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TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Questionnaire on the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Report of the Secretary-General

Addendum

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REPLIES RECEIVED FROM GOVERNMENTS

FINLAND

/Original: English/
/16 October 1978/

1. Torture and other cruel, inhuman or degrading treatment or punishment has been punishable under Finnish law as a general principle and more specifically on the part of public officials.

No. 1 of the questionnaire

2. The Finnish Penal Code, chapter 25, paragraph 11, provides that whosoever tortures another in order to obtain from him a confession in a matter shall be sentenced to imprisonment for not more than four years. The same chapter, paragraph 12, provides that whosoever without a lawful right, through violence or threat, forces another to carry out, endure or refrain from carrying out something shall be sentenced to imprisonment for not longer than two years or to a fine for coercion, unless a severer sentence is provided elsewhere in the law. Chapter 21 of the Penal Code contains separate provisions for the punishment of crimes against life or health. The punishments range from payment of a fine for manhandling to imprisonment for life for premeditated murder, homicide for personal gain or homicide manifesting particular malice or cruelty.

No. 2 of the questionnaire

3. A study of the relevant laws is circulated in both the basic and the further training of police and prison personnel, together with instructions for the appropriate procedures. Furthermore, the police and prison personnel are often reminded of their responsibility as public officials as well as of the sanctions for any unlawful procedures.

No. 3 of the questionnaire

4. See paragraph 3.

No. 4 of the questionnaire

5. The observance of lawful procedures and practices falls under the supervision of the Police Inspectors and the Prison Inspectors, who make tours of institutions and deal with complaints. The Parliamentary Ombudsman and the Chancellor of Justice also review cases of possible maltreatment. Letters of complaint from prisons addressed to one of these may not be opened by anyone else.

No. 5 of the questionnaire

6. See paragraph 2.

No. 6 of the questionnaire

7. See paragraph 5.

No. 7 of the questionnaire

8. As cause may arise, the matter shall be investigated by the authorities.

No. 8 of the questionnaire

9. If it is established that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed, normal criminal proceedings are instigated. Generally the punishment is imprisonment, but for minor cases it may be a fine (see para. 2). In addition to such punishment, a public official found guilty can be suspended or expelled from his office. Suspended sentence and a pardon are possible.

No. 9 of the questionnaire

10. Disciplinary sanctions, such as warning or a suspension, are possible for minor offences. In case of a serious crime, the accused public official is normally suspended for the duration of the investigation. An association may decide on its own accord to expel a member who has engaged in activities which are not compatible with the aims of the association.

No. 10 of the questionnaire

11. See paragraphs 9 and 10.

No. 11 of the questionnaire

12. There are no known cases where a confession would have been obtained by means of torture and other cruel, inhuman or degrading treatment or punishment.

No. 12 of the questionnaire

13. Victims of acts of torture or other cruel, inhuman or degrading treatment or punishment can receive redress or compensation either under the Damages Act (412/1974) or the Criminal Damages Act (935/1973). The former provides that whosoever wilfully causes loss or damage to another shall be liable for compensation. Whosoever has, through the act or omission of another, suffered permanent or temporary physical injury or other damage to his person is entitled to compensation for medical and other expenses caused by the injury, for the reduction of his means of livelihood, for pain and suffering and any permanent disability or handicap. The latter Act provides for compensation to be paid from public funds in cases of criminal damages.

No. 13 of the questionnaire

14. The significance of challenging a confession is at the discretion of the court. The minutes of the police examination are not necessarily binding if the accused denies in court the truthfulness of any statement therein.

No. 14 of the questionnaire

15. The Declaration has been given attention in education and training of police and prison personnel (see para. 3) and in the public media.

No. 15 of the questionnaire

16. In accordance with General Assembly resolution 32/64 of 8 December 1977, the Finnish Government, on 22 September 1978, gave a unilateral declaration on its intention to comply with the Declaration on the Protection on All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This undertaking entails no change of present Finnish law or practice, since the principles which are reflected in the Declaration have already been observed in Finland over a long period of time.

FRANCE 1/

/Original: French/
/9 October 1978/

No. 1 of the questionnaire

1. The rights of persons arrested or detained for criminal offences are protected by detailed regulations which include, first and foremost, the right of the arrested person to be advised of the charges against him and to communicate with the outside world, together with the right to the services of a defence lawyer during deprivation of liberty.

2. The provisions prohibiting any severe treatment, wilful misrepresentation or coercion during detention are particularly detailed and precise.

3. The Code of Criminal Procedure accordingly provides that a medical examination may be carried out at any time while a person is being held in custody, and such an examination becomes mandatory after 24 hours if the detainee requests it. Provision is also made for a similar medical examination during the preliminary investigation.

4. Likewise, there are precise rules for the punishment of any abuses committed against detainees.

5. First of all, there are the provisions of the Penal Code which are of general application and make murder in the first and second degree (arts. 295-297), the use of torture in the commission of a crime (art. 303), threats (arts. 305-308) and infliction of bodily harm, acts of violence and assault and battery (arts. 309-311) punishable.

6. Article 308 of the Penal Code inter alia makes it punishable to utter written or oral threats, accompanied by an order or condition that is to say with a view to inducing the person threatened to say, do or refrain from doing, a certain thing.

7. Articles 341-344 of the Penal Code deal specifically with unlawful arrest. This offence is more serious if there have been threats of death or physical torture, in which case the penalty is particularly severe. According to judicial practice and most legal writers, it can only occur if the public official involved exceeds his authority out of selfish interest or personal emotions. If the abuse of power is committed in the course of the performance of his official functions, he is liable to the penalties provided for in article 114 et seq. of the Penal Code.

8. The act of torture mentioned in article 344 must be physical, but the definition covers "prolonged deprivation of food, bedding, and clothing ..."

