

ROMANIA

CAT A/47/44 (1992)

339. The Committee considered the initial report of Romania (CAT/C/16/Add.1) at its 111th and 112th meetings, on 1 May 1992 (CAT/C/SR.111 and 112).

340. The report was introduced by the representative of the State party, who referred to the amendments incorporated in the Penal Code and the Code of Penal Procedure, and to the adoption of the new Constitution in December 1991. He said that the work of legislative reform was continuing, particularly with regard to the organization of the judicial system, the execution of penalties and the introduction of new, non-custodial types of penalty. He stated that specialized human rights departments had been set up within various ministries and the Public Prosecutor's Office, together with an interministerial committee responsible for coordination between those departments. He mentioned the activities of non-governmental organizations in the area of human rights; despite those positive changes, however, there were regrettably still some after-effects of the old regime and abuses by state officials.

341. The members of the Committee congratulated the Romanian Government on the quality of its report which, although relatively brief, showed that Romania had indeed adapted its legislation to the Convention. They expressed their satisfaction at finding that Romania had faithfully incorporated in its legislation the terms used in the Convention to define torture, and had established appropriate penalties for the offences provided for. By incorporating the Convention in its legislation word for word, Romania had acquired the best possible means of combatting torture. The members of the Committee also expressed their appreciation for the frankness with which the Romanian authorities had acknowledged the continued after-effects of the old regime. In that connection, some members of the Committee emphasized that attitudes still had to be changed, particularly with regard to conditions of detention and among the police, and stated that they had received reports of a number of individual cases of ill-treatment. Members of the Committee requested further information of a general nature, in particular on the organization of the judicial system and the court hierarchy in Romania, on the competence of the military courts, on the status of the judiciary and the appointment and dismissal of judges and prosecutors, on relations between the legislature, the executive and the judiciary in accordance with the provisions of the new Constitution, on the role of the People's Advocate, and on the organization and powers of the police forces. Clarification was also sought concerning the procedure which had led to the dismissal of several thousand policemen and a number of prosecutors or judges, and the amnesty granted to former political prisoners. Statistical information was requested on specific cases of torture and other ill-treatment.

342. In connection with article 3 of the Convention, members of the Committee requested clarification concerning the possibility of appealing against an expulsion order or being granted a stay of execution.

343. With regard to article 5 of the Convention, members of the Committee requested details

concerning the application of the principle of universal competence in Romanian law. It was noted in particular that, given the fact that articles 5 and 6 of the Penal Code were in conformity with the Convention, a bilateral treaty derogating from those articles would represent a derogation from the Convention.

344. On article 6 of the Convention, it was observed that the provision of the Romanian Code of Penal Procedure to the effect that it was for the prosecutor to notify the detention order to the diplomatic mission of the person charged did not seem to be consistent with article 6, paragraph 3, of the Convention. Clarification was also sought concerning the measure whereby a person suspected of an ordinary offence could be compelled to remain in his locality of usual residence. Details were also requested concerning the procedure for extending the limit on police custody of 24 hours.

345. Referring to article 8 of the Convention, members of the Committee asked whether the provisions of that article were directly applicable in Romania.

346. In connection with article 9 of the Convention, information was requested on the specific procedures for mutual judicial assistance. It was asked whether Romania had concluded extradition treaties with countries to which it was not bound by an international convention.

347. With regard to article 10 of the Convention, stress was laid on the particular importance of that article in the light of the situation in Romania, where education and training represented means of changing attitudes impregnated with the after-effects of the old regime and spreading a genuine human rights culture to all levels. Members of the Committee asked whether there were training programmes for medical personnel.

348. On article 11 of the Convention, information was requested on interrogation procedures and whether incommunicado detention was authorized. Details were requested on the procedures for supervision of acts in criminal proceedings. Questions were asked about the role and respective spheres of competence of the prison administration and the Office of the Public Prosecutor in the conduct of periodic inspections to ascertain whether prison establishments conformed to legal provisions.

349. With regard to articles 12 and 13 of the Convention, details were requested about the status and functions of the prosecutor and the means at his disposal to take action against abuses by prison service personnel. Details were also requested about the procedures for lodging complaints in the event of torture. It was asked whether the police had ever been called upon to take action in the case of a complaint of torture. A question was asked about the number of proceedings initiated against police officers and the sentences handed down. It was noted that Romanian legislation did not provide for special measures to ensure the protection of complainants or witnesses against ill-treatment.

350. In connection with article 14 of the Convention, clarification was requested concerning the compensation and rehabilitation offered to torture victims. Clarification was also sought concerning the direct responsibility of the State in cases of torture perpetrated by its agents. Questions were asked about the possibility for a criminal court to rule on a civil action, and it was asked whether the

victim could appeal to the court if the prosecutor decided not to initiate proceedings for lack of evidence. Emphasis was also placed on the need to establish a centre for the rehabilitation of torture victims in Romania.

351. With regard to article 15 of the Convention, members of the Committee asked whether the provisions of that article were directly applicable in Romania. Inquiries were made about the procedure with regard to evidence. It was asked whether judicial decisions had included cases where confessions obtained through torture had been ruled inadmissible. It was also asked at what point the lawyer intervened in the pre-trial proceedings.

