

ITALY

CAT A/47/44 (1992)

310. The Committee considered the initial report of Italy (CAT/C/9/Add.9) at its 109th and 110th meetings, held on 30 April 1992 (CAT/C/SR.109 and SR.110/Add.1).

311. The report was introduced by the representative of the State party, who emphasized that torture was not specified as an offence by the Italian Penal Code. In recent years, sporadic and isolated episodes of violence being used by law enforcement officials had been reported and had given rise to legal proceedings involving particularly severe sentences and disciplinary measures against the culprits. Italy was also discharging its obligations in the matter of action to combat torture within the European framework and was about to publish the report prepared by the European Committee for the Prevention of Torture following its recent visit to Italy. Lastly, Italy made a substantial annual contribution to the United Nations Voluntary Fund for Victims of Torture.

312. The members of the Committee welcomed the report of Italy and stressed that the presence of a high-level delegation demonstrated the importance attached by the Italian Government to the struggle against torture in all its forms.

313. With regard to the constitutional and legal framework for the application of the Convention, members of the Committee requested additional information on the place of the Convention in the Italian legal order and the way in which Italian internal law had been adapted to the obligations deriving from the Convention by the ratifying instrument, Act. No. 498 of 3 November 1988. They asked how possible conflicts between the provisions of the Convention and those of subsequent legislative texts were resolved; whether individuals frequently invoked the Convention in the courts; whether reference was made to the provisions of the Convention in judgements of the Italian courts; whether there was an ombudsman in Italy; and whether there were military courts or a state security court. Additional information was also requested on the provisions of the new Code of Penal Procedure adopted in 1989; the competence and recent activities of the Interministerial Committee for Human Rights; the role of the "citizens' advocates" recently introduced; the circumstances in which a state of emergency could be declared and the rights which might be subject to derogation during such periods; and the conditions for the appointment and dismissal of judges. Further information was also requested on the jurisdiction, composition and activities of the Freedom Court.

314. With regard to article 1 read in conjunction with article 4 of the Convention, members of the Committee expressed regret that there was no definition of torture in Italian criminal law. The direct applicability of the Convention in internal law was not a sufficient guarantee, since the Convention did not specify the offence or applicable penalties. In addition, domestic legislation did not seem fully to cover the relevant provisions of the Convention, particularly in regard to mental or psychological torture. In that connection, it was asked whether the offences mentioned in paragraphs 36 to 38 of the report were prosecuted *ex officio* and what penalties were incurred. Clarifications were requested on a bill currently under consideration whereby, in order for an act to be punishable, it must have been committed by a public official and on the arrangements governing

ex officio prosecution within the framework of disciplinary proceedings.

315. With regard to article 2, paragraph 1, and article 11 of the Convention taken together, members of the Committee referred to a number of reports from non-governmental sources mentioning cases in which provisions of the Convention had allegedly been violated. It was asked what had been the result of the inquiries conducted following the incidents said to have occurred in the Sollicciano prison in Florence and the Fuorni prison in Salerno. Similarly, it was asked whether the circumstances of the death of Alessandro Ruver in the Regina Coeli prison in Rome and the violence allegedly inflicted on Daud Addawe on Rome police premises had been elucidated. Information was also requested on incidents in which immigrants had apparently clashed with law enforcement officers.

316. Members of the Committee asked how Italy implemented article 2, paragraph 3, of the Convention, under which an order from a superior officer or a public authority may not be invoked as a justification of torture.

317. With regard to article 3 of the Convention, members of the Committee asked how possible conflicts between the political and the judicial authorities over questions of extradition were resolved.

318. Clarifications were requested on articles 7, 9 and 10 of the Penal Code, which seemed to apply the provisions of articles 5 to 7 of the Convention only partially. Questions were also asked concerning the application of the principle of universal jurisdiction to action to combat torture.

319. Additional information was requested concerning the implementation of articles 8 and 9 of the Convention, and in particular the direct applicability of those provisions in Italian internal law. Clarifications were also requested on the practical application of the principle mentioned in the report according to which the authorities reserved the right not to extradite an individual when he was liable to be subjected on his return to treatment constituting a violation of his fundamental rights. In particular, it was asked whether, by virtue of that principle, a foreigner liable to incur the death penalty in his own country could be extradited to it. Lastly, it was asked how many foreigners had been expelled or extradited during the last five years.

320. In connection with article 10 of the Convention, members of the Committee requested additional information on the training of law enforcement and medical personnel. It was asked whether there were programmes for the training of prison and medical personnel and whether the United Nations Standard Minimum Rules for the Treatment of Prisoners and the Principles of Medical Ethics were disseminated.