1/ The texts mentioned in this reply are annexed.

9. Any abuses which may be committed in penal institutions come under the prison regulations. Under those regulations warders are prohibited from engaging in acts of violence against prisoners, calling them by insulting names, using coarse or familiar language, and so on.

10. Failure to comply with these rules renders perpetrators liable to disciplinary penalties, without prejudice to the possible criminal penalties considered above.

11. The courts have had occasion to apply these provisions, which they have always interpreted in a very wide sense. For example, the Court of Cassation considers that the concept of "violence" is very general in nature and covers "all acts of violence whatever their nature and whatever the outcome" (decision of 8 December 1882).

12. There is no specific legislation for a state of war or any other exceptional circumstances. No special measures have been taken since the adoption of the Declaration.

No. 4 of the questionnaire

13. With regard to the implementation of regulations concerning police custody (garde à vue), it should be recalled that officers of the criminal police come within the purview of the State Counsel General (Procureur Général) (art. 38 of the Code of Criminal Procedure). In addition, the Chief State Counsel (Procureur de la République) directs the activities of the criminal police (art. 41 of the Code of Criminal Procedure). Under the French judicial system, the State Counsel General and the Chief State Counsel are judicial officials.

14. The Chief State Counsel, in the case of detainees in general, the examining magistrate in the case of persons awaiting trial, and the judge of the children's court in the case of minors, visit penal institutions regularly. In addition a commission for the supervision of prisons, including civil officers responsible for the administration of justice, is responsible for ensuring the enforcement of laws and regulations applicable to penal institutions; prisoners can inter alia be heard by this commission. A physician attached to each institution carries out systematic medical checks.

No. 5 of the questionnaire

15. All of these acts are subject to penal law. It should be made clear, however, at the juridical level, that the very broad interpretation given to the concept of "acts of violence" and "assault and battery" in judicial practice is substituted for the concept of attempted violence when no express provision is made for that in French law. Incitement to torture is in general considered as a case of complicity (art. 60 of the Penal Code).

No. 6 of the questionnaire

16. The judicial authorities are competent to deal with any offence committed or instigated by an official. The procedure is that of ordinary law, except in

the case of an officer of the crimilar police who has committed an offence in the district under his jurisdiction. In such circumstances the case may be heard by a court responsible for carrying out investigations or conducting trials in a place other than that where the offence was committed (art. 687 of the Code of Criminal Procedure).

No. 8 of the questionnaire

17. Criminal proceedings are instituted against anyone allegedly guilty of an act of torture. These proceedings take place in the same conditions as proceedings under the ordinary law and are therefore governed by the provisions of the Code of Criminal Procedure. The penalties are those fixed by the Penal Code in the relevant articles already quoted in paragraph 1. Such convictions are treated as convictions under the ordinary law and are therefore subject, in the same condition, to suspension of enforcement of the sentence, pardon, reduction or commutation of the sentence and, if applicable, amnesty.

No. 9 of the questionnaire

18. Irrespective of any criminal penalties imposed, those guilty of torture are liable to be barred or suspended from public service or, in the case of the professions, barred or suspended from their professional association.

No. 10 of the questionnaire

19. The same applies in the case of other cruel, inhuman or degrading treatment or punishment.

No. 11 of the questionnaire

20. It would appear that no investigation or proceedings involving torture have been instituted since the adoption of the Declaration.

No. 12 of the questionnaire

21. Compensation is available for all victims of bodily harm under the conditions set forth in articles 706-3 to 706-13 of the Code of Criminal Procedure, pursuant to an Act of 3 January 1977. This compensation is of a supplementary nature in that it is designed for cases where the victim is unable to obtain effective and adequate redress or compensation from any other source and, as a result, finds himself in a serious financial situation. The offender, in the first instance, and in some cases the State, if the offence is committed in the performance of official duties, may be sentenced to afford redress for injury caused to the victim.

No. 13 of the questionnaire

22. Under the French legal system there are no statutory rules of evidence; only a reasonable certitude of truth (intime conviction) on the part of the judge is taken into account. It goes without saying that the judge will not base his decision on statements obtained under torture.

23. With regard to paragraphs 2, 3 and 7, the French Government reminds the Secretariat that it has no objection in principle to the draft code of conduct for law enforcement officials. Indeed, the provisions of the draft as a whole are already incorporated into French domestic legislation or regulations and already form the essential basis for conduct appropriate to the various branches of public administration.

ANNEX

PENAL CODE

Book II

Persons criminally liable, pardonable or responsible for criminal offences or correctional offences

Article 60. The following shall be liable to punishment as accessories: any person who instigates the commission of a criminal offence (crime) or a correctional offence (délit) by gifts, promises, threats, abuse of authority or power, unlawful intrigue or guile, or who counsels the commission of the offence:

Any person who knowingly procures weapons, implements or any other means used in the commission of the offence;

Any person who knowingly aids or abets the principal or principals in the preparation, facilitation or execution of the offence, without prejudice, however, to any of the penalties specifically defined in this Code which may be incurred by conspirators or instigators of offences against the security of the State, even where the criminal offence which they conspire to commit is not actually committed.

CHAPTER III

Criminal offences and correctional offences against the Constitution

Section II. Attacks against liberty

Article 114. Any public official, Government agent or civil servant who orders or commits any arbitrary act which constitutes an attack either on the individual liberty of civic rights of one or more citizens, or on the Constitution, shall be sentenced to loss of civic rights.

If, however, he proves that he acted under orders from his superiors, to whom he owes obedience as a subordinate, in matters within their jurisdiction, he shall not be liable, and the penalty shall be incurred solely by the superiors who gave the order.

