



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

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COMMITTEE AGAINST TORTURE

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SUMMARY RECORD (PARTIAL)* OF THE 825th MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 8 May 2008, at 3 p.m.

Chairperson: Mr. GROSSMAN

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 3.10 p.m.

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

Combined second and third periodic reports of The former Yugoslav Republic of
Macedonia (CAT/C/MKD/2 and CAT/C/MKD/Q/2) (continued)

1. At the invitation of the Chairperson, the members of the delegation of The former Yugoslav Republic of Macedonia took places at the Committee table.
2. Mr. MANEVSKI (The former Yugoslav Republic of Macedonia), responding to questions posed by the Committee the previous day, said that pursuant to a 2004 amendment, article 142 of the Criminal Code of The former Republic of Macedonia was in full harmony with the definition of torture under article 1 of the Convention, and all elements had been incorporated into domestic legislation. Furthermore, he assured the Committee that article 118 of the Constitution provided that all treaties and agreements ratified by the State were fully applicable in the domestic legal order, and individuals could request direct applicability of the Convention in Macedonian courts.
3. With respect to the implementation of programmes for dealing with trafficking in persons and the smuggling of migrants, he said that legislation had been substantially strengthened on various fronts. He described a number of legislative and procedural approaches that reinforced the Government's commitment to broadening the definition of offences, imposing more severe penalties on perpetrators and enhancing regional cooperation.
4. Ms. GELEVA (The former Yugoslav Republic of Macedonia) confirmed that Macedonia had not yet ratified the Council of Europe Convention on Action against Trafficking in Human Beings, but that it remained a matter of high priority for the Government.
5. Her delegation agreed that the definition of marital rape under current criminal legislation was somewhat traditional, but she said that all suggestions for amendments made by the treaty monitoring bodies in that regard would be taken into consideration. The possibility for asylum-seekers to appeal decisions was allowed under article 32 of the law on asylum and temporary protection. She explained the procedures and timeframes for lodging such appeals, and subsequent challenges, and said that asylum-seekers had the right to an accelerated procedure for action to be taken under that regime within eight days.
6. The Office of the Ombudsman had been established on the basis of the Paris Principles. With specific reference to the issue of funding, she said that the current funding modalities of that Office were not in full compliance with the Principles, but that a decision had been taken for direct budget approval to be granted by the parliament, which further strengthened the autonomy of the Ombudsman. Follow-up on the recommendations of the Ombudsman had been improved in recent years. The latest statistics for 2007 had shown that 87 per cent of cases had been acted upon and the remainder were being processed. She stressed the commitment of the Government to improve communication and cooperation of all the relevant authorities with the Office of the Ombudsman, through various mechanisms, including quarterly review sessions.

7. With regard to the issue of universal jurisdiction, she said that a dilemma had indeed arisen over the crimes of torture committed by foreigners outside the territory of the Republic, yet criminally prosecuted within Macedonia. The State could prosecute only offences that were punishable by sentences of five years and more.

8. Mr. ZAFIROVSKI (The former Yugoslav Republic of Macedonia) explained that the Law on the Police had evolved from the need to establish a legal framework to implement the national reform strategy on the police force, on the basis of best European practices and common standards of police work. The law provided control and oversight mechanisms and created a clear distinction between the operations of the Ministry of the Interior and those of the police force at various levels. Apart from monitoring within the force itself, other bodies, including the Public Prosecutor's Office and a parliamentary commission, were involved in such oversight functions. With regard to external mechanisms, he said that the Office of the Ombudsman played a vital role, and in addition a scheme was being devised for deepening the involvement of non-governmental organizations and other independent bodies.

9. The rights of detainees, including access to legal counsel, medical care and family contact, were fully protected by legal guarantees in a transparent process. In addition, a system of custody officers had been set up to ensure the protection of all freedoms throughout the detention period until detainees were either released or brought before the courts. As far as the detention of juveniles was concerned, he said that the Law on the Police clearly defined the categories of police officers, uniformed or otherwise, who were empowered to deal with juveniles. The processing of minors was governed by the laws relating to criminal procedure, police procedures and juvenile justice. Special structures had been established to train police personnel in the treatment of minors and in relations with their parents, guardians or competent social centres.

