

FINLAND

CAT A/46/46 (1991)

182. The Committee considered the initial report of Finland (CAT/C/9/Add.4) at its 65th and 66th meetings, held on 16 November 1990 (CAT/C/SR.65 and 66).

183. The report was introduced by the representative of the State party, who provided detailed information on social and economic conditions in his country. He noted, in particular, that there was a clear-cut separation between the executive, legislative and judicial powers in Finland and that the concept of torture was completely alien to Finnish society.

184. International human rights instruments to which Finland was a party, including the Convention, had been incorporated into the body of Finnish law and were directly applicable as domestic legislation. They had been expressly referred to in very few court cases thus far, but the present Finnish Government and the Parliamentary Ombudsman had been playing a pioneering role in disseminating information about them in order to make judicial authorities and public opinion aware of their provisions, their implementation mechanisms and their recourse procedures. Remedies were available to victims of human rights violations and civil or criminal proceedings could be instituted by private individuals as well as by Public Prosecutors. There were also administrative remedies in cases of complaints of official misconduct. Under Finnish law compensation was comprehensively provided, with primary responsibility for damages resulting from unlawful acts or omissions committed in the exercise of public functions resting with the authorities. Well-developed welfare institutions and public medical care were available to provide rehabilitation measures.

185. Referring to the incorporation into internal law of the self-executing provisions of international human rights instruments, including the provisions of the Convention, the representative noted that in case of conflict the interpretation indicated or required by the Convention would prevail but that before and during the process of the ratification of the Convention several areas of legislation, such as the Penal Code, rules of evidence, extradition law and immigration law, had been carefully scrutinized. In the case of the Penal Code, the crucial issue had been whether there was a need for a specific reform of the Penal Code was still under way, the issue was still open at the moment. Finland's Extradition Act also had some possible shortcomings but these were remedied by the fact that article 3 of the Convention was directly applicable and prevailed over the relevant provisions of the Aliens Act as lex posterior. With regard to the establishment of universal jurisdiction, the representative drew attention to the link between its practical application and the question of the adoption of a specific definition of torture in Finland.

186. Legislation under which a person condemned to life imprisonment could be sentenced to solitary confinement for a maximum duration of four years had recently been repealed. Minors under 18 years of age could now be sentenced to terms of imprisonment or other forms of custody only in very exceptional circumstances. The establishment of an independent investigatory body

to deal with allegations of acts of torture was under consideration. The general rule relating to the free evaluation of evidence was regarded by the legal profession in the country as a sufficient guarantee against making use of statements elicited through torture.

187. Members of the Committee commended the Government of Finland for its extremely comprehensive and instructive report and thanked the representatives of the reporting State for their informative introduction. The amount and the quality of information provided showed the sincere desire of Finland to eradicate torture and its keen awareness of the areas in which protection was particularly necessary.

188. Members of the Committee wished to receive some clarification about the nature of the applicability of the Convention in Finland since some doubts subsisted as to whether the Convention carried the force of internal law and it appeared that a distinction was made among articles of the Convention that were directly applicable, others that were not directly applicable, and still others that gave rise to uncertainty. It was asked, in particular, whether the adoption of a special Act to implement the Convention had in any way changed the procedure for ascertaining that officials and authorities complied with the law and did not exceed their powers. In addition, information was requested on the role of the National Research Institute of Legal Policy, especially in relation to torture.

189. With reference to the debate raised in Finland about the need to adopt a definition of torture under criminal law, some members of the Committee recalled that torture was often used as a means of intimidating or even destroying a person and expressed the view that a specific and comprehensive definition of torture had to be included in the Penal Code, particularly to prohibit the increasingly common psychological forms of torture. They observed that to assimilate torture to other acts of violence disguised its exceptional nature and reduced the moral stringency of the legislation governing it. In most countries, the provisions of internal law were not sufficient to prohibit torture as defined by article 1 of the Convention and the adoption of a precise definition of torture in Finland could encourage other countries to do so. As an alternative, some members of the Committee expressed the view that Finland could supplement or amend existing provisions on acts of violence in such a way as to include all the acts of torture of ill-treatment covered by article 1 of the Convention.

