



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

Distr.: General
2 August 2010

Original: English

Committee against Torture

Forty-fourth session

26 April–14 May 2010

List of issues prior to the submission of the combined fourth and fifth periodic reports of Croatia (CAT/C/HRV/4-5)*

Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations

Articles 1 and 4

1. Please indicate whether the definition of torture contained in article 176 of the Criminal Code (torture and other cruel, inhuman or degrading treatment or punishment) includes mental pain or suffering. Please also clarify whether the definition of torture includes the element of punishment for any act, not limited to criminal offences.

Article 2¹

2. Please indicate whether the State party has established or designated a national preventive mechanism in accordance with the Optional Protocol to the Convention, and, if so, please explain whether this body has the necessary resources to carry out its mandate. Please explain whether there are mechanisms in place to monitor and regularly inspect all places of custody or control, including police detention facilities, institutions that engage in

*The present list of issues was adopted by the Committee at its forty-fourth session, according to the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their respective periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

¹ The issues raised under article 2 could imply also different articles of the Convention, including article 16. As General Comment n°2, paragraph 3, states "The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter "ill-treatment") under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. (...) In practice, the definitional threshold between ill-treatment and torture is often not clear." See further Chapter V of the same General Comment."

the care of children, the aged, the mentally ill or disabled, and military service institutions. Please further clarify whether any such mechanism(s) is/are independent of the State.

3. With reference to the competences of the institution of the Ombudsman, *inter alia*, to investigate complaints and to monitor places of detention, please provide information for the reporting period on the number of complaints alleging torture or other ill-treatment received by the Ombudsman's office over the last five years and on the type of follow-up provided. Please further clarify whether the Ombudsman's office can visit places of detention without prior notification. Please indicate to what extent the Ombudsman's recommendations are binding. Please provide information on whether the Ombudsman's office is equipped with the human, technical and financial resources necessary to carry out its mandate, particularly with regard to investigating complaints and monitoring places of detention.

4. Please provide information on steps taken by the State party to ensure that all detained persons, including foreign nationals, are afforded, in practice, fundamental legal safeguards from the very outset of detention, including the right of access to a lawyer and an independent doctor, if possible of their own choice, as well as the right to inform a relative, to be informed of their rights and to be promptly presented to a judge. How does the State party ensure that these rights are implemented in practice? Please also indicate whether all persons detained are registered from the very outset of detention. In particular, please comment on the following:

(a) The reported practice of summoning persons to a police station and engaging them in so-called "informative talks" for several hours, before formally declaring them criminal suspects (on the basis of an arrest warrant which had been previously issued against them) and before allowing them to contact a lawyer;

(b) Allegations that the correspondence of some prisoners with their lawyers is being read by prison officers;

(c) Measures to ensure that medical examinations are conducted out of the hearing and sight of police officers, that the confidentiality of medical data is strictly respected and that medical reports contain conclusions on the degree of consistency between allegations of ill-treatment and the medical findings.

5. Please give details of the legal aid system implemented in the State party, including the functioning and financing of the system. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment recommended that the system of free legal aid to detained persons be reviewed, in order to ensure its effectiveness from the very outset of police custody and that particular attention should be paid to the issue of the independence of *ex officio* lawyers from the police. Please comment on progress achieved to this effect.

6. Please provide information on steps taken by the State party to reduce the length of the pre-trial detention period and to ensure that it is only used as an exceptional measure. Please also indicate whether, and if so which, alternatives to pre-trial detention are being implemented, including non-custodial measures. Please provide information on the number of remand prisoners for the reporting period and on the average length of detention of prisoners awaiting sentencing. Also please specify whether remand prisoners are detained separately from convicted prisoners.

7. Please inform the Committee about the State party's compliance with article 2, paragraph 3 of the Convention, which provides that orders from a superior officer or a public authority may never be invoked as justification of torture or other ill-treatment, and indicate whether this is covered by a specific legal provision.

8. Please provide information on efforts undertaken by the State party to prevent, investigate and prosecute the crime of trafficking in human beings, as well as to protect victims and provide them with redress, rehabilitation and compensation. Please also provide data on the number of complaints, investigations, prosecutions and convictions for the crime of trafficking. In addition, please provide updated information on measures to suppress the exploitation of prostitution of women, in the context of the fight against trafficking in persons, including through discouraging the demand for prostitution and taking measures to rehabilitate and support women who want to get out of prostitution.

