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Sixtieth session

SUMMARY RECORD OF THE 1599th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 22 July 1997, at 10 a.m.

Chairman: Mr. BHAGWATI

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GE.97-17473 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of France (continued)(CCPR/C/76/Add.7; HRI/CORE/1/Add.17/Rev.1; M/CCPR/C/60/Q/FRA/2)

1. At the invitation of the Chairman, the members of the delegation of France took places at the Committee table.

2. Mr. FAUGERE (France), continuing the delegation's replies to questions asked at the previous meeting, said with reference to the principle of non-return of asylum-seekers that French law was well aware of international constraints, since article 33 of the Convention relating to the Status of Refugees had full effect in France. A refugee could not be sent back to a country where he feared persecution. There were two situations in which the principle was applied - at the frontier, where the authorities always gave an asylum-seeker held in the waiting zone the benefit of the doubt, and inside the country, where the majority of cases occurred and where French law was very clear. Within the country no expulsion order could be issued against an asylum-seeker until a decision had been taken on his request for refugee status. That principle was established by a decision of the Constitutional Court of 13 August 1993. Decisions of the administrative authorities were closely monitored by the administrative tribunals. Civil servants handling the procedures exercised great care because they knew they were personally responsible, both morally and criminally.

3. Replying to a question concerning loss of French nationality, he said that in certain very exceptional cases a naturalization decision could be challenged under article 25 of the Civil Code. Such cases, of which there had been fewer than 10 in the past 10 years, usually involved acts of terrorism or espionage or other acts that raised genuine questions as to a person's allegiance to the French nation and national community. A decision of the Constitutional Council, dated 16 July 1996, concerning the law on terrorism established clearly that, apart from very exceptional cases, there could be no question of discriminating between French nationals on the basis of how French nationality had been acquired.

4. Mr. Lallah's remarks about the rights of foreigners in France were fully reflected in observations of the National Consultative Commission on Human Rights and the note of 3 July 1997 to which he had referred. The government study currently under way on immigration and nationality would also be taking such concerns into account. It was a difficult area in which French law sought to strike a balance between firmness and generosity, and that balance would be the keynote of draft legislation to be considered in the autumn of 1997. In his view, through its legislation on foreigners, France could not be said to have contravened the provisions of the Covenant at any time. The republican tradition would have no truck with ideologies which inspired an inward-looking rejection of others.

5. Several members had asked about the responsibility of airlines and shipping lines upon which France imposed fines of up to FF 10,000 for carrying

foreign nationals without valid entry documents. It was a fairly widespread practice which could lead to some carriers facing considerable financial costs, but it was hardly unlawful if a carrier did not conduct minimum checks on its passengers' documentation. France was obliged to impose such fines under article 26 of the convention implementing the Schengen Agreement of 1990, and the rule that it was the carrier which met the costs of returning the passenger to the country of origin was sanctioned by the International Civil Aviation Organization. The law could develop only with reference to international practice. Fining carriers was provided for in a decision of the Constitutional Council dated 25 February 1992. French law exempted from payment of a fine any asylum-seeker who had travelled without the necessary travel documents.

6. Replying to a question about persons who feared to return to their country of origin not because of possible persecution by the legal authorities of that country but because of other circumstances, he said that such circumstances might be very varied. One member of the Committee had mentioned fear of genital mutilation, and certainly in such cases expulsion did not take place, in accordance with both administrative practice and jurisprudence. However, such cases were relatively exceptional. Many more cases concerned Algeria. French jurisprudence did not send back people who feared persecution from “third-party” authorities. They were eligible for refugee status under an Act of 27 May 1983 which authorized the granting of such status when there was voluntary tolerance or encouragement of persecution. Such criteria had recently been given a broader interpretation, as had been shown by a decision of 22 July 1994. But it had not resolved the matter, and since 1993 the practice of “territorial asylum” had been implemented, which made persons who in reality were afraid of violent Islamist groups eligible for temporary residence permits for as long as those risks continued. A government circular dated 24 June 1997 had given greater transparency to the procedure, which had hitherto been defined on a somewhat confidential basis; the circular also extended the procedure to all cases - even outside Algeria - where similar problems could arise. France was following with great interest the debate under way in the European Union on the subject of temporary protection.

7. Another question had concerned an incident at the Franco-Italian border in August 1995 in which a number of cars transporting people from the former Yugoslavia had forced their way through a police barrier. A policeman had fired at one of the cars, mortally wounding a child hidden in the boot. The policeman had been investigated for having wilfully opened fire and unintentionally killing someone. He had been convicted, but because an appeal was under way no further comment was possible.

