

GERMANY

CAT A/45/44 (1990)

175. The Committee considered the initial report of the German Democratic Republic (CAT/C/5/Add.13) at its 30th and 31st meetings, held on 16 November 1989 (CAT/C/SR.30 and 31).

176. The report was introduced by the representative of the State party, who stated that far-reaching changes were taking place within his country, many of which were closely linked with human rights. He provided additional information to the report, which had been prepared one year previously, on important amendments to the country's legislation.

177. He explained that the relevant provisions in the Penal Code had been brought into line with articles 1 and 16 of the Convention. Furthermore, the prohibition of torture and other cruel, inhuman or degrading treatment or punishment had been explicitly included in article IV of the Penal Code, under the Fifth Criminal Law Amendment Act of 14 December 1988. The new legal provisions of the Act had been published in the Law Gazette of 28 December 1988, and had been comprehensively covered in the mass media. Under a newly created article 91 a of the Penal Code, the definition of the term "torture" was now incorporated in national law. The Code of Criminal Procedure prohibited the use of confessions made under coercion, and any legal official or member of an investigatory body using such means was liable to imprisonment for a term of up to five years. Similarly, under the new article 91 a of the Penal Code, abuse of authority carried a penalty of imprisonment for a term of up to 10 years.

178. The members of the Committee welcomed the recent legislative changes described by the representative, particularly the legal ban on torture. The report, although brief, had been admirably supplemented by the oral presentation, and the annexes, containing the texts of relevant laws, were very helpful. Members requested further clarification on various issues relating to the implementation of the Convention in the German Democratic Republic.

179. They asked, in general, whether additional domestic legislation was required to give international instruments the force of law in the country. Clarification was requested on the difference between State courts and social courts, and on their operation and composition. An explanation was sought on whether a complaint constituted an appeal against a court decision, and whether there were cases where the law forbade complaints being lodged against the decisions of a court. Members asked what machinery existed, under the Act of Petitions, for citizens to exercise the right to co-determination and participation in society; what specific rights the Act conferred on the citizen; and what impact it had on efforts to combat torture. It was inquired whether the right, under article 50 of the Constitution, of all citizens to the assistance of State and social organs for protection of their liberty and inviolability also applied if that right were infringed by a public official. Members wished to know what measures had been taken by the Government against citizens or foreigners who might be guilty of nazism or militarism; whether extreme instances of xenophobia were punishable in the same way as acts of torture and whether they were exempt from statutory limitations in the same way as war crimes; and whether punishment for crimes against

peace and humanity also applied to all crimes with an international dimension. Members asked whether the list of various types of evidence admissible in criminal cases, provided in annex III of the report, was exhaustive. Information was requested on the effect of the Government's decision to abolish the death penalty in 1987, and its current views on the issue. Members also wished to know whether the principle of equality of all citizens applied in time of war or other socio-economic circumstances.

180. With reference to article 2 of the Convention, members asked whether the penalties for coercive acts committed by judges or members of investigatory bodies were decided by the presiding judge.

181. With regard to articles 3 and 5 of the Convention, members inquired whether the German Democratic Republic assumed universal jurisdiction over torturers, and whether there had been actual cases of refusal to expel or extradite persons to other States on the grounds that they might be subjected to torture in those States.

182. In connection with article 4 of the Convention, information was sought on whether acts of torture were punished whatever their gravity. Members asked whether any law-enforcement officials had been prosecuted for alleged abuse of authority. They sought clarification of what was meant by arrest in the case of disciplinary offences, as provided for in article 32 of the Penal Execution Act, and requested further information on the disciplinary offences in question.

183. With reference to article 6 of the Convention, members inquired whether measures had been taken to implement that article, in particular to prevent a person suspected of torture from leaving the country. Members wished to know who had authority to order detention. They also requested information on the maximum length and conditions of incommunicado detention. It was also asked whether measures had been taken to implement article 7 of the Convention.

184. With regard to article 10 of the Convention, members wished to know how that article was implemented in the German Democratic Republic, particularly with regard to the training of medical personnel in legislation on the crime of torture or ill-treatment, and whether there had been any attempt to disseminate information on such legislation in schools.