Article 3

9. Please indicate any requests for extradition received and provide detailed information, including their outcome, on all cases of extradition, return or expulsion that have taken place since the previous report. Please also provide information on cases where expulsion, return or extradition was denied for fear of torture. Please provide information on steps taken to ensure due process in asylum applications and deportation proceedings, including access to counsel, legal aid and an interpreter; and to guarantee access to judicial review for all asylum-seekers and to an entirely independent appeal mechanism to review rejected applications.

10. Please provide data disaggregated by age, sex, and ethnicity on:

- (a) The number of asylum applications registered;
- (b) The number of applicants in detention;
- (c) The number of applicants whose application for asylum was accepted, including on grounds that they had been tortured or might be tortured if returned to their country of origin;
- (d) The number of cases of *refoulement* or expulsion.

11. The Committee notes that a new Asylum Act entered into force on 1 January 2008. Please provide further information on its contents, particularly as regards compliance with article 3 of the Convention. With reference to the Committee's previous recommendations, please provide information on efforts to:

- (a) Ensure the physical and psychological integrity of all individuals accommodated in the reception centres for asylum-seekers and immigrants;
- (b) Refrain from detaining asylum-seekers and illegal immigrants for prolonged periods. Please provide information on the average length of detention;
- (c) Discontinue the practice of refusing access to asylum procedures because the authorities are unable to verify the identity of asylum-seekers owing to a lack of documentation or interpreters;
- (d) Provide an information sheet in the appropriate languages to inform asylum-seekers of the asylum procedures immediately after they are apprehended or arrive in the territory of the State party.

Articles 5 and 7

12. Please indicate whether the State party has rejected, for any reason, any request for extradition by another State of an individual suspected of having committed an offence of torture, and has started its own prosecution proceedings as a result, since the consideration

of the previous report. If so, please provide information on the status and outcome of such proceedings.

13. Please provide updated information with regard to the Committee's previous recommendation (CAT/C/CR/32/3, para. 9(b)) and the question by the follow-up Rapporteur on oversight mechanisms in place to ensure that persons transferred back for prosecution in national courts are brought before a criminal tribunal. In addition, please indicate the number of such transferred cases, relating to torture or other war crimes, which have already been prosecuted, and provide information on outcomes including sentences. Such information should be disaggregated according to the ethnic origin of, and the nature and gravity of, charges brought against the accused or convicted.

14. With reference to the concern expressed by the Human Rights Committee (CCPR/C/HRV/CO/2, para. 11), please provide information on war crimes trials held in absentia, including on the number of closed and ongoing cases and convictions. Please explain how the State party ensures fair treatment at all stages of such proceedings. Please include information on progress with regard to plans for reviewing cases in which judgment was obtained in absentia, with a view to requesting the renewal of proceedings. What concrete measures has the State party undertaken in the wake of reports that judgments pronounced in war crimes cases often take the convicted person's role in the defence of the homeland as a mitigating factor, which creates a clear ethnic bias for comparable crimes?

Article 9

15. Please provide updated information on the cooperation of the State party with the International Criminal Tribunal for the former Yugoslavia (ICTY), particularly as regards progress made in ensuring access to all requested documentation, including that relating to "Operation Storm".

Article 10

16. With reference to the Committee's previous recommendations, and the recommendations made by the Ombudsman and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, please include updated information on:

(a) Further educational and training programmes developed and implemented to ensure that all members of the judiciary and prosecutors, as well as law-enforcement officers, are fully aware of obligations under the Convention, fundamental legal safeguards and proper record-keeping regarding detainees. Has the State party delivered a clear message of "zero tolerance" towards ill-treatment, whether of a physical or verbal nature, from the highest level, and through ongoing training?

(b) Steps taken to ensure that within the structures of the police there is a clear line of reporting and that judges and others who receive complaints of torture and ill-treatment, particularly those that allegedly occurred in the pre-trial stage, give due attention to complaints and initiate investigations and prosecutions where appropriate;

(c) Steps taken to ensure adequate training for all medical personnel dealing with detainees in the detection of signs of torture and ill-treatment, as well as for those involved in the documentation and investigation of torture, in accordance with international standards, as outlined in the Istanbul Protocol.

Article 11

17. Please provide information on any new interrogation rules, instructions, methods and practices as well as arrangements for custody that may have been introduced since the consideration of the third periodic report. Please also indicate the frequency with which these are reviewed and disseminated among relevant professionals. Please provide information to the request by the follow-up Rapporteur for information on any provisions for regular inspections, or other oversight of police personnel. Has the State party adopted a Police Code of Ethics?

