



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

Distr.
GENERAL

CAT/C/SR.845
13 November 2008

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Forty-first session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 845th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 7 November 2008, at 3 p.m.

Chairperson: Mr. GROSSMAN

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.845/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)

Second periodic report of Kazakhstan (CAT/C/KAZ/2; CAT/C/KAZ/Q/2) (continued)

1. At the invitation of the Chairperson, the members of the delegation of Kazakhstan resumed their places at the Committee table.
2. Mr. KUSDAVLETOV (Kazakhstan), replying to the question whether Kazakhstan intended to accede to the Rome Statute of the International Criminal Court, said that his Government was currently evaluating that possibility. However, certain elements of the Statute posed problems with regard to the Kazakh Constitution, and the Statute could only be ratified once they had been resolved. In principle, his Government stood ready to cooperate in all international efforts whose objectives were in line with national priorities.
3. Turning to questions on trafficking in human beings, he said that an inter-agency committee headed by the Ministry of Justice and composed of representatives from relevant State institutions and NGOs had been set up to address issues relating to trafficking. The committee had drafted a programme of work for 2008 which included 16 measures relating to legal assistance for victims of trafficking, and cooperation in the areas of migration and combating organized crime.
4. Kazakhstan drew on international experience in providing assistance to victims of trafficking and was constantly improving relevant legislation. The Criminal Code had been amended to criminalize slavery, exploitation of human beings and trafficking. Victims of trafficking were covered by the law on State protection of persons involved in criminal proceedings. In 2007 alone, criminal proceedings had been instituted in 7 cases involving 31 victims. Kazakh nationals who had been trafficked to other countries were provided with consular assistance.
5. Funds had been made available for State and NGO-run programmes to assist victims of trafficking, who were guaranteed temporary housing and exemption from liability for any offences connected with their arrival in Kazakhstan. The media published information on the rights of victims and a special hotline had been set up. In 2008, a delegation had been deployed to study Italy's experience with special crisis centres for victims of trafficking and, as a result, steps had been taken to establish similar centres in Kazakhstan. The Ministry of the Interior had set up centres to train specialized anti-trafficking officials. A social services bill, which included provisions on assistance for victims of domestic violence and trafficking, was currently before parliament.
6. At the international level, his country had ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Kazakhstan also cooperated with other members of the Commonwealth of Independent States (CIS) and had signed the programme of cooperation between CIS members in the fight against human trafficking for 2007-2010.

7. Mr. ZHUKENOV (Kazakhstan), replying to questions about the independence of the judiciary, acknowledged that Kazakh courts were not yet fully independent. Following a brief overview of the structure of the Kazakh judicial system, he said that most cases were settled at first instance, with the participation of jurors. Provision had been made to extend the scope of jury trials as from 1 January 2010. The Supreme Court supervised the activities of courts of general jurisdiction and issued decisions providing explanations on issues relating to the application of legislation in practice; the Court's decisions were binding.
8. Judges were appointed for life; their appointment and removal were subject to a presidential decree and the relevant procedures were set forth in legislation. Candidates must pass a qualifying examination, followed by pupillage in a court and subsequent approval by the College of Justice. The powers of judges could be terminated or suspended only on grounds and in the manner stipulated in the Constitution, following a decision by a disciplinary panel of judges.
9. The Government was aware that more funding must be provided for courts and judges to ensure their independence. A special committee had been set up to oversee the allocation of financial and technical resources for the judiciary. Recent amendments to legislation governing the status of judges aimed at increasing their independence, inter alia by increasing remuneration. With regard to judges' professional qualifications, he drew attention to the Constitutional Law on the Judicial System and the Status of Judges, which stipulated that in order to qualify to serve in a higher court, a judge must have at least 5 years' experience of work in the legal profession; Supreme Court judges were required to have had at least 10 years' experience in lower courts.
10. Much had been achieved in the area of juvenile justice. On 27 June 2008, his Government had approved a phased strategy for developing the juvenile justice system over the period 2009-2011. The strategy provided, inter alia, for the establishment of specialized departments within the Ministry of the Interior and the Ministry of Justice, and for special studies on juvenile justice administration by the Office of the Procurator-General.
11. Specialized juvenile courts had been created by presidential decree on 23 August 2007 and commenced operations on 26 July 2008. Those courts heard criminal and civil cases involving minors, including custody-related complaints and violations of minors' rights. In the first three months, the courts had heard more than 200 civil cases, 40 criminal cases and 60 administrative cases. The vast majority of civil cases related to adoption. Criminal proceedings mostly concerned robbery and vandalism. The Code of Criminal Procedure provided for special procedures for cases involving minors. Judges generally opted for less severe forms of punishment; only 5 out of the 40 criminal cases involving minors had resulted in deprivation of liberty, which had been imposed owing to the seriousness of the crimes committed. Some of the cases had been resolved through reconciliation. Information on specific cases could be provided on request.
12. There were separate interview rooms for minors. At the court in Almaty, a separate building had been made available for that purpose. The Government planned to establish specialized juvenile courts in all regions.