8. Stowaways on ships were usually refused entry into France because they had no documents. The matter had become controversial because of the practice of keeping persons refused entry on board ship. The controversy had been largely fostered by the shipowners, but questions concerning the enforcement of the law and the guarantee of individual freedom were also involved. On 12 June 1997, the Court of Conflicts had decided that no flagrant irregularities were entailed by the fact of keeping the persons on board ship, but even if there were no flagrant irregularities, the procedure was not provided for by law and there was reason to believe that it might involve a degree of illegality. In any event, the authorities were very concerned at

the situation and would endeavour to apply the law fully as interpreted by jurisprudence once it had been defined. It would be necessary to hold international consultations - at least within the European Union - because the problem arose in other countries and it was important that French practice should not be at variance with that of its neighbours.

9. Replying to questions about the ease of acquisition of French nationality, he said that the most normal method was by affiliation. Spouses of French nationals could acquire it by declaration after two years of marriage. Every year some 40,000 people acquired French nationality by naturalization, for which they must fulfil a number of conditions. They must be habitually resident in France; in principle that meant for a period of five years, but there were exemptions for certain categories of foreigner having special links to France. Another condition was that the person concerned must be able to speak French sufficiently well for the purposes of his personal and working life. Each naturalization was preceded by an interview to assess the degree to which the person concerned had integrated himself within the national community. Having a criminal record in some cases prevented a person acquiring French nationality.

10. As to the question about the expulsion of foreigners who had disturbed public order, Mr. Yalden had been correct in saying that the notion of a serious threat to public order had not been defined in French law, but it was set out in various decisions of French jurisprudence and could also be illustrated from the reasons that were given for expulsion orders. They were usually based on conduct which had gravely disturbed public order and resulted in serious criminal sentences. More than half the cases concerned drug trafficking, and that proportion was increasing. Others concerned homicide and an increasing incidence of rape. A relatively minor category concerned wilful physical harm, but for that a person was expelled only if he had offended at least once before. The normal procedure was that expulsions were ordered only after an opinion had been given by a departmental commission composed of magistrates before which the person concerned had presented his defence.

11. Mr. AVEL (France), referring to a question concerning the malaise in the judiciary, said it certainly existed but was not new. It was linked to the place occupied by judges in society and by justice within the State. What was new was the discussion of the problem, which was essentially a debate about the relationship that should exist between justice and the political authorities. There had been an appeal by 103 magistrates, and the discussion was taking place both because procedures implicating politicians were now being investigated much more than in the past and because the judiciary and the police now had the means and the training to investigate cases with political, economic and financial implications. It was generally recognized that public opinion was wary of the influence which the Minister of Justice could exert in the conduct of individual cases, and of the harmful impact of that influence on democracy. The debate turned on whether France should go back on its legal traditions and do away with all links between the government procurator's office and the Minister of Justice. That would certainly put an end to any ambiguity and, as a consequence, it would also remove the need for any public action policy at State level. The alternative was to seek other methods that would ensure the existence of a genuine policy of public action

which would serve to enshrine application of the principle of prosecution, without doubt arising as to the possibility of intervention by the Minister of Justice in the handling of individual cases.

12. Another aspect of the debate related to the procedures for appointing government procurators. At present judges and government procurators were appointed by decree of the President of the Republic, but only judges were also appointed on the recommendation or certified opinion (avis conforme) of the Supreme Council of Justice. Government procurators were appointed on an opinion (avis simple) of the Supreme Council of Justice. The difference in the methods of appointment was demonstrated in the hierarchy of relationships within the procurator's office, and that was also an element in the discussion of relations between the procurator's office and the Minister of Justice. Some people advocated that all proposed appointments should be subject to a certified opinion of the Supreme Council of Justice.

13. The President of the Republic had given the First President of the Court of Cassation the task of establishing a commission to study such questions of French justice. It had recently submitted its report, and it was now for the Government to make its choice and submit proposals to the National Assembly. The Government had recently made known through the Minister of Justice that it had decided to initiate a reform such that, irrespective of the final choices made, the dialogue that should be established between ministries and the representatives of the government procurator's office would in future be beyond criticism or suspicion.

14. Turning to a question concerning the rights accorded to victims of maltreatment, he said that any victim could lodge a complaint with the government procurator but the latter could also be seized by any person with knowledge of facts liable to constitute a criminal offence, and it was for the government procurator's office to decide, in the light of the facts as presented, whether it was worth proceeding with a prosecution. The victim could also seize a court directly, in which case the matter must then go directly before a trial court. If a victim intended to demand compensation for any loss or injury he claimed to have suffered, he could lodge a complaint and initiate criminal indemnification proceedings simultaneously.

