

ESTONIA

CAT A/58/44 (2003)

45. The Committee considered the initial report of Estonia (CAT/C/16/Add.9) at its 534th, 537th and 545th meetings, held on 14, 15 and 21 November 2002 (CAT/C/SR.534, 537 and 545), and adopted the following conclusions and recommendations.

A. Introduction

46. The Committee welcomes the initial report of Estonia, but regrets that the report, due on 19 November 1992, was submitted with more than eight years' delay. It notes, however, that the report includes material up to 2001. The Committee acknowledges, in this regard, the difficulties encountered by the State party during its political and economic transition and hopes that in the future it will comply fully with its obligations under article 19 of the Convention.

47. The report, which contains information mainly on legal provisions and fails to address in detail the practical implementation of the Convention and the difficulties encountered in this regard, does not comply fully with the reporting guidelines of the Committee. However, the Committee acknowledges the extensive responses to its questions received from the delegation.

B. Positive aspects

48. The Committee notes the following positive developments:

- (a) The nomination of a Legal Chancellor who also acts in the capacity of an ombudsman;
- (b) The abolition of the death penalty in 1998;
- (c) The possible direct applicability, under the Constitution, of the definition of torture set out in article 1 of the Convention;
- (d) The entry into force on 1 September 2002 of the new Penal Code, which introduces torture as an offence and aims at developing a flexible and individualized penal system that will increase the possibilities for the rehabilitation of prisoners by providing them with an opportunity to work or study;
- (e) The improvement of prison conditions through, in particular, the suppression of special punishment cells, the renovation of detention facilities and the opening of the new Tartu prison, which will conform to recognized international standards. The Committee also welcomes the entry into force on 1 December 2000 of the Imprisonment Act, based on the 'European Prison Rules', as well as the power given to the Legal Chancellor and members of the Health Protection Office under the 2000 Internal Rules of Detention to have free access to all rooms in detention centres;

(f) The publication of the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the responses by the State party, which will enable a general debate among all interested parties;

(g) The commitment of the State party to continue its practice of publishing the concluding observations of the United Nations treaty bodies, as well as the reports submitted by Estonia to those bodies, on the web site of the Ministry for Foreign Affairs;

(h) The ratification by the State party on 30 January 2002 of the Rome Statute of the International Criminal Court;

(i) The assurance given by the State party that due consideration will be given to the possible ratification of the Optional Protocol to the Convention.

C. Subjects of concern

49. The Committee is concerned that:

(a) Article 1 of the Convention has not yet been directly applied by magistrates, and that the direct application of international human rights treaties, although possible in theory, is not widely practised in the courts;

(b) The definition of torture contained in article 122 of the Penal Code as "continuous physical abuse or abuse which causes great pain" does not seem to comply fully with article 1 of the Convention. The Committee notes that, according to the delegation, article 122 protects physical as well as mental health, but is of the opinion that the wording of the article may lead to restrictive interpretations as well as confusion;

(c) Isolated cases of ill-treatment of detainees by officials still occur in police stations. Although violence, including sexual violence, between prisoners in detention facilities and between patients in psychiatric facilities has diminished, the high risk of such incidents still remains. Conditions in old police detention centres are still of concern;

(d) The point at which a suspect or detainee can obtain access to a doctor of choice - assuming one is available at all - is not clear. In any event, there are legal exceptions to the right to have access to a lawyer and to "a person of choice" that could be abused by police. In general, no precise time frame is set for the exercise of the rights of persons detained in police custody;

(e) Under Estonian law, illegal immigrants and rejected asylum-seekers may be detained in expulsion centres until deported; such persons may be subjected to long periods of detention when expulsion is not enforceable;

(f) Persons of Russian nationality and stateless persons (overlapping categories) are overrepresented

in the population of convicted prisoners;

(g) No specific body seems to be in charge of collecting data in detention facilities, whether police stations, prisons, or psychiatric facilities.

D. Recommendations

50. The Committee recommends that the State party:

(a) Incorporate into the Penal Code a definition of the crime of torture that fully and clearly responds to article 1 of the Convention, and provide extensive training for judges and lawyers on the content of the Convention as well as its status in domestic law;

(b) Ensure that law enforcement, judicial, medical and other personnel who are involved in the custody, detention, interrogation and treatment of detainees or psychiatric patients are trained with regard to the prohibition of torture and that their recertification includes both verification of their awareness of the Convention's requirements and a review of their records in treating detainees or patients. Training should include developing the skills needed to recognize the sequelae of torture;

(c) Ensure close monitoring of inter-prisoner and inter-patient violence, including sexual violence, in detention and psychiatric facilities, with a view to preventing them;

(d) Continue the renovation of all detention facilities in order to ensure that they conform to international standards;

(e) Strengthen the safeguards provided in the Code of Criminal Procedure against ill-treatment and torture and ensure that, in law as well as in practice, persons in police custody and in remand have the right of access to a medical doctor of their choice, the right to notify a person of their choice of their detention and access to legal counsel. Legal exceptions to these rights should be narrowly defined. Persons deprived of their liberty, including suspects, should immediately be informed of their rights in a language that they understand. The right of criminal suspects to have a defence counsel should be extended to witnesses and to persons who have not yet been charged. The State party should introduce a precise chronology that would specify at what point the rights of all detainees may be exercised and must be respected;

(f) Elaborate a code of conduct for police officers, investigators and all other personnel involved in the custody of detainees;

(g) Introduce legally enforceable time limits for the detention of illegal immigrants and rejected asylum-seekers who are under expulsion orders;

(h) Fully examine and report on the reasons for the overrepresentation of persons of Russian nationality and stateless persons in the population of convicted prisoners;

- (i) Consider ratifying the 1961 Convention on the Reduction of Statelessness;
- (j) Create a mechanism for the collection and analysis of data on matters relating to the Convention in detention and psychiatric facilities;
- (k) Consider making the declarations under articles 21 and 22 of the Convention.

51. The Committee recommends that the State party, in its next periodic report, which will be considered as the fourth periodic report and should be submitted by 19 November 2004:

- (a) Provide detailed information concerning, in particular: (i) the precise mandate and the results of the activities undertaken by the Legal Chancellor and the members of the Health Protection Office when visiting detention centres; (ii) the results of the activities of the Legal Chancellor in dealing with complaints of ill-treatment or torture by State officials;
- (b) Explain how, in practice, the impartiality and objectivity of investigations of complaints of ill-treatment made by persons detained in police custody are ensured at all times;
- (c) Provide statistical data disaggregated, inter alia, by gender, age, nationality and citizenship, on complaints of torture and ill-treatment by State officials, on the prosecutions initiated in response, and on the penal and disciplinary sentences pronounced.

52. The Committee further recommends that the State party widely disseminate in the country any reports submitted by Estonia to the Committee, the conclusions and recommendations of the Committee, as well as the summary records of the review, in appropriate languages, including Estonian and Russian, through official web sites, the media and non-governmental organizations.