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Twenty-sixth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 467th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 7 May 2001, at 3 p.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.467/Add.1.

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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 (agenda item 4) (continued)

Concluding observations concerning the second periodic report of Georgia (continued) (CAT/C/48/Add.1; CAT/C/XXVI/Concl.1/Rev.1)

1. At the invitation of the Chairman, the delegation of Georgia took places at the Committee table.

2. Mr. YAKOVLEV, Country Rapporteur, read out the Committee's conclusions and recommendations concerning the second periodic report of Georgia contained in document CAT/C/XXVI/Concl.1/Rev.1.

3. Mr. KAVADZE (Georgia) said that the Government of Georgia would carefully consider the Committee's conclusions and recommendations and provide details of their implementation in its next periodic report.

4. The delegation of Georgia withdrew.

5. The meeting was suspended at 3.20 p.m. and resumed at 3.30 p.m.

Initial report of Slovakia (continued) (CAT/C/24/Add.6)

6. At the invitation of the Chairman, the delegation of Slovakia took places at the Committee table.

7. Ms. ŠTOFOVÁ (Slovakia), replying to questions raised by the Committee at a previous meeting, said that, under article 11 of the Slovak Constitution, international human rights treaties ratified by Slovakia and promulgated in the Official Gazette took precedence over domestic legislation but not over the Constitution itself. In some cases, moreover, the Constitution afforded greater protection than international instruments. If a complaint was filed concerning the practical application of a right protected by an international standard, the right concerned must be interpreted and applied in accordance with the Constitution and in the light of the international standard and any relevant case law. In the absence of precedents, the Slovak judicial authorities were required to explain the content and purpose of the protected right. A party to legal proceedings who was dissatisfied with a decision taken by the domestic courts could lodge a complaint with the relevant international body. The Constitutional Court had ruled along those lines in decision No. 28/1996.

8. On 1 July 2001 an amendment to the Constitution with far-reaching implications for the relationship between international law and domestic legislation would come into force. It would basically change the existing dualist system into a monist system entailing direct implementation

of certain international treaties. Under article 7, paragraph 5, of the Constitution, the following international instruments would acquire such status: treaties on human rights and fundamental freedoms, self-executing treaties and treaties establishing specific rights and duties of individuals.

9. Act No. 248/1994 had listed in the Criminal Code the crime of torture and other inhuman or cruel treatment, in keeping with the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. However, the issue of whether to incorporate the definition of torture as laid down in the United Nations Convention and the International Covenant on Civil and Political Rights had not yet been resolved. Protection against acts of torture committed by public officials was afforded in the Criminal Code. Inhuman or degrading punishment was prohibited, the only penalties allowed being those laid down in the Criminal Code. Article 50 of the 1994 Order concerning the Enforcement of Penalties and Deprivation of Liberty protected convicted persons against unauthorized violence, degrading treatment, insults and threats. Where doubts existed as to whether the conduct of a public official constituted torture, the prosecutor or judge concerned was required, under article 11 of the Constitution, to apply the provisions of the relevant international instrument. Article 259 (a) of the Criminal Code was based on the assumption that an act of torture caused physical or psychological suffering and, contrary to the definition contained in the United Nations Convention, the purpose for which the torture was inflicted was deemed to be irrelevant.

10. Despite the fact that the Criminal Code contained no definition of torture, the concept of "suffering amounting to torture" was explained in Slovakia's case law as comprising extraordinary, incremental or prolonged physical or psychological pain, pain that was almost unendurable but inflicted for a short period, or pain that was endurable but inflicted for a longer period. Pursuant to article 89, paragraph 6 (h) of the Criminal Code, acts entailing suffering that was seriously detrimental to health also came within the definition. A person found guilty of such acts was punishable, under article 259 (a), by 5 to 10 years' imprisonment. Where the perpetrator of an act of torture was acting under the authority of the State or a local authority, the penalty was increased. The definition of a public official was contained in article 89, paragraph 9, of the Criminal Code and included elected or other State officials at the central or local level, members of the judiciary and police and army officers. Such officials were deemed to incur criminal responsibility where the offence was in some way connected with their powers and responsibilities.