Article 115. Any minister who orders or performs any act or acts referred to in the preceding article and who, when requested to do so, pursuant to articles 63 and 67 of the senatus consultum of 28 Floréal, Year XII, refuses or fails to make amends for such acts within the period fixed therein, shall be banished.

/...

Article 116. If any minister charged with ordering or authorizing the act contrary to the Constitution maintains that the signature imputed to him has been obtained from him unawares, he shall invalidate the act and denounce the perpetrator, failing which, he shall be rendered personally liable to prosecution.

Article 117. Any claims for damages pursuant to the attacks mentioned in article 114 shall be made either through criminal prosecution or civil proceedings and shall be assessed in the light of the persons and circumstances involved and the injuries incurred, but in no case, irrespective of the identity of the victim, shall the said damages be less than 25 francs (0.25 F) per head for each day of unlawful and arbitrary detention.

Article 118. If the act contrary to the Constitition has been committed on the basis of a forged signature of a minister or other public official, the forger and anyone who knowingly used the forgery shall be sentenced to a term of 10 to 20 years' rigorous imprisonment with forced labour, the maximum penalty being applied in all cases.

Article 119. Any public official responsible for law enforcement and criminal investigations who refuses or fails to forward a lawful claim designed to establish illegal or arbitrary detention, either at a place of detention or elsewhere, and who fails to prove that he reported the facts to his superiors, shall be sentenced to loss of civic rights and shall pay damages in conformity with the provisions of article 117.

Article 120. Any warder or custodian of any place of custody or prison who accepts any prisoner without an order for committal or court decision or, in the case of deportation or extradition, without a temporary order from the Government, and anyone who detains or refuses to surrender such a person to a police officer or a person lawfully acting on behalf of the police, without an order from the Chief State Counsel or the judge, and anyone who refuses to submit admission registers to the scrutiny of the police officer, shall be guilty of unlawful detention and liable to imprisonment for a period of from six months to two years and a fine of 50,000 to 150,000 francs (500 F to 1,500 F).

Article 121. Any criminal police officer, State Counsel General, Chief State Counsel, deputy State Counsel (substitut) or judge who issues, causes to be issued or signs a court order or a warrant leading to the individual prosecution or indictment of either a minister or a member of parliament, without the authorization prescribed by State laws or who, without the said authorization, except in the case of arrests in flagrante delicto or hue and cry, issues or signs the order or warrant to seize or arrest one or more ministers or members of parliament shall be sentenced to loss of civic rights on the grounds of misuse of power.

Article 122. Any State Counsel General, Chief State Counsel, deputy State Counsel, judge or public official who detains or causes to be detained any person in a place other than one prescribed by the Government or public authority, or who brings any citizen before an assize court without a formal charge having first been made, shall likewise be sentenced to loss of civic rights.

TITLE II

CRIMINAL OFFENCES AND CORRECTIONAL OFFENCES AGAINST PRIVATE PERSONS

CHAPTER I

Criminal offences and correctional offences against the person

Section I. Murder and other capital offences, threats against the life of the person

§ 1. Murder in the first and second degree, parricide, infanticide, poisoning

Article 295. Voluntary homicide is murder in the second degree. (meutre)

Article 296. Any murder committed with premeditation or by lying in wait is murder in the first degree. (assassinat)

Article 297. Premeditation consists in planning with malice aforethought to make a homicidal attack on a chosen person or even on an individual met or encountered, even though such a plan may depend on a particular circumstance or condition.

Article 303. Any offender, of any description, who uses torture or cruel treatment in the commission of an offence, shall incur the same penalty as a person guilty of murder in the first degree.

§ 2. Threats

Article 305. Any person who, by means of an anonymous or signed written paper, picture, symbol or emblem utters a threat to murder, poison, or in any other way make an attempt on the life of a person, shall be sentenced to death, rigorous imprisonment with forced labour for life or life imprisonment. When the threat is accompanied by an order to deposit a sum of money at a designated spot or to fulfil any other requirement, the penalty shall be imprisonment for a term of two to five years, and a fine of 50,000 to 450,000 francs (500 F to 4,500 F).

Furthermore, the offender may forfeit the rights mentioned under article 42 of this Code for no less than five and no more than 10 years, commencing from the day on which he completes his sentence.

He may in addition, suffer restrictions on his freedom of movement, commencing on the day on which he completes his sentence (see Penal Code, art. 44).

Article 306. When the threat is not accompanied by any order or condition, the penalty shall be a term of imprisonment of not less than one year and not more than three years, and a fine of 50,000 to 450,000 francs (500 F to 4,500 F).

In this case, as in the preceding article, the offender may suffer restrictions on his freedom of movement (see Penal Code, art. 44).

Article 307. When a verbal threat is accompanied by an order or condition, the penalty shall be imprisonment for a term of six months to two years and a fine of 50,000 to 180,000 francs (500 F to 1,800 F).

In this case, as in the preceding articles, the offender may suffer restrictions on his freedom of movement (see Penal Code, art. 44).

Article 308. Any person who, by one of the means mentioned in the preceding articles, threatens force or violence other than in the form described in article 305, and accompanies the threat by an order or a condition, shall be sentenced to imprisonment for a term of six days to three months and/or a fine of 50,000 to 100,000 francs (500 F to 1,000 F).

Section II. Voluntary infliction of bodily harm not amounting to murder, and other voluntary criminal and correctional offences

Article 309. Any person who voluntarily inflicts bodily harm on another person or commits any other act of violence or assault and battery resulting in an illness or total incapacity for personal work for more than eight days, shall be sentenced to imprisonment for a term of two months to five years and a fine of 50,000 to 100,000 francs (500 F to 10,000 F).

He may further forfeit the rights referred to in article 42 of this Code for a period of no less than five and no more than 10 years, commencing from the day on which he completes his sentence.

