



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE

Thirty-seventh session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 741st MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 16 November 2006, at 3 p.m.

Chairperson: Mr. MAVROMMATIS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.741/Add.1.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (continued)

Fourth periodic report of Hungary (continued) (CAT/C/55/Add.10;
HRI/CORE/1/Add.11)

1. At the invitation of the Chairperson, the members of the delegation of Hungary resumed their places at the Committee table.
2. Mr. ÖRDÖG (Hungary) said that he would address the various questions raised concerning border guards. All foreign nationals could apply for asylum at the international airport or at border checkpoints. Specific information sheets were provided at those places, together with information concerning legal assistance. At the initial interview, asylum-seekers were told of their right to appoint a lawyer, a service that was in some cases provided free of charge: they were also informed of their rights and obligations.
3. Before any action was taken by border guards or other immigration authorities, all foreign nationals were informed of the possibilities open to them concerning legal remedies and official complaints. Every person taken into custody was given a decision in writing concerning his case. For reasons of security, a border guard was present during the medical examination of a detained foreign national, but remained at a sufficient distance to permit the confidential exchange of information between doctor and detainee. He had no information of any case where a doctor had tried to convince a foreigner not to lodge a complaint against the authorities.
4. The medical examination of foreign nationals prior to detention was compulsory, and doctors were obliged to report any visible sign of injury. Consequently, in the event of a foreign national being taken into custody with a visible injury and subsequently taken before the immigration authorities, the latter would insist on a medical report before accepting responsibility. A medical examination was also compulsory if a foreign national stated that he or she had been subjected to torture but had sustained non-visible injuries. In that case it was also necessary to initiate an official investigation.
5. An independent medical examination was possible if foreign nationals explained their reasons for not wanting to be examined by the doctor provided. In practice, foreign nationals sometimes requested to see a doctor of the same sex. If foreign nationals refused to cooperate with the doctor provided by the immigration authorities, they were escorted by border guards to a local doctor.
6. If it was believed that a foreign national might be subjected to torture or other cruel or inhuman treatment upon his return to his country of origin, the border guards informed the asylum authorities. In practice, those persons usually lodged an application for asylum. At the time of the wars in Bosnia and Kosovo there had been a mass influx of illegal, undocumented refugees who in many cases had not requested asylum. The border guards had not, of course, applied the principle of refoulement; most refugees had returned voluntarily after the war. Ethnic Albanians from Kosovo entering the country illegally were deported on direct flights to Pristina, to avoid sending them back to the Serbian authorities.

7. Since the most recent visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, a database had been set up for country of origin information. The database currently contained information on approximately 13 countries - mostly European but also Iraq and Syria - and was continuously updated.
8. Bilateral agreements existed between Hungary and all its neighbouring countries on the readmission of illegal immigrants, but Ukraine had refused to ratify a recently amended version of the agreement. With regard to the question of guarantees given by the Ukrainian authorities concerning the principle of non-refoulement, the official opinion of the border guard authority was that there was no obligation in any readmission agreement concluded by Hungary to monitor a person's fate after readmission. However, a joint project executed by UNHCR and the Hungarian Helsinki Committee had been initiated to monitor the fate of deportees.
9. In 2006, of the 226 persons turned back by border guards, 77 had been Serbian, 68 Romanian and 45 Ukrainian. Only 36 had been citizens of other countries, to which the issue of "chain deportation" did not apply. The asylum procedure in Hungary was not initiated ex officio, but at the request of the applicant.
10. In the past three years there had been eight complaints about border guards by 12 foreign nationals. The official procedure had been followed: disciplinary proceedings had been initiated against the guard in question, and subsequently an official investigation had been carried out by the prosecution service. Three of the cases had gone to court, where the complaints had been dismissed. In one case the prosecutor had decided not to press charges but the guard had been transferred.
11. He had no information relating to any cases where an injured person had been interviewed by border guards.
12. NGOs working in the field of human rights were involved in the training of border guards, covering aspects such as stress management; human rights issues; treatment of vulnerable groups of migrants; and "professional aggression" treatment techniques. Training had also been provided by UNHCR. As a result of the training, there had been fewer cases of conflict between guards and foreign nationals.
13. Cooperation agreements for the provision of legal and other assistance to detained foreign nationals existed between the border guard authorities and various NGOs and other organizations. Humanitarian organizations such as UNHCR and the Hungarian Red Cross were also allowed to visit centres where foreign nationals were detained. Regular psychological assistance - and emergency assistance where necessary - were provided in detention centres. The Cordelia Foundation for the Rehabilitation of Torture Victims provided psychological assistance in many cases, and agreements existed between detention centres and local psychiatric hospitals for the provision of care.
14. The alleged incident concerning a detainee being handcuffed to a radiator had been investigated and found to be unsubstantiated.

