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

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1992

Addendum

France*

[19 December 1996]

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* For the initial report submitted by the Government of France, see document CAT/C/5/Add.2; for the summary records of the meetings at which the Committee considered that report, see documents CAT/C/SR.26 and 27 and Official Records of the General Assembly, forty-fifth session, Supplement No. 45 (A/45/44), paras. 60 to 86.

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Annexes*

* The annexes may be consulted at the Office of the United Nations High Commissioner for Human Rights.

General legal framework

1. France signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted at New York by the United Nations General Assembly on 10 December 1984 (hereafter referred to as "the Convention"), when it was opened for signature, on 4 February 1985. Act No. 85-1173 of 12 November 1985 authorized its ratification. France deposited its instrument of ratification on 18 February 1986. The Convention, which entered into force on 26 June 1987, was published in France by Decree No. 87-916 of 9 November 1987. All the formalities required by both international and internal law have therefore been fulfilled.

2. In the French legal system, which is monistic, "Treaties or agreements duly ratified or approved shall, upon their publication, have an authority superior to that of laws, subject, for each agreement or treaty, to its application by the other party" (Constitution, art. 55). This primacy naturally applies in the case of the Convention and is binding on the legislature, executive, administration and judiciary.

3. France has subscribed to the principle stated in article 5 of the Universal Declaration of Human Rights, adopted by the United Nations General Assembly on 10 December 1948 ("No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment") and is bound by several comparable international instruments prohibiting torture and treatment, in particular:

The International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly on 16 December 1966 (article 7: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.");

The European Convention for the Protection of Human Rights of the Council of Europe, dated 4 November 1950 (article 3: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment.").

4. In the context of these two conventions, France has entered into commitments allowing individuals who consider that the rights guaranteed under them have been violated to bring actions against the French State in the bodies established by the conventions. France is a party to the Optional Protocol to the International Covenant on Civil and Political Rights, which established the right of individuals to submit communications to the Human Rights Committee. It has also subscribed to the declaration contained in article 25 of the European Convention on Human Rights recognizing the competence of the Commission to receive individual petitions.

5. Lastly, on 9 January 1989, France ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which it signed on 26 November 1987. For the prevention of ill-treatment this Convention, which came into force on 1 February 1989, instituted special machinery based on a committee empowered to visit any place under a State party's jurisdiction where persons are deprived of their liberty by decision

of a public authority. The committee, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), is made up of experts. After each visit, it draws up a report setting out its findings and such recommendations as it deems it necessary to make to the State party visited. It is incumbent on the State party to respond to those comments in writing. Subject to the agreement of the State party concerned, all the information may be published.

6. CPT has made four visits to France: one in 1991, two in 1994 (one each to Paris and Martinique) and one in October 1996. France raised no objection to the publication of the reports made by CPT following the first three of those visits (the reports on the visits made to Paris in 1991 and 1994 are annexed to the present document and the report on the visit made in 1994 to Martinique is expected to be published soon). The report on the latest visit is to be transmitted to the French Government in the course of 1997.

Information relating to the articles of the Convention

ARTICLE 1

7. This article does not in itself call for any special implementation measures on the part of the States parties. Paragraph 1 seeks to provide a definition of torture for the purposes of the Convention by specifying the acts that come within its sphere of application. It should be noted that this definition is the first to appear in an international instrument. Consequently, the clause contained in paragraph 2, applies, as far as international instruments are concerned, only to future instruments.

8. French legislation does not contain any definition of torture within the meaning of the Convention. However, the Ministry of Justice circular of 14 May 1993 on the new Criminal Code that came into force on 1 March 1994 refers expressly to article 1 of the Convention:

> Generally speaking, there may be qualified as torture within the meaning of article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted at New York on 10 December 1984, “any act whereby severe pain or suffering, whether physical or mental, is intentionally inflicted on a person”. It should be noted, however, that the provisions of the new Criminal Code are far wider in scope than those of the Convention, which concern only acts committed by a public official for specified purposes.

9. Articles 689-1 and 689-2 of the new Code of Criminal Procedure that came into force on 1 March 1994 together give French courts jurisdiction to prosecute and try anyone in France who has committed torture outside French territory. Article 689-2, indeed, refers to the definition in article 1 of the Convention:

> For the purposes of the application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted at New York on 10 December 1984, any person guilty of torture within the meaning of article 1 of the Convention may be prosecuted and tried under the conditions stated in article 689-1.

ARTICLE 2

Paragraph 1

10. The division among legislative, administrative, judicial and other measures of the arrangements that each State party must make to prevent acts of torture in any territory under its jurisdiction, depends on the constitutional system of the State in question.

11. In France, under article 34 of the Constitution, laws establish the regulations governing “civil rights and the fundamental guarantees granted to citizens for the exercise of their public liberties (...) determination of crimes and misdemeanours and the penalties imposed therefor, criminal procedure (...)”. Legislative authorization is also necessary for the ratification of international treaties and agreements that amend legislative provisions.

12. In addition to the laws authorizing ratification of the relevant international instruments, essentially the Convention, the legislation making torture an offence, setting the penalties for it and defining the judicial remedies available to victims also has to be taken into consideration. The judiciary, “the guardian of individual liberty” in the words of article 66 of the Constitution, acts within the framework thus set by the law. It may be invoked, for example, when a public official commits an act that violates the legally protected rights and freedoms of the individual (theory of assault).

13. Acts of torture committed by officials would come in particular under articles 222-1 and 222-3 of the new Criminal Code:

> Article 222-1: “The subjection of persons to torture or to acts of barbarity shall be punishable by 15 years' rigorous imprisonment”;
>
> Article 222-3: “The offence referred to in article 222-1 shall be punishable by 20 years' rigorous imprisonment if committed:
>
> [...]
>
> In or in connection with the performance of his functions or duties by a person vested with public authority or a public servant”.

14. Articles 432-4 to 432-6 of the new Criminal Code punish arbitrary infringement of others’ freedom of movement by persons endowed with public authority or public servants. In particular, article 432-4 provides as follows:

> The arbitrary ordering or performance by a person vested with public authority or a public servant in or in connection with the performance of his functions or duties of an act that infringes freedom of the person shall be punishable by seven years' imprisonment and a fine of 700,000 francs.

When the act consists in detention or restraint for a period of more than seven days, the penalty shall be increased to 30 years' rigorous imprisonment and a fine of 3 million francs.

15. More specifically, acts of torture ascribed to military personnel (who in France include gendarmes) are prosecuted under Act No. 82-261 of 21 July 1982 reorganizing the military system of justice: the government procurator's office operates under the sole supervision of the Minister of Justice:

(a) In the ordinary law courts (the courts of major jurisdiction and the appeal courts), competent to deal with all ordinary offences committed in French territory by military personnel, including offences committed while on but not in the course of duty;

(b) In specialized courts (the competent chambers of the courts of major jurisdiction) for ordinary crimes and offences committed in the course of duty and the military offences specified in book III of the Code of Military Justice;

(c) Outside France, in the court of Baden-Baden (Germany), which has jurisdiction over virtually all military and ordinary offences committed by any French national associated with the French forces in Germany;

(d) Before the military court of Paris, which has jurisdiction over offences committed in or outside French military compounds while on service in States bound to France by a specific convention on military justice.