185. With regard to article 11 of the Convention, members requested specific information on the following points: arrangements for the medical examination of detainees; monitoring of the treatment of detainees; whether prisoners were punished for refusing to work; whether visits by relatives were allowed in cases of illness; punishment for disciplinary offences in prison and whether an appeal could be made against such punishment; whether legislation had been brought into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners, particularly solitary confinement and restricted diets; and rehabilitation measures or release from prison.

186. With reference to article 14 of the Convention, members sought clarification on how the State authorities reconciled being party to an action for damages with the fact of providing compensation for victims in such cases. It was asked why compensation was regulated in advance by articles 1 and 3 of the Act on State Liability rather than in accordance with the gravity of the damage suffered. Members wished to know whether any time-limits were placed on claims for compensation, and why

such compensation could be sought only from the body or institution concerned and not from the individual responsible.

187. Finally, with regard to article 15 of the Convention, concern was expressed about confessions obtained under torture being accepted by the courts, and members wished to know in particular how article 243 of the Penal Code dealt with offences of coercion, and the penalties involved, and whether a person could be prosecuted simultaneously for two offences.

188. In his response to the general questions raised by members of the Committee, the representative explained that social courts in the German Democratic Republic ruled on minor offences; they were not empowered to take decisions on abuse of authority, and their functions were set out in a special Act passed in 1982. On the complex question of appealing against a judicial decision, he stated that the law on criminal procedure provided for a uniform system of appeal and made no distinction between an appeal and a request for annulment. He further explained that article 305 of the Code of Criminal Procedure only excluded the possibility of contesting a decision by the Supreme Court on an appeal, in which case there could be no recourse. The representative declared that, with few exceptions, all legal proceedings in the punishment of Nazi crimes and war crimes had now been concluded and that the law had thus fulfilled its anti-Fascist function. In all, more than 12,000 persons had been convicted of war crimes and crimes against humanity. He stressed that offences related to neo-nazism were severely punished. He indicated that the principle of universality applied to all international crimes covered by the draft code of crimes against peace and humanity prepared by the International Law Commission; and that under article 80 of the Penal Code aliens could be prosecuted, in certain circumstances, for an act committed abroad, taking into account political factors and the close co-operation that should exist between the State and public opinion. The representative explained that article 24 of the Code of Criminal Procedure provided for a full list of admissible evidence in courts, although in the revised Code the prohibition of certain evidence would be regulated more strictly. He declared that, following the abolition of the death penalty in 1987, there had been no increase in the number of serious crimes, including homicide, and that the measure had had a favourable effect on the political climate.

189. In response to questions raised under articles 3 and 5 of the Convention, the representative stated that there had been no case of extradition in recent years. Some provisions on extradition in mutual assistance treaties on criminal matters had been concluded with a number of countries; such provisions did not allow extradition for cases of torture within the meaning of the Convention.

190. In reply to questions concerning article 4 of the Convention, the representative stated that, following the mass demonstrations of October 1989, 338 complaints of ill-treatment had been lodged. Subsequently, 18 investigations had begun, and one police chief had been suspended from duty. The Public Prosecutor was required to report to the People's Chamber on the results of the proceedings instituted.

191. In his response to questions raised concerning article 6 of the Convention, the representative indicated that only judges could issue warrants for detention and that the law in the German Democratic Republic made no provision for a maximum length of pre-trial detention, although in general this did not exceed three months. Under the revised Code of Criminal Procedure there would be a review of arrest and detention procedures within the meaning of habeas corpus, and

article 126 of the Code provided that any person arrested must be brought before a judge within 24 hours for a decision on pre-trial detention or release. He explained that there was no incommunicado detention in the country.

192. With regard to questions raised in connection with article 10 of the Convention, the representative stated that members of the police force and prison staff received appropriate training on the rules of conduct to be respected in the exercise of their functions, and that continuous training was provided on a scientific basis. Special attention was given to training medical personnel to detect signs of torture, and prison establishments employed specialized physicians able to recognize the effects of violence and the after-effects of torture.

