UNITED NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.321
8 May 1998

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Twentieth session

SUMMARY RECORD OF THE 321st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 5 May 1998, at 3 p.m.

Chairman: Mr. BURNS

CONTENTS

GE.98-15985 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Second periodic report of France (continued) (CAT/C/17/Add.18)

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

2. Mr. DOBELLE (France), in reply to questions raised at the 320th meeting, said that France's voluntary contribution to the United Nations Voluntary Fund for Victims of Torture totalled FF 500,000. France would observe the United Nations International Day in Support of Victims of Torture on 26 June 1998 but could not yet provide details.

3. Mr. HEITZ (France) said that the concept of torture was not new in French law. Under the old Criminal Code, torture had been considered an aggravating circumstance for certain offences and even in some ways a general aggravating circumstance, as article 303 of that Code stipulated that criminals who used torture or committed acts of barbarity in the commission of their crimes would be punished as being guilty of murder. Torture was also considered an aggravating circumstance in cases of indecent assault, wrongful arrest, illegal detention and abduction. The Court of Assizes dealt regularly with such acts, which were often heinous and reflected a deliberate wish to inflict suffering. Under article 222-1 of the new Criminal Code, which had come into force on 1 March 1994, acts of torture were classified as a distinct crime. The subjection of persons to torture or to acts of barbarity was punishable by 15 years' imprisonment, and under certain aggravating circumstances by life imprisonment. Article 222-3 provided that torture and acts of barbarity were punishable by 20 years' imprisonment if they were committed in or in connection with the performance of his functions or duties by a person vested with public authority or a public servant.

4. There had been 4 convictions for torture in 1994, 9 in 1995 and 10 in 1996, including some under both the old and the new Criminal Codes. Convictions had been secured under article 222-1, but not for aggravating circumstances involving public officials. That did not, however, mean that the courts had not recently tried cases involving torture by public officials, including the police and gendarmes. There were different grounds for such prosecutions, mainly for attempted voluntary injury, which were aggravated when the act was committed by a public official, in which case it was punishable by up to 15 years' imprisonment, depending upon the degree of injury, such as mutilation or permanent disability. Committee members had expressed astonishment at the lack of a definition of torture in the new Criminal Code. That was because the new Code classified offences not in terms of their outcome, which did not constitute an essential part of the offence, but in terms of the behaviour of the author of the offence. As the human imagination had no limits, such acts could not be strictly defined and enumerated beforehand. For other offences, however, such as attempted voluntary injury, the infliction of temporary disability did constitute grounds for punishment.

5. The circular on the new Criminal Code was an attempt to make the Code's provisions more accessible to professionals and citizens. The circular referred to article 1 of the Convention in defining torture as any act by which severe pain or suffering, whether physical or mental, was intentionally inflicted on a person, but differed from the Convention in not referring to the purposes sought by the torturers. It specified that the French definition of torture was broader and more general and was not limited to acts committed by public officials for specific purposes.

6. There was also a principle of competence, under article 689-1 of the new Code of Criminal Procedure, which gave French courts jurisdiction to prosecute and try anyone in France who had committed torture outside French territory. On the basis of article 689-2 of that Code, proceedings had been instituted in 1995 against Mr. Wenceslas Munyeshyaka, who had been accused of crimes against humanity covered by the Criminal Code and of torture in what constituted the first application of the provision. The investigation had been initiated following accusations made by victims of the Rwandan genocide, and the court had found itself competent to hear the case under that provision because it believed it was the whereabouts of the person that was the determining consideration. Legal difficulties had, however, emerged regarding the classification of prosecutable offences. Article 689-2 did not concern domestic laws on punishment, which could be applied to persons accused of torture as defined by the Convention.