15. If a foreign national applied for asylum upon entry into the country, the asylum authorities were informed. In the context of regular border checks, a border guard could decide to refuse entry to a person not applying for asylum, for example if he did not have a visa. In other contexts, such as illegal border crossings, any measures taken were part of “immigration police” procedure, details of which had already been provided to the Committee. In those cases, border guards did not have the right to order return.

16. The Schengen harmonization process was still under way and Hungary had applied the Schengen acquis since 17 October 2006. The readmission agreement concluded with Serbia and Montenegro met European Union (EU) criteria and would continue to be applied by Serbia.

17. Turning to the questions asked about the immigration authorities, he said that legal representation could be requested throughout the immigration control procedure, and that relevant information was available at all detention and interview premises. In the majority of cases, legal assistance was provided by the Hungarian Helsinki Committee free of charge.

18. While legal remedy was automatically provided by the courts after five days of detention, judicial review could be requested at an earlier stage. Once there were no longer grounds for a person to be detained, detention was terminated. In practice, however, that could take months, particularly in cases where a person’s identity was difficult to establish. No figures relating to detention had been compiled for 2005. As at 19 September 2006, no person had spent more than 12 months in detention; 11 persons had spent 6 to 12 months in detention; 111 persons had spent between 5 days and 6 months in detention; and 39 persons had spent less than 5 days in detention.

19. Information on persons with subsidiary protection status had been provided to the Committee in June 2006; as at 31 October 2006 that status had been granted to a total of 364 persons.

20. He explained the different immigration control procedures for undocumented foreign nationals, which varied according to whether the person’s identity could be established, and gave examples of when accommodation in community shelters was provided, inter alia in cases where the principle of non-refoulement was applied. There was no overcrowding at reception centres and community shelters, as the number of asylum-seekers and illegal migrants was decreasing. Of the 1,770 places available at the three reception centres, 493 had been occupied as at 13 November 2006. He described the legislation granting protection to victims of human trafficking, for whom a specific shelter existed.

21. He described the special eight-day procedure applicable in the case of asylum requests made at Hungary’s international airport. Such cases were rarely resolved within that period, and the person concerned was usually transferred to one of the reception centres.

22. Asylum procedure included examination of the principle of non-refoulement on a case-by-case basis, regardless of country of origin, inter alia for asylum-seekers coming from third countries deemed to be safe.