193. Turning to the specific questions raised under article 11 of the Convention, the representative explained that, although there was no incommunicado detention in the German Democratic Republic, detainees could be held in separate quarters for health or personal reasons or, in cases of violence or attempted escape, could be isolated for not more than 15 days, when an attorney had to be informed. Their treatment in such circumstances was the same as for other prisoners: the detainees received regular medical checks and were informed of their right to contest the measures applied to them and to submit petitions under the Penal Execution Act. Solitary confinement was a disciplinary measure and could not exceed 21 days, before which a medical check was undertaken; if illness occurred during confinement it had to be discontinued; visits were not prohibited. He emphasized that all detainees were medically examined before going to trial and a committee was to be established responsible for monitoring the activities of the police and security organs. Under articles 63 and 64 of the Penal Execution Act, the Prosecutor's services were responsible for monitoring the living conditions of prison establishments, and article 34 of the Act covered living conditions, including food, exercise, medical care, leisure time, paid work and the practice of religion. He stated that, under article 2 of the Act, work for detainees was not only a right but also a duty and therefore disciplinary measures could be applied for refusal to work. Finally, he stated that since 1977 there had been a specific law governing the rehabilitation of detainees.

194. In response to questions raised under article 14 of the Convention, the representative indicated that, in cases of abuse of authority by State officials, compensation was granted under the Act on State Liability, and that, within four weeks following a finding of damage, the injured party received compensation paid by a State insurance fund. Following the recent events which had resulted in abuse of authority, the Public Prosecutor had stated publicly that the victims of such abuse would be compensated for the physical and psychological damage suffered in so far as the State authority was involved.

195. In concluding their consideration of the report, the members of the Committee thanked the members of the delegation for their co-operation and for the information provided in the report and in their responses to questions. The progressive nature of certain standards, in force or envisaged, was impressive, particularly the creation of a monitoring committee on police activities, the abolition of incommunicado detention, and the advanced prison system. The members stated that, in the changes which were taking place in the country in terms of greater respect for human rights, the provisions of the Convention would provide a firm support for the ongoing democratic process.

196. The representative emphasized the fundamental importance of exchanges of information and

experience in the field of human rights and stated that the German Democratic Republic could now consider making the declaration under article 21 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

CAT A/48/44 (1993)

161. The Committee considered the initial report of Germany (CAT/C/12/Add.1) at its 128th and 129th meetings, on 16 November 1992 (see CAT/C/SR.128, 129 and 129/Add.2).

162. The report was introduced by the representative of the State party, who stressed that the prohibition of torture and other cruel, inhuman or degrading treatment or punishment was a feature of the German Constitution and other legislation. That prohibition was part of the principle that human dignity should be respected, as established by the Federal Constitutional Court. He then pointed out that the German Penal Code did not contain a general offence of “torture”; however, there were specific offences such as assault and battery in office which would be penalized in the manner provided for by the Convention. In addition, under the provisions on remand custody, arrest warrants had to meet certain requirements, confinement could be reviewed at any time and it was more difficult for remand custody to be extended beyond six months. Prisoners in remand custody or sentenced in connection with terrorist offences were treated in the same way as other prisoners.

163. Legal remedies in Germany were not restricted to the domestic level. Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms was directly applicable in Germany and citizens could file applications with the European Commission on Human Rights. Germany had also recognized the jurisdiction of the European Court of Human Rights in accordance with article 46 of the European Convention. According to the statistics of the European Court, there had been no instance where Germany had been deemed to have violated the prohibition against torture contained in article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. One case was, however, pending.

164. Furthermore, the representative referred to training and instructions given to State employees and public officials to ensure that torture was not practised. With regard to the manifestations of violence directed against foreigners which had recently taken place in the country, he stated that both the Federal Government and the Länder were taking great pains to put an end to such acts. He also referred to sections 51 (1) and 53 (1) of the Aliens Act, which contained provisions implementing article 3 of the Convention.

165. Members of the Committee generally wished to know why the German Penal Code did not contain specific provisions for combatting torture, which was an offence specifically mentioned in international human rights instruments and defined by the Convention against Torture, whether German legislation was directly applicable in the five new Länder, whether the current State assumed jurisdiction for acts of cruel or inhuman punishment committed by officials of the former State, with regard in particular to prisoners and detainees, and whether compensation was being paid to the victims of the former regime. Information was also requested on the workings of the German judiciary and on measures concerning legal aid. It was particularly asked whether the Convention took precedence over the German Constitution.

