

DENMARK

CAT A/44/46 (1989)

94. The Committee considered the initial report of Denmark (CAT/C/5/Add.4) at its 12th and 13th meetings, held on 19 April 1989 (CAT/C/SR.12-13).

95. The report was introduced by the representative of the State party, who recalled that Denmark was the twentieth State to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He explained that the reason for the delay in ratification was to ensure that Danish legislation conformed with the Convention, and would not require Denmark to make reservations on specific articles. The only change in jurisdiction that had been necessary was in relation to article 5.

96. The members of the Committee welcomed the report, particularly as its structure corresponded to the Committee's general guidelines for the preparation of reports. It was stated that the report positively attested to Denmark's determination to prevent the occurrence of torture. Despite the clarity of the report, and the usefulness of an annex on the International Rehabilitation and Research Centre for Torture Victims (RCT), the members said that further illustrations of legislative and administrative documents would have been useful. There were also certain points in the report on which the members requested clarification.

97. Members of the Committee asked, in general, if there was a legal designation of torture in Danish legislation, as it was unclear from the report whether the Convention had been incorporated into Danish law. Furthermore, they wished to know if there was a specific prohibition on torture in the Danish Constitution. The report claimed that Danish Law considered the abuse of public power as a criminal offence to a far greater degree than acts of torture. Clarification was also sought on why proof of punishable conduct by a public employee usually affected their employment and whether this meant it did not always affect employment.

98. With reference to article 2 of the Convention, members of the Committee inquired about the legal status of a doctor who refused an order to force-feed a prisoner choosing to die by going on a hunger strike. They asked if the measures to protect Danish citizens from acts of torture were equally applicable to foreigners. Lastly, members asked if, in a state of war or international conflict, the rights of Danish citizens would be suspended.

99. With reference to article 3 of the Convention, members asked for more detailed information on the grounds for refusal to expel or extradite a person. In particular, they wished to have more details on the training given to police officers to enable them to recognize whether a person had been tortured or was likely to be so on return to his own country.

100. In relation to article 4 of the Convention, members of the Committee asked for elaboration on the term maltreatment. An explanation of the difference between sections 244, 245 and 246 of

the Criminal Code was requested. Members also asked for clarification on the penalties under 147 of the Criminal Code for confessions made by unlawful means.

101. Referring to articles 5 and 6 of the Convention, members inquired if torture was considered a universal crime, and if, in Danish legislation, this meant wherever it occurred and whoever was the victim.

102. With reference to article 10 of the Convention, members wished to know if there was an established training programme for medical personnel in the recognition of torture. Furthermore, they asked if doctors were specifically assigned to military, police or other authorities. Members said that it would have been useful to have been provided with illustrations of how the prohibition against torture was considered self-evident in Denmark.

103. With reference to article 11, members asked if prisoners were kept in isolation or in incommunicado detention. They wished to have clarification on the meaning of oral proceedings in court cases being observed to the widest extent possible. They requested information on whether a medical examination of all prisoners took place at the time of arrest. Members asked for further details on counsels for defence being appointed in all regular criminal cases.

104. In relation to articles 12 and 13 of the Convention, members of the Committee wished to have further information on the local boards which made investigations into police conduct. They wished to know whether the boards could call for investigations into crimes committed by police officials and the criminal responsibility of such officials. Members also asked for details on whether the Ombudsman had conducted investigations ex officio.

105. With reference to article 14 of the Convention, members stated that it would have assisted them in their work if they had been provided with illustrations of how the Government of Denmark makes compensation to torture victims, particularly examples of the Act on compensation from the treasury.

106. Referring to article 15 of the Convention, members of the Committee inquired about the rules on inadmissible evidence generally and whether such rules applied equally to foreigners. They asked if there had been cases where the obtaining of evidence or confession by unlawful means had been proven.

107. In relation to article 16 of the Convention, members of the Committee wished to know how many torture cases had occurred in Denmark and the number of public officials involved in such cases.

