

BULGARIA

CAT A/47/44 (1992)

215. The Committee considered the initial report of Bulgaria (CAT/C/5/Add.28) at its 97th, 98th and 99th meetings, held on 18 and 19 November 1991 (CAT/C/SR.97-99).

216. The report was introduced by the representative of the State party, who stated that the new Constitution of the Republic of Bulgaria, which had entered into force on 13 July 1991, embodied the principle of separation of powers and guaranteed the separate functioning, independence and equality of the judiciary. Moreover, the courts had been brought under the sole authority of the Supreme Judicial Council, which was competent to deal with all matters concerning the appointment, promotion, demotion and reassignment or dismissal and remuneration of judges, prosecutors and examining magistrates.

217. The representative further stated that the Constitution codified the principles of various international standards, including article 16, paragraph 1, of the Convention against Torture. He also indicated that although no special legislation existed in Bulgaria to regulate all aspects of protection against torture and other forms of cruel, inhuman or degrading treatment, the Constitution provided for many ways of dealing with that problem for which new penal and other laws would have to be adopted. Article 29, paragraph 1, of the Constitution, for example, stipulated that no person should be subjected to torture, inhuman or degrading treatment and article 30, paragraphs 2 and 3, of the Constitution provided for protection against unlawful detention of citizens and restrictions of their liberties. Extensions of the time-limit for preliminary investigations during pre-trial detention were still being allowed but questions were being raised about the legal responsibility of the Prosecutor's Office in that regard.

218. With respect to the inadmissibility of inhuman or degrading treatment, the representative noted that article 30, paragraph 4, of the Constitution provided that everyone was entitled to legal counsel from the time he was detained or charged; article 31, paragraph 2, stated that no defendant could be convicted solely by virtue of a confession; and article 31, paragraph 4, provided that the rights of a defendant could not be restricted beyond what was necessary for the purposes of a trial.

219. The representative also noted that some discrepancies existed between the new Constitution and the penal legislation in force. For example, Bulgaria had no specific provisions relating to the prohibition of and criminal responsibility for mental and psychological suffering. It was expected that the modernization of the penal legislation would take account of mental and psychological forms of violence and degrading treatment. Where legislative conflicts arose, the Constitution contained transitional provisions stipulating that the provisions of existing legislation were applicable unless they were contrary to the Constitution.

220. Other recent institutional changes included the establishment of the Constitutional Court on 3 October 1991 which could rule on the compatibility of the Constitution and international instruments concluded by Bulgaria prior to their ratification by parliament and the adoption of the

Acts on the Supreme Judicial Council and on Local Self-Government and Local Administration. The system of courts and tribunals was also undergoing changes. A new penal code, code of criminal procedure and an act on the execution of sentences were in the process of being drafted. There was also an urgent need for new legislation to replace the Juveniles Antisocial Behaviour Act. In accordance with article 5, paragraph 4, of the new Constitution, international instruments ratified by Bulgaria under the constitutionally established procedure were to be considered domestic legislation and would supersede any conflicting domestic legislation.

221. Members of the Committee commended the Government of Bulgaria on its report and thanked its representative for the additional information provided in his oral introduction. They noted with satisfaction that the Government of Bulgaria was considering the possibility of withdrawing its reservations to the Convention. They were also interested in having details of cases, if there were any, in which a court invoked the Convention in its decisions. Similarly, members of the Committee wished to receive an outline of the future legal system in Bulgaria and, in particular, of the body which would be responsible for the enforcement of sentences and for monitoring conditions of detention. Clarification was also requested as to the role of authorities empowered to investigate crimes and of examining magistrates and as to whether prisons came under the responsibility of the public prosecutor. Members wished to receive further information relating to the monitoring of the constitutionality of laws and the organization of the judiciary and concerning medical measures of constraint that were enforced by the courts. They also requested clarification of the number of persons who were being held in police custody at present and wished to know whether the Government intended to repeal the death penalty.

222. In relation to articles 1 and 4 of the Convention, members of the Committee noted the shortcomings in existing Bulgarian legislation with respect to the definition, prohibition and punishment of all forms of torture and recalled that States parties were obliged to ensure that all acts of torture were offences under criminal law and were properly punished. Concerning article 4 of the Convention, in particular, further information was sought as to types of torture-related offences for which a person could be tried as well as concerning the penalties prescribed by article 287 of the Penal Code for officials charged with offences involving torture or other forms of cruel, inhuman or humiliating punishment.

223. With regard to article 2 of the Convention, members of the Committee wished to know what administrative measures were being taken to ensure that torture or any other form of cruel, inhuman or degrading treatment or punishment was not practiced. Moreover, it was observed that the contents of article 16 of the Bulgarian Penal Code, relating to liability for acts involving torture which were carried out in compliance with an unlawful administrative order given by a superior or a public authority, did not seem clear enough to ensure compliance with the requirements of article 2, paragraph 3, of the Convention and firm enough to avoid any doubt about such an order in the mind of a subordinate anxious to respect discipline.