166. In connection with article 2 of the Convention, members of the Committee sought clarification on the concept of “remand custody” in Germany and on the use of force by the police in accordance with the law. They also wished to know whether there was any circumstance that allowed the police

to hold a person incommunicado and for how long, and how long a judge could keep a person in custody.

167. With regard to article 4 of the Convention, members of the Committee wondered whether, in the absence of specific provisions on torture, some gaps existed in German legislation in respect of prohibiting certain aspects of torture, such as psychological pressure, threats and intimidation. They also wished to know what other persons in office, apart from teachers, had been convicted by German courts for assault and battery and what the maximum sentence was for serious cases of bodily harm caused by a public official.

168. With reference to articles 5, 6, 7 and 8 of the Convention, clarification was requested on the full implementation of their provisions by German legislation. It was wondered, in particular whether the principle of discretionary prosecution was not in conflict with certain obligations under the Convention.

169. In relation to article 9 of the Convention, it was recalled that its provisions required that judicial assistance should be granted to all other States parties to the Convention, regardless of whether a treaty on mutual assistance existed, and it was asked whether that requirement was being met in accordance with the principle that the provisions of a convention to which Germany was a party were applied directly.

170. With regard to article 10 of the Convention, it was pointed out that its provisions specifically required medical personnel and the police to be educated about torture and the treatment of torture victims. It was also asked whether there was in Germany a code of ethics for the police and prison staff and whether and effort was being made in faculties of law to instil awareness of the question of torture.

171. As for article 11 of the Convention, more information was requested on measures to prevent violations of human rights during interrogations by the police.

172. Turning to article 14 of the Convention, members of the Committee wished to know whether the compensation referred to in the report concerned torture only or also include other forms of ill-treatment, which court had jurisdiction to hear requests for compensation and whether such cases could be brought before criminal, civil and administrative courts at the same time.

173. In his reply, the representative of Germany stated that, in his country, the concept of torture was hedged about by the body of extremely strict rules; he referred, in particular, to article 104, paragraph 1, of the Basic Law which provided that a person who had been arrested could not be subjected to mental or physical ill-treatment. He also explained that, since the signature of the Unification Treaty on 31 August 1990, the five new Länder which previously constituted the territory of the German Democratic Republic had been united with the Federal Republic of Germany and all the international treaties ratified by the latter and all the laws and codes which had been in force there were fully applicable to them. A number of exceptions were, however, admitted by the Unification Treaty to take into account difficulties connected with the transition period. The applicability of the Convention against Torture in Germany was guaranteed by article 59, paragraph 2, of the Constitution, which provided for the procedure to incorporate in international instrument

in national legislation.

174. The representative further informed the Committee that recently a law providing compensation for injustices committed in the German Democratic Republic had been promulgated. It would be followed by a series of other laws that would benefit the victims, and persons who had been imprisoned unjustly would be compensated. Hundreds of proceedings had been initiated in the new Länder for torture and extortion of confessions. Members of the security forces or public officials who had ill-treated prisoners and even caused their death in the German Democratic Republic were subject to punishment. The problem of retroactivity did not arise in such cases since ill-treatment had also been punishable in the German Democratic Republic. A body of case law now existed ensuring the applicability of the law to persons accused of offences committed in the former German Democratic Republic and several members of the militia had been sentenced for killing persons who had tried to cross the Berlin wall. The representative also provided information about the organization of the German judicial system and pointed out that judges were independent and could not be removed from office. Financial assistance was provided by the State to persons who were completely unable to pay the costs of legal proceedings. In addition, the State must, if the situation so required, assign a lawyer to assist a person suspected of a crime or assist the presumed victims. In case of conflict between German law and Germany's international obligations, precedence was given to international obligations over any others. That case had never arisen, however.

175. In connection with article 2 of the Convention, the representative explained that the police was required to bring any person who had been arrested before a judge on the day following his arrest; the judge informed the person of the charges against him as well as of his rights. The suspect could call the lawyer of his choice and refuse to make any statements in his absence. Persons who were suspected or accused of terrorism were treated in the same way as other offenders. A person placed in remand custody could at any time request the judge to interrupt his detention. Within a period of six months at most, the Supreme Court of the Land had to rule whether remand custody was not too severe a measure in relation to the charges and circumstances of the case. The representative further explained that the use of violence by the police within the limits authorized by law concerned situations such as body searches, fingerprinting etc., where the suspect refused to comply with police instructions. In that kind of situation, the police acted in accordance with the principle of proportionality; in other words, the restraint used should be proportional to the end sought. On the other hand, the representative informed the Committee that investigations were being carried out in two cases of ill-treatment allegedly suffered by persons arrested by the police, which had been reported by Amnesty International.

