considered it essential for the State party to include the offence of torture in its criminal law. She requested further information on the new regulations on police use of firearms; the proceedings initiated and sanctions imposed on police officers for use of excessive force, and the measures of redress and compensation offered to victims; and the training given to investigators of cases of torture and ill-treatment, particularly in the Istanbul Protocol. She would like to have statistics on investigations held, prosecutions brought and penalties imposed in cases of domestic violence. Information available to the Committee alleged that criminal proceedings could be launched only on the basis of an official complaint from the victim, a practice which did not conform to article 12 of the Convention. She drew attention to the conclusions of the Special Rapporteur on the independence of judges and lawyers, after visiting Bulgaria from 9 to 16 May 2011 (<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11020&LangID=E>), regarding the judiciary's lack of independence and the inadequacy of the financial and human resources allocated to legal aid, and invited the Bulgarian delegation to comment on those conclusions. She wished to know what follow-up action was being taken on recommendations by the European Commission against Racism and Intolerance that Bulgaria should prosecute and penalize racist offences, and should include a provision in its Criminal Code allowing racial motivation for a crime to be considered an aggravating circumstance. Lastly, she invited the Bulgarian delegation to reply to the questions already asked concerning forced marriages of persons aged 14 to 20, and NGO access to places of detention, in particular the reasons why the Bulgarian Helsinki Committee required advance authorization to visit police stations.

27. **Mr. Wang** Xuexian (Country Rapporteur) said that he would like specific examples of cases in which victims of torture and ill-treatment had obtained compensation. In particular, he asked what action had been taken by the State party in response to communication No. 257/2004 *Keremedchiev v. Bulgaria* lodged with the Committee. Regarding children with mental disabilities who had died due to neglect in specialized State institutions, he enquired whether those responsible had been convicted and whether the victims' families had been compensated.

28. Noting that, according to paragraph 144 of the written replies (CAT/C/BGR/Q/4-5/Add.1), 1,265 foreigners had been expelled between 2005 and 2011, he asked whether any of them had sought asylum. In conclusion, he requested detailed information on the conditions under which the expulsion of Roma had taken place in 2009–2010 and asked whether the anti-Roma violence in Katunitsa had led to investigations and prosecutions.

29. **Mr. Bruni** asked whether the State party intended to discontinue the practice of solitary cells as a disciplinary measure, which had devastating psychological consequences for detainees. He recalled the case of two Palestinian refugees who had been expelled from Bulgaria to Lebanon, where they had been allegedly tortured, and asked how the State party ensured that it fulfilled its obligations under article 3 of the Convention, particularly with regard to the thorough review of the risk of torture before an individual was expelled to another State.

30. **Mr. Mariño Menéndez** asked under what conditions Bulgaria resorted to incommunicado detention and how long that detention could last. It would be useful to learn whether there was an urgent appeal procedure allowing persons whose asylum application had been rejected to have their arrest and expulsion suspended while waiting for the competent authorities to decide on their case.

31. **Ms. Sveaass** said that she would like to know whether alternative measures to imprisonment had contributed to a reduction in both prison overcrowding and violence among prisoners. She would also appreciate information on measures taken to reduce the numbers held in institutions. She would be grateful if the delegation could provide up-to-date information on the results of the investigation led by the Prosecutor General into the deaths of 166 children, and 30 cases of child abuse. Similarly, information on the judicial guarantees applicable to involuntary hospitalization would be welcome. In addition, what measures had the authorities taken following the violent attack on five Jehovah's Witnesses in Burgas?

32. **Ms. Belmir**, after thanking the delegation for their detailed replies, asked why the rule on the tenure of judges applied only to senior judges, which was, at best, surprising. Security of tenure was in fact a fundamental guarantee ordinarily extended to all judges. It appeared that conditions for persons sentenced to life imprisonment were especially difficult, particularly during the first 5 years of their term. It would be interesting to hear the delegation's comments on the matter. Lastly, the Committee would be interested to learn whether 14-year-olds were subject to criminal penalties.

33. **Ms. Andreeva** (Bulgaria) said that the transit centre in Pastrogor could not be opened in 2009 due to delays in construction but that it should nonetheless be operational by the end of 2011, since the required additional funds had been allocated. The centre would be an open institution with modern facilities, including Internet. One wing would be reserved for young people, and asylum seekers would no longer be placed alongside foreigners awaiting expulsion or escort to the border.