When the acts of violence mentioned above result in mutilation, amputation or loss of the use of a limb, blindness, loss of an eye, or other permanent disability, the offender shall be sentenced to rigorous imprisonment with forced labour for a term of 10 to 20 years.

Article 310. In the case of premeditation or lying-in-wait resulting in death, the penalty shall be rigorous imprisonment with forced labour for life. If the acts of violence result in mutilation, amputation or loss of the use of a limb, blindness, loss of an eye, or other permanent disability, the sentence shall be rigorous imprisonment with forced labour for a term of 10 to 20 years. In the case for which provision is made in the first paragraph of article 309, the penalty shall be rigorous imprisonment with forced labour for a term of five to 10 years.

Article 311. When the infliction of bodily harm or other acts of violence or assault and battery do not cause any illness or total incapacity for personal work for a period of more than eight days, but have been committed with premeditation and by lying-in-wait, or while in possession of a weapon, the offender shall be sentenced to imprisonment for a term of two months to five years, and a fine of 50,000 to 1 million francs (500 F to 10,000 F).

Section V. Unlawful arrest and confinement

Article 341. Any person who, without an order from the duly constituted authorities and without a legal warrant, arrests, detains or illegally confines any person, shall be sentenced to 10 to 20 years' rigorous imprisonment with forced labour.

Any person who provides premises for such unlawful imprisonment or confinement shall incur the same penalty.

Article 342. If the duration of the unlawful detention or confinement exceeds one month, the penalty shall be rigorous imprisonment with forced labour for life.

Article 343. The penalty shall be reduced to imprisonment for a term of from two to five years if those who committed the offences mentioned in article 341 release the arrested, confined or detained persons within 10 days of such arrest, detention or confinement, and prior to any de facto prosecution.

Article 344. In each of the following two cases, the offender shall be sentenced to rigorous imprisonment with forced labour for life:

1. If the arrest was carried out while impersonating a uniformed official, under a false name, or on a counterfeit order of the public authority;

2. If the person arrested, detained or confined was threatened with death.

If the persons arrested, detained or confined were subjected to physical torture the death penalty shall be imposed.

CODE OF CRIMINAL PROCEDURE

Section II. Attributions of the State Counsel-General (Procureur général) of the Appeal Court

Article 38. Officers of the criminal police are subject to the control of the State Counsel-General. He may request them to collect any information he deems useful for the proper administration of justice.

Article 41. The Chief State Counsel (Procureur de la République) shall undertake or cause to be undertaken any action necessary to detect and prosecute offences against penal law.

To that end, he shall direct the activity of officers of the criminal police within the jurisdiction of his court.

He shall have all the powers and prerogatives assigned to an officer of the criminal police as provided for in title I, chapter I, section II, of this book, as well as by special laws.

In the case of offences which are being, or have just been, committed, he shall exercise the powers vested in him by article 68.

Article 687. When an officer of the criminal police is liable to be charged for a criminal offence or a correctional offence committed, either in the pursuance of his functions or otherwise, in the district under his jurisdiction or, in the case of a mayor or his deputies, when the provisions of article 681 are not applicable to them, the Chief State Counsel who is to be responsible for the case shall, without delay, submit an application to the criminal chamber of the Court of Cassation which shall proceed and make a ruling as in the procedure for determining which court has jurisdiction and shall designate the court which is to investigate or try the case.

The criminal chamber shall give its decision within eight days from the day following that on which the application is received.

The provisions of article 680 shall be applicable.

TITLE XIV

AVAILABILITY OF COMPENSATION FOR CERTAIN VICTIMS OF BODILY HARM

Article 706-3. Any person who has suffered harm as a result of voluntary or involuntary acts materially constituting an offence may obtain compensation from the State when the following conditions are fulfilled:

1. The acts have caused bodily harm and led to the death, or permanent incapacity, or total incapacity for personal work for a period exceeding one month;

2. The injury consists in a loss or reduction of earnings, in an increased financial burden, or inability to pursue an occupation;

3. The victim is unable to obtain redress or effective and adequate compensation from any other source and thereby finds himself in a serious financial situation.

However, the compensation may be refused, or reduced on account of the behaviour of the victim at the time of the offence or his relationship to the offender.

Article 706-4. The compensation shall be allocated by a commission set up within the jurisdiction of each appeal court. The commission shall have the character of a civil jurisdiction whose decision shall be final. Its proceedings shall be determined by decree of the Council of State.

It shall be composed of three judges of the appeal court designated annually by the first president. The functions of the State Counsel division (ministère public) shall be exercised by the general State Counsel in court (parquet).

Article 706-5. The application for compensation shall be submitted within a period of one year from the date of the offence; otherwise it shall be time-barred. When criminal proceedings are instituted, this time-limit shall be extended and shall not expire until one year following the decision of the court which gives the final ruling on the criminal prosecution. However, the commission shall not declare the application time-barred when the applicant can produce legitimate justification.

Article 706-6. The commission may undertake or cause to be undertaken any hearings or investigations deemed useful. It may, inter alia, request that it be supplied with copies of the reports concerning the offence and any documents from the criminal proceedings, even if they are still in progress. It may also request any person or administration to communicate information on the profession, financial, fiscal or social status of persons held liable for injury caused by the offence, or of the applicant; professional secrecy may not be invoked. The information thus gathered may not be used for purposes other than the investigation of the application for compensation and any divulgence of such information is prohibited.

In the course of the investigation of the application an advance may be granted to the applicant.

Article 706-7. When criminal proceedings have been instituted, the decision of the commission may be made known before a ruling has been given on the criminal prosecution.

The commission may postpone its decision pending a final ruling by the criminal court in the cases mentioned in the last paragraph of article 706-3: it shall, in the same cases and conditions, postpone its decision at the request of the victim.

