



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

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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 601st MEETING

Held at the Palais Wilson, Geneva,
on Friday, 7 May 2004, at 3 p.m.

Chairperson: Mr. MARIÑO MENÉNDEZ

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.601/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 (agenda item 7) (continued)

Third periodic report of Croatia (continued) (CAT/C/54/Add.3;
CAT/C/32/L/HRV/Rev.1)

1. At the invitation of the Chairperson, the members of the delegation of Croatia resumed their places at the Committee table.
2. The CHAIRPERSON invited the delegation to complete its responses to questions contained in the list of issues (CAT/C/32/L/HRV/Rev.1) and raised orally by Committee members.
3. Mr. VEIĆ (Croatia), responding to questions regarding Croatian legal provisions guaranteeing the rights of detainees, said that article 6 of the Criminal Procedure Act stipulated that persons detained on suspicion of committing a criminal act must be acquainted with the reasons for their detention and advised of their right to remain silent, to have legal assistance, and to inform a family member or other person of their arrest. The police were required, at the suspect's request, to suspend questioning for at least three hours to enable him or her to obtain legal assistance. If no legal representative was available, the police would assign a defence counsel to the detainee from a list compiled by the Bar Association. A person who refused the right to a defence counsel was asked to confirm that decision in writing.
4. Articles 46 and 47 of the Police Act regulated the use of polygraph testing. Such testing was prohibited, for example, in the case of subjects who were under the influence of alcohol, drugs or other psychotropic substances, were suffering intense physical pain, had a serious heart condition, displayed signs of stress or mental disorder, or were pregnant or had recently given birth. Articles 88 to 90 of the implementing regulations of the Criminal Procedure Act stipulated that polygraph testers must receive special training, that the detainee's legal representative must be able to view the procedure either live or in the form of a video recording, and that the subject should be informed that the test was optional and made aware of its legal implications.
5. If a person was caught in flagrante delicto, the arresting police officer was not required to characterize the act constituting the ground for arrest in precise legal terms. If the arrested person was deaf or mute, communication was facilitated by a specially trained officer. If he or she was mentally ill, under the influence of alcohol or expected to resist arrest, notification of the reasons for arrest could be delayed. Article 177, paragraph 2, of the Criminal Procedure Act authorized the audio-visual recording of interrogation sessions.
6. With regard to means of coercion, the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials had been consulted in drafting the Police Act, and the bill had been revised by three Council of Europe experts. Coercion had been used by the police in 1,925 cases in 2002 and in 2,075 cases in 2003. In 2002, 431 police officers had been injured and in the following year 383. The corresponding figures for civilian injuries were 439 and 413. There had been some cases of unjustified use of means of coercion. Any officer who resorted to means of coercion was required to file a report giving details of the

circumstances and describing the injuries sustained. The report, which was signed by the victim, specified whether medical assistance had been provided. A police expert reviewed the report and transmitted his or her findings to the head of the police district. Where the use of coercion resulted in injury or had lethal consequences, the Public Prosecutor's Office was immediately informed.

7. Non-governmental organizations (NGOs) had filed 40 complaints with the Internal Control Office during the past three years regarding the use of means of coercion. Four concerning ill-treatment had been investigated but found to be baseless. There had been 15 cases of unjustified use of means of coercion by the police in 1998, 21 in 1999, 14 in 2000, 17 in 2001, 11 in 2002 and 5 in 2003. He had been unable to obtain details of the penalties imposed but would forward the information to the Committee in due course. Regulations adopted a few months previously specified in great detail the procedures to be followed in investigating such cases. The sharp rise in the use of means of coercion in recent years could be attributed to an increase in criminal acts and in violence, especially at sports events, and to the methodology used in compiling statistics. For example, handcuffing accounted for 40 per cent of all cases although it was not defined as a means of coercion in many other European countries.