10. In response to queries concerning various aspects of training, he highlighted a recent case to illustrate that police officers who overstepped their duties in the handling of minors were liable to sanctions comprised of disciplinary measures, followed by compulsory training to improve their competence. Training in issues relating to gender equality was another area of priority for the Government. A 2008 strategic plan, which included the theme of gender equality and family violence, also envisaged the establishment of civilian advisory groups in local communities to identify issues with security implications, and to recommend approaches for the prevention and treatment of neighbourhood incidents. Border police received in-service training and attended workshops, seminars and training courses. Since 2007, a national centre for integrated border management had been set up to coordinate activities within the police force and other services involved in monitoring border crossings.

11. Mr. MANEVSKI (The former Yugoslav Republic of Macedonia) said that a constitutional amendment had extended the period of pretrial detention from 90 to 180 days, with the possibility of a further extension by the courts. He also described the policy of professionalism, with special reference to legislation on the Judicial Council, the appointment of which ensured the independence of the judiciary from political influence. He took the opportunity to address other issues relating to the appointment of public prosecutors and the entitlement of every citizen to free legal assistance. He confirmed that lawyers provided an independent service, organized through a Bar Association, and were not paid by the Government.

12. Mr. MIHAJLOVSKI (The former Yugoslav Republic of Macedonia) said that there were no records of sexual violence against female inmates or any complaints of such violence in Macedonian prisons. Female inmates were guarded by female prison staff. Gender equality was an integral part of the training programme for prison staff, and in future would also be added to the in-service training curriculum.
13. In 2007 and 2008, programmes at the national, regional and international level had trained Macedonian prison experts in how to train other prison staff. The Government planned to build new prisons in 2008. At a meeting in March 2008, attended by international experts, participants had agreed that, while domestic legislation was in line with the acquis communautaire for the most part, there were some outstanding issues that required harmonization.
14. Health care was a priority in prisons, from the human rights perspective and also in order to avoid the transmission of communicable diseases. All people held on remand or taken into detention had a medical examination within 24 hours of their detention. Detainees and prisoners had the right to full primary health care from doctors who worked in the relevant establishments. Those suffering from serious conditions were treated in public health institutions, free of charge. Detainees with complicated conditions had the right to have their sentences suspended in order to avail themselves of treatment at an appropriate medical institution, at their own cost. Several resident health-care staff were employed in larger penitentiary centres, particularly those with a high proportion of drug abusers.
15. Mr. AVRAMOVSKI (The former Yugoslav Republic of Macedonia) said that his Government's strategy on protection from domestic violence aimed to set priorities to prevent that scourge and to establish a supervisory mechanism. The strategy had been developed by experts from several ministries and many NGOs and national and international organizations. The Ministry of Labour and Social Policy was drawing up an action plan for the implementation of the strategy, which would focus on prevention and improved victim protection.
16. In order to raise awareness of the need to report cases of domestic violence, training had been provided for social workers, police, health-care staff, judicial staff and NGOs that worked with victims. A national awareness-raising campaign had also been launched, which had included a media campaign.
17. Ms. ATANASOVA (The former Yugoslav Republic of Macedonia) said that the law on amnesty had been adopted in 2002, in order to encourage reconciliation among the population in the wake of the crisis. It did not provide amnesty for crimes against humanity, which included torture.
18. As to the situation of ethnic communities, especially minorities of Albanian ethnic origin, she referred the Committee to her Government's report to the Committee on the Elimination of Racial Discrimination (CERD/C/MKD/7). That report contained a comprehensive overview of the situation of the ethnic minorities and their participation in all spheres of public life. Minorities participated in civil associations, in accordance with the relevant legislation. A strategy was currently being implemented to improve coordination between the civil sector and

the Government. Some civil organizations included participants from a mixture of ethnic backgrounds, while others focused on the needs of certain minorities, which was reflected in their composition. Several civil associations also targeted women's rights, some of which were made up exclusively of women members.