The hearing shall take place, and the decision shall be given, in chambers.

Article 706-8. When the court ruling on civil proceedings awards damages in excess of the compensation awarded by the commission, the victim may request supplementary compensation within the maximum limit fixed in article 706-9. He shall submit his application within one year of the date on which the ruling on the civil proceedings becomes final.

Article 706-9. The compensation awarded by the commission shall be paid by the State. It shall be paid as costs of criminal justice and shall not exceed the maximum figure set each year by decree.

Article 706-10. When the victim, following payment of the compensation, obtains effective redress or compensation for his injury, form any source, the State may require the commission which awarded the compensation to order total or partial reimbursement.

Article 706-11. The State shall succeed as subrogee to the rights of the victim to obtain from the persons responsible for any injury arising from the offence reimbursement of the compensation it has paid up to the amount of the redress for which such persons are liable.

It may exercise this remedy by instituting a civil action in the criminal court, and may even do so for the first time when the case is being heard on appeal.

Article 706-12. If the victim or his rightful beneficiaries bring a civil action before the criminal court or institute proceedings against the persons responsible for the injury, they shall indicate, at every stage of the proceedings, whether they have had recourse to the commission established under article 706-4 and, where applicable, whether the commission has awarded them compensation.

Failure to make such a declaration will enable the judgement on the civil provisions to be rendered null at the request of any interested person within two years from the date on which the judgement becomes final.

Article 706-13. In the case of an offence committed abroad, but within French jurisdiction, the provisions of this title shall be applicable when the victim is of French nationality.

SECTION II. SOLITARY CONFINEMENT, ISOLATION AND MEANS OF RESTRAINT

§ 1. Solitary confinement

Article D.167

Solitary confinement consists in placing the prisoner in a cell equipped for that purpose, which he must occupy alone, such punishment shall not exceed 45 days.

It shall be imposed under the conditions laid down in article D.249 and may be suspended wholly or in part as provided for in articles D.251.

Article D.168

In the conditions laid down in article D.249, the head of the institution may impose solitary confinement for a period of up to 45 days. However, in prisons under the authority of the head of a place of detention (maison d'arrêt) or a head warder, such power shall be reduced to a maximum of 8 days; the regional director may increase the term of punishment to a maximum of 45 days.

Time spent in disciplinary detention shall accrue to the period of the sentence to be served.

Prisoners undergoing such punishment shall be visited by a physician, if possible upon being placed in the punishment cell and in any case not less than twice a week. Punishment shall be suspended if the physician states that its continuation could be prejudicial to the health of the prisoner.

§ 3. Means of restraint

Article D.172

No means of restraint shall be used as a disciplinary measure.

The means of restraint referred to in article 726 shall be used in accordance with the provisions of that article only at the direction of a physician or on the order of the head of the institution when there is no other means of subduing a prisoner or preventing him from causing damage or physical injury to himself or another person. The head of the institution shall immediately cause the prisoner to be visited on a matter or urgency by the physician, who shall decide whether to continue restraint or direct that it be ceased.

The regional director shall be notified of such cases without delay.

Article D.173

As a precaution against escape, prisoners may be placed in handcuffs and shackles during transfer or removal from prison, or when circumstances do not permit them to be guarded effectively in any other manner.

However, no bond shall remain on a prisoner at the time of his appearance before a court.

Article D.174

Prison administrative staff shall not use force against prisoners except in cases of self-defence, escape attempts or violent resistance to or non-co-operation with orders given.

They shall use no more force than is strictly necessary.

Article D.175

In accordance with the provisions of the Act of 28 December 1943, the staff of penal institutions, whether in uniform or in civilian clothes, shall, in the absence of judicial or administrative authority, use armed force in the following cases:

"When they are the victims of violence or assault or are threatened by armed individuals;

"When they cannot otherwise defend the penal institution under their guard, or the posts or the persons in their charge, or when resistance is such that it cannot be overcome except by force of arms;

"When persons attempting to enter a penal institution or prisoners called upon to stop by repeated loud cries of 'stop' attempt to escape from them or to avoid their investigations and cannot be made to stop except by the use of arms."

For the purpose of implementing the foregoing provisions, the members of forces detailed to maintain order, whether intervening within a penal institution or providing protection or standing guard within or outside the institution in accordance with the provisions of article D.266, shall, during such intervention or the performance of such duties, be equated with the staff of the penal institution.

SECTION III: VISITS BY JUDICIAL AUTHORITIES

Article D.176

The judge responsible for the enforcement of penalties shall visit each penal institution at least once a month in order to inspect the conditions in which convicts are serving their sentences.

He shall communicate any observations he may have to the competent authorities for appropriate action.

He shall submit each year a report on the enforcement of penalties to the Minister of Justice, through the presidents of the courts.

Article D.177

In accordance with the provisions of article 222, the president of the chambre d'accusation shall, as he deems necessary and at least once every quarter, visit the places of detention (maisons d'arrêt) under the jurisdiction of the appeal court and inspect the situation of the accused persons detained in custody there. (Decree No. 72-852 of 12 September 1972)

He shall transmit any observations he may have regarding accused persons not within the jurisdiction of his appeal court to the president of the competent chambre d'accusation.

The examining magistrate and, in the case of minors under his jurisdiction, the judge of the children's court, may also visit the place of detention (maison d'arrêt) and see accused persons as often as they deem useful. The same shall apply to the examining magistrate attached to the permanent tribunal of the armed forces with regard to accused persons under his jurisdiction.

Article D.178

The Chief State Counsel and the State Counsel General shall visit penal institutions.

The Chief State Counsel shall visit each prison once each quarter and more often if necessary, inter alia, in order to receive prisoners wishing to make complaints.