11. As to the appropriateness of penalties, referred to in article 4, paragraph 2, of the Convention, the penalty for torture was more severe in Slovakia than that incurred for other crimes with comparable effects. Slovakia had no case law relating to article 2, paragraph 1, of the Convention, and she was unable to present any statistics on convictions as there had been none. Three applications concerning torture had, however, been submitted by Slovak citizens to the European Court of Human Rights.

12. The principle of universal jurisdiction was recognized in Slovak law in articles 19, 20 and 21 of the Criminal Code. A distinction was drawn between absolute universality (arts. 19 and 21) and subsidiary universality (art. 20). Article 19 listed crimes that were punishable in

Slovakia even if perpetrated abroad by a foreign citizen or stateless person not permanently resident in Slovakia. Those crimes included terrorism, sabotage and genocide, but not torture. Article 21, meanwhile, covered crimes defined in international treaties binding on Slovakia, one of which was the Convention. Under article 20 of the Criminal Code, Slovak courts were authorized to initiate criminal proceedings even if the crime in question had been committed abroad by a foreign citizen or stateless person who did not have permanent residence in Slovakia, provided that the crime was punishable in the territory where it had occurred and that the offender had been arrested in the territory of Slovakia and not extradited.

13. In principle, article 23, paragraph 4, of the Constitution, article 21 of the Criminal Code and article 379 of the Code of Criminal Procedure prohibited the extradition of Slovak citizens, but an amendment to the Constitution which would enter into force on 1 July 2001, would permit their extradition if an international tribunal established by a treaty signed and ratified by Slovakia so required. The execution of a foreign court's decision was impossible in Slovakia, save when it was obligatory under an international treaty, in which case the Minister of Justice had to propose such action to the Supreme Court, which took the requisite measures.

14. The principle of the separation of powers obtained in Slovakia, the courts being the third power. Slovakia had a Constitutional Court, a Supreme Court, eight regional courts which could also hear appeals and 56 district courts. Military courts also existed. The judicial system was regulated by Act No. 335/1991 and Act No. 400/1992 , as well as by Act No. 304/2000, which had strengthened the independence and impartiality of judges and improved their working conditions.

15. One of the bodies enhancing judges' independence was the Judicial Council, which was chaired by the President of the Supreme Court. It was composed of eight judges elected by their peers, three members chosen by Parliament, three members appointed by the President of the Republic and three members appointed by the Government, all of whom could serve two five-year terms of office. Once the Constitution was amended on 1 July 2001, the Council would be responsible for proposing the appointment or dismissal of judges to the President of the Republic, determining the court at which they would work, proposing candidates for the post of President or Vice-President of the Supreme Court, proposing judges to represent Slovakia in international judiciary organs and appointing and dismissing members of disciplinary boards. Under the old system, judges could be dismissed by Parliament if they were convicted of a premeditated crime or on grounds of ill health or old age, but once the Constitution was amended, the decision to dismiss a judge would lie with the President of the Republic acting on the advice of the Judicial Council. Judges could not be transferred to another court unless they agreed. New legislation from 2000 also regulated the duties and obligations of judges, stipulated their salaries and provided for the establishment of disciplinary boards.

16. An ombudsman's office was going to be established in Slovakia to protect human rights by extrajudicial means. The powers and status of the ombudsman would be specified in a special law.

17. Mr. SLOPOVSKÝ (Slovakia) explained that occasional disagreements between the police and procurators were necessary if the latter were to monitor the activities of the police effectively.

18. The permissible period of police detention had been extended for practical reasons. It was often impossible for the police or an investigator to collect enough evidence within 24 hours to enable the courts to take an informed decision regarding pre-trial detention. Paradoxically, a longer period of detention might be in the interests of the detainee, as it allowed more time to gather material proof and meant that a judge's decision was less likely to be influenced by the pressure of public opinion and the media.

