



International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
19 October 2021
English
Original: French

Committee on Enforced Disappearances

Concluding observations on the additional information submitted by France under article 29 (4) of the Convention*

A. Introduction

1. The Committee on Enforced Disappearances appreciates the additional information submitted by France under article 29 (4) of the Convention,¹ as requested by the Committee in its concluding observations on the report submitted in 2013 by France under article 29 (1).²
2. The Committee welcomes the additional information submitted in writing in response to the questions transmitted to the State party in March 2021, as well as the frank and constructive dialogue it had with a technical delegation at its 373rd meeting,³ held on 20 September 2021, on the measures adopted by the State party to comply with its obligations under the Convention, on the following topics: (a) harmonization of domestic law and the Convention; (b) prevention of enforced disappearance; and (c) investigation, reparation and sanctions in relation to cases of enforced disappearance. The Committee also thanks the State party for the additional information provided in writing after the dialogue.
3. The Committee commends the State party for having ensured that civil society participated in the preparation of the additional information by consulting the National Consultative Commission on Human Rights.⁴
4. At its 378th meeting, held on 23 September 2021, the Committee adopted the following concluding observations.

B. Positive aspects

5. The Committee acknowledges the measures that, following the adoption of the Committee's previous concluding observations, the State party has taken in areas relevant to the Convention, including:
 - (a) The adoption of Act No. 2013-711 of 5 August 2013, under which various provisions to bring French law in the field of justice into line with European Union law and the country's international commitments were introduced – chapter X of the Act contains provisions bringing criminal law and procedure into line with the Convention; in this regard, the Committee notes in particular that under article 221-12 of the Criminal Code, enforced disappearance, which is punishable by life imprisonment, has been made a crime in its own right and that the application of the article, according to the information provided by the State

* Adopted by the Committee at its twenty-first session (13–24 September 2021).

¹ CED/C/FRA/AI/1.

² CED/C/FRA/CO/1, para. 43.

³ CED/C/SR.373.

⁴ CED/C/FRA/AI/1, para. 4.



party, is in line with the Committee's jurisprudence and the Convention insofar as placement outside the protection of the law is considered a consequence of the crime;

(b) the adoption of Act No. 2019-222 of 23 March 2019 on planning for the period 2018–2022 and reform of the justice system, which provides for the establishment of a national counter-terrorism prosecution service with jurisdiction over, among other things, cases of enforced disappearance and stipulates that the specialized judicial unit of the Paris Tribunal de Grande Instance (court of major jurisdiction) is to have jurisdiction over cases of enforced disappearance,⁵ as recommended by the Committee.⁶

6. The Committee very much welcomes the information provided during the dialogue to the effect that the judicial authorities of the State party have exercised quasi-universal, active personality or passive personality jurisdiction in 23 proceedings related to alleged cases of enforced disappearance as a crime in its own right and as a crime against humanity.

7. The Committee again commends the State party for its central role in the fight against enforced disappearance around the world and in promoting the ratification of the Convention.⁷

C. Action taken on the Committee's recommendations and new developments in the State party

1. General information

8. The Committee notes the measures taken by the State party to comply with its obligations under the Convention since the Committee's previous concluding observations. It is nonetheless of the view that the legislative and institutional framework can be strengthened in such a way as to prevent and impose sanctions for enforced disappearance more effectively and to better guarantee victims' rights. The Committee therefore encourages the State party to give all due consideration to acting on the following recommendations, which were adopted in a constructive and cooperative spirit, with a view to ensuring that the legislative and institutional framework and all the steps taken by the State party's authorities are in full compliance with the Convention.

