

FRANCE

CAT A/45/44 (1990)

60. The Committee considered the initial report of France (CAT/C/5Add.2) at its 26th and 27th meetings, held on 14 November 1989 (CAT/C/SR.26-27).

61. The report was introduced by the representatives of the State party, who referred to the implementation in France of the Convention on the basis of the three essential elements contained in that instrument: prevention of torture, punishment of torture and compensation for torture.

62. He explained that action by France aimed at preventing torture was organized at two levels: international and domestic. At the international, and especially European, level, France had on 9 January 1989 ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and a French national had been elected member of the Committee established under that Convention. In the domestic sphere, the judicial authority exercised effective control in police premises where persons were held in custody. In addition, inspections were carried out in France in all places where a person might be detained or imprisoned and where there were risks of violation of the Convention. The supervisory measures consisted of unannounced visits by judicial or administrative authorities, pursuant to various articles of the Code of Penal Procedure.

63. The representative also referred to the question of solitary confinement, which affected certain especially dangerous prisoners and which had given rise to controversy in the country during the summer of 1988. He described the conditions and guarantees under which solitary confinement was practised in French prisons and stated that, in that context, it could not be claimed that solitary confinement constituted cruel, inhuman or degrading treatment. Moreover, in mid-1988, the Minister of Justice had set up a commission to make proposals to strengthen further the protection of human rights in the implementation of criminal justice. On the basis of the initial conclusions of the commission, an Act had been promulgated on 6 July 1989 strengthening guarantees for persons detained pending trial. The commission would shortly be making its final proposals for improving the conduct of pre-trial proceedings as governed by the Code of Penal Procedure.

64. In connection with the prevention of torture, the representative referred also to a bill relating to the rights and protection of persons hospitalized for mental disturbance, and to their conditions of hospitalization, which would shortly be debated in Parliament. He further stated that an Act of 2 August 1989 amending the Ordinance of 2 November 1945, relating to conditions of entry and residence of aliens in France, provided for additional legal guarantees and, in the case of aliens detained in France, for social and humanitarian assistance.

65. With regard to France's action for the punishment of torture and cruel, inhuman or degrading treatment, the representative pointed out that the offences of torture or acts of barbarism were embodied in the new draft penal code which Parliament had begun to consider in the spring of 1989.

Given the magnitude of the task, its consideration would have to be spread over several parliamentary sessions. The draft penal code established sanctions for acts of torture or barbarism consisting of 15 years' imprisonment, which was increased under certain circumstances and could extend to life imprisonment.

66. The representative further stated that no cases of torture and very few cases of cruel, inhuman or degrading treatment or punishment had come before the French courts in recent years. In that connection, he referred to some cases of conviction or disciplinary sanctions imposed on police officers in 1988 and 1989 for unlawful acts of violence, as well as to two cases, dating from 1987 and 1988, respectively, of prison officers who had been convicted of acts of violence against prisoners. He added that France, since 1982, had been trying to secure the prosecution of Colonel Astiz, and Argentine national, who was suspected of involvement in the disappearance and torture of two French nuns in Argentina during the military dictatorship. The case against him was currently being heard by the Paris Court of Assizes.

67. With regard to compensation for torture and assistance to its victims, the representative made reference to the contributions of France to the United Nations Voluntary Fund for Victims of Torture as well as to the financing of two national bodies whose activities were related to torture: the Medical Committee for Exiles and the Association for the Victims of Repression in Exile.

68. The members of the Committee commended the Government of France on its comprehensive report and its representative on his oral presentation. Some members of the Committee welcomed, in particular, the fact that many specific cases of prosecution and conviction for ill-treatment had been cited by the representative of the reporting State and asked whether an analysis and statistics of the general trends in such cases existed in France. They asked also whether France intended to make any changes in its legislation as a result of its accession to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, what the reasons had been for promulgating the amnesty acts in France and what types of offences were affected by those acts.