7. How, then, could the principle of competence be applied to article 689-2? By referring solely to torture as defined in article 222-1 of the Criminal Code, or by referring to a more generic definition of torture, including such other behaviour as crimes against humanity, of which Mr. Munyeshyaka had been accused? The Indictment Division of the Court of Appeal of Nîmes had deliberated on that issue and in 1996 had opted for the restrictive reading of article 689-2 of the Criminal Code, finding that the examining magistrate was incompetent to try the case inasmuch as the facts to be decided constituted crimes against humanity and complicity in genocide and did not fall within the definition of torture under the Convention. That very restrictive interpretation of article 689-2 had been criticized by both the Ministry of Foreign Affairs and the Public Prosecutor of the Court of Appeal of Nîmes, and an appeal had been filed against the decision, the Public Prosecutor arguing quite rightly that it was possible under the Convention to criminalize other behaviour that could constitute torture. The Court of Cassation had overturned the decision of the Nîmes court on 6 January 1998, arguing that only the classification of genocide was applicable in the case concerned and that the latter's Indictment Division had misinterpreted article 689-2. It had ruled that French courts were competent to try the case under the provisions both of article 689-2 and of the 1996 law to adapt French legislation to the provisions of Security Council resolution 955, which had created the International Criminal Tribunal for Rwanda. The 1996 law giving such jurisdiction to the French courts made its applicability dependent upon the presence of the offenders on national territory.

8. Regarding the lack of any provision in the Code of Criminal Procedure making prosecution for torture systematic, the French judicial system was based on the principle of the appropriateness of prosecution, which was for

the public prosecutor to decide, and not on the legality of prosecution. Criminal offences, however, were almost always prosecuted when there was evidence to suggest that they had been committed.

9. Mr. DOBELLE (France) said that the French legal system was monistic, meaning that treaties or agreements duly ratified or approved had an authority superior to that of laws. The administrative authorities, the courts, the Council of State and the Court of Cassation systematically gave precedence to the Convention when it appeared to conflict with a law, including in cases where the law in question post-dated the Convention. The Convention was directly applicable to domestic law, which meant that anyone could bring charges claiming violation of article 1 of the Convention. The circular did not have force of law, but it served as a reference for judges in interpreting the law and the Convention.

10. Mrs. DOUBLET (France), replying to questions raised on article 3 of the Convention, noted that Mr. Camara had referred to criticisms by certain non-governmental organizations (NGOs) of French treatment of asylum seekers at the border and regarding the Ordinance of 2 November 1945 on administrative detention. There had been approximately 1,000 asylum seekers at the border in 1997, twice as many as in the previous year. That figure represented, however, only a very small percentage of the total number of asylum seekers in France, as the French Office for the Protection of Refugees and Stateless Persons reported some 22,000 requests per year.

11. Regulations on granting asylum were very strict. There was no right of suspensive appeal at the border against decisions to refuse asylum, but consideration of requests for asylum was set about with safeguards. When asylum was refused and the authorities were aware of the risk to which the asylum seekers might be exposed, they examined the case as carefully as possible. The first safeguard was that each asylum seeker must be heard by an official of the Office. Secondly, the decision to refuse asylum was taken at the highest level, that of the Ministry of the Interior, and not at the border, following consultation with the Ministry of Foreign Affairs in the light of the asylum seeker's audience with the official. Thirdly, a request for asylum made at the border could be refused only if it was “manifestly unfounded”, i.e.: when the request was outside the scope of application of conventions on the protection of human rights; when the person did not cite a fear of ill-treatment but said he was seeking better living conditions; or when the request clearly lacked justification or substance or contained flagrant or irreconcilable contradictions. In 1997, the rate of admission of asylum seekers at the border had been 72 per cent, which was quite high and clearly showed the care exercised by the authorities in their consideration of requests.

12. The status of asylum seekers in detention was guaranteed under a decree of 1995 whereby HCR representatives had been granted access to holding areas and authorized to interview border control service chiefs and representatives of the Ministry for Foreign Affairs and to confer privately with asylum seekers, thereby ensuring that HCR could exercise its mission effectively. HCR had effected 22 visits to holding areas in 1996, and 18 visits in 1997. The 1995 decree contained similar provisions regarding the Red Cross, Amnesty International and other associations working for asylum seekers, which had

carried out 31 visits in 1996 and 77 visits in 1997. The Government planned further relaxation of regulations on access to holding areas under a decree to be published in the near future.