190. In connection with article 2 of the Convention, further information was requested about the roles of the Parliamentary Ombudsman and the Chancellor of Justice, their respective areas of competence, and the bill to extend their powers which had been recently submitted to the Finnish Parliament. It was asked, in particular, whether it was correct to assume that the Chancellor of Justice could not take initiatives, what specific measures the Parliamentary Ombudsman could take against judges or whether his powers were merely investigatory, and what action the Finnish Government had taken in respect of complaints brought to its attention by the Ombudsman. In addition, several questions were asked about prerequisites for arrest and pre-trial investigations and the rights of detainees. Further information was also requested regarding the conditions of indeterminate preventive detention and the possibility of appeal, the duration of police interrogation, pre-trial detention and the conditions governing police custody and solitary confinement, and whether there had been in Finland any specific cases in which the provision stating that an order by a superior could not be construed to justify torture had been invoked.

191. Referring to the Finnish Extradition Act, members of the Committee observed that its provisions were restrictive by comparison with those of article 3 of the Convention. They expressed the hope that some shortcomings of the Act, especially in respect of the principle of non-refoulement where the threat of torture was concerned, would be remedied by the enactment of additional human rights legislation.

192. Members of the Committee referred to a provision of the Finnish Penal Code whereby certain acts constituted crimes only once they had been accomplished and observed that such a provision did not seem to be in conformity with article 4 of the Convention. They also asked what penalty applied when a victim of aggravated assault and battery had died.

193. With regard to article 9 of the Convention, members of the Committee were of the view that Finnish legislation on mutual assistance was restrictive because it appeared to require a specific treaty on the subject and asked whether the Convention would qualify as the basis for such assistance.

194. In relation to article 10 of the Convention, information was requested specifically about the inclusion of education regarding the prohibition of torture in the training of medical personnel and prison staff.

195. In connection with articles 12 and 13 of the Convention, it was asked whether the allegations against the police referred to in the report concerned mild ill-treatment or grave misconduct, what the outcome of the investigations had been and what sentences, if any, had been handed down. It was asked also what action had been taken on the proposal to establish an independent investigatory body, whether the victim's right to initiate legal proceedings even in the event that the Public Prosecutor decided not to press charges had been exercised in practice and which legislative provision guaranteed it.

196. As for article 14 of the Convention, it was inquired whether there were in Finland any specific provisions on medical rehabilitation as distinct from merely financial rehabilitation, and how victims were compensated for mental injury.

197. With reference to article 15 of the Convention, and noting that minors in Finland could never be interrogated without the presence of a witness, members of the Committee asked how the witness in question was chosen. They also pointed out that, if article 15 was not directly applicable, legislation should be enacted to guarantee that evidence obtained as a result of torture could not be invoked in legal proceedings.

198. In his reply, the representative of Finland clarified that in his country only certain provisions of the Convention could be invoked directly, and it was for the judicial authorities to decide on their scope in each case. However, the fact that the Convention might either be invoked directly or for interpretative purposes in connection with the application of the relevant provisions of national legislation made little difference in its effects.

199. With reference to article 1 of the Convention, the representative indicated that the question

concerning the inclusion of a precise definition of torture in the new Penal Code currently under preparation would be considered by parliament in due course.

220. Referring to issues raised in connection with article 2 of the Convention, the representative explained that the powers of the Chancellor of Justice and the Parliamentary Ombudsman overlapped to a considerable extent in order to give aggrieved citizens a choice as to the authority to which they would submit their complaints. The Bill referred to in the report was primarily a technical measure designed to ensure a better distribution of resources and to avoid duplication, bearing in mind the formidable number of complaints lodged. Neither the Parliamentary Ombudsman nor the Chancellor of Justice had the capacity to impose their views, but both were respected authorities who played a guiding and advisory role in the Finnish legal system.