108. Commenting on the rehabilitation of torture victims, members wished to know whether before the establishment of the RCT, the Government had been involved in its own rehabilitation programme. Clarification was sought as to the nationality of the victims treated each year by RCT, as quoted in paragraph 7 of the annex to the report of Denmark.

109. Finally, on the grounds that torture is an international crime and as such comparable with

genocide and crimes against humanity, the Danish Government was asked whether it was considering the enactment by the Danish Parliament of an instrument specifically incorporating the crime of torture into Danish law.

110. The representative of the State party, replying to the general questions raised by members of the Committee, stated that the Danish Criminal Code had been amended in order to ratify the Convention and that the provisions cited in the report represented a specific incorporation of that international instrument. He said that the Constitution, which was difficult to amend, did not specifically prohibit torture, but that as the problem had not occurred in Denmark for over 125 years, the Government had not found it necessary to introduce the prohibition, since the prevention of torture was covered by existing legislation. In reply to the question on the abuse of public powers being considered to a far greater degree than the Convention, he said this meant that, under the law, it was not necessary to prove that an act of torture had been committed in order to find a public official guilty of the abuse of power, and that even simple assault would lead to a criminal charge. Therefore, the level of protection under Danish law began at a lower level than the definition of torture in the Convention. Similarly, not every offence on the part of a public official would automatically result in loss of employment; in the case of torture, however, a person could be suspended pending investigation and if found guilty would be dismissed. There was no question of a police officer continuing to be employed after having been found guilty of such an offence.

111. Turning to the specific questions concerning articles of the Convention, particularly those under article 2, the representative commented on a doctor's refusal to feed a prisoner intravenously, saying that a doctor would have to obey orders because section 250 of the Criminal Code made it an offence not to try to save the life of someone in ultimate danger. Although it was not illegal to commit suicide in Denmark, it was a criminal offence to assist someone to do so. Acknowledging that the matter raised ethical problems, he did not agree that to compel a doctor to feed a prisoner intravenously amounted to degrading or inhuman treatment. He confirmed that protection under Danish law from acts of torture applied equally to foreigners. He further confirmed that the Constitution did not contain an emergency clause and derogation from it was not permissible even in times of war.

112. With reference to article 3 of the Convention, the representative said that members of the Directorate of Aliens and the Red Cross, present at all times at airports, were trained to recognize symptoms of torture. The Directorate administered the admission or otherwise of refugees and asylum-seekers, but, if refused admission, a refugee could appeal to the Refugee Board. The Board consisted of representatives from the Ministries of Justice, Foreign Affairs, and Social Affairs, the Refugee Council and the Danish Bar Association and was headed by a high-court judge. The representative stated that doctors rather than police officers should be trained to identify torture victims. Doctors could provide medical certificates of evidence of torture or likelihood of torture if a refugee returned to his own country and such certificates would be placed on the files of the Directorate of Aliens and the Refugee Board.

113. In response to questions raised by members under article 4 of the Convention, the representative explained that section 244 of the Criminal Code dealt with minor offences, covered

all classes and carried a maximum two-year sentence; under this section, the intention, not the effect, of an offence was punished. Under sections 245 and 246, if the detention was to render severe damage, the penalty was up to 12 years' imprisonment, which could be increased by 50 per cent if committed by a police officer. The penalty under section 147 for obtaining confessions by unlawful means was three years imprisonment.

114. In relation to the questions raised on articles 5 and 6 of the Convention, the representative declared that, under section 8 of the Criminal Code, torture was regarded as a universal crime, regardless of the nationality of the perpetrator or wherever torture was committed.