224. In connection with article 3 of the Convention, it was asked whether new legislation being proposed would contain an explicit prohibition of expulsion, return or extradition of a person to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture.

225. Members of the Committee asked for further information on the implementation of articles 5 to 9 of the Convention, in particular on the applicability of universal jurisdiction for perpetrators of the crime of torture. They also wished to know whether the reporting State intended to revise its extradition treaties to include the offences referred to in article 4 of the Convention.

226. With respect to article 10 of the Convention, members of the Committee drew attention to the need to organize special training for the police, and for medical and other personnel and indicated that the United Nations might be able to provide assistance in that regard.

227. Concerning article 11 of the Convention, members of the Committee asked for clarification as to whether new legislation would provide for a preliminary medical examination for detainees. They also requested details of the State party's regulations relating to interrogation rules, and to methods, practices and arrangements for the custody and treatment of arrested or imprisoned persons. It was asked, in particular, whether such rules were consistent with the United Nations Standard Minimum Rules for the Treatment of Prisoners and what the proposed amendments were to article 87 of Regulation No. 5 of 1982, which allowed for the use of rubber truncheons. Statistics relating to suicides in prison could be made available.

228. With regard to article 12 of the Convention, it was asked whether the Bulgarian authorities intended to introduce a system of protection that would involve investigations whenever acts of torture came to light.

229. In connection with article 13 of the Convention, members of the Committee wished to know whether there had been any complaints by victims of torture who had been referred to by Amnesty International. They also wished to receive data on the ethnic composition of victims of torture and of persons who had been sentenced to death in the past, pointing out in that connection that the Committee had received information alleging violations of the rights of the Turkish minority in Bulgaria.

230. Referring to article 14 of the Convention, members of the Committee wished to know whether any compensation had been paid to persons who had been victims of torture under the previous régime and whether there were any specialized institutions or measures available to ensure the full rehabilitation of torture victims.

231. With respect to article 15 of the Convention, members of the Committee noted that domestic legislation did not seem to provide that statements made as a result of torture could be used against a person accused of torture, and sought clarification.

232. Replying to questions of a general nature, the representative of the State party referred in detail to the role of the Constitutional Court, established in Bulgaria in October 1991. The court was competent to take decisions on the constitutionality of the laws. Its role was also essential in relation to international instruments to which Bulgaria was a party as well as all those instruments to which Bulgaria wished to become a party since such instruments had to be submitted for review to the Constitutional Court before being submitted to parliament for ratification. The representative stressed that the provisions of the Convention against Torture had become an integral part of domestic legislation and could be directly invoked.

233. Concerning the organization of the judiciary, the representative explained that the new Constitution had established a Supreme Court of Cassation, a Supreme Administrative Tribunal, courts of appeal, regional courts, military courts and district courts. The Supreme Court of Cassation played a role in coordinating and harmonizing jurisprudence and its decisions were binding on all other courts and members of the Government.

234. With respect to the matter of compulsory medical measures for persons who were not legally responsible, the representative stated that they were applied only on the basis of a decision by the Prosecutor's Office or the judge. The Prosecutor's Office was also responsible for monitoring the enforcement of judicial decisions and ensuring that conditions of detention were in conformity with the law. The sole responsibility for preliminary investigations lay with judges but there were no examining magistrates as such, only "investigators". Preliminary investigations were carried out by the Department of Public Prosecutions, but once a case had been brought it would be in the hands of the courts and ultimately of the Supreme Court. The state security service had been dissolved in early 1991 and since then no security official could open an investigation.

235. The Department of Public Prosecutions also played a role in supervising the way in which the law was enforced in the prisons but prisons were administratively under the control of the Ministry of Justice. Investigators no longer came under the Ministry of the Interior but belonged to a separate administrative department. The relationship between prosecutors and investigators was governed by law. It was the prosecutor's duty to ensure that the activities of investigators were in conformity with the law. Parliament had adopted a moratorium on capital punishment since 1989 but that did not mean that such a sentence could not be handed down.

236. In connection with article 2 of the Convention, the representative stated that the Constitution and Bulgarian criminal law were categorical about the right of a subordinate not to carry out an unlawful order. With regard to administrative measures taken to ensure that torture was not used, he referred to disciplinary measures applicable to public officials found guilty of ill-treatment as well as to educational measures that sought to ensure that prison officials and staff were made aware of their obligations.

237. With respect to article 4 of the Convention, he indicated that the draft penal code and the draft code of criminal procedure, which were expected to be adopted in the first half of 1992, established penalties in keeping with the gravity of offences. Several state officials or members of the police who had committed acts prohibited by the Convention or who had committed abuses of power had been prosecuted and punished during 1990 and 1991 according to the penal provisions in force. Article 287 of the Penal Code, which related solely to crimes committed by judicial officials, was one of the provisions of Bulgarian legislation that was not expressly in conformity with the Convention.

238. Regarding articles 8 and 9 of the Convention and the measures being taken to improve their implementation, the representative stressed that no new legislative text was needed since the Convention was now directly applicable in Bulgaria. In addition, Bulgaria was about to accede to the European Convention for the Prevention of Torture and would also review agreements concluded with other countries. Mutual judicial assistance had already been practiced on a very wide scale with a number of other European countries even where no formal extradition treaties existed.