2. Harmonization of domestic law and the Convention

Enforced disappearance as a crime against humanity

9. The Committee reiterates its satisfaction that the State party has made enforced disappearance one of the acts that may constitute a crime against humanity.⁸ It takes note of the State party's assertion, made during the dialogue, that the expression "as part of a concerted plan", which appears in the definition of crimes against humanity, is understood in domestic law as a reference to the context in which the crime is committed, not as a constituent element or an additional condition. It also notes the State party's assertion that the expression meets a need to make the article more precise and to define objectively the notion of a widespread or systematic attack. The Committee notes, moreover, the assertion that this expression has not, in practice, been an obstacle to proceedings before the French courts. The Committee nonetheless regrets that the State party has not acted on its previous recommendation to remove this expression from its criminal legislation relating to enforced disappearance as a crime against humanity (art. 5).⁹

10. The Committee again recommends that the State party review its criminal legislation relating to enforced disappearance as a crime against humanity and delete the expression "as part of a concerted plan" in order to ensure that this legislation is compatible with article 5 of the Convention and applicable international law and thus

⁵ Ibid., para. 40.

⁶ CED/C/FRA/CO/1, para. 25.

⁷ CED/C/FRA/AI/1, para. 7.

⁸ France, Criminal Code, art. 212–1 (9).

⁹ CED/C/FRA/CO/1, para. 15.

to avoid introducing an additional condition for the prosecution of cases of enforced disappearance.

Mitigating circumstances

11. The Committee observes that, while domestic law does not provide for mitigating circumstances, article 132-78 of the Criminal Code makes provision exemption from or reduction of sentences in specific cases. However, the Committee notes that this article is not applicable to the crime of enforced disappearance and that, according to the State party's written responses to the Committee's questions, the working group set up by the Ministry of Justice to make the sentence reduction or exemption system more coherent and more effective did not dwell on the possibility of making enforced disappearance one of the crimes in relation to which the article was applicable and that the group's conclusions did not lead to legislative amendments. The Committee notes with interest the State party's assertion that, in handing down sentences, the courts assessed all the circumstances of the case and the cooperation of the individual, and that consideration is being given to the possibility of extending the system for the protection of cooperating witnesses to persons who contribute to limiting the effects of an enforced disappearance (art. 7).

12. The Committee reiterates its invitation¹⁰ to the State party to consider including mitigating circumstances in the law in relation to enforced disappearance as a measure that might be of use in elucidating some cases of enforced disappearance or identifying the perpetrators.

Military jurisdiction

13. The Committee notes with satisfaction the State party's assertion, made in writing¹¹ and during the dialogue, that, in peacetime, it has no military courts. As for cases of enforced disappearance committed during a crisis (a state of siege) or a state of war, the Committee takes note of the statement made during the dialogue that, even if military courts were re-established in such cases, this exception would not alter the organization of the ordinary judiciary and its guiding principles, including the principle of concurrent jurisdiction and the central role of the specialized unit of the National Counter-Terrorism Prosecution Service and the affiliated courts with jurisdiction over offences committed by military personnel. Nevertheless, and taking into account the information it has received on the subject, the Committee is of the view that investigations and prosecutions relating to cases of enforced disappearance committed by military personnel during a crisis (a state of siege) or a state of war should be explicitly excluded from military jurisdiction (art. 11).

14. Drawing attention to its statement on enforced disappearances and military jurisdiction,¹² the Committee recommends that the State party explicitly exclude from military jurisdiction the investigation and prosecution of enforced disappearances committed by military personnel in crisis situations (states of siege) or states of war.

Legislation concerning the wrongful removal of children

15. The Committee notes the State party's view that the acts described in article 25 (1) of the Convention are already punishable under French criminal law as the offences of abduction, false imprisonment and fraud.¹³ It also takes note of the information provided by the State party on the offences under which sanctions are or may be imposed for unlawful practices related to adoption. The Committee, however, is of the opinion that these provisions are not sufficient to encompass and adequately sanction the specific conduct envisaged in article 25 (1) of the Convention. The Committee also takes note of the State party's view, expressed in its written replies to the Committee's questions, that specific new measures regarding the review of court decisions on adoptions originating in enforced disappearances would be inappropriate because there are already three means of reviewing such decisions. In this regard, the Committee acknowledges the information, provided during the dialogue,

¹⁰ Ibid., para. 19.