115. With reference to questions on article 10 of the Convention, the representative explained that the identification and treatment of torture were covered in university courses on forensic medicine. Courses were provided not only for doctors, but nurses, paramedical personnel, members of the Red Cross and the Refugee Council. Such training was geared to a specific group of people and was substantive rather than simply formal training, particularly for police officers having contact with refugees and asylum-seekers. He further explained that doctors working for police authorities were general practitioners and that there were only seven doctors in the military forces, all of whom hold administrative posts. Commenting on why the prohibition against torture was considered self-evident in Denmark, he said that under the Administration of Justice Act the high professional standards of public and police officials made it obligatory for such officials to regard themselves as belonging to service bodies to help citizens, and to commit acts of torture would run counter to their educational and professional standards.

116. Responding to questions raised by the members on article 11 of the Convention, the representative stated that, in Denmark, prisoners in solitary confinement had access to newspapers, radio and television, to exercise in the open air, and to contact with prison staff, who were distinct from police officials and had no powers of interrogation. Such confinement could not be considered as incommunicado detention or true solitary confinement. Furthermore, the rules on solitary confinement were amended in 1984, providing stricter control of such punishment and ensuring that it was in proportion to the sentence imposed, and in any event must not continue for a period of more than eight weeks. The representative stated that regular criminal cases should be compared with police crimes, for example traffic offences. A counsel for the defence was provided for each defendant accused of a regular criminal offence, for which the State paid the fees. On the question of oral proceedings in court cases, he explained that criminal cases were dealt with by a tribunal consisting of a professional and two lay judges. The jury system was used infrequently and only where there was a possibility of a sentence of more than six years. The only cases not heard orally in courts were appeals against court orders that required documentary evidence.

117. In response to questions asked by the members on articles 12 and 13 of the Convention, the representative described the composition of the local boards in detail. Their function was to create co-operation between the police and the community and help the police integrate into the community. They could make complaints against the police if their conduct was considered unsatisfactory and ask the prosecutor to conduct an investigation into such complaints. Commenting on the functions of the Ombudsman, he said that this official could criticize the Government regarding standards in prisons and the treatment of prisoners and so help raise prison

standards; the Ombudsman had a preventive influence on complaints occurring in the first place.

118. In response to the request made by members under article 14 of the Convention for illustrations of relevant legislation, the representative assured the members that examples of all pertinent legislation would be provided to the Committee.

119. In reply to questions raised by members on article 15 of the Convention, the representative confirmed that inadmissibility of evidence applied equally to foreigners. He explained that proceedings in court cases were conducted orally, and that police reports on those in custody were not permissible in court, although such reports were available to the court officials if necessary. Should a person claim to have been tortured, the prosecutor was bound to investigate such a claim. No cases of evidence being obtained under torture had been found to have taken place. The representative confirmed that police officials could be prosecuted if they broke such rules and that sections 750 and 752 of the Administration of Justice Act prohibited the use of guileful questions or coercion.

120. The representative informed the members that the Government had not had its own rehabilitation program before the establishment of the RCT. Although it now provided funds to the Centre, the Government's sole role was a supervisory one concerning the grants provided to the Centre for the fulfilment of its functions. He responded to the question on the nationality of torture victims treated at the RCT by stating that the necessary anonymity of the victims prevented their country of origin being revealed. All that the Government was able to reveal was that 35 nationalities had been treated so far and that none of the victims were Danish citizens.

121. In reply to the suggestion of the enactment of a law in Denmark specifically on the crime of torture, the representative said that this suggestion would be given serious consideration.

122. The members of the Committee thanked the representatives of Denmark for the relevance and detail of their replies to questions, and acknowledged the special role played by Denmark in the rehabilitation of torture victims and in developing international norms in the area of human rights. The Chairman thanked the delegation for their co-operation and confirmed that the Committee would be aided in its work by the receipt of the texts of the various legal provisions which had been referred to by the members.

CAT A/51/44 (1996)

33. The Committee considered the second periodic report of Denmark (CAT/C/17/Add.13) at its 228th and 229th meetings, on 14 and 16 November 1995 (CAT/C/SR.228, 229 and 233/Add.1), and has adopted the following conclusions and recommendations:

1. Introduction

34. The Committee thanks the Government of Denmark for its report. It also listened with interest to the oral information and clarifications provided by the Danish representatives. The Committee wishes to thank the delegation for its replies and for the open-minded spirit and cooperation in which the dialogue was conducted.

