

## COMMITTEE AGAINST TORTURE

### Le Gayic et al. v. France

Communication No. 46/1996

9 May 1997

CAT/C/18/D/46/1996

### ADMISSIBILITY

*Submitted by: Cyril Le Gayic et al. (represented by counsel)*

*Alleged victim: The authors*

*State party: France*

*Date of communication: 5 February 1996*

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 9 May 1997,

Adopts the following decision:

#### **Decision on admissibility**

1. The communication is presented by counsel on behalf of Mr. Cyril Le Gayic and 12 other individuals, French citizens, residing in Papeete, Tahiti. They claim to be victims of violations by France of articles 16, 10, 11, 12 and 13 of the Convention against Torture.

#### The facts as presented by the authors

2.1 Following the resumption of nuclear tests in the Pacific by France, riots took place in Tahiti on 6 September 1995. The union A TI'A I MUA, which had called for a strike that day, was held responsible for the riots by the authorities. On 9 September 1995, the members of the Executive of the union were meeting at the organization's office in Papeete. Around 1 p.m., when the participants were preparing for a press conference to be held at 3 p.m., mobile guards in battledress invaded the premises. They ordered the unionists to line up against the wall, legs apart and hands behind their

heads. The unionists complied without resistance, but were bludgeoned by the police nevertheless. Then they were handcuffed two by two, led out of the building, thrown in a van and transported to the police station in the Avenue Bruat.

2.2 Once there, they were handcuffed individually and ordered to kneel in the parking lot, with the sun full in their faces. Those who had difficulty in kneeling were beaten with bludgeons or kicked. About 45 minutes later they were brought to the barracks and detained. They were not given any food or drink and were prevented from sleeping. They remained handcuffed and supervised, even when going to the toilet. No medical assistance was given. Some of them were released in the night of 9 September, without being charged. Others were charged and some of them were placed in preventive detention.

2.3 Mr. Cyril Le Gayic, born on 27 September 1953, General Secretary of the Confédération des syndicats indépendants de Polynésie, joined the meeting of unionists at 12.55 p.m. The author attaches a medical certificate from a doctor whom he went to see after his release.

2.4 Mr. Jean-Michel Garrigues, born on 29 September 1961, states that he was threatened by one of the mobile guards with a firearm and hit with a bludgeon against the left temple and that his shirt was torn and his head smacked against the wall with such force that one of his teeth fell out. He was constantly beaten although he was following orders given by the policemen. He was also given electric shocks with a sort of electric prod, and the marks of the handcuffs, put on tightly, took 10 days to heal. He submits that, after being on the parking lot for about 15 minutes, he started to vomit. Brought to the barracks, he was interrogated by a police officer in the afternoon. He spent the night in the barracks, where the guards prevented him from sleeping. He was not given anything to eat or drink. The next morning, a guard came to spray the detainees with insecticide. Asking to go to the toilet, Garrigues was shown one full of excrement, the door was left open and the guard stayed with him. He was not allowed to wash his hands afterwards. In the beginning of the afternoon he was brought to the Palais de Justice, where the ill-treatment ended.

2.5 Mr. Tu Yan, born on 1 December 1955, states that when, following orders, he lined up facing the wall, he was beaten with a bludgeon on his back and right leg and later also on the right arm. During the ride in the van, he was smothered by the weight of nine bodies on top of him. When brought to the barracks, he says that he did not suffer further ill-treatment, but he was refused anything to drink. He was released at 8 p.m. that same evening.

2.6 Mr. Bruno Sandras, born on 4 August 1961, states that he was threatened with a pistol against his temple and that he was flat on the floor of the van with others on top of him.

2.7 Mr. Eugène Sommers, born on 25 August 1958, states that he was thrown into the van head first and others were thrown on top of him. When he tried to lift his head because he could not breathe, a guard stepped on his head, telling him to keep his head down.

2.8 Mr. Jacques Yeun, born on 12 July 1949, states that, after the mobile guards entered the premises, he was bludgeoned and thrown on the ground like an animal. He states that, while in the barracks during the night, he was harassed by the guards, who continued to beat the detainees.

2.9 Mr. Albert Tematahotoa, born on 16 May 1961, affirms that he was beaten and ill-treated and states that he was released at 9.30 p.m., without having had anything to drink or eat.