15. Referring to a question concerning consignation, he said that the Code of Criminal Procedure indicated that the examining magistrate noted the lodging of a complaint and, depending on the financial resources of the person concerned, he fixed the amount of the consignation he must deposit with the court office and the time limit within which that must done. The examining magistrate might also exempt the claimant from paying any deposit.

16. Mr. LAGEZE (France), replying to questions concerning anti-terrorist legislation, said that the courts dealing with such cases were special criminal courts that had been set up in 1986 after a number of terrorist attacks in France which had caused many deaths. The normal Courts of Assize had, as a result of the publicity involved, experienced difficulties in jury selection. The fact that the courts dealing with terrorist cases were composed of professional judges meant that they could not be suspected of

partiality. The prosecuting bodies in such cases were the same as in ordinary criminal cases. The examining magistrates were ordinary judges who also dealt with cases unrelated to terrorism.

17. Police custody was always subject to the supervision of the judicial authorities, and persons held in police custody enjoyed the same rights as in criminal law. The only difference was that some of those rights might be available after different periods of time.

18. Replying to questions concerning pre-trial detention, he said that in the case of minors French law gave primacy to educational over repressive measures. Pre-trial detention was prohibited for minors under the age of 13 and in correctional matters for minors under the age of 16. For criminal matters pre-trial detention was available for all minors aged between 13 and 18, and in correctional matters for any minor over the age of 16. However, pre-trial detention could be ordered only if that measure seemed indispensable and it was impossible under the law for any other measure to be taken. Before a decision was taken to place a minor in pre-trial detention the judge must consult the appropriate department dealing with the legal protection of young people, which then compiled a report on the situation of the minor. When he was placed in pre-trial detention, the minor must be attended by a lawyer, and if he or his legal representatives did not choose one, the judge appointed one ex officio.

19. Legislation regarding the granting of compensation to persons held in pre-trial detention whose case was subsequently dropped or resulted in their acquittal had very recently been amended. An Act of December 1996 stipulated that the injury sustained need no longer be manifestly abnormal or particularly serious. The new law was likely to increase the number of people who would benefit from such compensation.

20. Questions had been asked concerning the scope of application of French law with regard to the provisions of article 14, paragraph 5, of the Covenant, which stated that everyone convicted of a crime should have the right to his conviction and sentence being reviewed by a higher tribunal according to law. At present there was no appeal procedure in the Court of Assize, but there was always the possibility of having one's conviction and sentence reviewed by the Court of Cassation. Against some decisions of police courts, for example those involving fines of more than FF 1,000, it was possible to lodge an appeal; police courts were presided over by a judge and were not competent to impose prison sentences. There would probably be a development regarding the reservation in respect of article 14, paragraph 5, because a draft law had been drawn up by the previous Government to establish two levels of jurisdiction in criminal cases. The draft law would probably be amended by the present Government and come into force in 1998. The double jurisdiction would also cover terrorist crimes.

21. As for a trial in absentia of someone accused of a crime who had refused to appear before a court and answer the charge, under French law such a person could in certain conditions be convicted by default. The law stated that if the person concerned was arrested before the sentence was handed down, the sentence in absentia was annulled and the person retried in the normal manner.

22. Finally, there had been a question regarding the relationship between the death penalty and the Military Code of Justice. The death penalty had not existed in France since 9 October 1981, either in the Penal Code or in the Military Code of Justice, for offences committed in wartime or in peacetime.

23. Mrs. GIUDICELLI (France) said a number of questions had related to solitary confinement. The examining magistrate could impose that regime for a period of 10 days, renewable once, and it could also be ordered by the head of the prison establishment as a security measure or at the request of the detainee. As at 1 July 1997, 488 prisoners were being held in solitary confinement. After three months the regime could be extended, but only by a decision of the Regional Director of Prison Services, and after a year only by a decision of the Director of the Prisons Administration, which indicated that such extensions were highly exceptional. Persons in solitary confinement were given twice-weekly medical checks, and they were not deprived of the right to receive visits.

24. Detention in disciplinary quarters could not be ordered for more than 45 days, even for serious offences. By a circular dated 2 April 1996, access for prisoners in such quarters to toilets and showers was now obligatory.

25. Women prisoners accounted for 4 per cent of the prison population, amounting to some 2,000 persons, including some 500 of foreign nationality, who were treated the same as other women prisoners. Twenty of them were minors, who were held in separate cells from adults, though joint activities were organized to prevent undue isolation.

26. In reply to the point raised by Mr. Klein concerning paragraph 145 of the report, she said that since 1995 there had been no restrictions on the number of letters that could be sent or received by prisoners, though all were censored except letters to lawyers or to the administrative authorities, which were confidential. She hoped that correspondence between prisoners and the Committee would soon be included in the confidential category.