69. More information was requested on the implementation by France of article 2 of the Convention and, in that connection, clarification was requested of the meaning of article 327 of the French Penal Code. It was also inquired how the regulations described in the report applied in non-metropolitan France, for instance in French Polynesia, which had been under a state of emergency.

70. With reference to article 3 of the Convention, it was asked whether, when the Minister of the Interior confirmed an expulsion order, an alien could be expelled immediately or whether the expulsion had to await the order of the administrative judge.

71. With regard to article 4 of the Convention, members of the Committee wished to receive the complete text of articles 320 and 344 of the French Penal Code relating to penalties for torture and for physical torture of persons arrested, detained or kidnapped. It was also asked whether torture inflicted by bodily injury which did not result in incapacity for work and had not been inflicted with premeditation or the use or threat of use of a weapon were still punishable under the Penal Code. In addition, clarification was requested on the sentence of the report dealing with the use of violence "in moderation".

72. With regard to article 7 of the Convention, the question was raised whether a torturer who had committed an extraditable political offence, but risked being tortured in the country to which he would be extradited, could be sentenced in France.

73. In connection with articles 10 and 11 of the Convention, information was requested on the observation in France of the United Nations Standard Minimum Rules for the Treatment of Prisoners and on the conditions and duration of solitary confinement. It was also asked whether the anti-terrorist and counter-intelligence services were subject to the same control and rules of conduct as the civilian police, what was the régime applicable in combating drug traffickers.

74. In connection with article 12 of the Convention, information was sought as to whether there had been any mutinies in French prisons which might have been the result of mistakes on the part of the prison authorities and, if such were the case, what means had been employed to put an end to the difficulties caused by uprisings of that sort. It was asked, in particular, whether the use of truncheons or other physical means was authorized, whether special measures had been applied after certain uprisings, how many cases of mutiny had occurred, whether that type of incident had caused any casualties, and whether there had already been cases of mutinous prisoners being killed by the security forces. Reference was made to article 40 (2) of the French Code of Penal Procedure, and it was asked whether there would be any exemption from the obligation of advising the Public Prosecutor of a crime without delay for a public official or civil servant who was married or related to the offender.

75. Referring to article 14 of the Convention, members of the Committee wished to know whether torture victims who came to France for treatment were allowed to stay after the treatment had been completed and what rehabilitation and social assistance facilities existed to help them. It was asked, in particular, whether, in view of the fact that acts of torture were prohibited by French law, the State could be held liable for acts of that type committed by one of its agents even in the case of a victim who was a national of a country with which France had not concluded a reciprocity treaty on matters of redress. It was also asked whether the direct liability of the State was established in France under article 706-3 of the Code of Penal Procedure or whether it was based on other provisions, whether article 1382 of the French Civil Code obliged an individual who had committed an act of torture to make personal redress by way of damages or whether the State had a responsibility to provide compensation under article 14 of the Convention. In addition, clarification was requested on the circumstances under which compensation might be refused or its amount reduced and regarding the persons who were eligible for compensation.

76. With regard to article 15 of the Convention, it was asked whether French courts had ever rejected evidence obtained through torture and, in that connection, explanations were requested on the application of articles 427 and 428 of the French Code of Penal Procedure.

77. In reply to questions raised by the members of the Committee, the representative of France stated that the total number of cases of ill-treatment in his country involving police officers had been 10 in 1988 and 1989; that was considered a low figure in comparison with the total number of police officers in France who were required to participate daily in the prosecution and punishment of offences. He explained that France had not had to modify its domestic legislation as a result of its ratification of the European Convention for the Prevention of Torture and Inhuman or Degrading

Treatment or Punishment since, unlike the United Nations Convention, the European Convention was basically preventive in character and did not contain any penal provision relating to indictment or punishment. He explained also that general amnesty acts were customarily adopted on the occasion of the election of the President of the Republic every seven years. They amnestied all offences which were not of excessive gravity; however, the victims of offenders who had been amnestied retained their right to redress.

