United Nations CED/C/SR.47

International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
4 June 2013
English
Original: French

Committee on Enforced Disappearances
Fourth session

Summary record of the 47th meeting
Held at the Palais des Nations, Geneva, on Friday, 12 April 2013, at 10 a.m.

Chairperson: Mr. Camara

Contents

The meeting was called to order at 10.10 a.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of France (continued) (CED/C/FRA/1; CED/C/FRA/Q/1 and Add.1)

1. *At the invitation of the Chairperson, the delegation of France took places at the Committee table.*

2. **Ms. Janina** requested information on the provisions and procedures safeguarding the prohibition to expel, return, surrender or extradite a person in danger of being subject to enforced disappearance. She wished to know whether those procedures applied in waiting zones, which authority issued decisions on asylum applications submitted by persons in those areas, the time lag between entry into the area and the decision on the application, and what mechanisms were available to those for suspending a deportation decision in cases when a risk of being subjected to enforced disappearance was invoked. She also requested further details on the cases and the manner in which the so-called priority procedure was used, and whether the persons concerned had recourse before the National Court of Asylum. She asked how the State party assessed the personal risk faced by an asylum seeker from a State considered to be "safe" and whether it made use of diplomatic assurances. She wished to know if legislation and practices concerning terrorism, emergency situations and national security might adversely affect the prohibition of refoulement of persons in danger of being subjected to enforced disappearance. She asked how the principle of non-refoulement was respected during the transfer of detainees held in custody by French officials on another State's territory during armed conflicts. She asked why Bill No. 250 did not criminalize the offences set out in article 25 of the Convention and whether enforced disappearance was one of the grounds on which a request could be submitted for review and, if necessary, annulment of an adoption decision issued following an enforced disappearance.

3. **Mr. Garcé García y Santos** asked the delegation to state the conditions under which a detainee could be prohibited from communicating with the outside world, and to provide statistics on the enforcement of that measure. He asked how France guaranteed the independence of the Office of the Controller-General for Places of Deprivation of Liberty, given that the holder of that office was directly appointed by the President and that it was not a national human rights institution in accordance with the Paris Principles. He wished to know what information about persons captured or detained during external military operations were recorded and communicated to superiors and what happened when that information could not be sent "promptly". With regard to article 22 of the Convention, he asked what specific criminal or disciplinary sanctions were imposed on unfair or dishonest officials. In reference to exceptional waiting zones, he asked how the State party applied in practice the minimum guarantees described in its initial report, how it dealt with identification errors and how the national preventive mechanism was able to carry out its monitoring duties in those zones. With regard to the concept of "victim" within the meaning of article 24 of the Convention, he requested additional information on the status of persons who had directly suffered the consequences of an enforced disappearance and on the possible negative effects of the distinction between ricochet victim (indirect victim) and direct victim. He also asked if the right to truth was expressly standardized and recognized in domestic law.

4. **Mr. Huhle** asked why the Convention provision allowing relatives to directly request information about a person deprived of liberty had not passed into French law.

5. **Mr. Hazan** asked whether the periods of detention without judicial supervision of persons accused of terrorism might lead to enforced disappearances.

6. **Mr. Al-Obaidi**, supported by **Mr. Yakushiji**, requested clarification on the application of articles 16 and 25 of the Convention and asked whether French law offered the guarantees enshrined in article 21 of the Convention.

7. **Mr. López Ortega** asked whether France planned to introduce habeas corpus proceedings and how many times in 2012 the police had used the procedure authorizing them to present a detainee to the prosecution via videoconference, which did not comply with international safeguards.

8. **Ms. Doublet** (France), replying to the questions about article 16 of the Convention, acknowledged that there was no express reference in French legislation to the prohibition of return of persons to a country where they would be in danger of being subjected to enforced disappearance. However, given that article 16 was clear, precise and unconditional, it was directly binding on French administrative and judicial authorities. In addition, as the risk of enforced disappearance was generally part of a series of violations of fundamental rights, under current French legislation persons who were in danger of losing their lives or liberty or being subjected to inhuman and degrading treatment would not be returned. Regarding the exercise of the right of persons placed in waiting areas to invoke the risk of enforced disappearance, an administrative authority, followed by judicial authority four days later, was competent to issue a decision to continue the detention in the waiting area. The detention could not be extended for more than 20 days, and during that period the persons enjoyed the services of a lawyer and an interpreter free of charge. In addition to that check on detention in waiting zones, there was also a check in place on decisions to refuse entry. Thus, persons who believed themselves to be in danger of being subjected to enforced disappearance if returned could apply for asylum. A specialized authority, the Office for the Protection of Refugees and Stateless Persons, examined such applications. The Office heard the applicant and delivered an opinion. The final decision was in fact issued by the Ministry of the Interior, but in practice it always upheld the Office's opinion. Entry could be refused if the request was manifestly unfounded. In addition, following the ruling of the European Court of Human Rights against France in 2007, the State had established a fully suspensive remedy against decisions to refuse entry for reasons of asylum. The person concerned, who received free assistance from a lawyer and an interpreter, had 48 hours to appeal the matter before a judge, who took a decision within 72 hours. The need for such short deadlines was dictated by the 20-day limit on stays in waiting zones. The appeal must be submitted in French, but, in accordance with the law, an association that helped foreigners prepare their appeals worked in the waiting zones, and the asylum seekers could explain their situation to the judge at the hearing, which was a key moment in the appeal process. If the judge felt that risk was established the decision to refuse entry was annulled and the foreigners were authorized to enter French territory, where they could proceed with their asylum applications.