8. With regard to the treatment of aliens and asylum-seekers, Croatia had adopted the Aliens Act in January 2004 and the Asylum Act would enter into force shortly. Both pieces of legislation had been prepared with expert European Union assistance under the CARDS Programme (Community Assistance for Reconstruction, Development and Stabilization) to ensure conformity with the provisions of international treaties. There had been one application for asylum in 1997, 26 in 1998, 20 in 1999, 23 in 2000, 87 in 2001, 93 in 2002, 59 in 2003 and 44 in 2004. No asylum-seeker to date had met the conditions for granting asylum. Appeals against decisions were referred to the Administrative Court. There had been one such appeal in 1998, 11 in 2001, 6 in 2002, 23 in 2003 and 3 in 2004. Conditions in the reception centre for aliens built in 1997 were admittedly not up to standard. Asylum-seekers had also been accommodated there until two years previously but they were currently held in a special centre run by the Office of the United Nations High Commissioner for Refugees (UNHCR) and the International Committee of the Red Cross (ICRC). However, the facility fell short of international standards and the Government had recently selected a site for a purpose-built facility for asylum-seekers. Although the movements of asylum-seekers were restricted, they were provided with facilities for cultural activities, sport and other leisure activities.

9. Coercion had been used against asylum-seekers 13 times in 2002, 8 times in 2003 and 5 times in the first three months of 2004. All cases had been investigated to ensure that the proper procedures had been followed. The Internal Control Office had also been involved in investigating the more serious cases.

10. In 2002 disciplinary action had been taken against police officers in 1,210 cases. In 81 cases the officers had been dismissed; in 53 cases an order of conditional dismissal had been issued; in 115 cases the charges had been dropped; in 2 cases the officers had been transferred to another job and in 774 cases a fine had been imposed. In 2003 disciplinary action had been taken in 918 cases, resulting in 89 dismissals, 54 conditional dismissal orders, 90 acquittals and 595 fines. Five per cent of police officers had been subjected to disciplinary proceedings and punishment.

11. There had been no case to date of an alien seeking asylum at a Croatian airport. He was sure, however, that any such applicant would be treated in accordance with the Asylum Act that was about to be adopted.

12. A number of Sri Lankans who had been placed in the facility for aliens in July 2003 had taken a month to apply for asylum because of lack of access to an interpreter. They had then been transferred to the facility run by UNHCR and ICRC but had subsequently escaped and their whereabouts was unknown. Some asylum-seekers had remained at the aliens facility for up to two years but under the new regulations the maximum stay was three months, with the possibility of one extension.

13. In 2003 four cases of ethnically motivated assaults by skinheads had been reported. The perpetrators had been identified and the cases referred to the Public Prosecutor's Office. In 2004 three such cases had been reported. In two cases the perpetrators were unknown and the other case had been referred to the Public Prosecutor's Office.

14. Ms. KUZMANIĆ OLUIĆ (Croatia), responding to question 16 of the list of issues, said that international treaties were hierarchically superior to domestic legislation and were self-executing. The provisions of the Convention against Torture were reflected, inter alia, in the Criminal Procedure Act, the Penal Code, the Police Act and the Aliens Act. In 1999, Croatia had harmonized some of its legislation with the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms. As Croatia expected to commence European Union accession proceedings shortly, the harmonization process would continue in that context. The rulings of the European Court of Human Rights were binding and Croatia had amended its legislation or even enacted new legislation in the light of its findings. For example, following the Court's judgement in the Kutić v. Croatia case, it had enacted the law on liability for damage resulting from terrorist acts. Later on, it had also enacted legislation on liability for damage caused by the army and police during the war of independence (1991-1995).

15. Croatia had participated actively in the preparation of the Council of Europe's draft Protocol No. 14, which would amend the European Convention on Human Rights with a view to improving the effectiveness of the European Court of Human Rights; the adoption of draft Protocol No. 14 was currently under debate. A case against Croatia on the grounds of torture and inhuman treatment had been declared inadmissible by that court. Croatia respected soft law, and had amended its domestic legislation to comply with the conclusions and recommendations of various international bodies. In that context, the Croatian Government looked forward to hearing the Committee's conclusions and would comply with its recommendations.