23. The process of aligning Hungary's legislation with EU directives on asylum was under way, but no political agreement had yet been reached concerning amendments to the national Asylum Act. In many ways, however, Hungarian legislation was more favourable than EU legislation, which often led to cases of abuse. The new Aliens Act was expected to come into force early in 2007 and would set the maximum duration of detention at six months.
24. Mr. SZÚCS (Hungary) said that the very general definition of torture contained in article 1 of the Convention could not be incorporated within the structure of the Hungarian Criminal Code. Rather, the Code defined specific criminal acts such as ill-treatment in official proceedings; forced interrogation; unlawful detention; and abuse of authority. The relevant provisions covered acts of torture or other inhuman or degrading treatment. Abettors and accomplices were punished in addition to perpetrators and co-perpetrators.
25. The right of detainees to correspond, and to receive parcels and visitors, could only be restricted in the interest of the criminal proceedings, for example to prevent the detainee from influencing witnesses or threatening the complainant. Such restrictions - which could naturally be appealed against - were imposed prior to indictment by the competent public prosecutor or, after indictment, by the competent judge.
26. Pretrial detention at police stations was possible for a maximum of 60 days, and was an exceptional measure applied only when necessary in the interests of the investigation.
27. Mr. BERECSKI (Hungary) said that while information on the average length of pretrial detention in prison could not be provided, according to the statistics for 2006 a total of 1,175 persons had been so detained for between 1 and 6 months; 667 had been detained for between 6 and 12 months; and 431 had been detained for between 12 and 18 months. Only 13 per cent of pretrial prisoners had been detained for more than 12 months.
28. Ms. GARAI (Hungary) said that under article 123 of the Criminal Code, law enforcement officials were not punishable for carrying out an order unless they were aware that they would thereby be committing an offence. That position was supported by the relevant case law. However, the provision had been applied only in cases of embezzlement. In a case involving ill-treatment by two soldiers - a superior and his subordinate - both men had been found criminally responsible.
29. Turning to the question about the death of Mr. Richárd Jakab, she said that, as part of the criminal investigation, tissue samples taken from his corpse had been examined by two civilian experts, a cardiologist and a traumatologist. Their findings had corroborated the result of the original autopsy, according to which Mr. Jakab had died of heart failure and not as a result of maltreatment by the police.
30. Mr. SZÚCS (Hungary) said that under the Police Act police officers could arrest someone who had committed an offence or was suspected of having done so. An arrest could also be made if a person failed to produce valid identification papers. The maximum time a person could be remanded in custody was 72 hours. In criminal proceedings, if a person remanded in custody failed to appoint a defence counsel, the investigating authority was required to appoint an ex officio counsel immediately. In other proceedings, the defendant could choose a

counsel but the authorities were not obliged to appoint one. Information on the right to legal assistance was included in a list of rights issued by National Police Headquarters and given immediately to anyone arrested by the police.

31. Mr. TALLÓDI (Hungary) said the legal status and authority of the ombudsman were defined by Act No. 59/1993. The ombudsman's recommendations were not legally binding but the authorities usually acted on them. The ombudsman submitted annual reports to parliament and informed it whenever the authorities failed to comply with his recommendations.

32. All prison staff and police officers received compulsory human rights training, including information on international human rights instruments, such as the Convention against Torture. Prison staff were given special training in stress prevention. Moreover, all law enforcement officials were required to undergo compulsory psychological screening every two years.

33. Mr. BEREZKI (Hungary), answering questions about vulnerable groups in detention, said that women were allowed to raise their children in prison up to the age of one year. A special unit for 20 families at Kecskemét prison had all the necessary medical and social facilities. Women could give birth to their babies in the prison hospital or in a civilian hospital; in the latter case they could request a suspension of their sentence for the requisite period.

34. Under the law, persons with mental disorders could not be sent to prison but were placed in a separate institution with a capacity of 186; medical services included access to psychologists and psychiatrists. Nearly every prison had set up special remedial groups for prisoners suffering from depression or personality disorders (who currently numbered about 180), but there was no special treatment unit for sex offenders. The "drug-free unit" had been created to help addicts, and physiotherapy units had been set up in two prisons for prisoners with locomotive disorders. Foreign prisoners expelled from Hungary as a punishment were taken to the "foreigners unit".

35. Mr. SZÚCS (Hungary) said that the prosecution service had begun investigations into 104 allegations of police brutality during the demonstrations that had taken place in September and October 2006. It had also initiated investigations into the actions of 117 demonstrators. All those investigations were still in progress. In addition, the Government had set up an expert committee to examine the reasons for the incidents and their consequences.

36. To illustrate why investigations into acts of torture and other cruel, inhuman or degrading treatment or punishment might be terminated in cases of "compulsion or threat", he gave the example of a prison guard ordering a prisoner to beat a cellmate. If the guard seriously threatened or beat the prisoner to ensure that the order was obeyed, the prisoner could not be held responsible. Instead the guard would be regarded as the "indirect perpetrator" and punished, and any investigation initiated against the prisoner would be terminated.