9. The prefecture could examine applications for asylum under the so-called priority procedure — which provided the same guarantees as the ordinary procedure — if the asylum seeker's presence in France posed a serious threat to public order, if they were a national of a country that was included in a list of safe countries of origin and if the request for asylum was based on deliberate fraud, constituted an abuse of asylum procedures or was intended only to defeat an expulsion measure that had been or would soon be issued. In 2012, 30 per cent of asylum applications had been examined under that procedure. In accordance with the law, a country was considered to be safe if it ensured respect for the principles of freedom, democracy and the rule of law as well as human rights and fundamental freedoms. Applications by asylum seekers who were nationals of a State on the list of safe countries of origin were handled by the Office for the Protection of Refugees and Stateless Persons under the priority procedure. The governing body of the Office for the Protection of Refugees and Stateless Persons drew up the list of countries considered to be safe countries of origin, which was subject to checks and revisions. It was not the

decisions of the National Court of Asylum or the Office for the Protection of Refugees and Stateless Persons that led to the expulsion of unsuccessful asylum seekers to their countries of origin, but rather separate measures taken by the administrative authority, namely the obligation to leave France and be escorted to the border. Those measures were subject to a fully suspensive remedy before the administrative judge, who was required to verify that the asylum seeker was not in danger of suffering inhuman or degrading treatment or becoming a victim of enforced disappearance if returned to their country of origin. France was aware of the criticisms of the priority procedure and was willing to take account of European Community directives on the right to asylum. With regard to the expulsion of terrorists, domestic law specified the absolute obligation to protect against inhuman and degrading treatment regardless of the offences the person had allegedly committed. The French authorities did not rely just on diplomatic assurances in cases of expulsion; rather, they personally verified that the person was not in danger. The exceptional waiting zones were designed to cope with an influx of foreigners who did not pass through border checkpoints. Since 2011, French legislation provided the same guarantees in exceptional waiting areas as in ordinary waiting areas.

10. **Mr. Stoliaroff** (France) said that prescription was the general rule in civil proceedings, as set out in the Code of Civil Procedure. Mitigating circumstances were contrary to the French legal tradition, thus France had not adopted the Convention provisions on that matter. In addition, France had not entered an interpretative declaration concerning article 2 of the Convention because it did not wish to suggest that there was a problem with that interpretation. The concept of "ricochet" victim was set out in article 24 of the Criminal Code. Enforced disappearance constituted personal injury, for both direct victims and members of their families, who could be considered ricochet victims. With regard to the family's right to know the place of custody or imprisonment, since French law gave priority to the right to privacy, a family who feared that one of its members was a victim of enforced disappearance must sue for damages in criminal proceedings before the public prosecutor on the basis of a "disturbing disappearance", which would lead to an investigation and allow the family to access the file on the allegedly disappeared person. In extreme circumstances, France accorded priority to the right to know. Enforced disappearance as a crime against humanity had been constituted as a criminal offence by the Act of 2010 and the enactment in French law of the Rome Statute of the International Criminal Court. Crimes of enforced disappearance not committed as part of a concerted plan would be covered by legal provisions in 2013. In addition, complaints of enforced disappearance were always admissible and were covered by the same guarantees regardless of whether the disappearance had taken place before or after an arrest by a legitimate authority. No one was held in secret detention in France. Article 66 of the Constitution prohibited arbitrary detention, and France considered secret detention to be arbitrary detention. Detention in police custody was automatically carried out under the supervision of a judicial authority, particularly in cases of terrorism. With regard to adoptions originating from the enforced disappearance of children, there was a procedure in place to challenge any adoption that had been fraudulently carried out. From a legal standpoint, there was no time limit on the review of adoptions, either in criminal or civil law. However, the judge also took into account the situation of the child and their family when the child was old enough to express an opinion. The principle of habeas corpus did not exist in French law, but the general legal system was very protective of freedoms, and the Act of 14 April 2011 had made it possible to universalize the right of all individuals to meet with a lawyer for 30 minutes and to have access to the case file. Only very serious offences, including terrorism and enforced disappearances, were subject to exceptions.