16. In 2003, Croatia had issued a standing invitation to the special rapporteurs of the Commission on Human Rights to visit Croatia, and had thus accepted the possibility of additional monitoring. Croatia also received visits from other international bodies, such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the European Commission against Racism and Intolerance (ECRI). The reports of the International Committee of the Red Cross (ICRC), which paid regular visits to detainees convicted of war crimes, had always been favourable and Croatia had never disputed criticism: the ICRC had found prisoners' living conditions to be good and had not determined any indications of torture.

17. In addition to ensuring the harmonization of laws with the Constitution, the Constitutional Court considered complaints regarding citizens' rights, including allegations of torture or ill-treatment. The Constitutional Court had invoked the provisions of international treaties several times, which helped to ensure that international instruments were respected in the domestic legal order. Although no date had been set for ratification of the Optional Protocol to the Convention, she assured the Committee that work on ratification was in progress. Moreover, she noted that Croatia already had a body that fulfilled the role of the national preventive mechanism required under the Optional Protocol, in the guise of the Ombudsman, whose mandate included visiting and reporting on places of detention.

18. Ms. ŠTIMAC (Croatia) said that under articles 16 and 17 of the Constitution, citizens' rights and freedoms could be restricted only by law and only in order to protect the rights and freedoms of others, public order, public morality, and health; rights and freedoms could be restricted only during a state of war or in the event of an immediate threat to the independence or unity of the Republic or in the event of severe natural disaster. Any such restriction must be decided by a two-thirds majority of Parliament or, if Parliament was not able to meet, by an order from the Government signed by the Prime Minister and countersigned by the President of the Republic. Restrictions were not permitted to be discriminatory on grounds of race, colour, gender, language, religion, national or social origin. In no circumstances might restrictions be imposed on the application of Constitutional rights concerning the right to life, the prohibition of torture, cruel or degrading treatment or punishment, the legal definitions of criminal offences and punishments or freedom of thought, conscience and religion.

19. Article 29 (4) of the Constitution stipulated that evidence obtained illegally could not be admitted in court proceedings; the principle that court decisions could not be based on such evidence was reaffirmed in the Criminal Procedure Act. Illegally obtained evidence was defined as evidence that had been acquired by violation of constitutionally or legally guaranteed rights.

20. Victims of torture did have the right to seek compensation through civil proceedings: as injured persons, victims of torture could file a claim for compensation against the perpetrator following a criminal case. In most cases, victims were instructed by the court to establish their right to compensation in civil proceedings; however, victims could also instigate civil proceedings independently, in which case causal nexus had to be proved between the perpetrator and the act, and between the act and the effect on the victim, in order to establish a legal basis for compensation. There had been two cases in 2002 in which detainees had sued Croatia before the European Court of Human Rights for violation of articles 3 and 13 of the European Convention on Human Rights: the Court had dismissed the claim with respect to one case, while the other case had been settled by an amicable agreement, under which the Government of Croatia paid the claimant 12,000 euros.

21. In mid-2003, Parliament had passed three acts which provided for victims of criminal offences to receive compensation directly from the State - the Act on the liability of the Republic of Croatia for damage caused by terrorist acts and public demonstrations, the Act on the liability of the Republic of Croatia for damage caused by Croatian armed and police forces during the independence war, and the Act on the liability of the Republic of Croatia for damage caused by the Former Socialist Federal Republic of Yugoslavia, for which the Former Socialist Federal Republic of Yugoslavia was liable. The question of who was considered to be an "official" was

regulated by the Criminal Procedure Act, which included an already extensive list. That list had subsequently been amended to include the Ombudsman for children and the Ombudsman for gender equality and their deputies.