34. **Mr. Petrov** (Bulgaria) said that, in conformity with article 32 of the Criminal Code, minors under 14 years of age were not criminally responsible. Criminal responsibility of minors aged 14 to 18, however, could be invoked if it had been established that those concerned were capable of discernment at the time of their actions. Furthermore, in conformity with the general provisions of article 62 of the Criminal Code, minors could have their sentences reduced and judges were obliged to favour alternative measures to imprisonment, such as conditional release or a suspended sentence. It should also be noted that when minors were sentenced to a prison term — a measure that could only be applied as a last resort — the court could exempt them from serving the sentence and place them in residential care, as provided by article 64 of the Criminal Code. As of 11 July 2001, 65 minors were serving a prison term in Bulgaria, which was less than 1 per cent of the prison population. Regarding the tenure of judges in Bulgaria, it should be clarified that all Bulgarian judges, regardless of rank, could be dismissed by the Supreme Judicial Council.

35. The incidents at Katunitsa had led to 38 investigations based on articles 161 and 162 of the Criminal Code which criminalized acts of racial hatred and incitement to racial hatred. The delegation would provide the secretariat with a document listing all the prosecutions brought and all the sentences handed down on the basis of those two articles. The attackers of Jehovah's Witnesses in Burgas had indeed been prosecuted, and eight of them had been found guilty.

36. Article 131 of the Criminal Code provided that NGO access to defendants needed to be authorized by the Prosecutor General or the courts in order to monitor human rights compliance. The provision was aimed at ensuring that preliminary investigations were effective and it did not prevent defendants from receiving personal visitors. In practice, it was very rare for NGOs to be refused access to a defendant.

37. With regard to the deaths of minors placed in institutions for children with mental problems, thorough investigations had been carried out under the supervision of the upper echelons of the prosecution service. However, it had not been possible to bring criminal cases since, due to the time-lapse — over 10 years in some cases — the necessary evidence

could not be assembled. The Committee should nonetheless be made aware that there were 117 ongoing cases.

38. **Ms. Andreeva** (Bulgaria), responding to questions about the two Palestinians expelled to Lebanon in 2010 following the rejection of their asylum claim, said that Bulgarian legislation fully guaranteed respect for the principle of non-refoulement established in article 3 of the Convention. In conformity with article 4, paragraph 3, of the Asylum and Refugees Act, a foreigner who entered Bulgaria to seek protection could not be returned to a country where his or her life or freedom might be under threat because of his or her race, religion, nationality, political opinion or membership of a specific social group, or where he or she was at risk of torture or other cruel, inhuman or degrading treatment or punishment. Regarding the two Palestinian refugees expelled to Lebanon, their asylum applications had not been sufficiently substantiated for them to be awarded international protection, and the Bulgarian authorities had not received any information indicating that they would be subjected to torture or ill-treatment if they were returned to the country. In that connection, a country of origin resource centre had recently been set up to improve the collection of the relevant data. Regarding follow-up mechanisms for foreigners returned to their countries of origin, Bulgaria unfortunately did not possess the funding required for such mechanisms. As for the accelerated asylum procedure, she suggested that, given the late hour, a document presenting all the relevant information should be submitted to the secretariat.

39. **Ms. Nikolova** (Bulgaria) said that, with regard to the response to the Committee's decision on the Keremedchiev case (communication No. 257/2004), the individual concerned had not exhausted all domestic remedies. He could bring a case under the State and Municipal Liabilities for Damages Act. In several cases concerning Bulgaria, the European Court of Human Rights had considered that law to provide a useful remedy.

40. **Mr. Tzantchev** (Bulgaria) said that the Roma residents who had moved to private land around the town of Burgas had willingly left their encampment after the municipal authority had issued an expulsion order for security reasons and that they had been given the opportunity to relocate elsewhere. As for the explosion of a car belonging to Sasho Dikov, an opposition journalist, on 14 October 2011, it should be emphasized that the incident had been strongly condemned by the Prime Minister of Bulgaria, Mr. Boyko Borissov, and that an investigation into events had been immediately launched.

41. **Ms. Kleopas** said that the delegation had not answered all of her questions. In addition, it had offered no information on measures establishing universal Bulgarian jurisdiction to try offences of torture. Also, the Committee did not know whether Bulgarian legislation stipulated compulsory investigation and prosecution of acts of domestic abuse. The delegation was invited to use the time that remained to respond to those questions.

42. **Ms. Makeva-Naydenova** (Bulgaria) said that Bulgarian legislation stipulated ex officio prosecution of acts that constituted a criminal offence. In addition, article 296 of the Criminal Code currently enabled tribunals to issue protection orders, the violation of which was systematically punished.

43. **The Chairperson** thanked the delegation of Bulgaria for its replies and recalled that it had 48 hours to transmit to the secretariat all the additional written information it considered useful to bring to the Committee's attention.

The meeting rose at 6 p.m.