27. Violence between detainees was a problem which caused great concern. Currently the response was to impose punishments and, where necessary, to prosecute. Prevention by confining perpetrators to their cells was often resorted to in the case of sexual assaults, but that had not proved sufficient, and other approaches were currently being considered.

28. The number of suicides in detention was also a matter for concern: it had increased from 64 in 1986 to 138 in 1996, although a corresponding increase had been noted in the population generally. In 1992 the Prisons Administration had set up a multidisciplinary team to study the problem, and in 1996 a joint prevention programme had been launched by the Ministry of Health and the Ministry of Justice. Any suicide was automatically reported to the authorities and an inquiry initiated.

29. In reply to Mr. Yalden, she said that the inspection service was part of the Prisons Administration and not an independent service. The French approach was to allow detainees access to all remedies available under

ordinary law, which would include recourse to the European Court of Human Rights. That was seen as the best way of ensuring that detainees were not deprived of their rights as citizens.

30. Mrs. MEDINA QUIROGA said that while she appreciated the explanations given, several of her questions had remained unanswered. She would like to know how many times the government procurator's office had instituted proceedings against prison officials for ill-treatment or torture of detainees, in violation of article 7 of the Covenant. She had also asked who decided what body should deal with cases of terrorism, what role was played by the police in such decisions, how many persons had been prosecuted under anti-terrorist legislation, and whether there was any possibility of appeal against disciplinary measures imposed in prison.

31. Mr. YALDEN said he would have liked information, first, on whether immigrants from countries outside the European Union were granted French nationality in the same proportion as those from inside the European Union, and also on whether the “charter” system of group returns of persons had been resorted to.

32. Mr. PERRIN DE BRICHAMBAUT (France) said his delegation would need some time to obtain the information asked for by the two previous speakers. It therefore suggested that it should provide written answers to the Committee within as short a time as possible.

33. Mr. FAUGERE (France), replying to Mr. Yalden, said there had been no “charter” operations involving group returns of persons since 1 June 1997.

34. The CHAIRMAN invited the delegation to respond to questions in part II of the list of issues.

35. Mr. AVEL (France), referring to question 9, said that as early as 1988, when introducing its second periodic report, France had informed the Committee that the Covenant was increasingly being invoked in the courts. Since that date, reference had been made to it in a large number of judicial and administrative decisions. Thus, between 1991 and 1997, the Court of Cassation had handed down 81 decisions, and the administrative courts 145 decisions, in which the Covenant had been invoked.

36. In reply to the second part of the question, he pointed out that under article 55 of the Constitution, treaties or agreements properly ratified or approved had greater authority than the law: France's ratification of the Covenant had meant that it was now part of domestic law. By virtue of recent jurisprudence of the Court of Cassation and the Council of State, both judicial and administrative judges must now ensure that the Covenant prevailed over domestic law even if the latter was of more recent date.

37. In practice, the Covenant was increasingly invoked on a wide variety of grounds: in the administrative tribunals, for instance, article 6 (right to life), article 14 (right to equality before the courts) and article 25 (right to vote) had all been used as grounds for decisions by the Council of State.

38. The same was true of the judicial courts. Article 9, concerning arrest and detention, and article 17, concerning the right to privacy, had been used as a basis for judicial decisions. The application of article 15, paragraph 1, which established the principle of retroactivity of the lighter legal penalty, was of particular interest. In three decisions in July 1996, the Paris Court of Appeal had applied that provision directly to cases involving funds held abroad before the abolition of exchange controls. The Court, with a view to ensuring that the Covenant was applied uniformly at the international level, had ruled that the same basic principle should be regarded as applying to all legal and regulatory provisions.

39. Replying to the last part of question 9, he said that to his knowledge no law had ever been declared void as being in conflict with a provision of the Covenant. However, after the Covenant's entry into force in 1991, the Minister of Justice had issued a circular on penalties applicable to minors expressly referring to article 6, paragraph 5, of the Covenant, under which the death penalty could not be imposed on persons below 18 years of age. In addition, the new Penal Code stated that article 112.1 was based on article 15 of the Covenant, relating to the non-retroactivity of the criminal law.

40. Mr. CHARPENTIER (France), replying to question 10 on procedures for implementing views adopted by the Committee under the Optional Protocol, said that, of course, France would comply with the Committee's recommendations if it was found guilty of any violation of the provisions of the Covenant. Indeed, if it did not consider itself bound by such recommendations, it would be denying the Committee the role assigned to it under the Protocol.

41. To date, France had been found guilty of only one violation, a case in 1989 involving the pensions of ex-servicemen who had belonged to the Union Française before decolonization. No immediate solution had been found to that problem because of the very considerable financial implications involved, but on four occasions - in 1989, 1993, 1994 and 1995 - the pensions of the authors of the communication had been reassessed to bring them into line with those of other beneficiaries.

