

POLAND

CAT A/49/44 (1994)

66. The Committee considered the initial report of Poland (CAT/C/9/Add.13) at its 160th and 161st meetings, held on 11 November 1993 (see CAT/C/SR.160 and 161), and adopted the following conclusions and recommendations:

Introduction

67. The Committee thanks Poland for its report, and is grateful to it for having begun a fruitful dialogue with the Committee through a highly qualified delegation.

68. Even though it is two and a half years late, the report is in keeping with the requirements of the Convention and the Committee's general guidelines concerning the form and contents of initial reports.

Positive aspects

69. Poland is one of the first Eastern European countries to bring about broad and far-reaching reforms in all areas - political, economic, social and legislative. It has ratified the European Convention on Human Rights and the Convention against Torture without reservations, as well as other international human rights instruments.

70. The Committee notes with satisfaction the considerable progress made by the Government of Poland in combating the various forms of torture. The reform of prison legislation is of a high standard.

Subjects of concern

71. At the same time, the Committee notes with concern that the reforms of criminal legislation and criminal procedure are overdue and incomplete:

- (a) The legislation contains no definition of torture;
- (b) The Public Prosecutor has more powers than the courts;
- (c) There are no special provisions for compensating victims of torture.

Recommendations

72. The Committee recommends that the Government of Poland should:

- (a) Take the necessary steps to have the new draft Penal Code and Code of Criminal

Procedure adopted, thus solving the specific problems brought about by torture;

(b) Guarantee and ensure adequate redress and compensation for victims of torture;

(c) Formulate a specific training programme on torture for civilian and military personnel, lawyers and the medical profession.

73. The Committee hopes to receive information from the State party on the questions raised by members of the Committee which have not been answered.

CAT A/52/44 (1997)

95. The Committee considered the second periodic report of Poland (CAT/C/25/Add.9) at its 276th, 277th and 279th meetings, held on 20 and 21 November 1996 (see CAT/C/SR.276, 277 and 279), and adopted the following conclusions and recommendations.

Introduction

96. The Committee thanks Poland for its report and for having once again begun a fruitful and constructive dialogue with the Committee. Notwithstanding the delay in Poland's submission of its second periodic report, the latter is in keeping with the requirements of the Convention and the general guidelines established by the Committee concerning the form and contents of reports.

Positive aspects

97. Poland is one of the first Eastern European countries to have initiated at an early date radical changes and reforms in all areas - economic, political, social and legislative. It has ratified the European Convention on Human Rights, the Convention against Torture and other international human rights instruments. The Committee notes with satisfaction the progress made in combating the different forms of torture.

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

98. The Committee notes that most of the reforms mentioned in the oral and written reports are still at the drafting stage.

Principal subjects of concern

99. The Committee is concerned about certain shortcomings in the legislation in force intended to combat torture. Domestic legislation does not contain any definition of torture, as required in articles 1 and 4 of the Convention. Moreover, there is no way for the Committee to determine whether, under existing legislation, obedience to a legitimate hierarchical authority may be invoked in justification of an act of torture.

100. The Committee is also concerned that Polish legislation permits periods of pre-trial detention which may prove excessive.

101. The Committee deplores the existence in Polish legislation of provisions authorizing the use of physical force, particularly against minors.

102. Lastly, the Committee deplores the fact that a supplementary report was not brought to the attention of its members until the meeting at which the periodic report was submitted, even though it contains interesting information.

Recommendations

103. The Committee repeats to the Government of Poland the recommendation it made in November 1993, at the conclusion of the consideration of Poland's initial report, namely, that a definition of torture which fully covers all the elements in the definition contained in article 1 of the Convention should be incorporated into domestic law.

104. The Committee also recommends that the Government continue its efforts to introduce other legislative reforms and to secure the adoption and promulgation of the numerous draft texts referred to by the delegation.

105. In this connection, the Committee recommends reforms of the legal system which will offer the possibility of formal, effective and concrete judicial verification of the constitutionality of police custody and pre-trial detention with a view to implementing the provisions of the Convention.