19. Mr. MANEVSKI (The former Yugoslav Republic of Macedonia) said that a draft law on probation included the introduction of several alternatives to imprisonment, which should alleviate problems related to prison overcrowding.
20. Ms. ZDRAVKOVSKA (The former Yugoslav Republic of Macedonia) said that social care centres functioned pursuant to several instruments of domestic legislation. Staff there had the authority to remove children from their families and accommodate them in a safe environment if there was sufficient evidence of abuse or neglect. The Office of the Ombudsman coordinated the shelters for victims of domestic violence and action taken to protect them. In 2007, a total of 102 children had been registered as victims of corporal punishment in the family. A further 492 children had witnessed domestic violence in the same year. In 17 cases, parental rights had been revoked, on the grounds of severe negligence or corporal punishment. The Criminal Code provided for three years' imprisonment for perpetrators of severe corporal punishment against children in the home.
21. The Government and the Roma Educational Fund had allocated resources for Roma children's involvement in preschool education and for high school scholarships. Eight information centres funded by the Ministry of Labour and Social Policy provided the Roma population with information on their rights, and a further four such centres would open in June 2008. Under domestic legislation, marriage was permitted from the age of 16 provided that both partners were of sound mind and body and had the written approval of their parents. Judicial approval was also required. The number of early marriages among the Roma was likely to decrease as a result of the additional funding allocated to education for that community.
22. The law on mental health contained protocols regulating the use of constraints. The use of constraints had to be registered by the health staff. Day-care centres and independent housing units were available for people with mental health issues.
23. Mr. MANEVSKI (The former Yugoslav Republic of Macedonia) said that the Ministry of Justice had undertaken to establish an office of the ombudsman for people with special needs.
24. Mr. ZAFIROVSKI (The former Yugoslav Republic of Macedonia) said that the Professional Standards Sector had received many complaints from the public in 2007, while the number received by the National Ombudsman and non-governmental organizations had decreased. That showed that the complaints mechanism provided by the sector had been accepted by the public. Some 30 per cent of the complaints currently concerned the Special Mobile Police Unit ("Alfa"), which was still operational in four cities. That Unit would, however, soon be closed down.

25. Ms. GELEVA (The former Yugoslav Republic of Macedonia) said that a working group was currently reviewing relevant domestic legislation in order to ascertain whether it was in line with the Convention on the Rights of Persons with Disabilities, and to consider the possibility of ratifying that instrument in the near future. Her Government also planned to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in due course.

26. Information on the case of Mr. El Masri had been provided in the written reply to question 18 on the list of issues. That individual had the right to file a civil law suit in Macedonia under domestic legislation. With regard to the role of the International Criminal Court, when the article 98 agreement with the United States of America had been drafted, the Government had endeavoured to take into account the European Union guidelines on that question. However, given the importance her Government attributed to membership of the European Union, that agreement would be reviewed.

27. The right to compensation had been explained in the written reply to question 29 of the list of issues. While there were no data currently available on compensation awarded to victims of human rights abuses, new information technology systems that would be installed in courts should provide the relevant statistical information in future.

28. There were no specific medical services for victims of trauma or torture. The Criminal Code contained a provision that explicitly prohibited the use of evidence obtained by torture and other coercive means. The Ministry of Foreign Affairs applied the Vienna Convention on Consular Relations in its treatment of detainees and prisoners. In 2005 and 2006, the National Ombudsman had filed four criminal charges against police officers pursuant to article 143 of the Criminal Code on the excessive use of force. All four charges had been accepted by the Public Prosecutor. Five such charges had been filed in 2007, but no information on the outcome had been received from the Public Prosecutor.

29. Mr. MARIÑO MENÉNDEZ enquired whether the fact of following orders by superior officers could be used as an argument for the defence of military personnel involved in cases of torture. He wondered whether a judgement concerning acts of torture committed by a foreign national in the territory of The former Yugoslav Republic of Macedonia handed down by a foreign court could be reconsidered or overturned domestically. It was not clear whether the forced disappearance of persons during armed conflict was considered a war crime and whether amnesty could be granted for such an act under domestic law. He would also like to know whether the police were required to issue a warning before firing their weapons.

30. Ms. SVEAASS said that she would appreciate more information on health services provided for persons with mental disabilities. She noted with satisfaction the public awareness campaign to combat violence against women. She enquired whether that campaign had also extended to the perpetrators of such violence. It was not clear whether the Alpha special police unit came under the same code of ethics as other police forces. She noted that the penalties for ill-treatment in the performance of duties under articles 142 and 143 of the Penal Code seemed mild in the light of the seriousness of the offence. Lastly, she encouraged the Government to make every effort to ensure compliance with article 15 of the Convention.