16. Therefore, the law prohibits and sets penalties for torture; the judiciary punishes it. The mere existence of this punitive system has an obvious preventive and deterrent effect. It is supplemented by administrative measures consisting primarily of instructions from the executive to public officials on how to behave in order to comply with the law. These will be examined in detail under each article.

Paragraph 2

17. A state of war cannot be invoked in France in order to justify torture. Article 383 of the Code of Military Justice states that acts contrary to the laws and customs of war constitute ordinary crimes or offences and by that token are subject to criminal penalties. The Code also punishes purely military offences, including “incitement to commit acts contrary to duty or discipline” (article 441). Similarly, the Act of 13 July 1972, amended by Act No. 75-1000 of 30 October 1975 establishing the general military regulations specifies that military personnel may not carry out acts that are contrary to the law, the customs of war or international conventions or acts that constitute crimes or offences (article 15). Lastly, the general disciplinary regulations for the armed forces, amended by Decree No. 75-675 of 28 July 1975, state explicitly in article 9 bis, on respect for the rules of international law applicable to armed conflicts, that, pursuant to duly ratified or approved international conventions, military personnel are prohibited from “committing violence to life and person or the personal

dignity of the sick, wounded or shipwrecked, prisoners or civilians, in particular murder, mutilation, cruel treatment or any form of torture".

18. Ordinance No. 59-147 of 7 January 1959, on the general organization of the defence system, defines the conditions for mobilization and state of alert in the event of a threat of war. If a mobilization or state of alert should be ordered, the Code of Criminal Procedure (article 699-1) stipulates that the Code of Military Justice may be rendered applicable by decree in the Council of Ministers.

19. French law sets forth very strict definitions for the various states of emergency:

(a) The state of siege is defined by the Act of 9 August 1849, amended by the Act of 3 April 1878. It may be decreed in cases of imminent danger resulting from a foreign war, a civil war or an armed uprising. Under article 36 of the Constitution, this decision must be taken in the Council of Ministers. A state of siege may not be maintained for more than 12 days without the approval of Parliament. It involves mainly the transfer of police powers and powers relating to the maintenance of law and order to the military authority;

(b) The state of emergency is regulated by the Act of 3 April 1955. It may be ordered by the Council of Ministers in cases of imminent danger resulting from serious breaches of law and order or from public disasters. It involves an extension of police powers counterbalanced by specific guarantees. Article 700 of the Code of Criminal Procedure states that "In the event of a declared state of siege or emergency, a decree in the Council of Ministers (...) may establish territorial courts of the armed forces under the conditions provided for by the Code of Military Justice. The jurisdiction of these courts derives from the Code of Military Justice for time of war and specific provisions of the legislation on states of emergency and states of siege";

(c) The main effect of recourse to article 16 of the Constitution is to strengthen the powers of the President of the Republic, who must then take action to restore the constitutional authorities to normal operation.

20. Through specific procedures particular to each one, the various states of emergency modify the normal division of authority, in particular in police matters and certain judicial procedures. They do not, however, affect the legal provisions and regulations prohibiting torture. Any acts of torture committed under them would therefore be punished as severely as in normal times.

Paragraph 3

21. In French law, an order by a superior may be invoked in justification of an act that itself constitutes a crime or offence only under the conditions set forth in article 122-4 of the new Criminal Code, which stipulates:

> No criminal responsibility shall attach to a person who commits an act that is prescribed or authorized by a law or regulatory instrument.

> No criminal responsibility shall attach to a person who commits an act ordered by a legitimate authority unless that act is manifestly unlawful.

22. It follows from these provisions that a manifestly unlawful order from a lawful authority cannot in itself justify the commission of an offence by an obedient subordinate. The law cannot in any circumstances order torture, since it expressly prohibits torture. A person in a position of authority who ordered subordinates to commit torture would be giving them a manifestly unlawful order, and under the regulations defining their rights and duties, they would be bound not to obey it. Thus, article 28 of the Act of 13 July 1983 on the rights and obligations of civil servants states that all civil servants must comply with the instructions of their superiors except where an order is manifestly unlawful and would seriously jeopardize the public interest.

23. Article 17 of the Decree of 18 March 1986 establishing the Code of Ethics of the National Police Force contains an identical provision and adds that "if the subordinate believes that he has been given an unlawful order, it is his duty to make his objections known to the issuing authority, indicating expressly why he believes the order to be illegal". Article 10 goes on, "a civil servant who witnesses prohibited behaviour shall be liable to disciplinary measures if he does nothing to stop it or fails to inform the competent authority".

24. Article 15 of Act No. 72-662 of 13 July 1972 establishing the general military regulations states that:

> Military personnel must obey the orders of their superior officers and are responsible for executing the missions entrusted to them.
>
> However, they may not be ordered to perform and may not perform acts that are contrary to the law, the customs of war or international conventions or that constitute crimes or offences, in particular against the security and integrity of the State.
>
> The personal responsibility of subordinates does not relieve superiors of any of their responsibilities.

25. Similarly, the Decree of 28 July 1975 establishing the general disciplinary regulations for the armed forces, requires obedience only to "orders received in conformity with the law" (article 7) and stipulates that a subordinate shall not execute an order requiring him to perform a manifestly unlawful act or one that is contrary to the rules of international law applicable in armed conflict or to duly ratified or approved international conventions (article 8).

ARTICLE 3

Paragraph 1

26. French law as it stands is consistent with this article as regards return ("refoulement") at the border, deportation from the territory (return to the frontier and expulsion) and extradition.

(a) Refoulement

27. Refoulement constitutes refusal to allow entry into a State. The measure is provided for in article 5 of the Ordinance No. 45-2658 of 2 November 1945, as amended, relating to the conditions of entry and residence of aliens in France. Article 2 of the Ordinance states that the rules it lays down apply "subject to international conventions". Consequently, entry to France cannot lawfully be refused if that would contravene the principles set forth in article 3 of the Convention against Torture. In practice, persons who do not meet the legal conditions for admission to France and fear they will be tortured in the event of their refoulement to another State apply for the right of asylum in France, invoking the "fear of being persecuted" mentioned in article 1 of the Geneva Convention relating to the Status of Refugees of 28 July 1951, an instrument binding on the French authorities article 33 of which prohibits the refoulement of refugees to countries where they fear for their lives or freedom.

28. Decree No. 82-442 of 27 May 1982, as amended, which was the enabling instrument for article 5 of the Ordinance, stated in article 12 that: "when an alien applies for the right of asylum on his arrival at the frontier, the decision to refuse him entry into France may only be taken by the Minister of the Interior after consultation with the Minister for Foreign Affairs".