19. Proceedings in criminal cases could be divided into four stages: the first covered the time prior to prosecution and was covered by article 158 of the Code of Criminal Procedure; then came the beginning of criminal proceedings up to the preferring of a charge (Code of Criminal Procedure, art. 176). That stage was followed by the consideration of the case by the court (arts. 180 ff.) with the court's judgement and the execution thereof forming the final stage.

20. During the first stage, the investigatory bodies gathered information, which was verified by the investigator, police or Procurator. The investigating magistrate then decided on the basis of the information obtained if an arrest should be made. If the suspicion that a crime had been committed was not confirmed, no further action was taken, and the party that had made the initial allegation could lodge a further claim with the Procurator's Office. On the other hand, if the suspicion that a crime had been committed was confirmed, the Procurator initiated criminal proceedings.

21. The decision to initiate proceedings under article 160 of the Code of Criminal Procedure had to be taken within 48 hours of the police's submission of its report to the Procurator. The suspect was immediately charged and could appeal to the Procurator. From the moment a charge was preferred, the accused was entitled to have counsel present at all interrogations. If the accused did not select a lawyer, the State appointed one; if the accused was a minor, his or her guardian was responsible for selecting counsel. Accused persons who were foreigners were entitled to use their mother tongue at all times and had the right to avail themselves of the services of an interpreter. The Procurator could review the lawfulness of proceedings at any stage on his own initiative. Any evidence that was deemed insufficient grounds for a trial must be made available to the accused, counsel and the victim of the crime. The Procurator alone could bring charges, and if he considered the case to be well founded, he would transmit it to the courts. The suspect could be charged only with the crime referred to in the complaint, but the Procurator could alter the definition of the crime if he did not agree with it.

22. Once it was ascertained that a prima facie case existed and that the preliminary stages had been conducted in a lawful manner, it could then be determined which court had territorial jurisdiction to hear the case. When court hearings were scheduled, detainees or their counsel had to be allowed enough time to prepare their defence, the minimum period being five working days. Court hearings were always public, save when they involved State secrecy or immorality, or when witnesses needed to be protected. The sentence must be pronounced in public and must rest solely only on the proof presented in court. A court could also decide to refer a case back to the Procurator, suspend the case or release the accused if he or she was found to be innocent. Any court decision could be challenged by the Procurator, the accused or the injured party.

23. Lawyers and the Procurator played an important role in the process he had just described because they had the dual function of ensuring that the law was observed and that the legitimate interests of individuals and the State were protected. The Procurator's Office was an independent body and its members were appointed by the President on the recommendation of Parliament. The duties of procurators included conducting criminal investigations and monitoring the lawfulness of criminal proceedings, conditions of detention and the execution of court decisions.

24. The task of barristers in Slovakia was to help citizens to enjoy their basic rights. In order to exercise their profession, they had to be on the roll of the Chamber of Advocates, an independent professional organization, and had to meet certain criteria regarding competence. Barristers had to be full-time lawyers.

25. With regard to the activities of the police and guarantees of the rights of persons in pre-trial detention, he explained that detainees were handed over to the police for identity checks and that their rights were set out in Act No. 171/1993. Any policeman was bound immediately to inform any persons being questioned of their rights and to treat them with due respect. Detainees must be allowed to contact relatives or their legal representative if they so desired. The police had to inform the military authorities or the detainee's guardian when the detainee was a soldier, a minor or mentally retarded. If a detainee was injured or claimed to be suffering from a serious disease, the police officer had to call a doctor. If the doctor decided that the detainee was not fit enough to be kept in a cell, the detainee was sent to a medical establishment. Detainees could not choose their doctor because the police could hold a person in custody for 24 hours only, and if the doctor of the detainee's choice lived far from the police station it might be impossible for the police to complete their questioning on time. Detainees could be examined by a doctor without a police officer being present. The results of the medical examination were placed in the detainee's file and made available to counsel.