37. Every year the prosecution service thoroughly investigated the treatment of persons in "holding facilities" and monitored the practice of suspending holding facility staff members found guilty of unlawful treatment. Over the previous three years no staff member found guilty of unlawful treatment had been allowed to remain in his post but, if every staff member under investigation was suspended, holding facilities would be difficult to operate.

38. Mr. TALLÓDI (Hungary) said that, pursuant to the provisions of Act No. 135/2005 and Government Decree No. 209/2001, victims of crimes were entitled to State damages if they had suffered bodily harm. Under Act No. 135/2005, which had entered into force on 1 January 2006, victims were also offered support services. Since the beginning of the year, the “victim assistance service” had already considered 276 requests and paid almost 14 million forint in damages.

39. Act No. 77/1993 stipulated there were both national and ethnic minorities in Hungary, the latter signifying the Roma; there were no indigenous peoples. Since, pursuant to Act No. 63/1992, all data relating to minority status were personal, they could be officially registered only with the consent of the person concerned. Minority status was subject to voluntary declarations and was not normally recorded. Anyone wishing to participate in elections to a minority self-government, however, was required to register as a member of the minority concerned.

40. Ms. TÓTH (Hungary) said that the consular protection of Hungarian nationals who were victims of trafficking was governed by Act No. 46/2001 relating to consular protection. Pursuant to its provisions, when a case was brought to their attention the Hungarian consular service helped the person to contact his or her family and provided him or her with the required travel documents. The consulate helped with any necessary bank transfers or made a loan so that the person could return home. In countries where Hungary had no diplomatic representation, consular services were provided by another EU member State.

41. Mr. GROSSMAN, Country Rapporteur, stressed that it would be preferable for Hungary to include a clear definition of torture in its Criminal Code. The situation was clearest for all concerned when there was a single legal provision defining torture and other cruel, inhuman or degrading treatment or punishment for the purposes of compliance with the Convention. With regard to specific matters, he added that the notion of aiding and abetting a crime was common to every legal system but he asked whether acquiescence was also provided for.

42. He requested a copy of the ombudsman’s annual report to parliament and the recommendations of the parliamentary committee on minorities. Among other things, they would offer a useful indication of issues of concern to Hungarian society.

43. Ms. SVEAASS, Alternate Country Rapporteur, asked whether NGOs could play an active role in monitoring the holding facilities for aliens. It would also be useful to know exactly how many grade 4 prisoners were kept in maximum-security cells for nine months or more. Welcoming the information that support services and compensation were available for crime victims, she said that the Hungarian authorities needed to distinguish between the victims of “any crime” and those of torture, a specific crime that the State was obliged to prevent but that could sometimes even be committed by State officials. She hoped that such a distinction would be made by the time the next periodic report was submitted.

44. The term “bodily harm” had been used with regard to damages; in her view, the potential psychological harm caused by a crime, especially torture or ill-treatment, could be even greater, and so a specific legal provision was required. She could understand why holding facility

personnel about whom complaints were lodged were usually suspended or transferred to other duties, but wondered whether consideration had been given to their dismissal if the complaints were serious or repeated.

45. Mr. GALLEGOS CHIRIBOGA, referring to the asylum procedure in place at the international airport, and noting the complexity of migration and asylum issues, asked why there were no legal provisions on the procedure to be followed at other points of entry.

46. Mr. MARIÑO MENÉNDEZ asked whether, in the light of international efforts to combat terrorism and the recent investigations by European institutions into extraordinary renditions, there had been any similar cases in Hungary. Had the Hungarian authorities resorted to enforced returns or similar methods of expelling third-country nationals, as was the case in some other European countries? Had there been any court cases in Hungary concerning either extraordinary renditions or enforced returns?