11. **Mr. Balcerski** (France) said that during military operations France respected the principle of non-refoulement and the prohibition of enforced disappearance by ordering military units that captured individuals to inform their superiors, who sent that information

to the International Committee of the Red Cross so that it could register and visit the detainees. When persons captured by the French authorities were transferred to the legitimate authorities of the State in which the French forces had intervened, France requested visitation rights and urged the State concerned to respect the guarantees of proper treatment and non-extradition to third States that had not agreed to those guarantees. The French authorities were endeavouring to have such guarantees included in a diplomatic agreement signed with the legitimate authorities of the State where the intervention had taken place. When individuals were captured or detained in the course of military operations, information was sent along the hierarchical chain about the conditions, date, place and circumstances of the capture and the identity, estimated age and presumed nationality of the captured, as well as their alleged links with the opposing forces, which might justify the detention. Communication system breakdowns sometimes made it impossible to send the information immediately. The information was sent along the hierarchical chain "as quickly as possible", meaning taking into account the time needed to escort the captured or detained persons to a location outside the combat zone, search them and interrogate them.

12. **Mr. Stoliaroff** (France) said that the crimes referred to in article 25 of the Convention already constituted a criminal offence under national law. The crimes referred to in article 25, paragraph 1 (b), of the Convention were specifically dealt with in articles 441-1 and 441-2 of the Criminal Code.

13. **Mr. Dumand** (France) said that the independence of the Office of the Controller-General for Places of Deprivation of Liberty was guaranteed under the law of 30 October 2007, which he read out. Respect for ethical standards among law enforcement officials was encouraged through initial and on-the-job training, numerous controls and sanctions. In 2011, nearly 3,000 disciplinary sanctions had been imposed against police officers. To put that in context, about 4 million police operations had been carried out that same year.

14. **Ms. Janina** asked the French delegation to describe the legal provisions justifying the fact that the Ministry of the Interior always upheld the opinions issued by the Office for the Protection of Refugees and Stateless Persons following the examination of asylum applications, when that opinion was not binding. She also asked if the 48-hour period granted to asylum seekers to appeal the rejection of their application was long enough to allow them to collect the documents and information required to prove to the judge that they were in danger of being subjected to enforced disappearance in their countries of origin. She asked if a review of adoption procedures could be initiated by third parties, particularly the adopted child's family of origin.

15. **Mr. Garcé García y Santos** welcomed the fact that the Controller-General for Places of Deprivation of Liberty enjoyed immunity in the exercise of his or her duties and hoped that other countries would be inspired to follow that good practice. He noted the explanation of the safeguards in place during armed conflicts but wished to gain a better understanding of the "security reasons" that could be invoked to justify not sending information according to the usual procedures.

16. **Mr. Huhle** said that enforced disappearance could also harm persons outside the family circle and wished to know whether the State party intended to broaden its definition of ricochet victims. He asked why the limitation period was different in criminal law compared with civil law and why it had not been increased to 20 years in cases of enforced disappearance, as had been done for cases of torture.

17. **Mr. Hazan** asked when the limitation period began in cases of child kidnapping — which was a continuous offence — and what happened to the child in proven cases of child abduction.

18. **Ms. Doublet** (France) said that under French law all matters concerning the entry and residence of foreigners were the responsibility of the Minister of the Interior; therefore, officially, the opinions of the Office for the Protection of Refugees and Stateless Persons could only be advisory, even though in practice they were upheld. As to the question of whether a 48-hour period was not too short to prepare a defence, examination of asylum applications was more a case of listening to the person's story and determining how sincere they were rather than examining evidence.

19. **Mr. Stoliaroff** (France) said that anyone with an interest in a case of adoption could ask the courts to review the adoption decision. France did not intend to broaden its definition of ricochet victims because the concept was defined more by jurisprudence than by the law, which made it possible to take changes in society into account. It was true that the two-month time limit for contesting a decision was short, but that period did not begin until the day the facts were established. In addition, statutes of limitations did not apply in the review of a civil action or in cases involving a continuing offence, such as enforced disappearance (in cases where the adoptive parents had themselves participated in the enforced disappearance of the child's biological parents) or concealment (in cases where the adoptive parents had knowingly adopted a child whose biological parents were victims of enforced disappearance). If the adoptive parents had acted in good faith, they were of course not prosecuted. The child could be returned to their biological family if they were very young; otherwise, their views must be heard.

20. **Mr. Balcerski** (France) said that the Armed Forces might decide it was best not to immediately announce the capture of an individual so as not to subject them to public condemnation upon their release. In such cases, the authorities would of course be informed that an arrest had been made, but only after the person concerned had been taken to a place they themselves deemed sufficiently safe.

21. **Mr. Niemtchinow** (France) commended the quality of the dialogue between his delegation and the Committee, especially as he was aware that consideration of initial reports would set precedents for the future. He assured the Committee that its concluding observations would be given the utmost attention by both the French Government and parliament, which the following week would begin considering a reform of the criminal law, and that should lead to the adoption of new laws before the summer of 2013. He pledged that his country would fully support the Committee, particularly in the implementation of articles 30, 31 and 32 of the Convention, and would continue to promote the universal adoption of the Convention, including as part of the campaign France was currently conducting with Argentina in that regard.

22. **The Chairperson** echoed the thanks expressed to the French delegation and said that he was well aware of the State party's commitment to the Convention and its effective implementation.

The meeting rose at 12.40 p.m.