26. Under article 49 of the Police Act, detainees could make complaints, proposals or statements which the officer on duty had to forward to his superior. Detained persons could place themselves under the supervision of the Procurator, who was entitled to enter the police station at any time. On ascertaining that detainees' rights had been infringed, the Procurator could demand that such violations should cease.

27. The Ministry of the Interior also had internal inspection and monitoring procedures to deal with citizens' complaints about the actions of the police. If the Ministry found that the police had committed a criminal act, investigations would be conducted and disciplinary measures taken as necessary. Furthermore, the police came under the general jurisdiction of the courts and the Procurator's Office, although it also had its own supervisory body, the Police Authority. If a police officer was ordered by a superior to engage in action that would constitute a criminal act, he was bound to refuse to obey orders. A police officer would thus have to refuse to carry out torture, since it was unlawful.

28. In reply to a question about the methods of pressure which could be applied to detainees by the police, he said that the matter was dealt with in article 50 of the Police Act, which laid down the conditions under which such methods could be used. Article 65 of the Police Act was

particularly important because it stipulated that physical pressure could only be applied to pregnant women, the elderly, minors or persons who were obviously injured or ill, by hand; no dogs or weapons could be employed.

29. Regarding incidents where the police were alleged to have broken the law, he said that investigation of an alleged beating of Roma by the police in a village in western Slovakia had revealed that the circumstances were different from those depicted in the press and by non-governmental organizations (NGOs). No violation of Act No. 171/1993 by the police had been found. Likewise, investigation of an incident in the village of Zehra, where a 14-year-old Roma boy had been struck by a rubber bullet during a search by a special police unit had shown that the incident had not been deliberate, and that the boy had been struck by a stray bullet. With regard to the two incidents in January 2001, he said that the investigating officer had been injured in a car accident, which meant that the inquiry would have to begin again. In the case in Poprad, where a prisoner had grabbed an officer's pistol and shot himself, the officer had been charged with negligence, but the case had been dropped because the officer had later committed suicide. In the case of the Chinese diplomat who had been attacked two years before, three youths from Bratislava had been prosecuted and the case was currently before the Supreme Court. Lastly, he noted that in April 2001 monitoring bodies had been created to investigate racially motivated violence, whether the perpetrators were civilians or police officers.

30. Mr. FÁBRY (Slovakia) said that Slovakia's prisons had a capacity of nearly 10,000 convicted prisoners. The prison population had dropped from just over 8,000 in 1998 to 7,750 in 2000, or approximately 80 per cent of capacity. Two new prisons were being constructed which would provide each prisoner with just over four square metres of space, rather than the three and a half square metres mandated in existing prisons. Since 1999 no record had been made of a foreign prisoner's ethnic origin; in 2000 there had been 71 foreigners and 72 women in prison. Women were housed in special prisons, including some house-like facilities in which two or three women shared a room and had access to showers, kitchen, specialized medical care, etc. Pregnant women and women with children under one year old could not be imprisoned. The law also provided that male prisoners over 65, women prisoners over 60, invalids and the ill all had to be sent to a prison hospital or a medical establishment. Minor prisoners, of whom there were 804 males and 3 females, also received special treatment. The males were kept in special institutions that provided strict discipline and compulsory education up to the age of 16 in order to prepare youthful offenders for the workplace. Such prisoners were allowed family visits at least once a week.

31. During the previous year there had been 40 hunger strikes, three suicides and 29 suicide attempts in Slovak prisons, and the authorities had had to use force on 53 occasions. Some 165 complaints of excessive use of force had been investigated in the previous three years and disciplinary action had been taken in 161 of those cases.

32. Conditions in the prisons were monitored by the Ministry of Justice and the inspection department of the prison service. The Procurator's Office was authorized to visit the prisons at least once a month and could order a prisoner released if due process had not been followed or if a court had not authorized an extension of temporary detention. In the preceding 10 years, 420 prisoners had been ordered released, and 10 had received compensation. Members of Parliament could also visit the prisons, but could not order a prisoner's release. Prisoners could

complain to the courts, the administration and the Constitutional Court about their detention. Prisoners could appeal to the European Court of Human Rights. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had inspected the prisons in 1995, and since that time only one anonymous complaint had been made to that Court alleging an unreasonably long detention; a number of complaints had also been made alleging inadequate health care, with 15 having been found justified and 2 not justified.