13. Reports alleging that Kazakh courts were subservient to the Office of the Procurator-General were baseless. The independence of courts was guaranteed in the Constitution; a special, independent committee was responsible for the allocation of funds for the justice system. The Procurator-General's Office was a separate entity that represented the State in court proceedings, oversaw pretrial investigations and initiated criminal proceedings. The Office's submissions to the courts had no special status.

14. The Code of Criminal Procedure provided for compensation and redress by the State for any damage caused as a result of illegal acts by bodies conducting criminal investigations, including property or moral damage. Any judicial body responsible for such damage must issue a formal apology.

15. In the case of Amantaj Usenov, on 21 March 2008 the Zhezkazgan city court had ordered the Ministry of Finance to pay the victim 5 million tenge in compensation for injuries sustained as a result of ill-treatment by police officers. On 21 August 2008, the Ministry of Finance had sent a letter to the court concerning changes in the way in which the decision would be implemented. On 9 September 2008, reconciliation had been achieved between Mr. Usenov and the Ministry of the Interior and compensation had been paid in full on 29 September.

16. Turning to the questions regarding arrest and detention procedures and the application of habeas corpus, he informed the Committee that responsibility for issuing arrest warrants had been transferred from the Procurator-General's Office to the courts. No person could be detained for more than 72 hours without a court order. Courts were required to give formal authorization for any extension of custody; such authorization must be requested no later than 48 hours after the arrest. Special procedures were in place to enable courts to verify the lawfulness of detention. The exact time of arrest must be entered in the record of the arrest, which must be completed within three hours after the detainee had been taken into custody. Failure to follow that procedure could result in criminal proceedings against the officer responsible for the arrest. Both the suspect and defence counsel must be present during court proceedings. The injured party was entitled, but not obliged, to attend.

17. While confessions of guilt had been admissible as evidence during the Soviet era, priority was now given to the presumption of innocence and nobody was required to testify against himself. Article 106 of the Code of Criminal Procedure made it clear that evidence obtained through torture was inadmissible. A regulation clarifying the provisions of the Code had been adopted in April 2008. Paragraph 12 of the regulation stated, for instance, that a court judgement was unlawful if it was based solely on evidence provided by the accused that was not backed by other evidence. Paragraph 24 emphasized that courts should make every effort to check evidence that might have been obtained unlawfully. If references by the accused to improper conduct by investigators could not be verified, the prosecutor should be instructed to provide the relevant information. Article 109 of the Code of Criminal Procedure concerned complaints regarding actions of representatives of the Procurator-General's Office and law enforcement agencies. Amendments to ensure that such complaints, including allegations of torture, were processed rapidly were currently being discussed.