176. With regard to article 4 of the Convention, the representative pointed out that under article 223 of the German Penal Code, physical or moral ill-treatment was punishable and that any person causing serious bodily harm to, or jeopardizing the health of another person could be sentenced to a maximum of three years' imprisonment. In this connection, he referred to a number of judgements handed down by the courts in respect of different kinds of physical or mental ill-treatment. For the same crime, an official such as a police officer could incur much more severe punishment than an ordinary citizen, since he could be sentenced to 5 years' imprisonment and, in very serious cases, to 15 years' imprisonment. The extortion of testimony by mental torture was also an offence under German Criminal Law and confessions obtained under duress could not be used before a court.

177. With reference to articles 5, 6, 7 and 8 of the Convention, the representative stated that a foreigner suspected of having committed torture abroad could be brought before a German court, if the country of origin did not request his extradition. However, the government procurator could not, under article 153 (c) of the Code of Criminal Procedure, institute proceedings in certain circumstances, as when the person concerned had already been sentenced abroad for the same offence or if an additional sentence might constitute unduly severe punishment.

178. In connection with articles 10 and 11 of the Convention, the representative referred, in particular, to directives concerning the training of officials with a view to making them aware of the need to respect strictly article 136 (a) of the Code of Criminal Procedure providing that confessions obtained under duress could not be used before the court. The representative acknowledged that not only personnel responsible for the application of laws, but also medical personnel, health workers, psychologists, psychiatrists and social educators should be fully informed about matters connected with torture and that work in that field should be intensified.

179. Referring to article 14 of the Convention, the representative explained that the normal rule of responsibility for the commission of illegal acts applied to public officials; any wrong done to persons or damage to property justified a request for compensation for material and non-pecuniary damage. Requests for compensation had to be addressed to the administration and then to a court.

Conclusions and recommendations

180. The Committee thanked the Government of Germany for its clear, comprehensive and objective report and its representatives for the pertinent replies they provided to the questions submitted to them. The Committee welcomed the legal and administrative measures that had been taken in Germany to prevent and, where necessary, punish torture, and it was pleased to note that Germany was doing everything in its power to fulfil the obligations it had assumed in ratifying the Convention. The Committee requested the German authorities to inform it of the result of the investigation initiated in Bremen into the incidents brought to its attention; and also requested the Government of Germany to envisage the possibility of making the declarations necessary to be bound by articles 21 and 22 of the Convention.

CAT A/53/44 (1998)

179. The Committee considered the second periodic report of Germany (CAT/C/29/Add.2) at its 328th and 329th meetings, on 11 May 1998 (CAT/C/SR.328 and 329), and adopted the following conclusions and recommendations.

1. Introduction

180. Germany signed the Convention on 13 October 1986 and deposited its instrument of ratification on 1 October 1990. The Convention entered into force in Germany on 31 October 1990. Upon ratification Germany made declarations concerning its understanding of article 3 of the Convention and the presumptive concordance of German law with the Convention. Germany has not declared in favour of articles 21 and 22. Both the initial report submitted by Germany on 9 March 1992 and the present second periodic report submitted on 17 December 1996 were prepared in accordance with article 19 of the Convention and in accordance with the general guidelines concerning the form and content of reports. The second periodic report covers the period from 9 March 1992 to 17 December 1996. Important information concerning the State party is also included in the basic document prepared by Germany on 8 August 1996.

2. Positive aspects

181. The Committee is encouraged by the fact that the Domestic Affairs Committee of the German Federal Parliament, the Permanent Conference of the Interior Ministers and Senators of the Länder and the Conference of Ministers of Justice of the Länder have addressed Amnesty International's report on the 70 alleged cases of police ill-treatment, especially against foreigners, between January 1992 and March 1995.