321. With regard to article 11 of the Convention, members of the Committee requested information on the rules concerning the conduct of police interrogations, investigations and incommunicado detention of prisoners; the conditions in which a prisoner could make an appeal concerning his conditions of detention; the duration of police custody and preventive detention; and the possibility for a person to have a medical examination after his arrest and to communicate with his family and a lawyer. It was also asked whether police interrogations were covered by precise instructions and were recorded; whether a procedure similar to habeas corpus existed in Italy; whether untired and

convicted prisoners were separated; whether there was a body responsible for supervising conditions of detention and, in particular, whether judges made unannounced visits to prisons; whether dangerous prisoners were subject to a special regime, such as incommunicado detention; what measures could legally be taken to avoid violence in prisons; and whether it was compulsory for prisoners to work.

322. With regard to articles 12 and 13 of the Convention, members of the Committee asked whether complaints had already been submitted concerning acts of torture and, if so, whether a rapid investigation had been conducted into such cases and with what results; whether the persons concerned had been suspended from their duties during the investigation; whether the rules concerning the defamation of state officials were not likely to discourage possible denunciations of torture cases; and whether allegations of acts of torture or cruel, inhuman or degrading treatment concerning Italy had been examined by the European Court of Human Rights. Clarifications were requested on the statement in the report that investigations conducted following violence allegedly committed against prisoners were covered by the law of secrecy. Lastly, members expressed concern over the length of criminal or disciplinary proceedings in cases involving presumed violence.

323. With regard to article 14 of the Convention, members of the Committee requested clarifications on the conditions in which the victim of an act of torture could obtain redress, particularly when the offender was a public official. In particular, it was found regrettable that Italian legislation did not provide for a general system of compensation by the State for victims of offences but only an obligation of redress limited to the individual responsible for the offence. It was emphasized that such a state of affairs was generally prejudicial to possible victims of torture who, very often, were not able to identify their torturers or to bring legal proceedings. It was not asked whether rehabilitation programmes for victims had been established.

324. With regard to article 15 of the Convention, members of the Committee asked whether a statement obtained through torture could be adduced as evidence in proceedings.

325. Lastly, members of the Committee welcomed the undertaking by the Italian authorities to publish the report prepared by the European Committee for the Prevention of Torture following its recent visit to Italy.

326. In his reply, the representative of the State party stated that conformity with the provisions of international human rights instruments was assured by adherence to the principle that such obligations prevailed over domestic law. Meeting obligations under such instruments was the responsibility of the Interministerial Committee for Human Rights. There was no Office of an ombudsman in Italy but a similar service was provided by a special section of the Criminal Court called the Freedom Court, whose magistrates were empowered to assist in cases where administration was dilatory or neglectful of a citizen's legitimate interests. The Freedom Court was also competent to re-examine, within a period of eight days, any decisions which restricted individual freedom. He added that appointment, transfer and disciplinary matters concerning judges were supervised by the Higher Council of Magistrature whose independence was enshrined in the Constitution and which was chaired by the President of the Republic.

327. With reference to the allegations of ill-treatment reported by the press and non-governmental organizations, the representative admitted that occasional instances of alleged ill-treatment by the police were inevitable. In general, however, members of the police acted with a high sense of responsibility. He briefly described several cases of alleged ill-treatment by the police, in which the judges found no ground for prosecution. Regarding the specific case of a person who had recently died in custody, he said that an investigation had been initiated by the Government Procurator's Office within two days. Details had, however, not yet been released since the matter was sub judice. In other cases of incidents at prisons, investigations had been initiated by the Government Procurator's Office; one case had been closed and the investigation in another case was not yet completed. The Department of Penal Investigation had also instituted proceedings against two prison officers.

328. With regard to articles 1 and 4 of the Convention, the representative recalled that torture was not dealt with a specific offence in Italy's legal system. The use of torture was contrary both to the fundamental principles of Italian law and to those recognized by various international instruments such as the Convention, the International Covenant on Civil and Political Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, whose provisions had been introduced into the Italian legal system. Moreover, the principle whereby every individual deprived of his freedom must be treated humanely was included in article 27 of the Italian Constitution and Italian legislation already made sufficient provision for cases that could be assimilated to the concept of torture in its broadest sense. The Convention had been ratified by a special Act of Parliament in order to fill the gaps in the Penal Code and to take account of the definition of torture in the Convention. Determining whether mental torture had occurred was up to the courts.

329. Regarding article 2, paragraph 3, of the Convention, the representative said that, according to article 51 of the Penal Code, acts undertaken on behalf of a public authority, if unlawful, were punishable.

330. Referring to articles 5 to 7 of the Convention, the representative emphasized that in Italian law the principle aut dedere aut judicare prevailed and was applicable in cases of extradition. It was, however, up to the political authorities to determine whether an extradition order should be carried out. Such an order would not be deemed acceptable if the accused person might be subject to the death penalty in the country of jurisdiction or if the offence was of a political nature.