2.10 Mr. Ralph Taaviri, born on 14 October 1954, states that he was threatened with a gun and was hit in the back with the butt of a rifle, which caused him to fall. His hands were bound with electric cable so tightly that he lost the feeling in his fingers. In the barracks, the detainees did not get anything to drink, nor were they allowed to go to the bathroom until a Polynesian guard came on duty, who gave them one bottle of water for all of them and allowed them to relieve themselves. He states that late in the evening he was taken for interrogation. He was chained by the arm to a guard and by one leg to another guard because it was dark and it was allegedly necessary for security. During the night, guards continued to harass him, so that he could not sleep. In the morning, when he had difficulty sitting down as ordered because of cramp, he was kicked over onto his back on the floor.

2.11 Mr. Lionel Lagarde, born on 5 October 1934, confirms the story as told in general terms above, and states that he was brought before the judge on Sunday at 4 p.m.

2.12 Mr. Irvine Paro, born on 24 March 1945, states that he was at the police station on Saturday morning, 9 September, in connection with the riots on the preceding Wednesday, thereby escaping the maltreatment to which his colleagues were subjected. Later, he was detained with his colleagues in the barracks and suffered the same ill-treatment and humiliations.

2.13 Mr. Ronald Terorotua, born on 27 March 1955, states that he was in the hall of the building when the mobile guards entered. He was threatened with a gun, told to lie down and hit with a bludgeon. Later, he was hit in the back with an electric prod while walking towards the van. He was pushed on top of his colleagues in the van. Later, he was interrogated from 1.30 to 6 p.m., with a two-hour pause; all this time he was not given anything to drink. A doctor came only to take his blood pressure and to see whether or not he was a heart patient.

2.14 Mr. Bruno Tetaria, born on 3 February 1960, states that, when the mobile guards arrived he was told to lie down with his hands behind his head, face down. Having done this, he was hit with a bludgeon and told to get up. Thrown in the van, he was again hit in the back, and when he lifted his head, a guard stepped on his neck. At the police station he was told to kneel and was hit in the back because he had difficulty getting into that position. In the barracks it was very cold and he was shivering; nevertheless he was not given a blanket.

2.15 Mr. Hirohiti Tefaarere, the General Secretary of A TIA I MUA, born on 19 June 1954, states that, when the police arrived at the union premises, he told his colleagues to remain calm and not to resist. When he was standing with his hands up, two guards threw him to the floor, after which he was handcuffed and insulted. Another guard came and walked over his back. He was then taken home to be searched and was again maltreated in front of his family.

### The complaint

3.1 The authors state that they were subjected to ill-treatment in terms of article 16 of the Convention against Torture. Further, they claim that France has not satisfied its obligations under

articles 10, 11, 12 and 13 of the Convention.

3.2 As regards the exhaustion of domestic remedies, the authors state that their counsel filed a complaint with the Dean of Magistrates in Papeete for cruel and inhuman treatment, for Ralph Taaviri on 20 October, for Cyril Le Gayic, Jean-Michel Garrigues, Tu Yan, Irvine Paro, Bruno Sandras, Eugène Sommers, Jacques Yeun, Albert Tematahotoa, Ronald Terorotua, Bruno Tetaria, Hiro Tefaarere on 23 October, and for Lionel Lagarde on 24 November 1995 respectively, without result.

3.3 It is stated that the same matter has not been submitted to any other procedure of international investigation or settlement.

#### State party's observations on the admissibility of the communication

4.1 By its submission of 17 September 1996, the State party argues that the communication is inadmissible because of non-exhaustion of domestic remedies.

4.2 The State party submits that acts of violence against persons are criminal offences under article 309 of the Penal Code, and under article 186 if the violence is committed by a public officer.

4.3 The State party explains that according to article 85 of the Code of Criminal Procedure, anyone who considers himself injured by a crime may file a complaint as a civil party before the competent magistrate. Articles 86, 87, 177, 178 and 179 lay down the procedure to follow. When a complaint is received, the magistrate informs the public prosecutor. The prosecutor can request the magistrate to hear the complaining party, if the complaint does not contain enough information to base the indictments on. If the magistrate considers that the facts disclose no criminal offence or cannot lead to a prosecution, or that the complaint is inadmissible, he produces a reasoned decision, which can be appealed by the interested parties, to the Court (Chambre d'accusation). A decision by the magistrate to dismiss a complaint is also appealable. The State party submits that the procedure is effective and must be exhausted before a complaint can be submitted to the Committee against Torture.

4.4 In fact, the authors made use of the procedure and lodged complaints with the Dean of Magistrates in Papeete. Subsequently, the public prosecutor, on 10 October, 29 November and 15 December 1995 and 28 March 1996, requested the opening of legal proceedings on an unspecified number of counts of violence committed by public agents, invoking articles 309, 186 and 198 of the former Criminal Code. The four requests were given to the Dean of Magistrates under one file number, 5070.