42. There was no specific procedure in French law for giving effect to the Committee's views, and in fact the finding of a violation of the Covenant was not enough in itself to permit a case to be re-opened. Indeed, the law did not allow for the review of a decision on the grounds that it had been taken in disregard of an international convention. However, France would continue to do its best to comply with the Committee's findings, acting on a case-by-case basis and taking specific circumstances into account.

43. Mrs. MORIZE-RABAUX (France), responding to question 11 on the human rights situation of persons living overseas, said the constitutional principles of the indivisibility of the Republic and of equality prevented any kind of differentiation between French citizens, whether living in metropolitan France or overseas. However, that did not mean that no account was taken of particular cultural identity. All French citizens without distinction enjoyed the same rights, and the Covenant was applied without restriction in all overseas departments, overseas territories and special territorial units. Overseas citizens participated in public affairs in the same way as citizens of France: thus, they were entitled to vote in

presidential elections, parliamentary elections and European elections. They were represented in Parliament by at least one deputy and one senator, elected in the same way as in France. Election turnout was in some cases as high as 80 per cent.

44. At the local level, each department was represented by a general council and a regional council. Overseas territories were administered by territorial assemblies, elected by universal suffrage, which enjoyed a considerable degree of autonomy, and the special territorial units were administered by elected general councils under a specific regime of their own.

45. Considerable efforts had been made to improve the economic and social situation of overseas citizens. In New Caledonia, for instance, a special policy had been introduced to promote the development of the northern province and the islands. Under the Matignon Agreements, peace had been established, and greater decentralization ensured by the creation of three new provinces. Talks were currently in progress on the construction of a nickel works in the northern province to achieve a better economic balance between the northern and southern regions. New Caledonia's macro-economic indicators were relatively good: thus, its GDP in 1996 had been some FF 90,000 per capita. Development contracts had been concluded, with the Government providing FF 90 million for the southern province, FF 374 million for the northern province, and FF 165 million for the islands. New roads linking the eastern and western coasts were being constructed, and a new power station was being built and should supply almost all inhabitants with power by the year 2000. A programme was under way to provide training courses in France for 400 students from New Caledonia by 1998, qualifying them to take up posts in private firms or in the administration: of the 285 who had so far taken the courses, 151 had obtained diplomas.

46. As to the education system, indicators were similar to those of metropolitan France and showed a gradual improvement in standards: between 1988 and 1995 the number of examination successes at all levels had risen. Regarding law enforcement, juridical and administrative systems differed according to particular local circumstances. In the overseas departments, the general councils and regional councils must be consulted regarding the enforcement of French law in the economic and social fields, notably on measures relating to taxation and employment. In the overseas territories, French law was not automatically applicable; their assemblies were directly responsible for administering the territories' affairs in such areas as welfare, health, education, economic development and taxation. The legal regime also differed as between the territorial units: in Mayotte, for instance, a special regime was now under preparation which would take into account the wish expressed by the majority of the population for closer links with France.

47. The provisions of international instruments to which France was a party applied, save in the case of any express exclusion, to all French overseas territories, whose administrative bodies must be consulted whenever such an instrument was ratified. There was, however, no machinery for considering how the provisions of such instruments were to be implemented in those territories; in that respect, the Committee's recommendations were not fully met. With regard to European Community law, it applied in overseas

departments exactly as in metropolitan France. Citizens of the overseas territories and communities were associated with the European Union, and voted in elections for European deputies; and they benefited from Community programmes and European development funds.

48. Traditional rules and customs relating to civil status were respected, as were the local laws and institutions - for example, the Koranic law of Mayotte. Those institutions remained competent to deal with local litigation. With regard to language, article 2 of the Constitution distinguished between the official language and the vernacular. The Act of 1994 recognized the use of French without prejudice to local languages; and, pursuant to the Organization Act of 12 April 1996, regional languages were taught in schools. Also under that Act, for example, French Polynesia was entitled to its own anthem and flag, and to institutions such as a land and property board. Similarly, New Calendonia had its own agency to deal with matters such as local development, building and land redistibution; between 1988 and 1989 it had taken decisions to hand over some 90,000 hectares to local groups.

49. With regard to the 1995 riots in New Calendonia, a number of trade-union members had been charged and placed in detention until the Court of Appeal had ruled, in December 1995, that reasons of public order no longer made detention necessary. Allegations of police brutality had not been supported by any evidence or by the medical examinations undergone by the persons detained; communications in that regard addressed to the Committee against Torture and ILO had been ruled inadmissible. As a result of the repeated acts of violence in New Caledonia between 1986 and 1988, the Government had sent a mission with the aim of restoring dialogue; the consequent signed agreements had led to the Act of 9 November 1988, which, inter alia, had provided for amnesty in respect of incidents prior to 20 October 1988, although total amnesty had not been granted because of the need to ensure complete restoration of public order. The Act had also provided for compensation for loss and damage suffered between 16 April 1986 and 20 October 1988.