29. In a decision dated 3 September 1986, the Constitutional Council determined that article 5 of the Ordinance (as amended by Act No. 86-1025, promulgated on 9 September 1986) implicitly but necessarily preserved the rights of refugees. The Council of State had, moreover, previously decreed, in a decision dated 27 September 1985, that article 12 of the Ordinance merely defined the competent authority and the procedure for refusing entry "insofar as the legally applicable provisions allow it, taking into account inter alia the stipulations of the international conventions relating to refugees". Hence a refugee cannot be returned if the effect of doing so would be to send him to a country where he was at risk.

30. Act No. 92-625 of 6 July 1992, which spells out the conditions under which aliens can be kept in holding areas, refers expressly to the case of persons who request asylum in France. Such persons may only be kept in a holding zone "for so long as is strictly necessary [...] for an enquiry to determine whether [their] request is not manifestly unfounded" (Ordinance No. 45-2658 of 2 November 1945 relating to the conditions of entry and residence of aliens in France, article 35 quater, as amended). Conversely, providing an alien's request for asylum is not "manifestly unfounded", he can enter France.

31. Even if it was considered that the case of individuals under threat of torture was different from that of refugees, and consequently was not covered by the rules formulated for refugees, a similar line of reasoning would have to be followed concerning the possibility of returning a person at risk of being tortured. The Convention against Torture would prevent the person's refoulement, since it takes precedence over domestic law.

(b) Removal from the territory

32. Under French law, the removal of an alien from French territory may be a consequence of a judicial decision banning the person from entering the territory and entailing escort to the border, of an administrative decision to escort him to the border because he had entered or was in France illegally, or of an administrative decision to expel the person because his/her presence represents a serious threat to public order.

33. Act No 93-1027 of 24 August 1993 added to the Ordinance of 2 November 1945 an article 27 bis reading:

> An alien who is the subject of an expulsion order or who must be escorted to the border shall be sent:
>
> 1. Unless the French Office for the Protection of Refugees and Stateless Persons or the Refugees Appeal Board has recognized him as a refugee or a decision is still pending on his request for asylum, to his country of nationality; or
>
> 2. To the country which issued him with a valid travel document; or
>
> 3. To a country to which he may lawfully be admitted.
>
> No alien may be sent to a country if he proves that his life or freedom would be in danger there or that he would be at risk there of treatment contrary to article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950.

34. The last paragraph of the article therefore incorporates directly into the Ordinance of 2 November 1945 the requirements of article 3 of the European Convention on Human Rights, which provides that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". It thereby also fulfils the requirements of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. No administrative authority which has properly decided that an alien shall be removed from French territory can lawfully send the person to a country where he will be at risk of torture or inhuman or degrading treatment.

35. Article 27 ter of the Ordinance of 2 November 1945 as amended by the Act of 24 August 1993 stipulates that the decision as to the country to which an alien who is subject to removal from French territory shall be returned is a separate matter from the decision on removal and is appealable to an

administrative court. If the appeal against the decision fixing the country of return is lodged at the same time as an appeal against the order for escort to the border on grounds of unlawful entry to or residence in France, it stays execution in the same way.

36. In any event, it must be stressed that safeguards exist as regards both escort to the border and expulsion. In each case, the very principle of the measure is subject to judicial control.

(a) Escort to the border:

(i) Upon being notified of the order to escort him to the border, the alien is immediately allowed to notify a counsel, his consulate or a person of his own choosing;

(ii) Pursuant to article 22 bis of the Ordinance of 2 November 1945, as amended by Act No. 90-34 of 10 January 1990, an order for escort to the border is not enforceable until 24 hours after the alien has been notified of it. In the intervening period the alien may lodge with the president of the administrative court an application for the annulment of the order. The president or his representative must rule on the application within 48 hours of its submission. The appeal stays execution, meaning that the order for escort to the border cannot be enforced until the 24-hour time-limit has expired or, if annulment has been sought, until the court has ruled on the application;

(iii) The alien may, in connection with the proceedings before the president of the administrative court or his representative, request the assistance of an interpreter and the production of the file containing the documents on the basis of which the decision complained of was taken. The hearing is public and must take place in the presence of the alien and of his counsel, if he has one. When an alien has no counsel, he may request the president of the court or his representative to assign him one. The ruling may be appealed to the Council of State.

(b) Expulsion

(i) The alien must be notified in advance and given at least two weeks' notice to appear before a commission of magistrates, whose proceedings are public;

(ii) Act No. 89-548 of 2 August 1989 states that while his situation is being reviewed by the commission, the alien has the right to be assisted by counsel or any person of his choice and to be heard with an interpreter. Furthermore, since the adoption of Act No. 91-647 of 10 July 1991, he may apply for legal aid in order to have the services of counsel free of charge; this entitlement must be mentioned in the summons to appear before the commission of magistrates;

(iii) The alien may explain to the commission the reasons why he should not be expelled. A record of his explanations must be sent, together with the commission's substantiated opinion, to the Minister of the Interior, who decides;

(iv) If the Minister of the Interior decides on expulsion, the decision may be referred to the administrative court;

(v) The requirement to seek the opinion of the commission is waived in cases of the utmost urgency. Even then, however, the expulsion order may be appealed to the administrative court on grounds of illegality, and the appeal may be accompanied by an application for stay of execution.

(c) Extradition

37. In France, extradition is regulated by the Act of 10 March 1927, which makes admissibility of requests for extradition subject to requirements of validity and form. These safeguards are strengthened by rules of procedure guaranteeing the exercise of the rights of defence. An individual whose extradition is requested is heard by the Indictments Chamber. Extradition may not be granted in the case of a negative opinion by the Indictments Chamber. If extradition is granted following a favourable opinion by the Indictments Chamber, the person extradited also enjoys certain safeguards.

38. These provisions are supplemented by France's international commitments, with the aim of providing increased protection for persons subject to extradition. When France ratified the European Convention on Extradition (done at Paris on 13 December 1957), on 10 February 1986, it made the following reservations:

> Extradition will not be granted when the person sought would be tried in the requesting State by a court which does not offer the fundamental guarantees in respect of procedure and the protection for the rights of the defence or by a court established for his particular case, or when extradition is requested for the purposes of executing a sentence or a security measure imposed by such a court.
>
> Extradition may be refused if his surrender is likely to have exceptionally serious consequences for the person sought.

France has also reserved the option of refusing extradition if "the penalties or security measures are not provided for in the scale of penalties applicable in France".

39. The legal remedies available ensure that these principles are respected. If the Indictments Chamber declares in favour of an application, an appeal to vacate may be made, with suspensive effect (decision by the Court of Cassation, 17 May 1984).