13. In the interests of protecting individuals who risked persecution, Parliament had voted on 8 April a law whereby persons in danger of ill-treatment could be granted asylum in France and refugee status could be accorded to individuals who had suffered persecution as a result of their efforts to promote freedom as well as to persons covered by the 1951 Geneva Convention relating to the Status of Refugees.

14. Article 35 bis, supplemented by the Act of 8 April, provided for the administrative detention of aliens who had broken the law. The permitted duration of such detention had been reduced to seven days, which could be extended under exceptional circumstances by up to five days, and required authorization by a judge after the first 48 hours. From the outset of detention, the alien must be informed of his right to counsel, to medical attention, and to communication with his consulate or a person of his choice. The judge must ascertain that the alien had been able to exercise his rights before authorizing an extension of detention. The legality of administrative detention under both national and international law was monitored by members of the judiciary who were also required to ensure that due procedure had been observed at the time of the alien's arrest. Under article 5 of the European Convention on Human Rights, the alien could be released if irregularities were found to have occurred, and that provision was often applied.

15. Judicial supervision of the conditions of detention was exercised independently of the administrative court's supervision of compliance with the rules regarding the country to which a foreigner could be returned. Article 27 bis of the Ordinance of 1945 required French judges to ascertain that foreigners would not be in jeopardy upon their return to the designated country.

16. The expulsion, as opposed to extradition, of Spanish nationals of Basque origin, belonging to ETA, had been prompted by very serious offences committed in France, some associated with the use of arms and others carrying extremely heavy sentences. The expulsion orders were issued after examination of each individual case, under article 27 bis of the Ordinance. The fact that such individuals might be liable to trial and sentencing in Spain for criminal acts perpetrated in that country was not a sufficient bar to their removal from France, given that such proceedings constituted legitimate action by a fully democratic State under the rule of law, which was striving to combat the most heinous terrorism and deserved the fullest support. The French and Spanish Governments had on several occasions conferred regarding allegations that expelled persons were ill-treated by certain police officers while their cases were being investigated, and had found them groundless. Similarly, on 5 December 1996 and 12 January 1998, the European Court of Human Rights had rejected appeals under article 3 of the European Convention on Human Rights against expulsion orders to Spain, lodged by two Spanish nationals of Basque origin belonging to ETA. The European Commission of Human Rights had also rejected charges that expulsion orders had been employed as a disguised form of extradition.

17. The Administrative Court had refused Mr. Arana's request for a stay of execution of his expulsion order from France to Spain; he had indeed been arrested and tried on his return to that country. While she had no specific information regarding the extraordinary case of detention in a holding area for a period of several years, raised by Mr. Burns, she explained that detention in a holding area was applicable to asylum seekers and to aliens entering France without permission. Whereas the maximum permitted duration of such detention was 20 days, requiring court authorization after the first four days, in 1997 the average duration for the latter category of alien had been 30 hours, and two days for asylum seekers, to permit their applications to be considered. Aliens detained in a holding area enjoyed the same rights and safeguards as individuals in administrative detention, and the French Government had recently taken steps to improve conditions in all respects.

18. Mr. CAILLOU (France), in response to Mr. Sørensen's question, said that where necessary aliens were escorted by members of the national police, but 75 per cent left French territory without an escort. Any alien seeking to evade removal would be liable to trial and sentencing. Aliens were always escorted on to aircraft, after being searched, out of sight of other passengers, particularly if they were handcuffed. Minimum force was employed and sedation was never used. Following recent incidents, the Ministry of the Interior had adopted new escort procedures to enhance the safety of the individuals involved, of the flight, and of other passengers.

19. Mr. LAGEZE (France) said that the decision to commit a person to custody could be taken only by an officer of the judicial police. In the case of a preliminary investigation, people could be committed to custody only if there was reason to believe that they had committed or attempted to commit an offence. People could not be held in custody if there was no evidence against them and could be held only for the time needed to take a statement. The provisions of the Code of Criminal Procedure and the treatment of detainees were the same whether a person was held by the gendarmerie or by the national police.