18. On 24 October 2003, Almaty District Court No. 2 had acquitted Mr. S.P. Fisenko under article 116 of the Code of Criminal Procedure of the charge of possessing large quantities of heroin, because it emerged during the court hearings that he had been beaten by the police and

forced to sign a confession. The fact that violence had been used was confirmed by the findings of a medical examination and testimony by witnesses to the beating. The court had also decided to initiate proceedings against the police officers concerned.

19. On 1 August 2008, the Atirauk regional court had acquitted Mr. M.V. Torshilov of charges of rape and murder because the prosecution's evidence had been obtained through the use of threats and beatings by police officers when he had been taken into custody in 2007. The Supreme Court had endorsed the regional court's judgement on 24 September 2008.

20. Turning to the question of amnesties, he said that parliament had enacted amnesty laws in 1996, 1999, 2002 and 2006. The amnesty law of 9 January 2006 had been enacted on the occasion of Independence Day. The beneficiaries had been persons convicted of less serious offences, minors, women with small children, persons with disabilities or of retirement age, and persons who had already served part of their sentence.

21. With regard to Mr. Rakhat Aliyev, the Almaty regional court had convicted him and several other members of a criminal group of kidnapping and racketeering. The group, which had included members of the armed forces, had used threats to force individuals to relinquish their property and had kidnapped two bank directors, whose whereabouts were still unknown. The members of the group had been tried and had admitted to using violence against their victims. All had been found guilty and would serve six-year sentences. Other accomplices such as notaries would serve shorter sentences.

22. Mr. DEMBAYEV (Kazakhstan), replying to questions regarding the definition of torture in Kazakh legislation, said that before Kazakhstan had become a party to the Convention in 1999 all cases of abuse of authority by public officials, including use of psychological pressure or physical violence, had been punishable under the 1995 Constitution, which stated that no one should be subjected to torture or ill-treatment. In 2002, article 347 of the Criminal Code, which defined torture and the penalties it attracted and which referred to the use of physical or psychological ill-treatment by an investigator, an official conducting an initial inquiry or any other official, had been adopted. Moreover, public officials who were not directly involved in acts of torture or ill-treatment but who instigated them or failed to take action against the perpetrators would be liable to prosecution under article 128 of the Code. Article 308 concerning abuse of official authority was also invoked in many cases. Between 2006 and 2008, a total of 209 law enforcement officials had been charged under that article. During the same period, 14 persons had been prosecuted under article 347. The penalties imposed under article 308 were generally more severe than those imposed under article 347. The authorities were, however, aware of the need to harmonize judicial practice in that regard and the Supreme Court might be called upon to issue guidelines regarding the application of the different articles and the penalties to be imposed.

23. Replying to questions regarding access to legal counsel and the quality of legal aid, he said that the Code of Criminal Procedure required the arresting authority to draw up an official record of the grounds for the arrest within three hours. However, law enforcement officials sometimes ignored that time limit and entered a later time of arrest. Parliament was currently discussing a bill that would address that problem and also guarantee the right to legal assistance. One provision contained a detailed description of the role of publicly-assigned counsel during the pretrial phase. The lawyers in question were not State officials but private professionals who

were members of the Bar Association. They were hired by the State on a rotating basis and were sometimes reluctant to take on such cases. The quality of the services they provided was monitored by special oversight bodies.

24. The Procurator-General's Office dealt with matters relating to extradition, which was based on bilateral treaties. The grounds for refusal of extradition had been spelled out by the legislature and the Code of Criminal Procedure. For instance, a person who had been granted asylum could not be extradited. Other basic principles were dual criminality and ne bis in idem. After extradition, steps were taken to ensure that the extradited person was tried only for the offence mentioned in the extradition request.