50. Mr. NEDELEC (France) said that France viewed human rights on the basis of two principles: equality of rights of all citizens, and the unity and indivisibility of the nation. It therefore recognized no distinct group rights as such, whether based on ethnic, religious, linguistic or other grounds, but took the view that only individuals had rights and obligations. At the same time, French law and tradition upheld the right of any person to belong to any group and, indeed, to refuse to belong. The State's role, therefore, was to safeguard the individual's freedom of choice and freedom to exercise that choice.

51. Most departments had facilities and procedures for receiving and settling immigrants, and the number of media and social services available to assist immigrants had grown steadily. A decision had been taken in 1996 to extend social housing benefits and subsidies, and an integration programme, instituted in March 1997, included measures to settle reunited families and provide bilingual guides on social rights and duties. Likewise, there were facilities for learning the French language and customs and for providing good schooling for all immigrant children. There was also a job training programme, staffed by volunteers, which was expected to involve about

30,000 young people by 1999. Other aspects of the programmes for immigrants included the integration of women, improvements in housing and efforts to combat racial discrimination.

52. Mrs. DE CALAN (France), referring to question 12 on the list of issues, said that, in a report prepared for the Fourth World Congress on Women, France had stressed the great changes that had taken place at the national level in the status of women during the past decade, including their increased share in the labour market, in educational qualifications and in access to posts of high responsibility. The proportion of women employed in the liberal professions had also increased considerably. In France, life expectancy for women (84.4 years) was higher than for men (73.0 years) and was two years more than the average for the other European Union countries. One area, however, which showed little increase in women's participation was politics; women represented 53 per cent of the population, but the proportion of women members of the National Assembly, although growing, was little over 10 per cent.

53. The general aim was to advance the status of women not simply through major legislation but through constant efforts to change attitudes. To that end, a special department on women had been established in 1994. One example of the task undertaken was the growing effort to combat violence against women. That effort, previously left to militant feminist associations, was backed by recent provisions in the Penal Code and employment legislation, as well as measures such as instruction and documentation to enable police and social workers to assist victims of harassment and inform them of their rights. In addition, departmental commissions had been established to monitor instances of violence, and State support was provided to over 60 relevant associations. The effect of those measures, and of others which she briefly mentioned, could be seen in recent criminal convictions; in 1995, 12.5 per cent of the prison population had consisted of persons convicted of attacks on women. Further recent legislation had also been aimed at eliminating discrimination between the sexes and improving social dialogue in that regard. Measures were also being taken to promote awareness in companies, including the provision of guidelines on matters such as equality of remuneration and collective bargaining. Other initiatives included a project, funded to the extent of FF 7.5 million for vocational training and job access, avoiding discrimination against women, and guidelines for educational institutions and editors.

54. With regard to the proportion of women in different branches of public service, the latest relevant report, published in 1995, showed that women slightly outnumbered men (51.4 per cent). The distribution was uneven, however. Figures for posts in ministerial offices showed a variation ranging from 74.2 per cent in the Ministry of Social Affairs to 24.7 per cent in the Ministry of the Interior and 20 per cent, the lowest, in the Ministry for Cooperation. Figures for 1995 showed that only three sectors in the public service, two of which related to the prison administration, remained male preserves.

55. Statistics relating to disparity in pay revealed a difference between the public and private sectors. Quantitatively, the disparity was slightly less in the public sector, being 18.9 per cent as against 22.7 per cent in the private sector. However, qualitative factors, such as career advancement also

had a bearing on public-sector employment; matters were further complicated by factors such as family benefits. Moreover, it was hard to quantify the influence of factors such as part-time employment and problems relating to job mobility. In the private sector, the gap stemmed mainly from differences in qualifications between the sexes. Women were still under-represented in the higher echelons of that sector, and remained in the majority in lower-paid areas such as the textile, garment and retail trades - a matter reflected in the above-mentioned guidelines on negotiations.