22. A decree on the internal organization of justice adopted 18 March 2004 had established a judicial academy within the Ministry of Justice with the aim of ensuring the continuing education of judges and their advisers. A comprehensive system of training for members of the judiciary was under way; emphasis was placed on the training of judges to conduct trials of those accused of war crimes and on training in civil, family and human rights law. Training seminars had been held on jurisprudence in a wide variety of subjects, including the suppression of trafficking in human beings, accession to the European Union and responsibility for criminal acts.

23. A State official who was given an order that was unlawful, immoral or contrary to the rules of their profession was required to submit a written note to the person who had given the order; if the order repeated in writing was lawful, then the official did not bear responsibility for the consequences of its execution. If the order was illegal, the official must not execute the order but must submit a written note to the superior of the person who had signed the order, or ultimately to the Government. In the event that a written order, the execution of which would constitute an offence, was carried out, the person who had carried out that order would be held jointly liable.

24. Since 1992, 3,456 prosecutions for war crimes had been initiated. A report by the Organization for Security and Cooperation in Europe (OSCE) had noted that 44 Serbs and 9 Croats had been convicted in 2003, which was an increase compared to 2002. She contested the assertion in the OSCE report that the cooperation of courts in providing international legal assistance was slow. Cooperation by the courts and by the State Prosecutor's Office was effective and speedy and Croatia had agreements with all neighbouring countries under the European Convention on Mutual Assistance in Criminal Matters, except Bosnia, which was not a party to that convention. For example, Croatia had recently provided assistance in response to a request from Belgrade that had resulted in seven witnesses giving evidence in a war crimes case just three months after the request had been made, despite the scant information that had been provided about the witnesses in question by Belgrade.

25. The seeming discrepancy between conviction and prosecution statistics, with reference to question 7 of the list of issues, which seemed to indicate that there were fewer prosecutions than convictions, was not an error. The statistical data provided took into account the dynamics of hearing cases. Some cases took several years to be decided, but the data pertained to the number of cases decided in any one year. All the cases for which the rulings were final, regardless of when the proceedings had started, had been included, which explained why it was likely that in some years there were statistically more convictions than prosecutions.

26. In response to the question regarding what had been done to depoliticize cooperation with the Hague Tribunal, international legal assistance was currently provided via the Ministry of Justice and a department for international legal assistance. As the Office for Cooperation with the Hague Tribunal had been running smoothly, it had been made into a department in charge of cooperation with the Tribunal within the Ministry of Justice. It operated in a very similar way to the department for international legal assistance in criminal cases. Croatia's cooperation with

the International Criminal Tribunal for the Former Yugoslavia (ICTY) was governed by the relevant provisions of the Criminal Procedure Act. The Ministry of Justice provided the link between the Hague Tribunal and the courts and State Prosecutors in Croatia. The Minister for Justice had sent a report on Croatia's efforts to locate General Gotovina to the Chief Prosecutor in The Hague. In response, the Prosecutor, Carla del Ponte, had made a statement to the effect that Croatia was cooperating fully with the Tribunal. Immediately thereafter, the European Commission had issued a positive opinion on Croatia's application for candidate status for accession to the European Union. Another indicator of good cooperation with the Tribunal was the fact that the Prosecutor and the Croatian Minister for Foreign Affairs had met recently in The Hague.

27. Mr. VEIĆ (Croatia) said that there was an error in paragraph 19 of the report, which stated that a complaint could be lodged directly with the Office of the Attorney-General within three days of inappropriate police conduct. No such deadline existed; in fact there was no time limit for lodging complaints.

28. Regarding the two cases mentioned at the previous meeting, one of whom was a member of the Roma minority who had sustained injuries as the result of an attack, a criminal report had been sent to the Office of the Public Prosecutor against unknown perpetrators. Although police investigations had been undertaken to identify the perpetrators, difficulties had arisen because the victim was severely visually impaired and could not recognize suspects. In the second case, which concerned an asylum-seeker whose request had been turned down, the Office of the United Nations High Commissioner for Refugees (UNHCR) had been involved in examining his application. It was worth noting that all asylum requests had been of an economic nature, and therefore did not fulfil the necessary requirements.