25. Ms. AMIROVA (Kazakhstan) said that the Office of the Human Rights Commissioner (Ombudsman) had been established in September 2002. The incumbent was appointed for a five-year term, once renewable. The qualifications for the post included a higher-level legal diploma and at least three years' service in an area relating to general or human rights law. Neutrality in terms of political and other views was a further requirement. The Ombudsman was appointed by the Prime Minister with the approval of the two chambers of parliament, to which he reported annually. The Ombudsman could take measures to protect human rights and alert parliament, the President and the Government when serious violations came to light. He could recommend that officials who had violated human rights should be disciplined and could make statements to the media. He was assisted by a national human rights centre, which had a 15-member staff. A three-year budget had been approved by parliament in 2008 and a law allocating additional funds for regional branches was about to be enacted. Efforts were thus being made to ensure that the Office's legal basis fully complied with the Paris Principles.

26. In late 2006, a group of experts from the Venice Commission, which was the Council of Europe's advisory body on constitutional matters, had visited the country. The group had recommended that the Ombudsman should have the right to take legislative initiatives and to file applications with the Constitutional Court. Under a new legal-development project, a special law on the institution of the Ombudsman would be enacted. The draft version was currently being discussed among legal experts, public bodies and NGOs.

27. The Ombudsman received about 2,000 individual complaints every year. Unfortunately, almost 60 per cent of the complaints concerned court decisions and were therefore outside his jurisdiction.

28. There was as yet no ombudsman for children, but a committee on the rights of the child had been set up in the Ministry of Education pursuant to a recommendation by the corresponding United Nations Committee. The Ombudsman was involved in a special two-year project that was being developed in cooperation with UNICEF and one of the five reports submitted by the Ombudsman to date concerned the rights of the child. The most recent report concerned the rights of immigrants, economic migrants and refugees.

29. The human rights commission was responsible for drafting the annual report on the human rights situation in Kazakhstan, whereas the Ombudsman drafted a separate report on his own activities. He participated in various inter-agency advisory bodies, for example on legal policies and international law, and was also involved in the drafting of human rights legislation.

30. In the light of the ratification of the Optional Protocol, discussions were under way on the establishment of a mechanism to investigate cases of torture. One proposal was that it should be attached to the Ombudsman's Office.

31. Ms. ZHARBOSUNOVA (Kazakhstan) asked whether it would be possible to submit in writing, in Russian, the remaining replies that her delegation had been unable to deliver in the time available.

32. The CHAIRPERSON said that any further written information should be submitted by the middle of the following week so as to help the Country Rapporteur draft the concluding observations.

33. Mr. KOVALEV, Country Rapporteur, said that, despite the time constraints, he had formed a favourable impression from the replies to his specific questions. Given the delegation's great enthusiasm, he was confident that Kazakhstan would rapidly eliminate torture. One important question he had omitted to raise was who was authorized to order the extension of detention beyond 72 hours and in what circumstances. It would be preferable if the additional written information was submitted in English.

34. Mr. WANG Xuexian, Alternate Country Rapporteur, thanked the delegation for its candid and cogent replies. Nevertheless he would have liked an answer to his question on training, since it was considered to be the most effective method of preventing torture. More information on the time frame for conducting investigations would also be welcome. He stressed that the intent of the Committee's question concerning the Rome Statute of the International Criminal Court was to encourage the State party to consider acceding to that instrument.

35. Ms. BELMIR said that she was not entirely satisfied with the delegation's replies, especially concerning the definition of torture. Of particular concern was the "note" in paragraph 14 of the report according to which physical and mental suffering caused as a result of legitimate acts on the part of officials should not be recognized as torture. The information provided by the delegation seemed to imply that what mattered was the degree of harm caused and not the fact that it was inflicted, a view which was not in conformity with the Convention. She asked under what circumstances Kazakh law allowed officials to cause harm to persons deprived of their liberty.

36. The delegation had stated that the appointment of judges by the President of the Republic afforded certain guarantees, and that the President was also responsible for organizing the work of the judiciary. She wondered how that could be reconciled with the principles of the independence of the judiciary and the separation of powers.