56. Mr. AVEL (France), replying to the Committee's question on the right to privacy (Covenant, art. 17), described the process of telephone-tapping - including the interception of telefax communications - which could be ordered by the judicial authorities in the course of investigations of crimes punishable by two or more years of imprisonment and when “traditional” methods of inquiry proved ineffectual. Taps, which could be ordered for renewable periods of four months, must be the subject of a judicial act or rogatory commission. Such measures, which were stringently regulated, could be applied not only to the communications of defendants but also to those of third parties and even - subject to stricter hierarchical controls - lawyers, deputies and senators. Transcripts of recordings must be made and entered in the file, and must be accessible to the lawyers of the persons concerned, who could call for an expert evaluation of their contents. If the examining magistrate was convinced of the non-involvement of the person whose communications had been intercepted in the offence under investigation, or if no charges were brought, the government procurator must, as provided in the Code of Criminal Procedure, ensure that the recordings were destroyed and place on record the fact that no further action was to be taken.

57. Mr. FAUGERE (France) said that the relevant law, Act No. 91-646 of 10 July 1991, also provided for special “security” taps designed to obtain national security information, to protect essential aspects of France's scientific and economic potential, and to prevent terrorism, crime and organized delinquency. Such taps might be ordered, in a written and substantiated decision by the Prime Minister or one of two people specifically designated by him, at the express and written request of the Minister of Defence, the Minister of the Interior or the Minister of Customs. The content of transcripts must be directly related to the matter under investigation. Responsibility for ensuring respect for the fundamental freedoms of citizens was legally vested in a national control commission composed of members appointed jointly by the Council of State and the Court of Cassation, together with a deputy and a senator appointed, respectively, by the presidents of the two assemblies. In 1996, a total of 4,603 requests for security taps had been made to the Commission.

58. Mr. DE BELAY (France), referring to the subject of freedoms of conscience, religion and expression (Covenant, arts. 18 and 19), replied to the Committee's questions concerning conscientious objection, which was currently governed by the Act of 8 July 1983, and was in conformity with article 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Describing the conditions under which the right to conscientious objection could be exercised, the duties which it entailed and alternative service, he said, in response to the inquiry why alternative civilian service was at present double the length of military service, that

absolutely no penalization was intended. Rather, the difference in duration was designed to test the strength of the convictions of the young persons concerned, who could otherwise opt out of military service by making a simple declaration. Virtually no complaints had been lodged by objectors on the grounds of that discrepancy, and other forms of national service, in technical cooperation activities or in the education system for example, were also longer than normal military conscription. The Human Rights Committee had, when considering a communication involving Finland in 1990, expressed the view that alternative civilian service for conscientious objectors that was twice the length of military conscription was neither unreasonable nor repressive. If the abandonment of conscription that was envisaged in the reform of national service currently under way was approved by Parliament, the problem of conscientious objection and call-up would be largely resolved.

59. The Committee had further asked about the right of students in State schools to dress in conformity with their religious practices, and about what was known as the "Islamic scarf" question. He described the exhaustive efforts that had been made to establish the legal situation - in regard to French domestic law and relevant international obligations - and to reconcile the constitutional principle of the secular nature of the public education system with respect for the rights of students to wear articles of clothing or insignia indicative of their religious beliefs.

60. In November 1989, the Council of State had made public an opinion, which formed the basis of administrative circulars issued in 1989, 1993 and 1994 to the public education authorities. It acknowledged the right he had just mentioned, but had nevertheless cautioned against any abuse that might be construed as pressure, provocation, proselytism or propaganda affecting the rights and dignity of others, jeopardizing their health or safety, or disturbing the smooth conduct of the educational process. Describing the administrative circulars, he stressed the responsibility that devolved on the directors of educational establishments for deciding, on a case-by-case basis, whether intervention was necessary and - more delicately - for maintaining dialogue with the young people concerned, and with their parents, in a spirit of conciliation rather than retribution. On the whole, the nationwide and sensitive application of the circulars had been successful in dispelling difficulties. The seriousness of attempts to strike a proper balance in the matter were exemplified by the two separate occasions on which the Council of State, asked for a further opinion, had declared illegal the absolute prohibition of the wearing of insignia with religious, political or philosophical connotations and, on the other hand, confirmed the right to exclude from school children who insisted on wearing clothes unsuitable for gymnastics classes.

61. Mr. NEDELEC (France), replying to the question on freedom of expression (Covenant, art. 19), described in some detail the Act of 13 July 1990 relating to the punishment of all racist, anti-Semitic and xenophobic acts. Enforcement of the law had resulted in very few convictions - about four a year. He cited in particular the findings of the court against articles by revisionist historians who denied or contested, among other things, the existence of the Holocaust and the gas chambers. But the Act was only one of the many legal instruments available in France to combat racism and xenophobia. That criminalization of the offences he had described was in

conformity with the provisions of the Covenant was, in his delegation's view, borne out by the reference, in article 19, paragraph 3, to possible restrictions on the freedom of expression. Moreover, the compatibility of the Act with the Covenant was guaranteed in the jurisprudence of the courts which were consistently at pains to ensure that any application of the Act was fully in keeping with France's international obligations.