33. After a court had decided that prisoners were entitled to compensation for abusive deprivation of liberty, the Ministry of Justice had found 442 out of 1,500 complaints to be justified and had paid out some 6.2 million Koruna as of January 2001. Although there had been 2,000 cases of disciplinary measures taken against prison staff in the preceding three years, generally speaking staff tried to be on good terms with inmates. In the preceding 10 years there had been no riots in the prisons.

34. In response to a question about a case where a prisoner had had to wait a few days before receiving medical attention, he said that the prisoner had simply not requested medical attention immediately. He recalled that prisoners must receive medical attention if requested within one working day of the request; doctors could be summoned even on a Sunday. Detainees could choose from among 160 authorized doctors, including psychologists and specialists as well as paramedical staff. Every detainee was therefore assured of adequate medical attention, and any complaints were evaluated by an independent medical expert.

35. Mr. NAGY (Slovakia), referring to questions relating to organ and tissue transplantation, said that there were strict regulations governing such procedures. Organ removal and/or transplant could only be performed for purposes of medical treatment or research by qualified personnel in centres authorized by the Ministry of Health. In cases involving a living donor, organ removal could be performed only if the donor's consent had been given in writing and verified by an expert panel. Removal of the organ was not allowed if the donor's health would be threatened, or if the prospective donor was in prison or detention. It was also illegal for a living donor to be paid for donating an organ.

36. In cases where the donor was deceased, the attending doctor and an anaesthesiologist, who could not be a member of the transplant team, were required to certify that cardiac and respiratory functions had ceased and all resuscitation efforts had failed. A member of a transplant team approved by the Ministry of Health then certified the end of brain activity as the time of death. Even in such cases, no organ or tissue could be removed if permission had been denied by the patient in writing. Nor could any organ or tissue removal occur if the cause of death was an infectious disease or unknown, or if the deceased had died in prison. Export of organs, which was governed by international norms could occur only if no suitable recipient could be found in Slovakia. All documentation relating to the transplant process, from the certificate of death to the transplant team report, had to be retained by the medical centre for at least five years.

37. Mr. PETŐCZ (Slovakia) noted that much of the updated statistical information requested by the Committee could be found in Slovakia's most recent report to the Committee on the

Elimination of Racial Discrimination (CERD/C/328/Add.1). The delay in submission of the current report to the Committee against Torture could be attributed to the sometimes difficult situation in which a newly independent State found itself. Nevertheless, Slovakia had met all its current treaty reporting obligations and would continue to do so in the future.

38. Ms. GAER thanked the delegation for its extensive responses, particularly the information on legal matters and some cases involving the police. While she would have preferred more information on any prosecutions of alleged acts of torture and other universal crimes, she took it that such issues were considered universal jurisdiction offences. She wondered, however, whether the right to make complaints against the authorities was adequately protected in fact and expressed concern about allegations that such complaints were inadequately investigated. She specifically wished to know whether the State party had made any real effort to increase awareness of the existence of the monitoring bodies and the right to make complaints, especially in the light of reports, from the Roma, for example, who were scattered in several hundred small settlements, that obtaining access to an office where a complaint could be lodged was difficult. She also expressed concern as to whether the Government was providing adequate protection to human rights defenders such as Mr. Columbus Igboanusi, an African who had been attacked, or Mr. Muller, a Roma who had received death threats and been threatened with law suits for testifying against the police, and wondered whether such situations could be dealt with by the monitoring bodies.