4.5 The investigating magistrate ordered medical examinations of the claimants. The medical examiner filed his reports on 3 January and 22 May 1996. According to the reports, three unionists, Messrs. Taaviri, Tetaria and Tematahotoa, showed after-effects of injuries. Upon request of the authors' counsel, a psychiatric examination of 10 of the claimants was ordered on 10 June 1996, to evaluate the psychological consequences of the treatment they claim to have been subjected to.

4.6 On 19 October 1995, the investigating magistrate ordered a commission of inquiry to interview

the officers in charge of apprehending the A TIA I MUA members on 9 September. It appears from the commission's report that the police officers interviewed contest the violent acts alleged by the complainants, although they recognize that their intervention was firm because of the tense situation.

4.7 On 7 March 1996, pictures of the police officers who had participated in the intervention were given to the complainants for identification purposes. According to the State party, the complainants had difficulty in formally identifying the perpetrators of the violence of which they complain.

4.8 The State party submits that several of the complainants were summoned to a further hearing on 9 September 1996 and that the investigations are continuing without delay. The State party thus argues that the authors cannot invoke the exceptions to the rule of exhaustion of domestic remedies laid down in article 22, paragraph 5 (b), of the Convention, since their application is not unduly prolonged nor can it be said that it is unlikely to bring effective relief.

#### Counsel's comments on the State party's submission

5.1 In his reply to the State party's submission, counsel argues that the requirement of exhaustion of domestic remedies applies at the moment when the Committee actually examines the admissibility of the communication, not at the time of submission. According to counsel, it is thus not certain that domestic remedies will not be exhausted when the Committee considers the communication.

5.2 Counsel further points out that cruel, inhuman or degrading treatment is not a criminal offence under French law, for which reason the authors had to base themselves on articles 309 and 63 of the (former) Penal Code.

5.3 Moreover, counsel recalls that the rule of exhaustion of domestic remedies does not apply when the remedies are not likely to be effective. In this context, counsel submits that, on 2 October 1996, the complainants requested the investigating magistrate, under article 81 of the Code of Criminal Procedure, to proceed to a reconstruction of the events, including the conditions in which they were arrested, transported in a van and detained. On 18 October 1996, the magistrate rejected their request. The complainants have appealed this decision to the Court of Appeal of Papeete.

5.4 According to counsel, the refusal deprives the complainants of an effective and useful remedy. Counsel argues that the reasons on which the magistrate based his decision (the harmful media effects) ("le retentissement médiatique néfaste"), are totally unacceptable and show that he recognizes that the reconstruction would reveal a disturbing reality. It is stated that the magistrate also objected to the costs such a reconstruction would entail.

5.5 Counsel argues that with this decision, the magistrate has violated his international obligations under articles 10, 11, 12 and 13 of the Convention against Torture. Counsel therefore contends that the procedure can no longer be seen as likely to bring effective relief and that the communication should thus be declared admissible.

6.1 In a further submission, counsel states that the Court of Appeal of Papeete has confirmed the decision by the investigating magistrate of 18 October 1996 rejecting the complainants' request for

a reconstruction. Counsel states that the complainants have requested a judicial review (cassation) of this decision and submits that all domestic remedies will thus have been exhausted when the Committee takes up the communication. Counsel adds that it is clear that the procedure initiated under article 85 of the Code of Criminal Procedure will not give effective relief. According to counsel, this is also shown by the fact that there has been as yet no arraignment (*mise en examen*) of the accused although the complainants have recognized their aggressors from the pictures furnished by the investigating magistrate.

6.2 Counsel alleges that the reconstruction in situ was refused because it would reveal a violation of article 16 of the Convention.

### Issues and proceedings before the Committee

7.1 Before considering any claim in a communication, the Committee must decide whether or not it is admissible under article 22 of the Convention.

7.2 Article 22, paragraph 5 (b), of the Convention precludes the Committee from considering any communication unless it has ascertained that all available domestic remedies have been exhausted. The Committee notes that the ill-treatment inflicted on the complainants is currently the subject of a judicial review in Papeete. The Committee finds that the information before it does not suggest that the recourse procedure is being unreasonably delayed or that it is unlikely to bring the complainants effective relief. It observes, therefore, that the conditions laid down in article 22, paragraph 5 (b), of the Convention have not been met.

8. The Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision may be reconsidered under rule 109 of the rules of procedure if the Committee receives a written request by or on behalf of the individuals concerned containing documentary evidence to the effect that the reasons for inadmissibility no longer apply;

(c) That this decision shall be communicated to counsel for the complainants and to the State party.

[Done in English, French, Russian and Spanish, the French text being the original version.]