¹¹ CED/C/FRA/AI/1, para. 31.

¹² A/70/56, annex III.

¹³ CED/C/FRA/AI/1, para. 85.

that the judicial review procedure provided for in article 595 of the Code of Civil Procedure would be the most viable means of challenging an adoption originating in a case of enforced disappearance, as that procedure can be used when the adoption decision was based on documents known to have been falsified. The Committee is nonetheless of the view that the State party must still put in place specific legal procedures, in accordance with article 25 (4) of the Convention, to ensure that all adoptions potentially originating in an enforced disappearance can be reviewed and, where appropriate, annulled, while always making the best interests of the child a primary consideration. The Committee also takes note of the information provided during the dialogue that a bill that would reform some aspects of adoption legislation is currently under consideration (art. 25).

16. The Committee recommends that the State party adopt the measures necessary to making the acts described in article 25 (1) of the Convention offences in their own right and provide for penalties for those acts that are commensurate with their extreme seriousness. It also recommends that the State party make certain that there are legal procedures in place in domestic law to review and, where appropriate, annul any adoption or placement of a child that originated in an enforced disappearance. The Committee encourages the State party to take advantage of the bill currently under consideration to establish specific legal procedures in this regard.

3. Prevention of enforced disappearance

Non-refoulement

17. The Committee notes the State party's assertion, made during the dialogue, that the protection from refoulement provided by domestic law is broad enough to cover cases where there was a risk of enforced disappearance. It nonetheless notes with regret that the prohibition of refoulement does not make express reference to such a risk (art. 16).

18. The Committee reiterates its recommendation that the State party make express provision in its domestic legislation for the prohibition of refoulement where there is a risk of a person's being subjected to enforced disappearance.¹⁴

Right to communication of persons deprived of liberty and right to information of persons with a legitimate interest

19. The Committee takes note of the information provided by the State party concerning: (a) the right of persons in police custody to notify a relative, their employer and, where appropriate, the consular authorities, and to be assisted by a lawyer; (b) the right of persons in pretrial detention to be put immediately in a position to inform their family members as soon as possible that they have been detained and, with the permission of the investigating judge, to receive visits or make telephone calls to third parties; and (c) the access of persons with a legitimate interest to the information included in prison registers. The Committee is concerned, however, that, in exceptional circumstances involving the most serious offences, and when the conduct of the proceedings so require, the investigating judge could, under the law, order a ban on communication for a period of 10 days, renewable once. While noting the State party's assertion that counsel is present at all stages of the proceedings and can provide relatives with the information referred to in article 18 (1) of the Convention, the Committee stresses that the Convention provides for the right of persons deprived of liberty to communicate with their relatives, as well as for the right of the latter to receive information on the deprivation of liberty, and that any restriction of these rights must be exceptional and strictly necessary (arts. 17, 18 and 20).

20. The Committee recommends that the State party take the measures necessary to ensuring that:

(a) All persons deprived of liberty, regardless of the offence with which they are charged, enjoy in law and in practice all the guarantees provided for in the Convention, in article 17 in particular;

¹⁴ CED/C/FRA/CO/1, para. 27.