106. The Committee also recommends that the Government intensify its programme of training for all personnel responsible for the implementation of legislation, including doctors.

107. The Committee recommends that objective inquiries be initiated, and pursued with due dispatch, into the activities of the security forces in order to determine the veracity of allegations of acts of torture and, where the findings are positive, to bring the offenders before the courts.

108. The Committee recommends that the period of pre-trial detention be shortened and that the possibility of extending it for two years should be abolished.

109. The Committee recommends that statements obtained directly or indirectly under torture should not be admissible as evidence in the courts. It recommends that the abolition as soon as possible of legal provisions permitting the use of physical force, for whatever reason, should be envisaged.

110. Finally, the Committee considers that the likelihood of commission of acts of torture or of other cruel, inhuman or degrading treatment would be limited if suspects had easy access to a lawyer, doctor or family member during the 48 hours of police custody.

CAT A/55/44 (2000)

82. The Committee considered the third periodic report of Poland (CAT/C/44/Add.5) at its 412th, 415th and 419th meetings, held on 2, 3 and 5 May 2000 (CAT/C/SR.412, 415 and 419) and adopted the following conclusions and recommendations.

1. Introduction

83. The Committee notes with satisfaction that the third periodic report is comprehensive, informative and conforms with the general guidelines for the preparation of State party reports, with regard to both form and content.

84. The oral statement of the delegation of Poland and its explanations and clarifications and the discussion that followed complemented the written information provided.

2. Positive aspects

85. The Committee notes with appreciation the impressive and successful efforts made by the State party that have led to major transformation in the political, social, economic, legislative and institutional spheres in Poland.

86. The Committee notes in particular:

(a) The adoption of the new Constitution which entered into force on 17 October 1997 and which contains new elements for the defence of freedoms and the rights of citizens, stipulates the respect of international law binding on Poland and ensures the precedence of international agreements over domestic law in case of conflict;

(b) The introduction in the new Constitution of the norm that stipulates that "no one be subjected to torture or cruel, inhuman or degrading treatment or punishment", which is an important step towards achieving the requirements and recommendations of the Committee, namely that a definition of torture which fully covers all the elements in the definition contained in article 1 of the Convention be incorporated in domestic law;

(c) The abolition of the death penalty;

(d) The fact that no statute of limitation applies with respect to war crimes and crimes against humanity.

3. Principal subjects of concern

87. The Committee is concerned that the amendments to domestic legislation do not contain any provisions for the prosecution and punishment of those guilty of the crime of torture, as required by articles 1 and 4 of the Convention.

88. The Committee is also concerned that the new Penal Code does not introduce any substantial change regarding orders of superiors when they are invoked as justification of torture. According to existing legislation, criminal responsibility of the recipient of an order is based on his awareness of the criminal nature of the command.

89. The new Penal Code does not include the "danger of exposure to torture" as one of the grounds for the refusal of extradition as is required by article 3 of the Convention.

90. The Committee notes that, in spite of the efforts of the State party, some drastic acts of aggressive behaviour by police officers continue to occur, which has resulted in death in some instances.

91. The Committee is also concerned about the persistence in the army of the practice of the so-called "fala", whereby new recruits are subjected to abuse and humiliation.

4. Recommendations

92. Although the Committee notes that the new Polish Constitution recognizes international conventions ratified by Poland to be part of the Polish legal system, it also notes that in the Polish legal system there are no provisions for making charges relating to, nor penalties applicable to, the crime of torture. Therefore, the Committee recommends that the State party introduce such legislative changes as are necessary to identify torture as a specific crime and to enable prosecutions of torture, as defined in the Convention, and the application of appropriate penalties.

93. The Committee further recommends that the Penal Code be amended to ensure that orders of superiors cannot be invoked, in any circumstances, as justification of torture.

94. The State party should introduce an effective and reliable complaint system that will allow the victims of torture and other forms of cruel, inhuman or degrading treatment or punishment to file complaints.

95. Legislative and administrative measures should be introduced to safeguard against excessive use of force by the police, in particular in connection with the supervision of public meetings and to safeguard against the persistence of abusive measures associated with the practice of so-called "fala" in the army.