He shall report his observations to the State Counsel General.

The Government Commissioner attached to the permanent tribunal of the armed forces shall have the same prerogatives, but only with regard to prisoners under the jurisdiction of that tribunal.

Article D.179

The First President of the Court and the State Counsel General shall each year submit a joint report to the Minister of Justice on the functioning of the penal institutions for which they are responsible and the service rendered by the staff of such institutions.

SECTION IV. THE SUPERVISORY COMMISSION

Article D.180

The Supervisory Commission, under the chairmanship of the préfet in the administrative centre of each département, and of the sous-préfet in the administrative centre of each arrondissement, shall comprise:

1. The President of the county court (tribunal de grande instance) and the Chief State Counsel attached to that court, or civil officers responsible for the administration of justice appearing in their stead;

2. The judge responsible for the enforcement of penalties;

3. An examining magistrate appointed by the President of the county court;

4. A judge of the children's court, if the Commission is attached to a place of detention (maison d'arrêt) situated at the seat of a children's court;

5. The chairman (bâtonnier) of the Association of Barristers (ordre des avocats) or his representative;

6. An officer representing the general commanding the military region, if the Commission is attached to a place of detention (maison d'arrêt) situated at the seat of a permanent tribunal of the armed forces;

7. A member of the General Council elected by his colleagues;

8. The director of employment and labour for the département or his representatives;

9. The inspector of schools or his representative;

10. The chairman of the chamber of commerce and industry or his representative;

11. The chairman of the craftsman's association or his representative;

12. The director of health and social work for the département or his representative;

13. A representative of the organizations which assist prisoners or former prisoners and are authorized to provide social aid, appointed on the proposal of the judge responsible for the enforcement of penalties;

14. Three to six persons belonging to charitable institutions engaged in social work or selected in view of their interest in the problems of prisoners and former prisoners.

The members of the Commission referred to in the two preceding paragraphs shall be appointed for a period of two years renewable by decision of the préfet, of which a certified copy shall be sent to the Minister of Justice.

The head of the penal institution and staff members, approved visitors, members of the medical and social services and chaplains of the institution, and any other persons who habitually perform any function in the institution, may not serve on the supervisory commission.

Article D.181

The first president of the appeal court and the State Counsel General attached to that court may appoint respectively a judge and a State Counsel in court (magistrat du parquet) to represent them and take part in the work of the supervisory commission if they do not wish to attend themselves.

Article D.182

In the absence of the préfet or the general secretary of the préfecture, or, in the administrative centres of the arrondissements, in the absence of the sous-préfet, meetings shall be conducted under the chairmanship of the senior civil officer responsible for the administration of justice.

Article D.183

The supervisory commission shall meet when convened by its chairman, at least once a year, in the institution to which it is attached.

Moreover, one or more of its members may be delegated to visit the prison more frequently if the Commission deems it useful.

Article D.184

The Commission shall be responsible for supervising the interior of the prison as regards sanitary conditions, security, diet and health service, work discipline and observance of the regulations, and the training and moral reform of detainees.

It shall communicate any observations, criticisms or suggestions it wishes to make to the Minister of Justice.

In no case shall it have any authority to take action.

Article D.185

Supervisory commissions attached to penal institutions within the same département may have the same membership.

SECTION V. CONDITIONS FOR VISITING PRISONERS

Article D.186

Prisoners identified by name may be visited by written permission under the conditions laid down in articles D.64, D.68 and D.403 et seq.

Article D.187

Without prejudice to the rights granted to the judicial authority, the Minister of Justice alone may grant general permission to communicate, either for an indefinite period or for a limited number of visits, with prisoners not identified by name.

Apart from the cases mentioned in article D.473 regarding prison visitors, such authorization shall be granted only in exceptional cases.

Article D.257-1

In addition to applying the provisions of article D.257, the head of the institution and his staff shall by the most appropriate means keep prisoners informed and receive any comments and suggestions the prisoners may make.

Article D.258

The head of a penal institution shall at all times have the option of submitting to the regional director in authority over him a decision which the present chapter places within his competence, and the same shall apply to the regional director with regard to the Minister of Justice.

On the other hand, the head of a penal institution may, in urgent cases, assume powers normally proper to the regional director, provided that he makes an immediate report, by telephone if necessary.

SECTION IV. COMPLAINTS BY PRISONERS

Article D.259

Any prisoner may submit requests and complaints to the head of the institution, who shall grant the prisoner a hearing if he has sufficient grounds.

Each prisoner may request a hearing by the civil officers responsible for the administration of justice and other officials responsible for inspecting or visiting the institution at which no member of the prison staff shall be present.

Article D.260

A prisoner or the parties adversely affected by an administrative decision may request that such decision be referred to the regional director, if it was handed down by the head of a penal institution, or to the Minister of Justice if it was handed down by a regional director.

However, any decision taken within the scope of the powers laid down by law, regulations or ministerial instruction shall be immediately enforceable, the use of the above-mentioned ex gratia appeal procedure notwithstanding.

Article D.261

All requests or complaints shall be presented within the framework of the provisions, on the one hand, of articles D.176 to D.178 of this section regarding visits by judicial authorities and articles D.183 and D.184 regarding the activities of supervisory commissions and, on the other hand, those of article D.257-1.

Article D.262

Prisoners may at all times send letters to the French administrative and judicial authorities named in the list drawn up by the Minister of Justice.

Such letters may be sent in sealed envelopes and shall then be exempt from any form of control; their dispatch may not be delayed.

Prisoners using the facility thus granted to them in order to make provocative statements, threats or libellous allegations, or to repeat unjustified complaints which have already been rejected, shall be subject to "disciplinary penalties", without prejudice to possible criminal penalties.