352. Concerning article 16 of the Convention, general information was requested on prison administration.

353. In reply to the questions raised by members of the Committee, the representative of Romania provided information on the draft bill on the organization of the judiciary. The legislation being drafted would abolish an instance inherited from the former dictatorship, which still allowed the President of the Republic extraordinary recourse against decisions. The competence of military courts would be restricted to offences by military personnel and against property of the armed forces. Members of the judiciary, currently appointed by the Minister of Justice, would, according to the draft bill, be appointed by the President of the Republic on the advice of the Supreme Council of the Magistrature. Disciplinary matters, currently dealt with by the court of high-level judges, would be a matter for the Magistrature. According to provisions of the new Constitution, judges were independent and irremovable. The authority of the Ministry of Justice was basically administrative and it was not entitled to issue instructions to prosecute in a given case. It was the function of the Office of the Public Prosecutor to examine and, if necessary, review the legality of decisions taken by the courts. On the question of amnesty, the representative explained that a decree-law promulgated shortly after the revolution of December 1989 covered, *inter-alia*, persons convicted during the previous regime of genuinely political crimes, often disguised by those in authority under other charges. Concerning police officers who had been dismissed, it was stated that measures taken against them had been of an administrative nature, but that some had been tried and sentenced for specific offences. In addition, more than 75 per cent of the previously incumbent regional prosecutors and their deputies had been dismissed and a new system of competitive examinations had been instituted in order to ensure the recruitment of a genuinely independent judiciary. With regard to the organization of the police, a law was currently being drafted. The previous state police, the *Securitate*, had been abolished and the sole body concerned with state security would be the Information Service. The representative also referred to the important role played by the People's Advocates, responsible for ensuring that the rights of the individual citizen were duly defended. Concerning actual cases of torture, no statistics were available but some alleged cases were being investigated.

354. With regard to article 3 of the Convention, the representative pointed out that under the Constitution any person had the right of recourse to defend his legitimate rights and interests; there was no express provision, however, on the question of expulsion.

355. In connection with article 5 of the Convention, the representative stated that articles 3 to 9 of the Romanian Penal Code contained provisions which allowed the establishment of state

jurisdiction. Under article 4 of the Romanian Extradition Law, the extradition of Romanian citizens, or of non-Romanian citizens domiciled in that country, was not permitted. Therefore, Romanian courts were competent to deal with the offences concerned.

356. In his reply concerning article 6 of the Convention, the representative explained that the requirement for a suspect not to leave the area was a purely preventative one, intended to ensure the suspect's presence during investigations, and applicable for a maximum period of 30 days. Such measure did not involve house arrest or surveillance.

357. In respect of article 8 of the Convention, the representative indicated that its provisions were directly applicable in Romanian law. He added that the bilateral extradition conventions in existence prior to Romania's adhesion to the Convention normally provided for extradition to be granted in cases involving a penalty of at least one or two years' imprisonment, and that torture was covered in such provisions.

358. With regard to article 10 of the Convention, the representative agreed that much needed to be achieved in that regard and that Romania must strive to overcome its shortcomings where application of that article was concerned.

359. Referring to article 11 of the Convention, the representative acknowledged that Romania still faced great difficulties in funding improvements in many spheres, including penitentiary institutions. Some 42,000 detainees were held in premises whose total capacity was 30,000. However, efforts were being made to improve conditions, and the administration of prisons had been transferred in 1991 from the Ministry of the Interior to the Ministry of Justice. A new law on sentencing was being drafted, which would conform to relevant international provisions. Regarding the supervision of criminal proceedings, the representative provided information on the tasks of the prosecutor as laid down in the Code of Penal Procedure. He referred to the several types of prosecutors, each with his special field of supervisory expertise. The Code of Penal Procedure set forth rules for the administration of evidence during criminal proceedings, but contained no detailed rules regarding interrogation tactics. Monitoring of prisons or police premises used for preventative detention usually took place on a monthly basis. In addition, supervision was carried out by the prison authorities and by judges.

360. Concerning articles 12 and 13 of the Convention, the representative explained that the military court was competent to deal with complaints against police and other officers. The prison administration was required to inform the prosecutor immediately in the event of the a detainee lodging a complaint. There were no specific regulations to protect complainants or witnesses but the provisions of the Code of Penal Procedure regarding threats and ill-treatment were applicable in such cases. Furthermore, new legislation was envisaged in that regard. As to the role of the police concerning criminal proceedings in cases of torture, the representative said that the police never conducted criminal proceedings in such serious cases, since the prosecutor himself was entrusted with investigation. He added that many non-governmental organizations submitted reports containing allegations of abuses. The Ministry involved monitored the cases, tried to resolve them and replied to the non-governmental organizations. Some 15 cases of official misconduct were currently under investigation.

361. Turning to article 14 of the Convention, the representative explained that the State could bear civil liability for acts committed by its agents. A victim of an act of torture could lodge complaints to the Attorney-General of the Republic. In general, criminal proceedings were applicable against the State and the person found guilty.

362. With regard to article 15 of the Convention, the representative stated that the provisions of that article were directly applicable in Romanian law. Any confession could subsequently be retracted or invalidated by other evidence, and was not regarded as irrefutable evidence. Confessions obtained under duress were null and void.

363. Concerning article 16 of the Convention, the representative pointed out that although the existing law on penitentiary institutions was old, it conformed to the provisions of relevant international instruments in a number of respects, such as the separation of men and women and the treatment of minors.

Concluding observations

364. In concluding the consideration of the report, the Committee commended the Government of Romania for its determination to comply with the Convention, as evidenced by the new institutions and legislation introduced, and wished it success in overcoming the problems left by the former regime. The Committee noted in that connection that education about human rights was needed to combat those problems in order to make changes that were irreversible. It thanked the Romanian delegation for its comprehensive answers to the Committee's questions. The Government of Romania was requested to provide, in its next periodic report, information on measures taken in order to put an end to the legacy of the former regime, which could still be seen in prison conditions and the behaviour of the police.