40. Furthermore, the administrative court has decided that decrees adopted pursuant to the Act of 10 March 1927 on behalf of a foreign State can be treated separately from France's international relations, and a person whose

extradition has been authorized may appeal on grounds of illegality (Council of State, decision of 28 May 1937, Decerf). The Council of State monitors the legal classification of the circumstances justifying extradition (Council of State, 24 June 1977, Astudillo Caleja) and verifies the conformity of the extradition orders with international conventions. It takes French public policy into account. Consequently, it has decided that the extradition of an individual who might well incur the death penalty (which has been abolished in France) would be contrary to French public policy (decision of 27 February 1987, Fidan). It also takes into account the general principles of the law on extradition. In particular, it examines the respect for the "fundamental rights of the human person" especially by the judicial system of the requesting country (Uriza Murquitio, 14 December 1987)

41. Lastly, in a decision of 1 April 1988 (Bereciartua Echarri), the Council of State quashed an order granting to the authorities of the country of origin the extradition of a person who had been granted refugee status. The Indictments Chamber of the Paris Court of Appeal recently took a similar decision by refusing to approve the extradition of a refugee to his country of origin (Arrospide-Sarasola, l June 1988).

42. Consequently, even if France had not ratified the Convention, extradition that would render a person liable to torture, either as part of or outside the legal proceedings, might be considered to be unlawful by French courts. The entry into force of the Convention confirmed this trend. It should be emphasized that observance of the provisions of article 3 is ensured not only by national legal remedies, but also by individual applications, as mentioned in the introduction, to the United Nations Human Rights Committee and the European Commission of Human Rights.

43. Mention should be made in this respect of the ruling of the European Court of Justice of 7 July 1989 to the effect that a decision by the United Kingdom to surrender a German national to the United States authorities would, if enforced, breach article 3 of the European Convention on Human Rights. The Court reached this finding after noting that there were serious grounds for thinking that if the German returned to the state of Virginia, where he had been accused of a double murder, he would be sentenced to death and therefore at risk from "death row syndrome" (ECHR, 7 July 1989, Soering/United Kingdom).

ARTICLE 4

Paragraph l

44. As already stated, acts of torture are classified as a distinct crime by article 222-1 of the new Criminal Code that came into force on 1 March 1994. Under the previous Code, they merely constituted an aggravating circumstance in connection with certain offences. The first paragraph of the new article 222-1 provides:

> The subjection of persons to torture or to acts of barbarity shall be punishable by 15 years' rigorous imprisonment.

45. The classification of torture and acts of barbarity as a crime has eliminated shortcomings in the punishment of torture. Before the new provisions came into effect, how violations of the person were classified depended directly on the degree of injury. Now what counts is that such violations are inherently serious, irrespective of their outcome. In particular, a person may now be prosecuted for attempted voluntary injury; that was not the case before. The result is that nowadays attempted mutilation may be classified as attempted torture.

46. Moreover, article 222-3 of the new Criminal Code, which enumerates aggravating circumstances relevant to torture and acts of barbarity, refers expressly to the commission of such acts by public officials:

> The offence defined in article 222-1 shall be punishable by 20 years' rigorous imprisonment if committed:
>
> [...]
>
> 7. In or in connection with the performance of his functions or duties by a person vested with public authority or a public servant.

Should a public official commit acts of torture on instructions from representatives of the “lawful authorities”, article 122-4 of the new Criminal Code precludes his exoneration if the acts are “manifestly unlawful” - as would, clearly, be the case.

47. The new provisions of the Criminal Code concerning torture are also applicable to members of the armed forces, pursuant to article 27 of Act No. 72-662 of 13 July 1972, which states that “members of the armed forces are subject to the provisions of ordinary criminal law and to those of the Code of Military Justice”. In addition, article 441 of the Code of Military Justice punishes incitement to commit acts that are contrary to duty or to discipline.

48. Articles 121-4 to 121-7 of the new Criminal Code make attempted torture and complicity in torture punishable in the same way as torture itself:

> Article 121-4: “Author of the offence” shall mean the person who:
>
> 1. Commits the acts constituting the offence;
>
> 2. Attempts to commit a serious or, in the cases provided for by law, an ordinary offence;
>
> Article 121-5: An attempt occurs when action commences and is interrupted or fails to achieve its aim only because of circumstances beyond the author’s control;
>
> Article 121-6: An accomplice in an offence within the meaning of article 121-7 shall be punishable as its author;
>
> Article 121-7: “Accomplice” in a serious or ordinary offence shall mean any person who wittingly aids or abets its preparation or commission.

> The term “accomplice” shall also apply to any person who, by gift, promise, threat, order or abuse of authority or power causes an offence or gives instructions for it to be committed.

Lastly, it should be noted that “torture and inhuman acts” may also count as constituent elements of a crime against humanity as defined in article 212-1 of the new Criminal Code.

Paragraph 2

49. The new Criminal Code has an entire paragraph (articles 222-1 to 222-6) devoted to punishment of torture and acts of barbarity. Article 222-1, which establishes the offence of torture, provides for a penalty of 15 years’ rigorous imprisonment subject to an automatic minimum term, meaning that the prisoner must serve half his sentence before becoming eligible for abatement. Articles 222-44, 222-45, 222-47 and 222-48 provide for numerous supplementary penalties, including deprivation of civic, civil and family rights, prohibition of residence in France and banishment from French territory.

50. The law provides for three levels of aggravation of the offence:

(a) The penalty is increased to 20 years’ rigorous imprisonment if the acts are accompanied by sexual assault other than rape or if they are committed in any of the 10 other aggravating circumstances provided for in article 222-3. As had already been said, those circumstances include the commission of torture in or in connection with the performance of his functions or duties by a person vested with public authority or a public servant;

(b) The penalty is increased to 30 years’ rigorous imprisonment in any of the following three cases: if the offence is committed against a child under 15 by an older relative or a person in authority over the minor; if the offence is repeatedly committed against a child under 15 or a vulnerable person; if the offence occasions mutilation or permanent disability;

(c) The penalty of rigorous imprisonment for life is applicable if the torture or acts of barbarity unintentionally cause the victim’s death or are practised in conjunction with another crime.

51. It should be noted that the commission of acts of torture always constitutes an aggravating circumstance in relation to certain other offences: for example, rape (article 222-6); procuring (article 225-9); kidnapping (article 224-2, paragraph 2); theft (article 311-10) and extortion (article 312-7).

ARTICLE 5

52. Book I, Title One, chapter III of the new Criminal Code, concerning the territorial scope of criminal law, largely reproduces the provisions of the old Code of Criminal Procedure, Book IV, Title X, i.e. the former articles 689 to 689-2 and 693 which were quoted in the initial report of France in 1988. The requirements of article 5 of the Convention are, therefore, satisfied by the following provisions:

Paragraph 1 (a), (b) and (c)

53. Articles 113-2 to 113-7 of the new Criminal Code respectively provide as follows:

> Article 113-2: French criminal law shall be applicable to offences committed within the territory of the Republic;
>
> An offence shall be deemed to have been committed within the territory of the Republic if the acts constituting it took place within that territory;
>
> Article 113-3: French criminal law shall be applicable to offences committed on board or against vessels flying the French flag, wherever they may be. It alone shall be applicable to offences committed on board or against vessels of the French Navy, wherever they may be;
>
> Article 113-4: French criminal law shall be applicable to offences committed on board or against aircraft registered in France, wherever they may be. It alone shall be applicable to offences committed on board or against French military aircraft, wherever they may be;
>
> Article 113-5: French criminal law shall be applicable to any person who renders himself guilty within the territory of the Republic, as an accomplice, of a serious or ordinary offence committed abroad if that offence is punishable by both French and foreign law and is confirmed by a final decision of a foreign court;
>
> Article 113-6, paragraph 1: French criminal law shall be applicable to any serious offence that is committed by a French national outside the territory of the Republic;
>
> Article 113-7: French criminal law shall be applicable to any serious or ordinary offence punishable by imprisonment that is committed outside the territory of the Republic by a French national or an alien if the victim was of French nationality at the time of its commission.