20. Ms. INGALL-MONTAGNIER (France) said that the conditions of custody and treatment of detainees were governed strictly by articles 63 ff. of the Code of Criminal Procedure. A judicial police officer who had decided to place a person in custody must notify the public prosecutor without delay. The public prosecutor monitored measures relating to custody and could order the release of the detainee at any time. Magistrates from the public prosecutor's office could make surprise visits to places where people were held in custody to ensure compliance with the regulations in force.

21. The duration of custody varied according to whether a minor or an adult was involved. Adults could be held in custody for 24 hours, which could be extended by a further 24 hours if the public prosecutor so authorized. In the case of drug-related offences, under ordinary law a person could be held in custody for a further 48 hours on the orders of a judge before whom he or she was due to appear. The same rules applied to crimes of terrorism.

22. Under no circumstances could minors under the age of 13 be detained in custody, no matter what the alleged offence. Minors between 13 and 16 years

of age could not be held beyond 24 hours for offences punishable by less than five years' imprisonment. Any extension had to be authorized by the public prosecutor or investigating magistrate.

23. Any person detained had to be informed of the right to telephone a family member, the person with whom he or she lived, or an employer. When minors were involved, the judicial police officer had to inform the family or guardian unless the public prosecutor's office decided otherwise. All persons in custody had the right to be seen by a physician, when first apprehended and again if the period of detention was extended. A physician had to be designated for minors under the age of 16 and persons suspected of drug trafficking were seen by one as soon as they were taken into custody and every 24 hours thereafter. Persons also had the right to see a lawyer after the first 20, 36 or 72 hours of custody, depending on the nature of the alleged offence. Minors were allowed to see a lawyer as soon as they were taken into custody. Meetings with lawyers could not last more than 30 minutes. The lawyer did not have access to the prisoner's files and could not attend interrogations during custody. However, written comments could be submitted.

24. A public prosecutor or judicial police officer could at any time designate a physician to examine a person held in custody. The examination must then take place without delay and the certificate, which must indicate the physician's opinion as to whether the detainee was fit to be kept in custody, formed part of the detainee's file.

25. Ms. SCOTT (France) explained that the French gendarmerie, a police force with military regulations, lay somewhere between the army proper and the civil police. As a member of a military force, an officer of the gendarmerie was at greater liberty to use a weapon than an ordinary civil police officer who was entitled to do so only in self-defence. There were, however, strict rules as to when an officer of the gendarmerie could use a weapon: for example, if the officer was being threatened by another armed individual; when there was no other way of defending the people or places he or she was guarding; or when orders, repeated loudly and clearly, for a vehicle or person to stop were ignored. Although legislation governing the use of weapons by officers of the gendarmerie dated back to 1943, neither the executive nor the legislature had felt that it needed to be amended.

26. Mr. DOBELLE (France), referring back to custody, stressed that the civil and military judicial police forces were governed by the same legal instrument and that the rights and guarantees afforded to persons held in custody by either force were the same. There was no way in which anyone could be held in custody in secret. Any violation of the right to telephone an outside person would be reported to the public prosecutor's office immediately.

27. Ms. GIUDICELLI (France) explained that the protection of human rights was an integral part of the training given to law-enforcement personnel and persons working in the judiciary. Recruits to the national gendarmerie were taught international humanitarian law as part of their training on ethics. Police officers in general were also made familiar with public rights and freedoms and the main international human rights conventions.

28. In answer to the question on the relationship between bodies that monitored ethics and the national police, the supreme council on ethics and the security forces currently being established would be a new, independent administrative authority and would replace the National Police Ethics Board.

29. With regard to Mr. Sørensen's question on paragraph 98 of the report, she said that France did not have any specific provision for NGOs to monitor prison establishments. However, members of NGOs were involved in various kinds of prison activity such as education and training. Procedures for allowing representatives of NGOs or other bodies to visit detainees were being simplified.