239. With respect to article 10 of the Convention and the training of medical personnel about the prohibition of torture, the representative indicated that the Ministry of Health, the Ministry of Justice and the Prosecutor's Office had requested assistance from the Council of Europe and the European Committee for the Prevention of Torture to develop an appropriate programme. The involvement of the Committee against Torture in such a programme was also seen as desirable. There were several other planned initiatives, some of which had received United Nations assistance, to improve the training of prosecutors, investigators, and military and prison personnel.

240. Concerning article 11 of the Convention, the representative said that Bulgarian legislation did not provide for a preliminary medical examination of detainees but, since the Convention was now applicable nationally, that situation could only improve. Not only the Standard Minimum Rules for the Treatment of Prisoners but also the European Rules, which were even stricter, were in force in Bulgaria. A delegation of the Council of Europe that visited two Bulgarian prisons in the spring of 1990 had found no breach of such rules. However, in the past, there had been acts of brutality in Bulgarian prisons. Two prison guards had been put on trial for such offences and four others had been dismissed. The maximum period provided for in the Code of Criminal Procedure for the duration of custody was 10 days but under article 30, paragraph 3, of the new Constitution it was only 24 hours. The latter provision obviously took precedence.

241. In connection with article 13 of the Convention, the representative stated that no case of torture or ill-treatment had been reported in Bulgaria since 1989. The cases referred to by Amnesty International dated back to an earlier period and the persons concerned, who were Bulgarians belonging to the Turkish minority, had been released at the end of 1990.

242. With reference to article 14 of the Convention, the representative stated that the Bulgarian Government had allocated 120 million leva for the compensation of victims of the previous régime and referred to a series of other measures adopted for the rehabilitation of such victims.

Concluding observations

243. The Committee thanked the representative of Bulgaria for his full and frank answers to the questions that had been raised. It also took note of the radical reforms and far-reaching changes taking place in the country. In that connection, the Committee recommended that the process of legislative reforms be accelerated and that relevant information should be included in the first supplementary report to be submitted at the end of June 1992. The Committee also expressed the hope that the first supplementary report of Bulgaria would reflect the fact that the comments and suggestions made by it during the dialogue with the State party had been taken into account.

CAT A/54/44 (1999)

151. The Committee considered the second periodic report of Bulgaria (CAT/C/17/Add.19) at its 372nd, 375th and 379th meetings, held on 30 April 1999 and 3 and 5 May 1999 (CAT/C/SR.372, 375 and 379) and has adopted the following conclusions and recommendations.

1. Introduction

152. The Committee welcomes the second periodic report of Bulgaria submitted in accordance with the guidelines for the preparation of State party reports. It appreciates the information provided by the representative of Bulgaria in his introductory statement and the open and fruitful dialogue.

153. However, the Committee regrets that the second periodic report was seven years overdue.

2. Positive aspects

154. The Committee notes with great satisfaction, that the State party has:

(a) Made the declarations recognizing the Committee's competence under articles 21 and 22 of the Convention;

(b) Ratified among other international and regional treaties the European Convention on Prevention of Torture and Other Inhuman or Degrading Treatments or Punishment;

(c) Abolished the death penalty;

(d) Continued to reform and amend its domestic laws in order to protect human rights;

(e) Continued its efforts to educate law enforcement officials in the field of human rights, particularly, with regard to the prohibition against torture.

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

155. The Committee takes note of the economic problems currently existing in Bulgaria and the adverse effect that they have on some of the reforms in progress.

156. It recalls, however, that such difficulties could never justify breaches of articles 1, 2 and 16 of the Convention.

4. Subjects of concern

157. The lack in domestic law of a definition of torture in accordance with article 1 of the Convention and the failure to ensure that all acts of torture are offences under criminal law.

158. The legislative and other measures are not sufficiently effective to ensure the respect of the

provisions of article 3 of the Convention.

159. The lack of measures to ensure universal jurisdiction with regard to acts of torture in all circumstances.

160. The continued reporting from reliable non-governmental organizations on ill-treatment by public officials, particularly the police, especially against persons belonging to ethnic minorities.

161. The deficiencies relating to a prompt and impartial system of investigation of alleged cases of torture and the failure to bring those allegations before a judge or other appropriate judicial authority.

5. Recommendations

162. The Committee recommends that the State party:

(a) Continues its effort to implement the provisions of the Convention, particularly articles 1, 2, 3, 4, 5 and 6, by adopting the necessary legislative measures in that regard;

(b) Continues its policies and efforts to educate law enforcement personnel as well as medical personnel about the prohibition of torture;

(c) Take effective steps to put an end to practices of ill-treatment by the police which still occur;

(d) That all prisoners' correspondence addressed to international bodies of investigation or settlement of disputes be excluded from "censor checks" by prison personnel or other authorities;

(e) Submit its third and fourth periodic reports due on 25 June 1996 and 25 June 2000 respectively on 25 June 2000 at the latest.