29. Mr. DAMJANOVIĆ, responding to the question on training of prison staff in relation to the implementation of the Convention, said that a centre had been established in 1999 for the training of prison staff, and to date 1,200 officials had undergone training. The basic course for judiciary police officials covered international conventions, standards and rules on the treatment of detainees. All the other courses included examples of observance of human rights and dignity.

30. As for the training of medical personnel, in the course of their university training all medical students attended a special course on ethics and deontology. In addition, all medical personnel in the prison system had been briefed regarding the implementation of the Convention. Training had been provided to the main officials in correctional homes and prisons, and to the heads of security departments. Special training had also been provided for officials on the use of means of coercion, based on international standards. In addition to programmes offered at the training centre, permanent education had been provided in correctional institutions and prisons since 1999. Training was provided by prison staff who themselves had been trained by experts from the British prison system. A handbook for prison staff written by Andrew Coyle, entitled A Human Rights Approach to Prison Management, published by the International Centre for Prison Studies, had been translated into Croatian and distributed to all prisons and correctional institutions.

31. Regarding post-traumatic stress disorder (PTSD) diagnosis in prisons, the regulation for prison staff was that the state of health of those affected should be established and any conditions, including PTSD, communicated to the medical commission. In addition to providing treatment, governors had the duty to place any employee suffering from PTSD in a job that did not involve direct contact with prisoners. Prisoners suffering from PTSD were placed on a voluntary basis in a special programme of psychological assistance, which had been set up in September 2001 and was run by the prison service in conjunction with one of the university hospitals.

32. Regarding the number of reports of abuse of coercion sent by the Governor of the institution in Turopolje to the Ministry of the Interior, disciplinary proceedings had been launched against the officials for exceeding their authority in three cases. Two of the officials had been found innocent, and one had been found guilty and dismissed.

33. There had been one recorded death at a juvenile institution, although not at the Turopolje facility, but in another correctional home for juveniles under the jurisdiction of the Ministry of Health and Social Welfare. The family had been informed and given psychological assistance. The funeral had been organized by the establishment and paid for by the Ministry of Health and Social Welfare, and a lump sum had been paid to the family. The Ministry of Health had requested a detailed report, which stated that the juvenile perpetrator of the act had been detained and charged. The Government had since adopted a programme of activity for the prevention of violence against children and juveniles.

34. Regarding the treatment of detainees and the organization of life imprisonment, no cases of prisoners being detained in warehouses had been ascertained. Prisoners had clearly stated legal rights. They had at least two hours of outdoor activity a day; sport and physical activity were provided depending on the institution, and prisoners were allowed access to television, newspapers, radio, books and religious services. If the court agreed, they could also work. The Public Prosecutor could visit a prisoner only with the permission of the competent court, and in the area provided for visits by legal counsel or family members.

35. Concerning the monitoring of violence among inmates, especially sexual abuse and retaliation, a psychosocial diagnosis was made within three to four weeks of the beginning of a prisoner's sentence. An assessment was made of possible abusers and victims of sexual abuse, which was taken into account when deciding on where to place the individual and how to execute the sentence.

36. The CHAIRPERSON invited the Country Rapporteur and Alternate Country Rapporteur to make their observations.

37. Mr. RASMUSSEN (Country Rapporteur) thanked the delegation for its replies, but said that he would welcome clarification of a number of issues. For example, although the report provided details of the number of complaints in various years, he would be interested to hear the outcome of those complaints. The same applied to the information on the number of asylum applications and complaints about asylum decisions: he would be interested to hear how many applicants had actually received asylum. He noted that the number of coercion cases in the alien reception centres was quite high, and would be interested to learn the outcome of the investigations into those cases, with respect to whether coercion had been justified.