30. Ms. de CALAN (France) said that since 1994 the question of health care and how to improve it in prison establishments had been reviewed by the prison authorities and the health service to ensure that the care and treatment provided were of the same standard as outside prison establishments. The first change decided had been to give responsibility for health care in prisons to the health authorities, so on their arrival in prison detainees were registered in the health insurance system. A new approach had also been taken to training prison and medical staff. Health and prison authorities had worked together to compile a methodological guide for health care.

31. A questionnaire sent out in March 1996, to ascertain whether there were any difficulties in recruiting health staff to work in prisons had been followed up by interregional meetings. The conclusion had been that, while there was no difficulty in recruiting, for example, general practitioners, nurses or medical secretaries, there was a shortage of male nurses and dentists.

32. Physicians were trained from the outset in professional ethics. The Code of Medical Ethics, amended by the decree of the Council of State of 6 September 1995, set out doctors' general obligations and their duties to their patients, not least to respect their human dignity and their physical and mental integrity.

33. The question of the administration of electric shock treatment to persons committed without their consent to psychiatric institutions had been discussed at length by the National Evaluation Group on Act No. 60-527 of 27 June 1990 concerning the rights of such patients. Some 70 per cent of mental patients in France had consented to their hospitalization. Electric shock treatment was used only when other types of treatment had failed, particularly in cases of schizophrenia, and was administered under anaesthesia. Some years previously, the General Inspectorate of Social Affairs had prohibited lobotomy but not electric shock treatment. However, the question was being kept under review and a national agency responsible for the monitoring of health-care services was about to publish a report on the subject.

34. With regard to the rehabilitation of victims of torture or ill-treatment, in particular refugees, the Medical Committee for Exiled Persons attached to Bicêtre Hospital in Paris operated a network of

professional and voluntary aid workers on an annual budget of about 1 million French francs. It collaborated with all the main bodies working on behalf of refugees. With regard to ill-treatment, in particular sexual abuse, a circular of 27 May 1997 had set up regional reception facilities organized on the basis of focal points linked, for example, to regional hospitals and employing teams specially trained to deal with the physical and psychological sequelae of all kinds of violence. The focal points also functioned as centres for initial and in-service training and, in general, for information and awareness-building, for example among general practitioners.

35. Mr. BITTI (France), replying to a question regarding the admissibility as evidence of confessions obtained under torture or as a result of inhuman or degrading treatment, said that the issue was frequently a bone of contention between common-law and civil-law jurists. The exclusionary rule applied in common-law countries did not exist in civil-law countries, where all items of evidence were admissible. Under that head, articles 427 and 428 of the French Code of Criminal Procedure dealt with ordinary offences and article 353 with criminal offences. The whole of the evidential system rested on the idea of conviction intime (being convinced beyond reasonable doubt). The Cour de Cassation (supreme court of review) had recently emphasized that evidence was admissible even when it been obtained through the commission of a criminal offence. That did not, however, exempt the perpetrator of that offence from prosecution. Moreover, as France applied a monistic system, article 55 of the Constitution could be invoked with a view to having a piece of evidence excluded, not under French law but under article 15 of the Convention, which was directly applicable before the courts. Another more difficult option was invocation of article 802 of the Code of Criminal Procedure, under which proceedings could be declared null and void where there had been an infringement of the rights of the defence. However, very strict conditions must be fulfilled in such cases.

36. Mr. HEITZ (France) said that, while confessions had long been viewed as conclusive evidence of guilt, that was no longer the case, especially as a result of the major advances achieved in scientific and technical assessment of evidence. Where an accused person confessed to an offence, every effort was made to obtain additional substantiating evidence. In two well-known recent cases, DNA-based genetic material had been successfully used to acquit the defendants. Examining magistrates and police officers involved in criminal investigations no longer accepted a confession as the sole proof of commission of a criminal offence. A public prosecutor who learned that an individual had been ill-treated when in police custody immediately ordered an inquiry into the circumstances. If the person concerned had confessed to a crime while in custody, there were two possibilities. If the confession was false, that would be quickly established through an investigation of the conditions in which it had been made. If it was true, the prosecutor could invoke article 802 of the Code of Criminal Procedure to declare the proceedings null and void or - the solution usually opted for in practice - the interrogation report could be struck from the record.