54. Article 689 of the Code of Criminal Procedure as amended by the Act of 16 December 1992 states that:

> The authors of and accomplices in offences committed outside the territory of the Republic may be prosecuted and tried by French courts when, pursuant to the provisions of the Criminal Code, Book 1, or of another legislative instrument, French law is applicable or when an international convention gives French courts jurisdiction to deal with the matter.

55. It follows that French courts have jurisdiction over torture and acts of barbarity in the cases referred to in article 5, paragraph 1, of the Convention.

Paragraph 2

56. Articles 689-1 and 689-2 of the Code of Criminal Procedure as amended by the Act of 16 December 1992 came into force on 1 March 1994 and concern just the situation referred to in article 5, paragraph 2, of the Convention:

> Article 689-1: Pursuant to the international conventions referred to below, any person who renders himself guilty outside the territory of the Republic of any of the offences enumerated in those articles may, if in France, be prosecuted and tried by French courts. This article shall apply to attempts to commit any of those offences whenever such attempts are punishable;
>
> Article 689-2: For the purposes of the application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted at New York on 10 December 1984, any person guilty of torture within the meaning of article 1 of the Convention may be prosecuted and tried under the conditions stated in article 689-1.

These new provisions are very similar to those of article 689-2 of the old Code of Criminal Procedure as amended by Act No. 85-1047 of 30 December 1985.

ARTICLE 6

Paragraphs 1 and 2

57. To explain how this article may apply, it is necessary to specify the circumstances in which it may apply, assuming the suspect to be on French territory.

58. In the first category of situation, i.e. when the offence has been committed by a French national on French territory against another French national, France alone has jurisdiction. In a second category of situation, i.e. when the offence has been committed by a national of a foreign State on the territory of that State against another national of the same State, in accordance with the usual principle of international criminal law, that State alone has jurisdiction and is entitled to demand extradition of the offender or suspect. France would generally agree to such extradition, particularly in view of article 8 of the Convention. If however France does not grant extradition in such a case, it has the necessary jurisdiction to try the individual in question, as was shown with reference to article 5.

59. The question of competing jurisdiction may arise between France and another State, in particular when an offence has been committed by a French national or against a French national on the territory of that State, or when it has been committed by a national of that State on French soil.

60. Depending on the circumstances and the stance adopted by the French Government, the following may be applied:

(a) The system of ordinary law as defined in the Code of Criminal Procedure: a preliminary investigation by the judicial police on instructions

from the public prosecutor or automatically under the supervision of the public prosecutor; 24-hour custody which may be renewed once pending the institution of proceedings by an initiating order issued by an examining magistrate on the instructions of the public prosecutor; possibly preventive detention if charges are preferred (mise en examen);

(b) The law on extradition (Act of 10 March 1927, under article 696 of the Code of Criminal Procedure): interim arrest warrant issued by the public prosecutor (Act of 10 March 1927, article 19), examination as to personal particulars by the prosecutor or a member of his department within 24 hours of the arrest (article 11), earliest possible transfer and remand in custody in the public jail of the seat of the Court of Appeal within whose territorial jurisdiction the person concerned was arrested (article 12), notification abroad within 24 hours of receipt of the documents supporting the extradition request and the evidence on which the arrest was made, interrogation within the same period, immediate referral to the Indictments Chamber and appearance of the alien before the Chamber within a period not exceeding one week (article 13).

61. Hence, in all cases, French legislation enables the responsible authorities to ensure the presence or detention of the suspect and it prescribes an immediate investigation.

Paragraph 3

62. This point is covered by article 36 (Communication and contact with nationals of the sending State), paragraphs 1 (b) and (c) and 2, of the Vienna Convention on Consular Relations of 24 April 1963, which provides as follows:

> 1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:
>
> [...]
>
> (b) If he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;
>
> (c) Consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

> 2. The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended.

63. With a view to simplifying the application of these provisions, on 17 May 1982, the Minister of Justice sent a circular to judges, prosecutors and prison administrators (Circular No. 82-14). It will be noted that this article must be applied even to nationals of States which have not ratified the Vienna Convention on Consular Relations. That instrument did not specifically regulate the case of stateless persons. The Convention against Torture equates them with the nationals of the State where they usually reside.

Paragraph 4

64. This paragraph informs States Parties of the conduct to be followed in the instances contemplated in paragraph 1. There is no current provision in French law to impede its implementation, if necessary.

ARTICLE 7

Paragraph 1

65. This paragraph follows directly from article 5, paragraph 2, and applies the principle of aut dedere aut judicare to the specific case of offences referred to by the Convention. No particular comments are therefore required.

Paragraph 2

66. Under French law, acts of torture constitute serious offences, as was stated under article 4 above. Accordingly, they may be treated only as such by the competent prosecuting authorities. In addition the standards of evidence are independent of the grounds on which the State exercises its jurisdiction.

Paragraph 3

67. All persons facing charges are entitled to fair treatment regardless of the nature of the offence with which they are charged, in accordance with French law and the international instruments to which France is a party, foremost among them the International Covenant on Civil and Political Rights (article 14) and the European Convention on Human Rights (article 6).

ARTICLE 8

Paragraph 1

68. This is a directly enforceable provision which complements existing extradition treaties. It is binding, even if an extradition treaty concluded in the future between States Parties to the Convention does not include torture as grounds for extradition.

Paragraphs 2 and 3

69. These two paragraphs deal with two mutually exclusive cases. Paragraph 2 does not apply to France as France does not make extradition conditional on the existence of a treaty. Indeed, the Act of 10 March 1927 defines conditions, procedure and effects in respect of extradition in the absence of a treaty. Hence, France is among the States referred to in paragraph 3 and recognizes acts of torture as cases for extradition under the conditions laid down in the Act of 10 March 1927. Furthermore, political considerations which, under French law, may constitute an objection to extradition may not be taken into account when an act of torture has been committed.

70. Admittedly, article 5 of the Act of 10 March 1927 states that extradition will not be granted "when the crime or offence is political in character or the product of circumstances such that extradition is requested for a political purpose". However, it does make extradition possible if "acts of abhorrent barbarity and vandalism prohibited by the laws of war" have been committed during a civil war. Furthermore, and above all, the Council of State considers that the fact that some crimes of a non-political nature may have been committed for a political purpose does not warrant, in view of their seriousness, their being regarded as political in character (cf. judgements Croissant, 7 July 1978, Rec., p.292, Gador Winter and Piperno, 13 October 1982).