(b) **All persons with a legitimate interest have access to the information referred to in article 18 (1) of the Convention concerning persons deprived of liberty and the right, in accordance with article 20 (2), to a prompt and effective judicial remedy as a means of obtaining that information without delay and without having to file suit.**

4. Investigation, reparation and sanctions in relation to cases of enforced disappearance

Right to the truth and to reparation

21. The Committee notes with interest the adoption of Act No. 2014-535 of 27 May 2014 transposing Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings. It also notes that, according to the information provided by the State party in reply to the Committee's questions, the right of victims to file suit and thus to gain access to information on the case in which they are involved and to copies of all documents in the case files, as well as to request investigative steps and appeal certain decisions, enables them to exercise their right to know the truth. The Committee is of the opinion, however, that none of these provisions is sufficient to fully guarantee the victims' right to know the truth, as established in article 24 (2) of the Convention. The Committee also notes the information on the right to reparation provided by the State party in its written replies to the Committee's questions¹⁵ and during the dialogue. In this respect, it notes that in addition to the possibility of receiving financial compensation, victims can be helped by support associations to obtain, among other things, counselling and psychological care, and that they can bring an action before the courts to request State compensation for damages. The Committee, drawing attention to its previous concluding observations¹⁶ and the assessment contained in its report on follow-up to concluding observations,¹⁷ is still concerned by the State party's failure to ensure that, under domestic law, victims of enforced disappearance are guaranteed access to all the forms of reparation enshrined in article 24 (5) of the Convention.

22. The Committee recommends that the State party adopt the measures necessary to ensuring that all victims of enforced disappearance, regardless of the date of the commission of the offence and even if no criminal proceedings have been instituted, have the right to the truth and to reparation. In this connection, the Committee recommends that the State party:

(a) **Explicitly include in its legislation the right of victims to the truth, in accordance with article 24 (2) of the Convention;**

(b) **Take the measures needed to ensure that domestic legislation provides for a system of full reparation that, compatible with article 24 (5) of the Convention, is applicable even if no criminal proceedings have been instituted or the alleged perpetrators have not been identified and takes into account the particular circumstances of the victims, including their sex, sexual orientation, gender identity, age, ethnic origin, social situation and disability.**

D. Realization of the rights and fulfilment of the obligations under the Convention, dissemination and follow-up

23. The Committee wishes to draw attention to the obligations assumed by States when they become parties to the Convention and, in this respect, urges the State party to ensure that all the measures it takes, irrespective of their nature or the authority from which they emanate, are in full accordance with the obligations it assumed on becoming a party to the Convention and other relevant international instruments.

24. The Committee wishes to emphasize the particularly cruel effect of enforced disappearance on women and children. Women who are subjected to enforced

¹⁵ See also CED/C/FRA/AI/1, paras. 82 and 83.

¹⁶ CED/C/FRA/CO/1, para. 35.

¹⁷ CED/C/7/2.

disappearance are particularly vulnerable to sexual and other forms of gender-based violence. Women who are relatives of a disappeared person are particularly likely to suffer serious social and economic disadvantages and to be subjected to violence, persecution and reprisals as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves are disappeared or because they suffer the consequences of the disappearance of one of their relatives, are especially vulnerable to violations of their human rights. The Committee therefore places particular emphasis on the need for the State party to systematically adopt a gender perspective and take into account the specific needs of women and children as it acts on the recommendations made in the present concluding observations and implements the full range of the rights and obligations set forth in the Convention.

25. The State party is encouraged to disseminate widely the Convention, the additional information submitted under article 29 (4) of the Convention and the present concluding observations in order to raise awareness among all governmental authorities, all civil society actors and the public at large. The Committee also encourages the State party to promote the participation of civil society in the process of implementing the present recommendations.

26. Pursuant to article 29 (4) of the Convention, the Committee requests the State party to submit, by 27 September 2024, specific and updated information on the implementation of the recommendations contained in paragraphs 16 (legislation on child abduction), 20 (right to communication of persons deprived of liberty and right to information of persons with a legitimate interest) and 22 (right to the truth and to reparation) of the present concluding observations. The Committee encourages the State party to promote and facilitate the participation of civil society in the compilation of this information. The Committee notes, moreover, that, under article 29 (4) of the Convention, it may subsequently request the State party to provide additional information on the implementation of the Convention, including information on the measures that have been taken to give effect to all the recommendations contained in the present concluding observations.