18. Please provide updated information on measures taken to improve conditions in all detention facilities, including places of detention for police suspects, remand prisoners, asylum-seekers, irregular migrants, the prison hospital, and psychiatric institutions, to bring them in line with international minimum standards. In particular, please provide information on efforts to alleviate the problem of overcrowding, to ensure adequate sanitation, physical and mental health care, and to improve the regime of activities, including the possibility of working. Please provide information on any efforts undertaken to improve contacts and increase interaction between prison guards and prisoners and to raise the number and proportion of female staff in all places of detention. In addition, please provide information on progress towards ending the practice of staff openly carrying batons.

19. Please clarify whether deprivation of liberty of persons under the age of 18 is used only as a measure of last resort, whether the State party has established special detention centres for persons below the age of 18, and please provide the number of detained persons below the age of 18, disaggregated by age, sex, and place of detention. In addition, please clarify whether juveniles and unrelated adults are accommodated separately at the Ježevo Detention Centre for Illegal Immigrants, as recommended by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

20. Please provide information on efforts to end practices contrary to the dignity of detained persons, including the placement of non-partitioned toilets in shared cells, sometimes in view of video surveillance cameras, the escorting of female prisoners to the showers by male guards, the use of enclosed restraint beds in psychiatric institutions, and practices in kindergartens of locking children in toilets for punishment. Please provide information on the application of and restrictions on (including relevant legislation, rules and instructions) the use, length and conditions of solitary confinement depending on the type of institution, as well as efforts to ensure that the application of solitary confinement is always recorded, is not applied arbitrarily and does not amount to cruel or degrading treatment.

21. Please provide information on the frequency with which placements in institutions for the care of the mentally ill or disabled are reviewed. Please also explain whether persons deprived of their legal capacity may effectively challenge the legality of their placements in court. In addition, how does the State party ensure that the judicial review of placement of young offenders in a re-education institution is always conducted by a judge and in the presence of a legal representative?

Articles 12 and 13

22. With reference to the Committee's previous concluding observations (CAT/C/CR/32/3, para. 9 (p)), please provide information and data on complaints, investigations, prosecutions, and convictions regarding allegations of torture and ill-treatment, namely pursuant to article 176 of the Criminal Code (torture) and related articles,

including 106 (violation of the equality of citizens), 126 (extortion of statements by coercion), 127 (maltreatment in the execution of duty or public authority), 128 (coercion), 158 (war crimes against the civilian population) and 174 (racial and other discrimination). In light of a number of investigations and prosecutions initiated under articles 126 and 127 of the Criminal Code in 2006 and 2007 as a result of complaints, please explain why these cases were not investigated and prosecuted as acts of torture. In addition, please clarify whether the proceedings initiated were of a criminal or disciplinary nature and whether in practice the burden of proof rests solely on either the alleged victim or perpetrator. Given that the vast majority of such cases have been dismissed and only a few suspended sentences were passed, please explain how the State party ensures prompt and impartial investigations into allegations of torture and related crimes.

23. Please provide information on the application of the Law on Protection from Family Violence and on the availability of adequate and sufficient provision of services to victims. Please also provide information on the number of complaints, investigations, prosecutions and convictions regarding allegations of violence against women, including domestic and sexual violence, and measures to ensure adequate monitoring, protection and compensation for victims. In addition, please provide updated information on the incidence of violence in homes for re-education and social care institutions and on any measures taken to reduce and prevent such acts.

24. In light of the Committee's previous concern (CAT/C/CR/32/3, para. 8(a)), please provide detailed information on the progress achieved with regard to investigating torture, including sexual violence, and ill-treatment, which occurred during the conflict, including the number of ongoing and closed investigations, and their outcome, disaggregated by the ethnicity of the alleged perpetrator. In addition, please provide information, disaggregated by ethnic origin, on the number of persons who remain missing, and on the progress towards establishing the truth about their fate and whereabouts.

25. Please provide updated information on the application of the 1996 Amnesty Act. Notwithstanding the State party's assurances reflected in the Committee's last concluding observations (CAT/C/CR/32/3, para. 5), please provide information on measures undertaken to ensure that it has not been applied to acts of torture and other ill-treatment. Please also indicate whether a statute of limitations applies for the prosecution of acts of torture and ill-treatment, including crimes committed during the conflict.