2. Positive aspects

35. The Committee appreciates the determination of Denmark to guarantee respect for and protection of human rights, being one of the first States to accede without reservations to most of the international and regional instruments for the protection of such rights. Thus Denmark is a forefront State in the development of human rights standards.

36. The Committee notes with satisfaction that Denmark is playing a special role in the full rehabilitation of torture victims, and provides resources for that purpose through the Rehabilitation Centre for Torture Victims.

37. The Committee is also pleased to note the unique commitment of the authorities in Denmark in the field of education and information for the prevention of torture.

3. Subjects of concern

38. The Committee is nevertheless concerned about the allegations received from some non-governmental organizations concerning one case of apparent torture, and some cases of ill-treatment, and the alleged use of leglocks by police forces, as well as solitary confinement applied in some places of detention.

4. Recommendations

39. The Committee recommends that the State party give high priority consideration to the incorporation of the provisions of the Convention into its domestic law.

40. The Committee also recommends the enactment of a law in Denmark specifically on the crime of torture in conformity with article 1 of the Convention, so that all the elements of the definition of that offence contained in the said article are fully covered.

41. Furthermore, it is the view of the Committee that Denmark should take strong measures to

bring to an end ill-treatment, which was reported in some police stations, to ensure that allegations in this regard are speedily and properly investigated, and that those who may be found guilty of acts of ill-treatment are prosecuted.

CAT A/52/44 (1997)

171. The Committee considered the third periodic report of Denmark (CAT/C/34/Add.3) at its 287th and 288th meetings, on 1 May 1997 (CAT/C/SR.287 and 288), and formulated the following conclusions and recommendations.

1. Introduction

172. The Committee thanks the Government of Denmark for its frank cooperation, demonstrated among other things by its third periodic report, which was submitted on time. Not only was the report prepared in accordance with the general guidelines regarding the form and content of periodic reports to be submitted by States parties under article 19 of the Convention, but it also contained abundant information which facilitated a constructive dialogue.

173. The Committee also thanks the Danish delegation for its frank replies to the questions raised by members of the Committee.

2. Positive aspects

174. The Committee notes with satisfaction the commitment of the Government of Denmark to the reforms of the judicial system in Greenland.

175. The Committee also considers the State party's efforts to ensure that the composition of the police corps reflects the diversity of the population to be another very positive aspect.

176. The Committee views as very important the fact that the subject of "human rights" appears in the basic training of the police.

177. The Committee can only welcome the fact that the Government grants subsidies to independent, private organizations involved with the rehabilitation of torture victims.

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

178. The Committee notes the difficulties of Denmark in incorporating the provisions of the Convention into Danish law, given its commitment to the "dualist" system.

4. Subjects of concern

179. The Committee is concerned that there may still be some doubts as to the legal status of the Convention in domestic law, particularly with regard to the possibility of invoking the Convention before the Danish courts and the competence of the courts to apply its provisions ex officio.

180. The Committee is also concerned that Denmark has still not introduced the offence of torture into its penal system, including a definition of torture in conformity with article 1 of the

Convention.

181. The Committee is concerned about the institution of solitary confinement, particularly as a preventive measure during pre-trial detention, but also as a disciplinary measure, for example, in cases of repeated refusal to work.

182. The Committee expresses its concern about the methods used by the Danish police both in their treatment of detainees and during public demonstrations, for example, the use of dogs for crowd control.

183. The Committee is further concerned about the real degree of independence of the mechanisms used to deal with detainees' complaints.

5. Recommendations

184. The Committee recommends that the State party consider incorporating the provisions of the Convention into domestic law, as it has already done for the European Convention on Human Rights.