37. Ms. DUBROCARD (France), referring to the case of Mr. Ahmed Selmouni which had been raised by the Committee in connection with an Amnesty International report dated April 1998, said that the European Commission of Human Rights had issued a report in December 1997 to the effect that France

had violated article 3 of the European Convention on Human Rights inasmuch as Mr. Selmouni had been subjected to torture during police custody. The case had been referred to the European Court of Human Rights. Although criminal proceedings instituted in France against the police officers accused of having ill-treated Mr. Selmouni had not yet been completed, the Commission had taken the view that the requirement of exhaustion of domestic remedies was not applicable because the proceedings were unreasonably prolonged. The French Government, on the other hand, had been unable to provide the Commission with information on the merits of the case because it was still sub judice.

38. With regard to the allegations by Amnesty International of ill-treatment of detainees in Grasse remand prison by prison guards on the night of 31 December 1997, the public prosecutor's department of the Grasse Court of Major Jurisdiction had applied on 10 January 1998 for information proceedings to be begun against "X" on a charge of violence committed jointly by persons vested with public authority. Those persons were undergoing investigation and had been placed under judicial supervision by the examining magistrate. They were prohibited from serving as prison guards, were denied access to the Grasse remand prison and were not allowed to confer with the other individuals under investigation, the witnesses or the victims. As regards disciplinary action, the Inspectorate of Prison Services had initiated an inquiry on 15 January 1998. The five guards under investigation had been suspended from their duties since 30 January 1998.

39. Replying to a question on the Act of 6 July 1990 mentioned in paragraph 157 of the report, she said that it offered a subsidiary line of recourse when the victims of certain offences were unable to use the normal channels for obtaining reparation, in particular owing to the death of the presumed perpetrator or where the perpetrator was unknown. In the case of victims who were foreign nationals, a request for compensation could be filed provided that the victim had been, for administrative purposes, legally present in the country either on the date on which the offence had been committed or on the date on which the request was filed. A request could therefore be declared admissible even if the victim's administrative status had not been in order on the date on which the offence had been committed.

40. Mr. BITTI (France), replying to the question as to whether there was a requirement, in the case of the International Criminal Tribunals for Rwanda and the former Yugoslavia, that crimes against humanity should have been committed in connection with an international conflict, drew attention to the 1945 Charter of the Nürnberg International Military Tribunal. Although article 6 (a) and (b) of the Charter required a linkage between crimes against humanity and an international conflict, the Control Board for Germany had decided, with effect from 20 December 1945, that in future no such linkage would be required under international criminal law. The French lawmakers had taken that precedent into account in article 212.2 of the Penal Code which had entered into effect on 1 March 1994 and no linkage was required under French law. On the other hand, a linkage between crimes against humanity and either an internal or an international conflict was required under Security Council resolution 827 (1993) concerning the International Criminal Tribunal for the former Yugoslavia but, curiously enough, not under Security Council resolution 955 (1994) concerning the International Criminal Tribunal for Rwanda. France had therefore adopted two separate pieces of legislation to

establish the jurisdiction of French courts in respect of offences committed in the former Yugoslavia and Rwanda. A linkage with an internal or international conflict was required in the Act of 2 January 1995 concerning the former Yugoslavia but not in the Act of 22 May 1996 concerning Rwanda.

41. The CHAIRMAN requested the delegation of France to withdraw while the Committee considered its concluding observations.

42. The delegation of France withdrew.

The meeting was suspended at 5.15 p.m. and resumed at 5.45 p.m.

43. The members of the delegation of France resumed their places at the Committee table.

44. The CHAIRMAN informed the delegation that, owing to pressure of time, the Committee had been unable to complete its observations at the current meeting. He invited them to return the following day at 3 p.m.

45. The Committee had greatly appreciated the delegation's extremely detailed responses to its questions.

The meeting rose at 5.50 p.m.