331. With reference to article 10 of the Convention, the representative said that particular attention was being given to ensuring that those responsible for enforcing the law were familiar with human rights priorities. A textbook had thus been prepared with a view to promoting greater awareness in police academies of the relevant aspects of constitutional and criminal law. The Police Department was responsible for recruitment and training, including programmes to inform law enforcement agents about human rights.

332. Referring to articles 11 and 14 of the Convention, the representative explained that preliminary investigations should not normally exceed 18 months. In certain very serious or complex cases, such as those involving terrorism or foreign jurisdiction, the Office of the Public Prosecutor was entitled to request a period of investigation in excess of the statutory 18 months. After the expiry of the

maximum period for preliminary inquiries, the examining magistrate set a period of 10 days for submission of the final report, failing which the case was closed. Responsibility for ensuring that human rights were guaranteed in places of detention lay with magistrates. Furthermore, although there was no system for compensating persons claiming that they have been ill-treated while in detention, there was an advisory board to investigate conditions of custody, which was authorized to initiate special inspections. Detention in isolation was permitted only for health reasons and normally involved exclusion from communal activities for a period of up to two weeks. As for incommunicado detention, a time-limit of 24 hours was imposed.

333. Any person held in custody had to be duly informed of his rights, including the right to a defence counsel, and his family had to be informed immediately if he so wished. Unless there was an order for release or removal to a medical institution, all detained persons had to be brought before a magistrate within 24 hours. Specific instructions about the conduct of interrogations, especially with regard to the first phase, had been issued. Furthermore, any interrogation had to be conducted in the presence of a judge and officially recorded.

334. With regard to articles 12 and 13 of the Convention, the representative stated that disciplinary procedures should normally be completed within a period of 90 days and that provision was made for the suspension of a law enforcement official during the period of the proceedings. Replying to another question, the representative emphasized that only four cases of alleged ill-treatment had been brought to the attention of the European Court of Human Rights. Of those, two had been withdrawn, one had been deemed inadmissible, and in one case no violation had been found.

335. As concerned article 15 of the Convention, the representative explained that article 191 of the new Code of Penal Procedure provided that evidence obtained by illegal methods could not be used in any proceedings.

Concluding observations

336. In concluding the consideration of the initial report of Italy, the Committee expressed its appreciation to the high-level Italian delegation for having engaged in a very fruitful dialogue. Replies had indeed been received to many of the Committee's questions. However, a few questions relating, *inter alia*, to the organization of the legal system, the new Code of Criminal Procedure and the expulsion or extradition of foreigners remained to be answered or completed in the first supplementary report. The establishment of the Freedom Court and of the Interministerial Committee for Human Rights were considered to be appropriate examples of Italy's commitment to human rights and its international obligations.

337. The Committee nevertheless considered that its concerns had not been fully allayed, especially with regard to the method of integrating international standards into domestic law by way of the Act of Ratification. It observed that consideration should be given by the Italian authorities to the possibility of including a definition of torture in its legislation and making all acts of torture punishable by appropriate penalties. Attention should also be given to speeding up domestic remedies. The Committee was concerned at the absence of a system of compensation for victims and it was emphasized that, in accordance with the Convention, the State should be held civilly responsible for the acts of its servants. It was also suggested that special chapters of the Convention

be included in the handbooks issued to Italian police personnel and made available to members of the medical profession.

338. Lastly, the Committee said that it had no doubt that torture was not systematically practised in Italy. The various cases referred to during the consideration of the report seemed to be more in the nature of cruel, inhuman or degrading treatment than acts of torture within the meaning of the Convention. Nevertheless, the authorities had to deal with such cases energetically and within the statutory limits, and references to measures taken in that respect should be included in the first supplementary report of Italy.

CAT A/50/44 (1995)

146. The Committee considered the second periodic report of Italy (CAT/C/25/Add.4) at its 214th and 215th meetings, held on 27 April 1995 (CAT/C/SR.214 and 215), and adopted the following conclusions and recommendations.

A. Introduction

147. The Committee appreciates the submission of the periodic report of Italy and expresses its thanks for a good oral presentation. It notes, however, that the report does not properly comply with the Committee's guidelines for this kind of report (CAT/C/14), especially in regard to providing data and replies requested previously. In addition, the general report was not accompanied by basic data on the State party, as required by the guidelines. The Committee was none the less able to engage in a constructive dialogue with the delegation that met many of its concerns.

B. Positive aspects

148. The Committee welcomes Italy's firm commitment to the protection of human rights, as reflected in the signing of many agreements, both regional and universal.

149. It also notes that a very constructive step has been taken in authorizing the publication of the report prepared by the European Committee for the Prevention of Torture further to a visit to Italy.

150. The significant increase in Italy's contribution to the United Nations Voluntary Fund for Victims of Torture is very gratifying.