Paragraph 4

71. This provision is directly enforceable. It should be noted that, between States Parties to the Convention applying it in good faith, there can be no contradiction between article 8 and article 3. Nonetheless, there are some grounds on which France may impede the extradition of a torturer. This would be the case, for example, if he faced the death penalty in the requesting country, either for the crime of torture or on some other count. In such an instance, article 5, paragraph 2, would naturally be invoked.

ARTICLE 9

72. This traditional provision is similar to that appearing in several international conventions on criminal matters such as the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970 (article 10) and the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 23 September 1971 (article 11). In French internal law the rules applicable to the satisfaction of demands for judicial assistance are those set forth in articles 30 et seq. of the above-mentioned Act of 10 March 1927.

ARTICLE 10

73. The rules prohibiting and punishing the use of torture appear in the basic provisions regulating each of the professions concerned. A working knowledge of these articles is therefore included in the training courses organized for their members. Obviously, study of the Criminal Code and Code of Criminal Procedure forms the basis for the training of magistrates and

lawyers. As regards military personnel, the general disciplinary regulations for the armed forces (Decree No. 75-675 of 28 July 1975, amended) are part of the programme for all training courses, including those for national service personnel. The principle of the prohibition of torture, established by international law and by the Convention in particular, is therefore widely publicized among the general public.

74. The other relevant texts (the general military regulations, the Code of Military Justice) form part of the programmes intended for future non-commissioned and commissioned officers. The courses organized by the national advanced training centre for judicial police and courses for non-commissioned and senior officers of the national gendarmerie emphasize Circular No. 9600 DN/GEND EMP/SERV of 4 March 1971, which concerns the measures to be taken to ensure respect in the activities of the judicial police for the fundamental rights of the individual. Attention was further drawn to the contents of that circular in Note No. 10990 DEF/GEND/OE/PI/DR of 22 April 1994.

75. Concerning the police, the Code of Ethics (Decree No. 86-592 of 18 March 1986) is widely circulated and commented upon and is taught in police training colleges. In addition, the training of members of the police and police officers comes under the authority of the National Police General Inspectorate which, inter alia, supervises educational establishments. Members of this body themselves participate in the teaching, particularly with regard to police ethics. Decree No. 93-1081 of 9 September 1993 established a National Police Ethics Board. The Board, which is chaired by a member of the Council of State, comprises two senior judges, an academic, a lawyer, a journalist, a member of the civil service inspectorate, two serving officers of the national police and one retired officer of that force. It has been invited by the Minister of the Interior to submit to him proposals concerning, in particular, the ethical training of police officers.

76. Training in the prison regulations, the guiding principle of which is respect for the inherent dignity of the individual, is provided for all categories of prison staff by the National School of Prison Administration. Instruction on penal law and procedure and national institutions is also provided. Criminal lawyers and representatives of humanitarian and human rights organizations assist in this instruction. In 1996, the prison service issued a publication entitled “Prison et droits de l’homme” (Prison and Human Rights) on the jurisprudence of the European Commission and Court of Human Rights applicable to prisoners. This document, which has been widely distributed among prison staff, draws attention in particular to the inadmissibility of subjecting prisoners to torture.

77. With regard to the medical profession, the Code of Medical Ethics as amended by a decree of the Council of State dated 6 September 1995 sets out doctors’ general obligations and the duties they have to their patients. Article 2 of the Code makes it incumbent on every doctor to exercise his calling “in a spirit of respect for human life and for the individual and his dignity”. Article 10 specifies how to behave towards persons in detention:

> No doctor who has to examine or provide care to a person deprived of liberty shall directly or indirectly promote or sanction, even if only by his presence, infringement of that person's physical or mental integrity or dignity.

78. Similar rules appear in the codes of ethics of the other two medical professions, viz. dental surgeons and midwives, and in the professional rules for nurses. The curricula for medical and nursing studies provide for training in the legislation, ethics, deontology and responsibilities specific to these professions.

ARTICLE 11

79. The concepts of "custody" and "treatment of persons subjected to any form of arrest, detention or imprisonment" relate to a number of distinct juridical situations that are described below.

(a) Custody

80. A person may initially be deprived of freedom of movement by being committed to custody. The decision to commit may be taken only by an officer of the judicial police in the circumstances laid down in articles 63, 77 or 154 of the Code of Criminal Procedure, i.e. in the event of a crime or of capture in flagrante delicto, of a preliminary investigation, or in execution of a rogatory commission. In the case of a preliminary investigation, people may be committed to custody only if there is "reason to believe that they have committed or attempted to commit an offence" (article 77).

81. Acts Nos. 93-2 of 4 January 1993 and 93-1013 of 24 August 1993 were passed to clarify the conditions applicable to detention in custody, and gave people thus deprived of their liberty improved rights. As regards supervision of custody by the judicial authorities, it should be stressed that judicial police officers are now required to notify the public prosecutor or investigating magistrate concerned without delay of any committal to custody (arts. 63 and 154 of the Code of Criminal Procedure). The law also expressly states that the public prosecutor must supervise custody in order to ensure that all goes smoothly and that the formalities laid down in the new Act (article 41) are observed. For people held in custody, the legislature has created new rights to end their isolation without compromising the investigation in progress. These are described below.

82. **The right of a person in custody to be informed, in a language he understands, of the safeguards legally available to him and the law governing the duration of custody** (Code of Criminal Procedure, arts. 63 and 63-1). The maximum duration of custody is 24 hours, which may however be extended by not more than 24 hours with the written authorization of the public prosecutor. Pursuant to the new provisions of article 63-1 of the Code of Criminal Procedure, notes detailing the rights of people in custody were sent in 1993 to all departmental gendarmeries and police services. The notes were produced in a variety of languages. If a foreigner held in custody cannot read any version of the note, an interpreter may be called in. If a French national held in custody cannot read, the judicial police officer will inform him orally of his rights and safeguards.

83. Article 64 of the Code requires the judicial police officer to indicate on the transcript of the statement taken from a person held in custody the lengths of the periods of questioning undergone and the periods of rest in between, and the dates and times at which the person was taken into custody and subsequently liberated or brought before a competent court. This information must be initialled separately by the individual concerned; a note to that effect must be added if he refuses. The annotation must specify the reason for custody.

84. **The right to warn a family member of the action taken against him.** This right, preventing people in custody from being kept isolated, guards against the ill-treatment that may occur if the individual concerned is cut off from the outside world. If, however, the judicial police officer believes that giving the family notice would hamper the progress of the investigation, he must refer immediately to the public prosecutor, who will then decide whether or not to accede to the request or defer notice (article 63-2).

85. **The right to a medical examination.** People held in custody are informed of this right as soon as they are taken into custody, and can ask to be examined by a doctor designated by the public prosecutor or by the judicial police officer. They may request another examination if custody is extended. A medical examination is also required, even if the individual concerned does not ask for one, if a member of his family does. Lastly, the public prosecutor or judicial police officer may at any time officially designate a doctor to examine a person held in custody. Such an examination must take place without delay, and the certificate, which must include an indication of the doctor’s opinion as to whether the detainee is fit to be kept in custody, is put on the file (article 63-3).