47. He then asked whether members of the armed forces or civilians could arrest anyone caught in flagrante delicto. If they could, what rules applied? Did the person thus arrested have to be escorted immediately to a police station? Did the police keep separate registers of such arrests and, if so, what were the figures?

48. Ms. BELMIR said that, in order to obviate the risk of impunity under article 123 of the Criminal Code, all law enforcement officials should be given training in the correct procedure in order to avoid violations of human rights.

49. The distinction between national and ethnic minorities seemed to be peculiar to Hungary. She wished to know whether membership of either minority was mentioned on identity documents. Were members entitled to Hungarian passports? Was there a likelihood of discrimination against members of the minorities when they travelled abroad? Did they run the risk of statelessness?

50. The CHAIRPERSON invited the delegation to reply to further questions put by Committee members.

51. Mr. SZELEI KISS (Hungary) said that all the ombudsman's annual reports were available on the Internet but could also be made directly available to the Committee on request. A new criminal code was being drafted and the Committee's recommendations on a definition of torture would be conveyed to those concerned. The new code would, of course, have to be adopted by Government and parliament.

52. Mr. ÖRDÖG (Hungary) said that detainees had the right to establish direct contact with human rights organizations, as had been described in Hungary's third periodic report (CAT/C/34/Add.10), and had traditionally done so. Such organizations performed a wide variety of tasks, including receiving complaints, initiating judicial proceedings or conducting investigations. The Hungarian Helsinki Committee was the organization with the most expertise in that field.

53. He agreed that the psychological damage suffered by victims of torture could sometimes be greater than the bodily harm suffered, and that that was an important issue. Although, according to the rules of detention, the physical condition of an asylum-seeker or refugee determined whether or not they could be detained, there was nothing to prevent such persons from lodging a complaint of torture. Border guards had an opportunity, as well as an obligation, to report any complaint of torture, regardless of whether or not there were visible signs of it.

54. The so-called “airport procedure” was a special procedure that had been introduced only at the international airport but had in practice proved not to be effective. Border guards did not have the capacity to handle a mass influx of asylum-seekers or refugees; that task was better left to asylum officers, who were better qualified to examine and process applications. The issue would be addressed as part of the current reform of Hungary’s Asylum Act.

55. Ms. GARAI (Hungary) said that the Government was involved in efforts to negotiate international instruments relating to terrorism, including the proposal for a framework decision on certain procedural rights in criminal proceedings throughout the EU. Hungary was part of a group of countries that maintained that certain procedural rights must be respected. Different standards did not apply depending on the severity of the crime; under the Criminal Procedure Act, the same safeguards applied whether a crime was a terrorist act or not. In Hungary, there had been no instances in which measures had been taken in relation to terrorist offences committed abroad, and there had been no terrorist attacks.

56. Persons caught in flagrante delicto were taken into custody for a maximum of 72 hours if, under the Criminal Procedure Code, there were grounds for ordering such custody. In some cases, such persons were detained at a police station for up to 8 hours, or, in exceptional cases, up to 12 hours, in order to determine their identity and establish the facts needed for an investigation. The two measures were not recorded in separate registers.

57. Mr. SZELEI KISS (Hungary) said that any questions the delegation was not able to answer to the Committee’s satisfaction would be answered in writing in due course.

58. Mr. TALLÓDI (Hungary) said that all persons belonging to a Hungarian national or ethnic minority were Hungarian citizens; their status as a member of a minority was not indicated in their passport.

59. Ms. GARAI (Hungary) said that the provisions of the Criminal Code were by no means considered to be conducive to impunity; rather, they took into account the fact that soldiers, for example, were in a very difficult situation. Torture and degrading treatment were prohibited, and all soldiers and police officers were aware that such acts were punishable under the Criminal Code. For that reason, her Government did not consider it necessary to amend the Criminal Code in that regard.

60. The CHAIRPERSON thanked the delegation for its participation.

61. Mr. SZELEI KISS (Hungary) said that his Government valued the Committee’s comments and looked forward to receiving its recommendations.

The public part of the meeting rose at 4.40 p.m.