151. Also encouraging are the provisions of Law No. 296, pertaining to work by prisoners, the new alternative measures to imprisonment, such as house arrest, and the rules of Law No. 492, relating to the transfer of prisoners.

152. Lastly, the State party is to be congratulated on fully abolishing the death penalty.

C. Factors and difficulties impeding implementation

153. Like the Human Rights Committee, this Committee notes something of a tendency to discriminatory treatment by sectors of the police force and prison warders with regard to foreigners, entailing violation of their rights. Furthermore, the existence of a large number of public officials involved in acts of corruption is not a positive contribution.

D. Subjects of concern

154. The Committee notes with concern the persistence of cases of ill treatment in prisons by police officers. It even notes a dangerous trend towards some racism, since the victims are either from foreign countries or belong to minorities.

155. Non-governmental organizations of proven reliability have informed the Committee of a series of serious acts of torture, and in some cases deaths, of detainees. The penalties on the members of the forces of law and order are not commensurate with the seriousness of these acts.

156. Similarly, a matter of some concern is the number of unconvicted prisoners, the overcrowding in prisons and the suspension, even temporary, of humanitarian rules on the treatment of prisoners.

E. Recommendations

157. The Committee suggests that the State party should:

(a) Continue to examine the possibility of including in its criminal law the concept of torture set out in the Convention;

(b) Better guarantee the right of a victim of torture to be compensated by the State and to provide some programme of rehabilitation for him;

(c) Monitor effective compliance with safeguards during preliminary custody, especially access to a doctor and legal counsel;

(d) Make sure that complaints of ill treatment and torture are promptly and effectively investigated and, where appropriate, impose an appropriate and effective penalty on the persons responsible;

(e) Establish more training programmes for law-enforcement and medical personnel.

158. The Committee also asks to be sent the legal texts that were requested, together with the remaining information asked for by members of the Committee (results of ongoing trials, statistics, judicial organization, etc.) and hopes that the next periodic report will discuss all the measures adopted.

CAT A/54/44 (1999)

163. The Committee considered the third periodic report of Italy (CAT/C/44/Add.2) at its 374th, 377th and 381st meetings, held on 3, 4 and 6 May 1999 (CAT/C/SR.374, 377 and 381) and has adopted the following conclusions and recommendations.

1. Introduction

164. The Committee welcomes the timely submission of the third periodic report of Italy and thanks the representatives of the State party for their good oral presentation and their collaborative and constructive attitude in the dialogue with the Committee.

2. Positive aspects

165. The Committee welcomes:

(a) The introduction in Parliament of a bill aiming at adding the crime of torture as an autonomous crime and the setting-up of a special fund for the victims of acts of torture;

(b) The introduction of a number of modifications in the regime of precautionary measures to protect arrested persons and detainees from ill-treatment or torture, such as the rule requiring that questioning outside the court has to be documented by sound or audio-visual recordings (Law No. 332 of 1995);

(c) The passing by Parliament of Law No. 40 of 6 March 1998 governing immigration and aliens, which, in particular, grants the aliens who are legally residing in the territory of the State party, parity with the Italian citizens;

(d) The assurances contained in the report that a different and new policy of accepting foreigners is to be energetically carried forward;

(e) The consideration by the Italian Parliament of a bill that accords humanitarian protection and the right of asylum and intends to institute an organic asylum regime;

(f) The fact that foreign prisoners who are granted measures alternative to detention may also be granted temporary work permits.

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

166. While it does not underestimate the difficulties created by the presence of a large number of foreigners of different cultures and nationalities on the Italian territory, the Committee expects that the new law on immigration along with the continued efforts on the part of the authorities will help ease the situation, especially since many of these foreigners had to flee their countries of origin due to severe conditions of unrest.

4. Subjects of concern

167. Despite the efforts of the authorities, the prison system remains overcrowded and lacking in facilities which makes the overall conditions of detention not conducive to the efforts of preventing inhuman or degrading treatment or punishment. In this regard, the Committee notes with concern, that reports of cases of ill-treatment in prison continued and that many of them involved foreigners.

168. The Committee is also concerned over the lack of training in the field of human rights, in particular, the prohibition against torture to the troops participating in peacekeeping operations and the inadequate number of military police accompanying them, which was responsible in part for the unfortunate incidents that occurred in Somalia.

5. Recommendations

169. The Committee recommends that:

- (a) The legislative authorities in the State party proceed to incorporate into domestic law the crime of torture as defined in article 1 of the Convention and make provision of an appropriate system of compensation for torture victims;
- (b) The Committee be informed of the progress and result of the judicial proceedings resulting from the incidents in Somalia;
- (c) All prisoners' correspondence addressed to international procedures of investigation and settlement be excluded from "censor checks" by prison personnel or other authorities.