86. **The right to see a lawyer** confidentially **after the first 20 hours of custody** (article 64-4). If the person in custody is not in a position to designate a lawyer or the lawyer chosen cannot be reached, the person in custody can ask for a lawyer to be officially assigned to him. To improve the organization and quality of criminal defence, a decree dated 4 February 1994 establishes arrangements for recompensing lawyers so assigned.

87. Any information obtained in breach of these provisions of articles 63, 63-1, 63-2, 63-3 and 63-4 will be deemed null and void (art. 171 of the Code of Criminal Procedure). It should also be mentioned that a circular dated 1 March 1996 on the conditions governing committal to custody was sent to every public prosecutor's office in France, asking what difficulties had been encountered in enforcing the new legislation and how the situation might be improved. The initial findings from this inquiry indicate that articles 63 et ff. of the Code of Criminal Procedure are being respected and that the judiciary is keeping a constant watch over committals to custody.

88. As stated in the 1988 initial report, the judicial police operates under the supervision of the government procurators at the courts of major jurisdiction (art. 12 of the Code of Criminal Procedure) and, within the territorial jurisdiction of each Court of Appeal, is overseen by the public prosecutor of the appeal court and the Indictment Division. If judicial police officers fail to respect any of the above provisions, the Indictment Division can admonish them or suspend them, temporarily or permanently,

without prejudice to any purely disciplinary measures that may be imposed by their superiors. If, moreover, the Indictment Division considers them to have committed a criminal offence, it will have the file forwarded to the public prosecutor (arts. 224 to 230 of the Code of Criminal Procedure).

89. Judicial police officers are not immune from criminal liability as they go about their duties, and can be prosecuted in the criminal courts. If unlawful conduct on the part of a judicial police officer amounts to a criminal offence, as would be the case with torture, the victim can obtain redress by bringing a civil action before the civil courts.

(b) Military justice

90. Act No. 93-2 dated 4 January 1993 on criminal procedure reform has applied since 1 March 1996 to proceedings falling within the jurisdiction of army tribunals, naval, military and air force courts and provosts' courts. As of that date, therefore, the new provisions described above have also applied to custody in military matters.

91. The Hardouin decision, handed down by the Council of State on 17 February 1995, introduced real judicial checks on disciplinary measures in the armed forces. The Council ruled that a complaint could be lodged before the courts, on grounds of illegality, against arrest as a punishment as provided for in articles 30 and 31 of Decree No. 75-675 (the Armed Forces (general disciplinary regulations)) dated 28 July 1975.

(c) Imprisonment

92. A person may be imprisoned either because, in the circumstances provided for by law, he has been placed in pre-trial detention by order of an examining magistrate as provided for in articles 144 to 148-5 of the Code of Criminal Procedure, or because he is serving a term of imprisonment. In either case, the prison regime is governed by Book V (execution arrangements), Title II (detention), of the Code of Criminal Procedure.

93. Article D.189, paragraph 2, of the Code sets forth the general principle of respect for the individual:

> The prison administration shall ensure respect for the dignity inherent in the human person in regard to all the detainees for which it is responsible in any capacity, and shall do its utmost to facilitate their reintegration into society.

94. In particular, article D.174 states:

> Prison staff must not use force against detainees except in the event of self-defence, attempted escape, or violent or passive resistance to orders. When they do use force, they must do so only to the strict extent necessary.

95. Article D.172 states that “no coercive measure may be used as a punishment for indiscipline”. As regards disciplinary punishment for detainees, a new system has been instituted by the decree dated 4 April 1996

and the implementing circular dated 12 April 1996. The new system clearly defines what constitutes a disciplinary offence and spells out the punishments applicable.

96. The implementing circular explicitly refers to the European Prison Rules and the European Convention for the Protection of Human Rights and Fundamental Freedoms. It stipulates that disciplinary action "must satisfy the principles [...] laid down in Council of Europe recommendation (R.87) 3 on the European Prison Rules", which prohibit, in particular, "any cruel, inhuman or degrading punishment" as a disciplinary measure. Prison staff would of course be liable to criminal and civil proceedings if detainees were tortured.

97. In any event, there are a number of provisions guaranteeing that conditions in detention are supervised and monitored, and guarding against torture, as detailed below:

(i) Visits and reports by judicial authorities

98. Articles 727 and D.176 to D.179 of the Code of Criminal Procedure require visiting magistrates, the presidents of Indictment Divisions, investigating magistrates, children's magistrates, government procurators and public prosecutors to pay regular visits to prison establishments to check on the conditions in which the detainees under their jurisdiction are held. If they have any comments, they may make them known to the authorities concerned for action to be taken. Additionally, visiting magistrates are required to report annually to the Minister of Justice, through the heads of the various courts, on the execution of sentences. The first President and the public prosecutor report annually to the Minister of Justice on the operation of the prison establishments under their jurisdiction and the performance of their staff. They may meet detainees with no member of the prison staff present (art. D.232 of the Code of Criminal Procedure).

(ii) Visits by the supervisory committee

99. Composed of local administrative and judicial authorities, the supervisory committee is responsible for "internal inspection of the prison as regards cleanliness, safety, feeding arrangements, health services, work, discipline, observance of the regulations, education and the social reintegration of detainees" (article D.184). It meets at least once a year, visits the establishment, conducts any interviews it considers necessary, and receives applications from detainees concerning any matter within its jurisdiction. It may communicate any comments, criticisms or suggestions it feels it necessary to make to the Minister of Justice.

(iii) Inspection visits

100. Under article D.229 of the Code of Criminal Procedure, prison establishments are inspected regularly by the Prisons Administration inspection service, the prefect, and any other administrative authorities with supervisory responsibilities for the various prison administration services.

(iv) Medical supervision

101. Act No. 94-43 of 18 January 1994 made the public hospital service responsible for providing detainees with diagnostic and health care. Since that time, therefore, doctors from outside the prison administration have systematically given the medical check-ups to all new detainees and made the mandatory visits to detainees held in isolation and punishment blocks. When a doctor finds that a detainee's state of health is incompatible with his continued detention in a punishment block, the punishment is suspended. The doctor may proffer an opinion whenever he sees fit as to the desirability of continuing or ceasing to hold a detainee in an isolation block. He may at any time advise the head of the establishment that he believes a detainee's state of health is incompatible with his maintenance in detention.

(v) Judicial supervision

102. It should be made plain at the outset that no detainee may be deprived in any circumstances of the opportunity to communicate with counsel. Every detainee can also take advantage of the possibilities available under articles 259 and 260, first paragraph, of the Code of Criminal Procedure:

> Article 259: Detainees may submit requests or complaints to the head of the establishment, who shall grant an interview if sufficient grounds are advanced. Detainees may request an interview with the magistrates and officials responsible for inspecting or visiting the establishment with no member of the prison staff present.
>
> Article 260, first paragraph: Detainees and parties to whom an administrative decision gives grounds for a complaint shall be entitled to request referral of the decision to the regional director, if the decision emanates from the head of an establishment, or to the Minister of Justice if the decision emanates from a regional director.