Article D.263

Military or naval prisoners shall also be entitled to write freely to the French military or naval authorities.

In addition, they may be visited by representatives of such military or naval authority named in a service instruction.

Article D.264

Foreign prisoners may communicate with the diplomatic representatives and consular agents of the State of which they are nationals, provided that such State grants reciprocity.

To that end, the necessary permission shall be granted to such representatives or agents to communicate or correspond with prisoners of their nationality, without prejudice to the provisions of articles D.406 and D.416.

GERMANY, FEDERAL REPUBLIC OF

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No. 1 of the questionnaire

1. One of the measures taken by the Federal Republic of Germany against torture was the ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms. 2/ This Convention, effective for the Federal Republic of Germany on 3 September 1973, contains in article 3 an absolute prohibition of torture which may not be suspended in the case of war or any other public emergency that represents a threat to the life of the nation (art. 15, para. 2, of the Convention).

2. The prohibition of torture contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms is considered directly valid law in the Federal Republic of Germany. Its effectiveness is guaranteed by the fact that the Federal Republic of Germany has subjected itself to international controls. It made the declarations in accordance with article 25 as well as the declaration in accordance with article 46. This means that anyone who feels his rights are being violated according to article 3 of the Convention can, after exhausting the means of obtaining legal redress available in this country, appeal to the European Commission on Human Rights. According to article 48 of the Convention, a decision as to whether it is being violated lies ultimately with the European Court of Human Rights, beneath whose jurisdiction the Federal Republic has placed itself. However, in the many years that these two legal protection authorities have been active, a case of torture has yet to be determined in the Federal Republic of Germany.

3. The Federal Republic of Germany also supports all efforts directed towards world-wide establishment of the absolute prohibition of torture, the respect of which is warranted in the Federal Republic of Germany by international guarantees of legal protection. It has promoted this aim by ratifying the International Covenant on Civil and Political Rights which, in article 4, paragraph 2, and article 7, first sentence, expresses a strict prohibition of torture, similar to that expressed in the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Nos. 2 to 4 of the questionnaire

4. The provisions relating to the execution of prison sentences guarantee complete protection from torture and other cruel, inhuman or degrading treatment or punishment. Any restriction of the freedom of a prisoner not provided for by law or not indispensable in order to maintain security or prevent a serious disturbance of order within the given prison, is interdicted. The application of restraints or security measures is dependent on the presence of narrowly defined conditions determined by the security and order requirements of the institution and may not be excessive.

2/ United Nations, Treaty Series, vol. 213, No. 2889, p. 221.

5. In any measure taken, the maintenance of the imprisoned person's human dignity is a constitutional requirement. His physical and mental health must be looked after. The architectural and organizational form of penal institutions are also to guarantee humane treatment, taking individual needs into consideration. The prisoner can have a violation of his rights examined by an independent judge.

6. Prison personnel are familiarized with these provisions during professional training.

No. 5 of the questionnaire

7. The prohibition of torture and other inhuman and degrading treatment is embodied in article 1, paragraph 1 (inviolability of human dignity), and article 2, paragraph 2, first sentence (right to life and freedom from bodily harm), of the Constitution. Aside from this, criminal law in this country provides extensive protection against torture and other inhuman and degrading treatment. The following offences can lead to punishment:

(a) Section 343 of the Penal Code (extortion of testimony);

(b) Section 340 of the Penal Code (causing bodily injury in the exercise of a public office);

(c) Section 223 et seq. of the Penal Code (offences involving bodily injury);

(d) Section 240 of the Penal Code (intimidation);

(e) Section 241 of the Penal Code (threat);

(f) Section 239 of the Penal Code (deprivation of liberty);

(g) Section 344 of the Penal Code (prosecution of innocent persons);

(h) Section 345 of the Penal Code (punishment of innocent persons).

8. Participation in the above-named offences is also punishable by law. The following should be mentioned in this connexion:

(a) Section 25 of the Penal Code (indirect guilt and complicity);

(b) Section 26 of the Penal Code (instigation);

(c) Section 27 of the Penal Code (aiding and abetting).

9. There are two additional cases that make participation in the above-named offences by a superior in public office punishable:

(a) Section 357 of the Penal Code (inducing a subordinate to commit an offence);

(b) Section 340 of the Penal Code (causing bodily injury in the exercise of a public office),

10. Punishability of an attempt (sect. 22 et seq. of the Penal Code) and of attempted participation (sect. 30 of the Penal Code) is given with respect to most of the above-named offences. An extension of protective criminal law before the fact results from the circumstance that incitement to the named offences is itself a punishable offence (sect. 111, para. 1, of the Penal Code). This offence is punishable even if incitement does not lead to the intended offence (sect. 111, para. 2, of the Penal Code).

11. Advocating or inducing torture measures is, on the other hand, punishable only in the context of subsections 88a and 130a of the Penal Code. A criminal offence is thus only given if advocacy or inducement refers to intentional grievous bodily harm (subsects. 88a, 130a in connexion with sect. 126, para. 1, No. 3, and sect. 225 of the Penal Code). The same holds for rewarding and conniving at offences (sect. 140 of the Penal Code).

Nos. 6, 7, 8 and 10 of the questionnaire

12. Should the Office of Public Prosecutions be notified of a suspected offence either through a complaint presented or by some other means, it is required ex officio to intervene and investigate the matter. An offence can be reported either in writing or by word of mouth to the Offices of Public Prosecutions, offices or officers of the police, or local courts. If the investigations carried out produce sufficient cause for indictment, the Office of Public Prosecutions is required to bring charges before the competent court. If this is not the case, the Office of Public Prosecutions will discontinue proceedings. In doing so, it is required to inform the complainant of this step and state the reasons. If the complainant is also the victim, he can, within two weeks after being informed of the discontinuance of proceedings appeal to the senior official in charge of the Office of Public Prosecutions. The victimized complainant must be informed of his right to appeal and of the prescribed period in which he may do so. In the case of a negative decision on the part of the senior official in charge of the Office of Public Prosecutions, the complainant may enter a request for a court decision within a month following notification. The complainant must be informed of this and of the intended court procedure.