201. Police custody in Finland could not exceed four days. A person so remanded was entitled to the assistance of counsel during questioning unless the authorities responsible for the investigation found him untrustworthy or considered that the case called for a special procedure. The Pre-Trial Investigation Act regulated the right of a person in police custody to communicate with his family or to be examined by a doctor. Persons in pre-trial detention constituted 10 per cent of the prison population which amounted to 4,000 persons out of a total Finnish population of 4.9 million. Persons in preventive detention could appeal to a special court which could grant them parole.

202. Referring to articles 4 and 5 of the Convention, the representative provided information on penalties laid down in the Penal Code for various offences noting, in particular, that while assault that was actually perpetrated was a punishable offence, attempted assault was not. There was no provision of the Penal Code specifically establishing universal jurisdiction.

203. With regard to article 10 of the Convention, the representative stated that Finland was applying provisions prohibiting doctors from any form of complicity in torture. Prison officials were given special training courses at a special training centre run by specialists in international human rights laws.

204. With reference to articles 12 and 13 of the Convention, the representative indicated that the great majority of complaints lodged against members of the police concerned abuse of authority, although sometimes the alleged offences involved inhuman treatment under the Convention. Culprits were severely censured and were given a warning or reprimand by the Parliamentary Ombudsman or the Chancellor of Justice.

205. As for article 14 of the Convention, the representative stated that Finnish legislation provided for compensation to be granted to torture victims, both for material damage caused and for pain inflicted. The current trend was towards a broad interpretation of the offence of torture for compensation purposes.

206. Referring to article 15 of the Convention, the representative stated that the witness who attended the interrogation at the request of the investigator or the person questioned was usually chosen from among members of the police forces. The presence of a witness during the interrogation was linked to the nature of the preliminary investigation. Any statement made out of court was in principle regarded as inadmissible unless confirmed in court. Any statement found to

have been extracted under duress was dismissed as evidence. A decision to incorporate in the Code of Judicial Procedure an explicit provision making any deposition obtained through torture inadmissible would be a purely symbolic gesture since such depositions were never taken into account under the existing system based on the free assessment of evidence.

Concluding observations

207. In conclusion, members of the Committee expressed the view that both the report and the dialogue established with the representatives of Finland had been extremely interesting and could serve as a model for other reporting States. They added that in the next periodic report of Finland, clarifications would be desirable concerning the application of article 1 of the Convention, particularly the definition of torture under internal law; the application of articles 3 to 8, particularly the question of universal jurisdiction; the application of article 9, particularly the question of mutual judicial assistance between States parties and the application of article 15. Finally, they expressed the wish to receive the revised Penal Code of Finland as soon as it was adopted.

208. The representative of Finland assured the members of the Committee that due account would be taken of their comments in the preparation of his Government's next periodic report.

CAT A/51/44 (1996)

120. The Committee considered the second periodic report of Finland (CAT/C/25/Add.7) at its 249th and 250th meetings, on 2 May 1996 (CAT/C/SR.249 and 250), and has adopted the following conclusions and recommendations:

1. Introduction

121. The Committee welcomes the detailed report of the Government of Finland outlining the new measures and developments relating to the implementation of the Convention that have taken place in the State party since its submission of the initial report in October 1990. The report under consideration was prepared in accordance with the guidelines established by the Committee and provided the additional information that had been requested by the Committee. The Committee also welcomes the core document (HRI/CORE/1/Add.59) submitted by the Government providing a country profile of Finland.

2. Postive aspects

122. The Committee did not receive any information on allegations of torture in Finland.

123. The Committee takes note with satisfaction of the important steps taken by the State party to develop further the legislative measures relating to the implementation of the Convention. Among these measures, the Committee notes with particular satisfaction the amendment to the Constitution to incorporate the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

124. The Committee also considers important that the amendment introduces at the highest legislative level the "normality principle", according to which the conditions in places of detention must be similar as far as possible to those existing in the community at large.

125. The incorporation in the Preliminary Investigation Act of detailed provisions concerning the correct procedure for interrogation is also a matter of satisfaction.

126. The Committee further considers as an important event the establishment of the Rehabilitation Centre for Torture Victims.

127. The Committee takes note with satisfaction of the intention of the Finnish Government to abolish the system of administrative detention.