38. Although there had been no reported asylum applications at the airports, if no interpreters were available, how could the authorities know that nobody had wanted to apply?
39. He appreciated the detailed reports on the two individual cases and the information relating to prisons, particularly on the training of staff and medical personnel, the use of Andrew Coyle's manual, the treatment of PTSD and the account of the death of the juvenile. A misunderstanding seemed to have arisen as a result of language. The CPT had used the expression "warehouse" in its report not in the physical sense, but to describe the situation of prisoners detained in empty facilities with nothing to do.
40. Mr. YAKOVLEV (Alternate Country Rapporteur) thanked the delegation for its conscientious answers, which he would bear in mind when formulating his recommendations.
41. Mr. GROSSMAN said that he would welcome clarification on whether the information provided on disciplinary measures adopted for prison and police staff was based on abuse, or simply on any type of violation of duties, such as punctuality or excessive alcohol consumption. As the number of sanctions imposed seemed high, he would be interested to see a breakdown of the reasons for the disciplinary measures.
42. Mr. PRADO VALLEJO said that it was imperative that every effort be made to bring the asylum centre in line with international standards. The asylum process should also allow for applications to be made at the airport.
43. The CHAIRPERSON said that he would be interested to hear whether the State party applied the criteria of the country of origin or safe third country to reject asylum applications, and, if so, in what way.
44. Mr. VEIĆ said that, in view of the number of prosecutions for criminal abuse in the course of duty, the delegation might send the Committee a written report on the nature of the offences and their status before the courts.
45. Regarding asylum-seekers in general, a new law on asylum would enter into force in July. So far, the procedure had followed almost obsolete regulations. Although Croatia did not currently have a centre for asylum-seekers that met international standards, funds had been made available and a centre was in the process of being built 10 kilometres from Zagreb and should be ready within six months.
46. Regarding asylum-seekers arriving at airports, there had been no cases of passengers requesting asylum immediately on arrival in Croatia. There were cases of foreigners not being in possession of the necessary documents, but such cases were dealt with under the Law on the Movement and Stay of Aliens, which, in its amended version, had entered into force in February 2004. The new law had been drafted in consultation with European Union experts and experts from the Office of the UNHCR.
47. An analysis of disciplinary measures would be prepared and sent to the Committee, explaining the reasons for taking disciplinary measures and the sanctions included in such measures. Coercion was rarely used as a measure of dealing with cases in centres for aliens.

Coercion had declined over the past three years, and all cases had been investigated. Most had concerned aliens attempting to leave detention facilities. A report on the issue, including detailed statistics, could be sent to the Committee in the near future.

48. Mr. DAMJANOVIĆ (Croatia), referring to disciplinary measures involving prison staff, said that specific information could be given only regarding the three cases he had mentioned previously. In two of those cases the charges against the prison staff had been dropped and in the other the defendant had been convicted.

49. Mr. VEIĆ (Croatia) said that asylum applications were not judged in the light of the applicant's country of origin. All cases were assessed individually, in respect of Croatia's Asylum Law, which was based on international standards. The text of that law was available to the Committee, should they require it.

50. The CHAIRPERSON asked whether Croatia, like the European Union, had a list of countries classified as "safe", and whether coming from such a country was sufficient reason for an asylum application to be rejected.

51. Mr. VEIĆ (Croatia) said that Croatia did not have such a list. The Government considered that there could always be reasons for justifying an asylum application, regardless of the country the applicant came from.

52. Mr. DAMJANOVIĆ (Croatia) thanked the Committee for their attention. He said that Croatia was engaged in promoting and strengthening human rights and he hoped that the Committee's recommendations would assist in that development.

53. The CHAIRPERSON invited the Croatian delegation to be present to hear the Committee's conclusions and recommendations later in the current session.

54. The delegation of Croatia withdrew.

The public part of the meeting rose at 5.15 p.m.