62. Mr. CHARPENTIER (France) replied to the questions concerning dissemination of information about the Covenant and national bodies responsible for monitoring respect for human rights (Covenant, art. 2). Instruction in human rights formed part of the national curriculum. During the past year, renewed efforts had been made to expand public information activities on the subject of human rights in general, and more particularly concerning the rights enshrined in the Covenant. A National Liaison Committee had been established in connection with the United Nations Decade for Human Rights. The National Consultative Commission on Human Rights, which encompassed some 30 NGOs, had been informed of, and had circulated information concerning, the preparation and presentation of the third periodic report. It would be holding a follow-up meeting on the subject in September 1997.

63. Concerning the functions of the médiateur (Ombudsman), he said that strictly speaking, they did not include protection of human rights, but related rather to the out of court settlement of disputes between citizens and the administrative authorities, usually on a case-by-case basis. In 1996, no fewer than 43,000 complaints had been submitted to the médiateur and his staff, which numbered 200. The médiateur also proposed reform measures to the Government, and could raise human rights issues in that connection; in 1997, he had been particularly concerned with the rights of detained persons. The National Consultative Commission on Human Rights, for its part, was especially concerned with the situation of aliens; it prepared an annual report on racism, anti-Semitism and xenophobia, reported regularly on such issues as clandestine labour and naturalization, and was closely involved in the current overall review of the status of aliens in France.

64. The CHAIRMAN invited members of the Committee to ask their final questions.

65. Mr. YALDEN asked for statistics concerning the number of women occupying senior positions in public service.

66. He asked whether he was right in understanding that the National Consultative Commission on Human Rights did not receive complaints and would welcome further information concerning the work of the médiateur in connection with the rights of detainees.

67. He was aware that France had made a declaration of non-applicability in relation to article 27 of the Covenant, and so it was with some diffidence that he raised the issue of the rights of minorities. Notwithstanding the statement in the final paragraph of the report that France was a country without minorities, he did not wish to spark off a discussion of the meaning of that term. But he did wish to inquire whether positive steps were taken to preserve and protect the collective qualities and values - notably their languages, but also other special aspects of their culture - that distinguished the Bretons, the Basques and the native peoples of the overseas departments and territories from other French men and women. In a word, was

affirmative action taken not only on behalf of more recent immigrant populations, such as those of North African origin, but also on behalf of historically implanted groups.

68. He hoped that his question would be interpreted in the constructive spirit in which it had been posed and commended the French delegation for what he had found to be a comprehensive, frank and highly professional presentation.

69. Mr. TÜRK noted with satisfaction, in connection with the freedom of religion, the Strasbourg Administrative Court ruling, cited in paragraph 288 of the report, according to which administrative authorities could no longer refuse to register an association, particularly a religious association, on grounds unconnected with the requirements of public order. He inquired about actual practice, especially in regard to associations promoting new religions, such as the Church of Scientology.

70. Concerning the freedom of expression, (para. 316 of the report), he inquired whether there was any jurisprudence concerning “incitement to and vindication of terrorism”, the subject of an Act of 9 September 1986.

71. Returning to the matter of ethnic groups, already addressed under the list of issues and extensively dealt with by the delegation, he said that he shared the concern just voiced by Mr. Yalden and wished to pursue the matter somewhat further. In 1994, the Committee had adopted General Comment 23, on article 27 of the Covenant. What had struck him, when listening to the delegation's presentation, was a degree of similarity in the approaches adopted. In the General Comment, the number of persons to whom the provisions of article 27 might apply was considerably extended by going beyond citizenship or even permanent residence as requirements for protection under that article. Moreover, it was pointed out in the Comment that the existence of an ethnic, religious or linguistic minority in a given State party did not depend on a decision by that State, but should be established by objective criteria. At the same time, the expansion of the scope of protection observed in the General Comment was accompanied by a considerable shift of focus with respect to the actual content of that protection, which was reduced to only those positive measures that protected persons belonging to minorities against various acts by other persons or by organs of the State party. Those measures must, moreover, be in conformity with the provisions of the Covenant concerning non-discrimination, must not lead to privileged situations or to separate status, and must not amount to more than what the Committee referred to as “legitimate differentiation”.

72. With those considerations in mind, he wished to ask, first, whether the French Government had taken note of and/or considered the General Comment on article 27 and its implications, and secondly, whether, in the light of the interpretation that went beyond an earlier understanding of minorities and focused more closely on historically and territorially established groups, France might not consider withdrawal of its declaration on article 27. He trusted that his question would be seen not as impertinent, but rather as a sincere attempt to provide food for thought.

The meeting rose at 1.10 p.m.