3. Subjects of concern

128. In the criminal law of Finland there is no provision containing a specific definition of torture.

129. Under Finnish law there are no provisions specifically prohibiting the use of statements obtained under torture in judicial proceedings. The Committee considers that such a provision could

constitute a strong preventive measure against acts of torture.

130. Although the abolition of preventive detention for dangerous recidivists has been applied in practice, there is no information on initiatives taken by the Finnish authorities to modify the relevant provisions in the Dangerous Recidivists act.

131. The Committee is concerned about the absence of sufficient legal protection of the rights of persons who are denied asylum through the use of a list of safe countries in which those persons could be sent back, in the Immigration Act of Finland.

Recommendations

132. The Committee recommends that the State party incorporate into its legislation the definition of torture as a specific crime committed by a public official or other person in an official capacity in accordance with article 1 of the Convention, considering as insufficient the definition of assault provided in the Criminal Code of Finland.

133. The completion of the procedure for the abolition of preventive detention is also recommended.

134. The establishment of an independent agency to investigate offences allegedly committed by the police, a question that is now under consideration in Finland, is likewise considered advisable by the Committee.

135. The Committee supports the idea of the reinforcement of the Immigration Ombudsman's Office and the establishment of an office of a special human rights ombudsman in the State party.

136. The Committee recommends that a legal protection be provided to those persons who requested asylum and who are sent back to a country included in the list of safe countries, by decision of the competent authority. Decisions on expulsion, return (refoulement) or extradition should take into account the provisions of article 3 of the Convention.

137. The Committee recommends that a special provision be incorporated into the State party's criminal procedure, concerning the exclusion from judicial proceedings of evidence which has been established to have been obtained, directly or indirectly, as a result of torture, as provided for by article 15 of the Convention.

CAT A/55/40 (2000)

51. The Committee considered the third periodic report of Finland (CAT/C/44/Add.6) at its 397th, 400th and 402nd meetings on 11, 12 and 15 November 1999 (CAT/C/SR.397, 400 and 402) and adopted the following conclusions and recommendations.

1. Introduction

52. The Committee welcomes the third periodic report of Finland, which was submitted on time and is in full conformity with the Committee's guidelines for the preparation of periodic reports. The Committee also welcomes the fruitful and open dialogue between the experienced representatives of the State party and itself.

2. Positive aspects

53. The Committee notes with satisfaction the following:

- (a) The Act on the Enforcement of Sentences;
- (b) The amendment of the Mental Health Act and the Act on State Mental Hospitals;
- (c) The amendment of the Military Discipline Act;
- (d) The reform of the Finnish public prosecution system;
- (e) The measures taken to improve prison conditions for Roma and foreigners;
- (f) The decrease in the prison population in Finland;
- (g) The efforts made in educational programmes for the police and personnel dealing with asylum seekers;
- (h) The legal measures taken to accommodate asylum seekers in places other than prison;
- (i) The Finnish practice of making all statements of the accused available to the judge who, according to the law, must take into account only the statements made freely, as required by article 15 of the Convention.

3. Subjects of concern

54. The Committee is concerned about the following:

- a) The lack of a definition of torture, as provided in article 1 of the Convention, in the penal legislation of the State party and the lack of a specific offence of torture punishable by appropriate penalties, as required by article 4, paragraph 2, of the Convention;

(b) The use of isolation in certain cases of pre-trial detention, initially authorized by a judge, but whose terms of implementation are decided upon administratively.

4. Recommendations

55. The Committee recommends that:

(a) Finland establish adequate penal provisions to make torture as defined in article 1 of the Convention a punishable offence in accordance with article 4, paragraph 2, of the Convention;

(b) The law governing isolation in pre-trial detention places be changed by establishing judicial supervision for the determination of the isolation, its duration and its maximum period;

(c) In order to reinforce the Conventions objectives to ensure the proper investigation of incidents which may amount to a breach of Article 16 of the Convention, the State party should declare illegal and prohibit organizations which promote and incite racial discrimination, as well as the dissemination of ideas based on racial superiority or hatred, as recommended to the State party by the Committee on the Elimination of Racial Discrimination in March 1999.