78. With reference to article 2 of the Convention, the representative stated that the State of Emergency Act of 3 April 1955 applied to the entire territory of the French Republic, including overseas departments and territories, but with some differences.

79. Referring to article 3 of the Convention, the representative highlighted the additional guarantees provided by an Act of 2 August 1989 to aliens in respect of whom a removal order had been issued. An alien who had been the subject of an expulsion order could appeal to an administrative tribunal and simultaneously apply for a stay of execution. In any case, an alien would not be expelled to his own country if he could show that he was likely to be maltreated.

80. Turning to article 4 of the Convention, the representative referred to provisions of the French Penal Code, as well as to French case law concerning bodily injury, which indicated the kind of penalties applied in cases of bodily injuries resulting in an incapacity for work for less than eight days, acts of violence which had no immediate physical consequences but had psychological effects, and minor acts of violence. With regard to the use of violence "in moderation", he referred to the provisions of the Penal Code requiring police officers to use force only under certain circumstances, when it was strictly necessary and without excess.

81. In connection with article 7 of the Convention, the representative referred to the information already provided about proceedings which might be initiated against the perpetrator of an offence if extradition was not granted, and stated that no person would be extradited by France if such a person was liable to the death penalty or liable to be treated in an inhuman or degrading manner in the State requesting extradition.

82. Referring to articles 10 and 11 of the Convention, the representative described both the length of sentences incurred by persons found guilty of serious offences and the régimes applicable in French prison establishments. He pointed out that, since the adoption of the Act of 9 October 1981 abolishing the death penalty, the maximum sentence was rigorous imprisonment for life. The conditional release of a person sentenced to rigorous imprisonment for life could be considered after he had served at least 15 years, but it could not take place before 30 years in certain cases of homicide accompanied by acts of torture or barbarism. Participation in the resettlement of prisoners formed part of the responsibilities of the government prison service as defined in the Act of 22 June 1987. With regard to the rules of conduct of counter-espionage services, the representative explained that the Directorate for Internal Security was subordinate to the Ministry of the Interior and its staff had the same status and were subject to the same control as police officers; the Directorate-General for External Security was subordinate to the Ministry of Defence, which was responsible for ensuring that the former functioned correctly, in compliance with the law. All members of counter-espionage services were subject to the requirements of the Convention, which was incorporated in French law. He added that France had very severe legislation against drug

traffickers, permitting the extension of the duration of detention without charge to up to four days, whereas in ordinary law it was 48 hours. The legislation prescribed very severe penalties for drug trafficking: offenders were liable to imprisonment for up to 20 years, and up to 40 years for second offences. That legislation fell within the framework of the constitutional principles and international rules regarding the rights of the defence and human rights.

83. In connection with article 12 of the Convention, the representative pointed out that officers responsible for discipline inside prison establishments were not armed. If fairly serious incidents occurred, the governor could authorize the use of truncheons or tear-gas. In the case of generalized mutiny, the governor could call on the armed security forces. In the course of the preceding five years, three mutinies had taken place in local prisons, but without loss of life or serious injury. With regard to article 40 of the Code of Penal Procedure, it applied to officials in the performance of their duties, with no exemption.

84. With reference to article 14 of the Convention, the representative stated that victims of torture who came to France were assisted and helped by associations. Their situation on leaving hospital was the same as that of all other aliens. He also stated that, in France, direct liability of the State existed as distinct from the liability of the perpetrator. The victim of an act of violence by a police officer could initiate criminal proceedings against him or he could bring a liability suit against the State before an administrative tribunal. The victim would always receive compensation for material damage, even if the perpetrator of the act of violence had no means to pay. In addition, France was considering how to amend the law in order to extend the rights of victims to compensation.