26. Please provide information on measures undertaken, following the visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, to ensure that all persons in detention have the right to complain to the competent authorities without fear of ill-treatment or intimidation. In addition, please provide information on action undertaken by the State party upon the recommendation by the Ombudsman to set out formally and ensure the transparency of the procedure for examining complaints to the Department for Internal Control of the Ministry of the Interior.

27. Please provide updated information on the Committee's previous recommendation that the State party enforce all relevant legislation providing for the protection of witnesses and other participants in proceedings and ensure that sufficient funding is allocated for effective and comprehensive witness protection programmes. In particular, please explain how the State party ensures the protection, including through the preservation of their identity, of witnesses and potential witnesses from ill-treatment or intimidation as a consequence of any evidence given, or agreement to do so, in a war crimes trial, particularly in high-profile cases.

Article 14

28. Please provide information on redress and/or compensation measures ordered by the courts and actually provided to victims of torture, or their families, including for crimes committed during the conflict, since the examination of the last periodic report. This information should include the number of requests for compensation made, the number granted, the amounts ordered and those actually provided in each case, and be disaggregated by the age, sex and ethnicity of applicants.

29. Please explain how the State party ensures that the victims of acts of torture committed during the conflict, and their families, have an enforceable right to fair and adequate compensation, in light of legislation mandating the State Prosecutor's Office to represent the interest of the State, thereby creating a conflict of interest; applying a statute of limitations and shifting the burden of proof to the plaintiff. In addition, please explain how the State party ensures that victims or their descendants who seek compensation for acts of torture are not punished and re-victimized, in particular by having to cover the costs of proceedings upon the rejection of claims; and by making the annulment of such costs conditional on the withdrawal of their claims.

30. Notwithstanding information submitted through the State party's follow-up communication (CAT/C/HRV/CO/3/Add.2), please clarify the provisions of the Law on Pecuniary Compensation to Crime Victims with regard to the requirements and proceedings for compensation to direct and indirect victims of violent crimes, including special provisions concerning trans-border cases, and whether it would expedite the granting of compensation. In addition, please clarify the reason for delaying the entry into force of this Law until the accession of Croatia to the European Union.

31. Please describe the legal procedure available to victims of torture or ill-treatment for compensation, including the means for as full rehabilitation as possible. In addition to criminal proceedings, do such victims have the possibility of lodging civil claims? Please provide relevant laws or court decisions interpreting these procedures.

Article 15

32. In light of allegations against police officers of violations, pursuant to articles 126 and 127 of the Criminal Code, please explain how the State party ensures that no statement obtained under torture or ill-treatment is used as evidence in any proceedings. Please also provide examples where statements established to have been made as a result of torture were dismissed as a result.

Article 16

33. In light of allegations that there is a lack of accountability with regard to cases of violence against ethnic minorities, please provide updated information on measures taken to adequately prevent, combat and punish ill-treatment, including violent acts, and discrimination against ethnic and national minorities, and the lesbian, gay, bisexual and transgender (LGBT) community. Please provide statistical data on the number of complaints, investigations, prosecutions, convictions and sanctions, as well as on compensation provided to the victims of these acts, disaggregated by the age, sex and ethnicity of the victim. Please also provide data and information on minority returns, in particular Serb internally displaced persons (IDPs) and refugees, and on efforts to facilitate and encourage return, including at the level of local government. In addition, please

comment on progress towards the effective prohibition of racist organizations in the State party.

34. In light of cases of intimidation and attacks against media workers investigating and reporting on war crimes and organized crime, and considering the role of such investigations in challenging impunity and supporting investigations, please inform the Committee of any measures adopted to enhance the protection of investigative journalists and human rights defenders from ill-treatment and intimidation as a consequence of gathering evidence and reporting on issues related to war crimes, including through investigation.

Other issues

35. Please provide updated information on measures taken by the State party to respond to any threats of terrorism and please state whether, and in what way, these measures have affected human rights safeguards in law and practice and how it has ensured that the measures taken to combat terrorism comply with all its obligations under international law. Please describe the relevant training given to law-enforcement officers, the number and types of convictions under such legislation, the legal remedies available to persons subjected to anti-terrorist measures, indicating whether there have been complaints of non-observance of international standards, and the outcome of these complaints.

General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention

36. Please provide detailed information on the relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the national level, that have occurred since the previous periodic report, including any relevant jurisprudential decisions.

37. Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the national level that have occurred since the previous periodic report, including on any national human rights plans or programmes, and the resources allocated thereto, their means, objectives and results.

38. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of the previous periodic report in 2004, including the necessary statistical data, as well as on any events that occurred in the State party and are relevant under the Convention.