13. If the Office of Public Prosecutions does in fact hand up an indictment, the course of the trial and execution of a possible sentence, including release before completion of sentence and pardon of the offender, follow the general provisions contained in German penal law and laws governing criminal court procedure.

No. 9 of the questionnaire

14. Conviction of any or several of the offences named as pertinent to No. 5 of the questionnaire (sects. 224 to 226, 239, paras. 2 and 3, 340, paras. 2, 343, 344, para. 1, and 345, para. 1, of the Penal Code) or also of an attempted offence, participation or attempted participation in any or several of the offences named (sect. 30 of the Penal Code) automatically leads to loss of access to public employment and loss of rights deriving from public elections for a period of five years (sect. 45, para. 1, of the Penal Code).

15. In addition to the application of section 45, paragraph 1, of the Penal Code, the court can deny access to public employment for a period of from two to five years, in accordance with section 45, paragraph 2, in so far as especially provided for by law, such as in subsection 92a and section 358 of the Penal Code. According to section 358 in connexion with section 45, paragraph 2, of the Penal Code, the court can rule to deny access to public employment if a prison sentence of at least six months has been given for conviction of an offence as defined by sections 340, 343, 344, 345, paragraphs 1 and 3, and 357 of the Penal Code or for conviction of an attempted offence, participation or attempted participation in an offence as defined by section 30 of the Penal Code.

16. What is more, a public official loses his status as such upon conviction of intentionally committing even a minor offence and receiving a sentence of at least one year's imprisonment (sect. 24 of the Civil Service Law Outline Act and sect. 48 of the Civil Service Act of the Federal Republic of Germany). He loses official designations and titles as well as salary and pension rights.

17. In the case of offences causing bodily harm, the court can impose conduct controls if the offender received a prison sentence of at least six months and there is a danger that the offender will commit further offences (sects. 228, 68, para. 1, No. 2 of the Penal Code). Here, too, it makes no difference whether the conviction was for an offence committed, an offence attempted or participation in an offence.

18. In the case of a prison sentence of not more than one year, the court suspends the sentence and releases the convicted offender on good conduct if it can be expected that he will take the sentence as a warning and not commit more offences in future without being subjected to criminal punishment (sect. 56, para. 1, of the Penal Code). The court can also suspend a heavier prison sentence, not exceeding two years, and release the prisoner on good conduct if, besides the aforementioned conditions, special circumstances are present in the offence and in the personality of the offender (sect. 56, para. 2, of the Penal Code). A sentence of at least six months is, however, not suspended and the prisoner is not released on good conduct if defence of the legal system makes this necessary (sect. 56, para. 3, of the Penal Code).

19. If the convicted offender is serving a prison sentence, the court can suspend the rest of the sentence and release him on good conduct if two thirds of the sentence, but a minimum of two months, has been served, if he can responsibly be released on probation and if he gives his consent (sect. 57, para. 1, of the Penal Code). The court can suspend the remainder of the sentence after half of it has been served if the conditions named in section 57, paragraph 1 of the Penal Code have been fulfilled, at least one year of the sentence has been served and special circumstances are involved in the offence and in the personality of the convicted offender (sect. 57, para. 2, of the Penal Code).

20. If a sentence or the remaining part of a sentence is suspended and the prisoner released on good conduct, the court determines the length of the probation period, which must not be less than two years nor more than five years (subsect. 56a and sect. 57, para. 3, of the Penal Code). The court can impose conditions on the convicted offender and/or give him orders and/or place

him under the supervision and guidance of a probation officer for the duration of the probation period (subsections 56b, 56c, 56d and section 57 paragraph 3, of the Penal Code). Decisions pertaining to subsections 56b to 56d of the Penal Code can also be made, changed or reversed at a later date.

No. 11 of the questionnaire

21. There are no indications whatsoever that criminal proceedings have ever been initiated on suspicion of torture or other cruel, inhuman or degrading treatment.

No. 12 of the questionnaire

22. German law guarantees that victims of torture or other cruel, inhuman or degrading treatment can, as a general rule, hold the State liable for damage suffered. The State can be held liable for damage that is caused when someone in exercising the duties of a public office culpably violates an official duty incumbent on him with respect to a third party. Damage to persons and to property must be repaired, including any non-material damage suffered (indemnification for suffering pain). Claims for damages can be asserted by bringing an action before an ordinary court.

23. A victim of torture could also receive indemnification as a result of economic losses or damage to his health under the Law on the Indemnification of Victims of Violent Acts of 11 May 1976 (Federal Statutes, vol. I, p. 1181).

24. There is no knowledge of any practical cases of the kind mentioned.

No. 13 of the questionnaire

25. According to subsection 136a of the Code of Criminal Procedure, the freedom of the accused to make use of and decide of his own free will must not be impaired through maltreatment, exhaustion, physical intervention, administering of drugs, harassment, deception, or hypnosis. Force may only be applied to the extent that the law pertaining to criminal procedure will permit. Threatening to use a measure not permitted under criminal procedure law and promising an advantage not provided for by law are prohibited. Measures that impair the memory or reasoning ability of the accused are not permitted. This prohibition is valid without regard to the consent of the accused.

26. If the freedom of the accused to make use of and decide of his own free will is impaired in inadmissible manner by a government agency, his testimony cannot be used. This also holds true if the accused consents to its use.