39. Mr. SLOPOVKSÝ (Slovakia) said that two criminal investigations of alleged abuses by the police in Slovakia were under way and stressed that the internal inspection service of the Ministry of the Interior, which was independent of the police, could also conduct such investigations. With regard to the case of Mr. Igboanusi, he said that complaints had been made by the victim to NGOs, the Ministry of the Interior and the police. Following an initial meeting in November 2000 between the complainant and the police, an investigation was in progress to ascertain whether the attacks against the victim and his family had been physical as well as verbal. It should be noted that in the preceding few years there had been an increase in activity by skinheads and Fascist groups, which were being closely monitored by the police and secret service. Monitoring bodies had been established in every office of the criminal police in major towns and cities, and they were responsible for ensuring that no complaints went unheeded and that appropriate action was taken.

40. Mr. YAKOVLEV, commending the delegation on the impressive statistics it had provided, asked whether the Chamber of Advocates was a State body or run by lawyers themselves. Also, the Committee had been told that if the Procurator's Office took a final decision on a complaint by a detainee, the complaint would not be referred to a court; if, however, the Procurator authorized an arrest, could a complaint about that arrest be referred to a court for further review? He also sought confirmation that police detention centres and investigation centres both reported to the Ministry of the Interior, which would mean that the same authority was responsible for both investigation and execution of punishment.

41. Mr. SLOPOVSKÝ (Slovakia) said that the Chamber of Advocates was self-managed. The Procurator's Office did not authorize an arrest - the courts did, on the basis of a recommendation from the Office which was itself based on a police recommendation. Regarding

places of detention and investigation, he said that only the preliminary 24-hour period of detention was under police control; all further pre-trial detention and investigations were supervised by the Ministry of Justice.

42. Mr. PETŐCZ (Slovakia) welcomed the dialogue initiated with Committee members and said that his Government considered that strict respect for international human rights instruments was a prerequisite for the establishment of a modern democracy and for the individual's search for well-being and freedom.

43. The delegation of Slovakia withdrew.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

44. The CHAIRMAN drew attention to a voluminous scholarly report produced by a Professor Bayevsky for the Office of the United Nations High Commissioner for Human Rights, entitled The United Nations Human Rights Treaty System: Universality at the Crossroads. He had no information as to who had requested the report. However, the secretary of the Meeting of Chairpersons of the Human Rights Treaty Bodies had circulated a summary of those relevant sections of the report, suggesting that the Committee might wish to review them together with the index of the report and consider any matters of obvious importance to the treaty bodies in general and to the Committee in particular.

45. Ms. GAER said that she had glanced at the report and believed that it raised a wide range of basic questions, some bearing on the Committee's rules of procedure. She proposed that one or two meetings should be set aside for a substantive discussion of those issues.

46. The CHAIRMAN said that, given the workload for the current session, that suggestion was not realistic.

47. Mr. MAVROMMATIS said that he, too, had looked at the report and felt that the time had come for the Committee to review its working methods, although that could perhaps not be done at the current session. He agreed with Ms. Gaer that challenging points had been made. The Committee should in general try to be more economical in its consideration of State party reports, avoiding duplication of questions, for instance, so that some time remained in each session for discussion of other important matters.

48. The CHAIRMAN suggested that, as a first step, a small working group should be established, composed probably of himself, Mr. Mavrommatis and one other interested member, to prepare a set of proposals for a review by the Committee of its rules of procedure.

49. It was so decided.

50. The CHAIRMAN informed the Committee that he had received an invitation to a workshop sponsored by the Office of the United Nations High Commissioner for Human Rights on reproductive and sexual health, including a session on women's health. Since he himself could not attend, he suggested that Mr. Rasmussen and Ms. Gaer should attend on behalf of the Committee.

51. It was so decided.

52. The CHAIRMAN, recalling that he himself would be attending the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in August, said that funds might be available to permit one other Committee member to attend.

53. Mr. RASMUSSEN proposed that Mr. Mavrommatis should also attend the Conference.

54. It was so decided.

55. Ms. GAER said that when the Conference was held, she, too, would be pleased to attend as a Committee member, at her own expense, as was done customarily by members of the Committee on the Elimination of Racial Discrimination.

The public part of the meeting rose at 5.45 p.m.