37. She enquired whether any higher authority monitored procurators in their task of ensuring the observance of citizens' constitutional rights and freedoms during criminal proceedings.

38. Ms. SVEAASS welcomed the frankness with which the delegation had presented specific cases. She asked whether Mr. Torshilov, having been acquitted of two serious offences, had been awarded compensation. She enquired what steps were being taken to investigate and prevent self-mutilation among detainees.

39. Ms. GAER said although there had not been enough time to hear all of the delegation's replies, certain aspects had become clearer. While progress had been made in some areas, others remained a cause for concern. For example, the Committee would be looking closely at the State party's need to strike a balance between the letter of the law and practice. A further concern was the continued pattern of low-grade abuse, including beatings and sexual threats, on which she requested more information. The delegation's replies concerning certain high-profile cases of abuse had not entirely satisfied her, particularly in relation to due process issues.

40. She requested more information on the administration of detention centres. She understood that some of them were still under the administration of the Ministry of the Interior, particularly those which had given rise to the most serious complaints.

41. She enquired how the objectives of the Shanghai Cooperation Organization could be reconciled with the State party's obligations under article 3 of the Convention concerning the principle of non-refoulement. Allegations had been made that persons suspected of terrorist, separatist and extremist religious activities were being returned to their homelands without valid grounds. Amnesty International had reported that certain people were classified as illegal immigrants without rights. The Convention drew no such distinctions, but merely referred to persons who might be in danger of being subjected to torture. It also seemed that persons covered by the Minsk Convention on the provision of judicial assistance and legal relations in civil, family and criminal cases had fewer rights than persons from other States. She requested clarification on those matters.

42. Mr. MARINÑO MENENDEZ thanked the delegation for explaining the role of the Ombudsman. He still had some doubts, however, concerning procedures for recording the exact length of detention and expressed concern about their impact on the legal status of persons being held.

43. Despite the delegation's assurances regarding the greater independence of the judiciary, the specific role played by procurators in Kazakhstan remained problematic and should be taken up in the concluding observations.

44. He asked whether there was an agreement among the States parties to the Minsk Convention that their citizens should automatically be returned to their country of origin without any investigation of the risk of being subjected to torture upon their return.

45. The CHAIRPERSON, speaking as a member of the Committee and referring to a case mentioned involving an out-of-court settlement, enquired whether the settlement had included compensation, and if so, on what grounds the compensation had been awarded.

46. Detainees often found themselves in a legal vacuum. If their detention was officially recorded they enjoyed certain protection; however, their detention could also be de facto. The provisions of the Convention were applicable to all detainees, and so it was highly important to establish the start and duration of detention.

47. States could, of course, freely choose whether to ratify the Rome Statute of the International Criminal Court; the Committee could merely indicate that such a choice was worthwhile. Ratification would provide protection for their citizens and prevent other States from establishing jurisdiction over them.

48. Ms. ZHARBOSUNOVA (Kazakhstan) thanked the Committee for the constructive dialogue and recommendations made so far. The ratification of international instruments depended on the political will of States. When her country had embarked on the path of democracy and development, it had done so with the intent of ratifying the main international human rights instruments. Nevertheless, the enactment of legislation and elimination of stereotypes had taken considerable time. The Constitution was sound, but there was no magic formula for ensuring the practical implementation of legislation.

49. The report and information furnished by the delegation and NGOs showed that great strides had been made. Yet there was still room for improvement. Since the ratification of the Optional Protocol to the Convention in June 2008, efforts had been focused on the establishment of a mechanism to monitor implementation of the Convention. She was confident that the Committee's continued cooperation and possible mission to Kazakhstan in May 2009, together with the support of civil society and other international bodies, would contribute to the overall improvement of the situation and to the fulfilment of Kazakhstan's obligations under the Convention. Her delegation would submit the remaining replies to questions raised, in English and Russian, within the agreed deadline.

The public part of the meeting rose at 5.10 p.m.