31. Ms. BELMIR, noting the importance of the work of the police in the judicial system, said that clarification was needed on the role of the police in the setting of bail. More information was needed on the incidence of the excessive use of force by the police. She enquired whether electroshock weapons such as Taser guns were used by the police. She also enquired about the provisions made for compensation of persons wrongly held in pretrial detention.

32. Mr. GAYE enquired whether Macedonian citizens had the opportunity to institute legal proceedings in their own right without having to appeal to prosecutors. Noting with concern that police were responsible for the oversight of custody and bail, he sought information on the role of the prosecutor in such matters. Independent monitoring of places of pretrial detention was of particular importance in the light of the considerable potential for abuse. Another area of concern involved the maximum period for preventive custody. Clarification was needed on whether that period was as high as 15 years. If so, it was excessive and unreasonable.

33. Mr. KOVALEV noted with satisfaction the cooperation shown by the Macedonian authorities at the international level in the area of trafficking in human beings and forced disappearances and its efforts to enhance the national justice system.

34. Ms. GAER, referring to a question concerning the investigation and trial of suspects for the alleged cases of enforced disappearance, which had occurred during the conflict in 2001, and cooperation with the International Criminal Tribunal for the former Yugoslavia and other States in the region, enquired whether the Government was satisfied with the investigation carried out by the Tribunal into the responsibility of the security forces in the events in Ljuboten and the role of the Minister of the Interior. She also enquired whether the other four cases which had been returned to The former Yugoslav Republic of Macedonia for prosecution had indeed been prosecuted. In the Ljuboten case, some 100 persons had been arrested and others had been killed. She wondered whether any of those arrested had subsequently brought charges against the Government for cruel treatment or torture. If so, information was needed on the results.

35. Mr. WANG Xuexian enquired whether the State intended to accede to the Optional Protocol to the Convention, Migrant Workers Convention and the Convention on the Rights of Persons with Disabilities and, if so, whether it had established a time frame for that purpose.

36. Mr. ZAFIROVSKI (The former Yugoslav Republic of Macedonia) said that no person enjoyed amnesty for a crime committed upon the order of a superior officer. No Taser weapons were used by the police force. The law on the police governed the means of coercion and the use of firearms. Several conditions must be met before a law enforcement officer could legally use a firearm. The firearm could be used for the purpose of police work, but only in self defence or while resisting force. There must be no available alternative to using a firearm. The subject must be warned. The police officer must try to avoid killing the subject. Lastly, the firearm must not harm innocent bystanders or cause undue material damage. Regarding the issue of custody, the police could not detain a person without a court order for more than 24 hours. He concurred that the period of pretrial detention involved the greatest risk of ill treatment. Accordingly, organizational reform was being introduced so that an official would be put in charge of ensuring the safety of persons in custody.

37. Mr. MANEVSKI (The former Yugoslav Republic of Macedonia) said that every citizen wrongly detained was entitled to compensation. His Government had enjoyed good cooperative relations with the International Criminal Tribunal for the former Yugoslavia. With respect to the four cases which had been returned for prosecution, the Ministry of Justice was currently translating thousands of tribunal documents for use by the Public Prosecutor's Office, which had already initiated proceedings in the cases. By law, injured parties were entitled to appeal to the courts regardless of whether the Public Prosecutor's Office had initiated proceedings. Concerning extradition, the number of cases had more than doubled between 2004 and 2007. International cooperation had also been enhanced in combating money laundering.

38. Ms. GELEVA (The former Yugoslav Republic of Macedonia) said that the armed forces did not enjoy impunity under the law. Concerning the question raised about the possibility of a retrial of a foreigner in The former Yugoslav Republic of Macedonia, persons could not be tried twice for the same crime. The Government had taken steps towards acceding to the Optional Protocol to the Convention, which it considered a priority. The Convention on the Rights of Persons with Disabilities was another Government priority, as was shown by its signing on the opening day. The Migrant Workers Convention was important but not a priority. In response to a question raised by the Chairperson, she said that the list of priorities was not legally binding but rather a statement of intention.

39. Ms. ZDRAVKOVSKA (The former Yugoslav Republic of Macedonia), referring to the rights of persons with mental disabilities, said that national mechanisms were in place to monitor mental hospitals in order to ensure that there was no undue involuntary hospitalization. In such an event, the authorities took steps to return the patient to his or her family.

40. The delegation of The former Yugoslav Republic of Macedonia withdrew.

The discussion covered in the summary record ended at 5.15 p.m.