85. In connection with article 15 of the Convention, the representative referred to the rules of evidence laid down in the French Code of Penal Procedure and to the relevant information provided in the report.

86. In concluding the consideration of the report, the members of the Committee congratulated the French Government on the measures it had taken to prevent and combat torture, which could serve as a model to other countries, and on the precise information it had submitted with regard to the implementation of the Convention. They also thanked the representatives of France for their detailed, clear and comprehensive answers to their questions.

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137. The Committee considered the second periodic report of France (CAT/C/17/Add.18) at its 320th, 321st and 322nd meetings, on 6 May 1998 (CAT/C/SR.320, 321 and 322), and adopted the following conclusions and recommendations.

1. Introduction

138. The Committee is gratified to note that the second periodic report of France complies with the general guidelines for periodic reports (CAT/C/14), although it was submitted some six years late.

139. The Committee listened with great interest to the oral presentation which, like the report, revealed the efforts of the State party to be honest, specific and comprehensive, and to the explanations and clarifications furnished by the French delegation, which displayed a clear desire for constructive dialogue and a solid professionalism.

140. The Committee is particularly gratified at the fact that the composition and size of the delegation clearly demonstrated France's interest in the work of the Committee.

2. Positive aspects

141. The Committee was pleased to note the following positive aspects:

(a) The manifest determination of the French Government to combat torture, shown in particular in certain provisions of the new Criminal Code, for example, articles 221-1, 222-1 and 432-4 to 432-6;

(b) The numerous projected improvements to legislation and current practice, such as the creation of a supreme ethics council; the drafting of a practical ethics handbook for use by the police forces; the guidelines on prison monitoring; the reactivation of the supreme prison administration council; the principle that a lawyer should be present from the outset of custody for most offences; and the curtailment of the duration of pre-trial detention;

(c) The announcement of a further contribution to the United Nations Voluntary Fund for Victims of Torture.

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

142. The Committee notes that there are no particular impediments to the implementation of the Convention in France.

4. Subjects of concern

143. The Committee is concerned about the following:

(a) The absence, in French positive law, of a definition of torture which conforms fully with article 1 of the Convention;

(b) The system of "appropriateness of prosecution", leaving public prosecutors free to decide not to prosecute perpetrators of acts of torture, or even to order an inquiry, which is clearly in conflict with the provisions of article 12 of the Convention;

(c) That aspect of the procedure for taking evidence under which the courts are not explicitly prohibited from admitting evidence obtained under torture, which contravenes article 15 of the Convention;

(d) The practice whereby the police hand over individuals to their counterparts in another country, despite the fact that a French court has declared such practices to be illegal; this is contrary to the duties of the State party under article 3 of the Convention;

(e) Sporadic allegations of violence committed by members of the police and gendarmerie at the time of arrest of suspects and during questioning.

Recommendations

144. The State party should consider incorporating into its criminal law a definition of torture which conforms with article 1 of the Convention.

145. The State party should pay greater attention to the provisions of article 3 of the Convention, which applies equally to expulsion, *refoulement* and extradition and, as demanded by a number of non-governmental organizations and as proposed by the National Advisory Committee on Human Rights, the possibility should exist of lodging a suspensive appeal against a refusal to allow entry into France and subsequent *refoulement*.

146. The State party should pay maximum attention to allegations of violence by members of the police forces, with a view to instigating impartial inquiries and, in proven cases, applying appropriate penalties.

147. In this connection, and in the interest of conforming with the letter and spirit of article 12 of the Convention, the State party should consider abrogating the current system of "appropriateness of prosecution" in order to remove all doubt regarding the obligation of the competent authorities to institute systematically and on their own initiative impartial inquiries in all cases where there are reasonable grounds for believing that an act of torture has been committed anywhere within the territory under their jurisdiction.

148. The State party is invited to submit its third periodic report as soon as possible in order to adhere to the schedule for the submission of reports laid down in the Convention.