182. The Committee is satisfied that no cases of torture within the strict meaning of article 1 of the Convention have been reported, and that tainted evidence has not been reported as having been used in any judicial proceedings.

183. The Committee is encouraged by the establishment of 12 torture rehabilitation centres and welcomes the fact that the German Government contributes to the United Nations Voluntary Fund for Victims of Torture.

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

184. The Committee is aware of the State party's problems with the integration and management of large numbers of refugees and other minorities of non-German descent and of the problems deriving from the State party's attempts to maintain fair and equitable asylum and immigration procedures.

4. Subjects of concern

185. The Committee is concerned that the precise definition of torture, as contained in article 1 of

the Convention, has still not been integrated into the German legal order. While section 340 of the German Criminal Code and the Act on the Suppression of Crime, dated 28 October 1994, would seem to cover most incidents of torture, statistical coverage of the incidence of torture, aggravated forms of torture with specific intent (*dolus specialis*) and incidents causing severe mental pain or suffering ("mental torture" insofar as not covered by article 343 of the German Penal Code) are not covered by current legislative provisions, as required by the Convention. Likewise, it is not absolutely clear that all exculpation by justification and superior order is categorically excluded as required by the Convention.

186. The Committee is concerned at the large number of reports of police ill-treatment, mostly in the context of arrest, received from domestic and international non-governmental organizations in recent years, as well as at the conclusions of the study entitled "The police and foreigners" commissioned by the Conference of Ministers of Internal Affairs in 1994 and presented in February 1996, to the effect that police abuse of foreigners represents more than "just a few isolated cases".

187. The Committee is concerned about the incidents of suicide of persons in detention while awaiting deportation.

188. The Committee is particularly concerned about the apparently low rate of prosecution and conviction in the alleged incidents of ill-treatment by the police, especially of people of foreign descent.

189. The Committee is concerned at the existence of certain open-ended legal provisions permitting, under certain circumstances, the discretionary but significant reduction of the legal guarantees of those detained by the police, such as provisions permitting the police in certain cases to refuse permission to someone detained at a police station to notify a relative of his arrest. Likewise, references to "the principle of proportionality", unless with respect to specific and binding decisions of the German courts, may lead to arbitrary reductions in such guarantees.

5. Recommendations

190. The Committee recommends that the State party adopt the precise definition of the crime of torture foreseen by the Convention and integrate it into the internal German legal order (art. 4, para. 2, of the Convention).

191. The Committee requests the German Government to envisage the possibility of making the necessary declarations so that Germany is bound by articles 21 and 22 of the Convention.

192. The Committee recommends that both internal disciplinary measures against offending police officers and the external prosecutorial and judicial measures be significantly strengthened to ensure that in future all police officers accused of ill-treatment of domestic and foreign nationals alike are brought to justice. In order to ensure that in cases of alleged ill-treatment by police officers such conduct is open to the fullest scrutiny, the Committee recommends, without prejudice to ordinary State procedures, that German criminal procedures be open to subsidiary prosecution by the victims of ill-treatment and that adherence procedures (*Adhäsionsprozesse*) and civil procedures for damages be made more widely applicable and possible. Adequate legal assistance by competent German

legal counsel should be made available. Furthermore, the length of the investigation of complaints of police ill-treatment should be shortened.

193. The Committee recommends that further legislative attention be paid to the strict enforcement of article 15 of the Convention and that all evidence obtained directly or indirectly by torture be strictly prevented from reaching the cognizance of the deciding judges in all judicial proceedings.

194. The Committee recommends that police and immigration officers of all ranks, as well as medical personnel, receive compulsory training concerning human rights in general and especially concerning the Convention against Torture; in view of the fact that most reports of ill-treatment come from foreigners, the Committee recommends that these officers also receive compulsory training in the areas of conflict management and ethnic minorities.

195. The Committee further recommends that Germany continue its efforts to ensure that all detainees, at the outset of their custody, be given a form in a language they understand, outlining their rights, including the right to be informed of the reason for their arrest, to contact a relative and a lawyer of their choice, to submit a complaint about their treatment and to receive medical assistance.

196. In order to make future judicial proceedings against those suspected of ill-treatment possible, police officers should be required to wear a form of personal identification that would make them identifiable to those who allege ill-treatment.