185. The Committee reiterates the recommendation it made during consideration of the first and second periodic reports of Denmark that it should incorporate into its domestic law provisions on the crime of torture, in conformity with article 1 of the Convention.

186. Except in exceptional circumstances, *inter alia*, when the safety of persons or property is involved, the Committee recommends that the use of solitary confinement be abolished, particularly during pre-trial detention, or at least that it should be strictly and specifically regulated by law (maximum duration, etc.) and that judicial supervision should be introduced.

187. The Committee recommends that the State party reconsider the methods used by police in their treatment of detainees or during crowd control.

188. The Committee recommends that the State party ensure that complaints of ill-treatment lodged by detainees are handled by independent bodies.

CAT A/57/44 (2002)

68. The Committee considered the fourth periodic report of Denmark (CAT/C/55/Add.2) at its 508th, 510th and 518th meetings, on 2, 3 and 10 May 2002 (CAT/C/SR.508, 510 and 518), and adopted the following conclusions and recommendations.

A. Introduction

69. The Committee welcomes the fourth periodic report of Denmark, which was submitted on time and in full conformity with the Committee's guidelines for the preparation of periodic reports. In particular, the Committee welcomes the way the State party has addressed the Committee's previous recommendations in a separate part of the report. The Committee also welcomes the fruitful and open dialogue between the representatives of the State party and itself.

B. Positive aspects

70. The Committee commends the State party for maintaining a high level of respect for human rights in general and for its obligations under the Convention in particular, as well as for the active role it plays internationally in the fight against torture.

71. The Committee welcomes the recommendation made by the Committee set up by the Ministry of Justice to incorporate three main United Nations human rights treaties, including the Convention, into Danish domestic law.

72. It also notes with satisfaction:

(a) The adoption of the Amendment to the Act on the Administration of Justice, which has greatly tightened the controls over the use of solitary confinement, decreasing its use as well as providing for judicial control over solitary confinement while in remand;

(b) The circulars of the National Commissioner of Police prescribing, inter alia, earlier access by family to detainees, mandatory medical examination of all persons placed in a detention cell, and access to a lawyer and an interpreter without delay;

(c) The adoption of legislation granting a more protective status to asylum seekers;

(d) The efforts made in educational programmes for the police;

(e) The multidisciplinary treatment of persons living in Denmark who have been victims of torture;

(f) The increase in the State party's contribution to the United Nations Voluntary Fund for Victims of Torture and the continued support to national rehabilitation centres for torture victims.

C. Subjects of concern

73. The Committee is concerned about the following:

- (a) The lack of a definition of torture, as provided in article 1 of the Convention, in the penal legislation of the State party and the lack of a specific offence of torture punishable by appropriate penalties, as required by article 4, paragraph 2, of the Convention;
- (b) The lack of effective recourse procedures against decisions imposing solitary confinement upon persons servicing sentences;
- (c) The proposed amendment to the Alien's Act, which may imply that aliens who have been refused a residence permit must leave the country immediately after the rejection of their application. If strictly applied, this will frustrate the effectiveness of article 22 of the Convention.

D. Recommendations

74. The Committee recommends that:

- (a) The State party ensure the speedy implementation of the recommendation of the Ad Hoc Committee with regard to incorporating the Convention into Danish domestic law;
- (b) Denmark establish adequate penal provisions to make torture as defined in article 1 of the Convention a punishable offence in accordance with article 4, paragraph 2, of the Convention;
- (c) The State party continue to monitor the effects of solitary confinement on detainees and the effects of the new bill, which has reduced the number of grounds that can give rise to solitary confinement and its length;
- (d) The law governing solitary confinement for convicted prisoners should establish adequate review mechanisms relating to its determination and duration;
- (e) The State party ensure that the proposed amendment to the Aliens Act does not frustrate effective recourse by aliens to the Committee as provided in article 22 of the Convention;
- (f) The State party widely disseminate the Committee's conclusions and recommendations, in all appropriate languages, in the country.