103. The effect of these provisions is to enable any detainee to enter an administrative appeal before seeking a judicial remedy before the administrative courts. The administrative courts have been given greater supervisory authority over conditions in detention since the decision (Marie) handed down by the Council of State on 17 February 1995. The Council ruled admissible an appeal on grounds of illegality against a head of establishment's decisions to place a detainee in a punishment block. Such measures had previously been held to be internal sanctions that afforded no grounds for a complaint. Moreover, article D.262 allows detainees to write confidentially to a number of administrative and judicial authorities: "Detainees may at any time write letters to the French administrative and judicial authorities appearing on a list drawn up by the Minister of Justice. Such letters may be submitted sealed, and shall then not be subject to any form of scrutiny; their dispatch must not be delayed."

104. By note dated 20 June 1994, the Prisons Administration included among the aforesaid authorities all members of the European Commission and Court of Human Rights, and the chairman of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

105. Military and naval detainees may write without restriction to the French military or naval authorities, and be visited by representatives of the military or naval authorities designated in the committal proceedings (article D.263). Foreign detainees may, subject to reciprocal arrangements, contact the diplomatic or consular representatives of their home States (article D.264).

(d) Detention of foreigners in holding areas, in administrative detention or in judicial confinement

(i) Holding areas

106. Foreigners awaiting permission to enter France or unable to complete their onward journeys used to be kept in the “international” areas of ports and airports for as long as was necessary to consider their applications or arrange their return home. There were no specific regulations to govern this situation, and the safeguards available to them were announced by circular only (circular dated 26 June 1990).

107. When voting on Act No. 92-190 of 26 February 1992, which amended various provisions of the amended order No. 54-2658 of 2 November 1945 governing entry into and residence in France by aliens, the Constitutional Council, taking up the matter at the Prime Minister's suggestion, affirmed by decision dated 25 February 1992 that keeping foreigners in holding areas was constitutional provided that they were not kept there for an unreasonable period and that the courts handed down a decision as soon as possible (Journal officiel, 27 February 1992).

108. Act No. 92-625 of 6 July 1992, on holding areas at ports and airports, was passed after that decision (Journal officiel, 9 July 1992). The new language appears in article 35 quater of the order of 2 November 1945, subsequently amended by Act No. 94-1136 of 27 December 1994 to cover railway stations open to international traffic. The latter Act clarified and tightened the rules applicable to transfer from one holding area, where foreigners are held, to another from which they will actually depart.

109. With an eye to the right of asylum and individual freedom, therefore, France has developed rules that offer numerous safeguards to those concerned. The latter include two distinct categories of foreigners: first, foreigners without permission to enter France or unable to complete their onward journeys, who will be held only so long as is strictly necessary for them to depart; and then, foreigners applying for admission as asylum seekers, who can be held only for the purpose of conducting proceedings to determine whether their application for asylum is manifestly unjustified and, if so, for enforcing the decision to refuse them entry.

110. Here it should be pointed out that, to protect the right of asylum, an asylum seeker can be refused entry into France only by decision of the Minister of the Interior, not the border police, after consultation with the Minister for Foreign Affairs (art. 12 of decree No. 82-442 dated 27 May 1982, amended).

111. The procedure for holding foreigners and the related safeguards are the same for both categories: at any point in the proceedings, foreigners may leave the holding area for the foreign destination of their choice; and they are held in hotel-type premises where they are fed and lodged. They may at any time request the assistance of an interpreter or a doctor, and may communicate with anyone they please.

112. Detention in holding areas is subject to strict deadlines. The procedure comprises a number of phases, each of which comes with its own safeguards:

- **The decision to detain an individual for a maximum period of 48 hours, renewable once**, is taken by the chief of the border control service. The decision must be in writing and state how it was arrived at; it must be registered and brought without delay to the attention of the government procurator for scrutiny. The foreigner is immediately informed of his rights and obligations, through an interpreter if necessary.

- **After four days, detention may be extended only with the authorization and under the supervision of a judge** - the president of the court of major jurisdiction for the geographical area concerned. The administrative authorities must explain to the court why it has not been possible to send the foreigner home or, if he has applied for asylum, to grant him entry, and state how long it will take to arrange for his departure from the holding area. The court will issue its finding in the form of an order after interviewing the individual concerned in the presence of his counsel, who can challenge the detention.

- **The extension may not be for more than eight days.** The order authorizing or denying extension of detention may be appealed to the first President of the Court of Appeal, who has 48 hours to issue a decision.

- **Only exceptionally may the extension be renewed for a further eight days**, following the same procedure.

113. In no case may the total time an individual is detained in a holding area exceed 20 days. In practice, the average duration is 1.8 days for foreigners refused entry or unable to complete their onward journeys. It is 4.5 days on average for asylum seekers, owing to the need to consider their applications. A foreigner may contest the legality of a decision to refuse him entry before the administrative courts, and append to his request for the decision to be set aside an application for stay of execution.

114. Decree No. 95-507 of 2 May 1995, issued pursuant to the Act of 27 December 1994, grants access to the holding area to representatives of the Office of the United Nations High Commissioner for Refugees and humanitarian organizations. Under this decree, authorized representatives of UNHCR have access to the holding area and may meet the chief of the border control service and representatives of the Ministry of Foreign Affairs. They may also meet the asylum seekers privately. As the decree states, this access

is intended to "permit the Office of the United Nations High Commissioner for Refugees to accomplish its mission". Similar provisions apply to humanitarian associations.

115. Lastly, the International Organization for Migration (IOM) also operates in holding areas, providing humanitarian support.

(ii) Administrative detention

116. Foreigners facing an expulsion order or due to be escorted to the border who cannot immediately leave French territory may be detained in premises not under the control of the Prisons Administration for as long as is strictly necessary to effect their departure. Whether to do so is decided by the representative of the State in the département concerned. The decision must be in writing and state how it was arrived at, and is subject to scrutiny by the courts. Article 35 bis of the order dated 2 November 1945, as amended by Act No. 93-1027 of 24 August 1993, establishes the safeguards indicated below.

117. The government procurator must be immediately informed of the decision to detain an individual, and may throughout the period of detention visit the premises and verify the conditions of detention.

118. The foreigner must himself be immediately informed of his rights, if need be through an interpreter if he does not speak French. Throughout his detention he may request the assistance of an interpreter, a doctor or counsel and may, if he so desires, communicate with his consulate and a person of his choice.

119. Twenty-four hours after the decision to detain the foreigner is taken, the president of the court of major jurisdiction or a magistrate designated by him must decide whether to extend the period of detention, having interviewed the individual concerned in the presence of his counsel, if any. If the foreigner can offer effective recognizances, the court may, exceptionally, order him confined to his residence.

120. Detention will end at the latest six days after the court issues the detention order. This deadline may be extended by a maximum of 72 hours, by order of the president of the court or a magistrate he designates, in an absolute emergency where public order is under especially grave threat, or where the foreigner has not provided the competent administrative authority with a travel document permitting his removal from French territory to take place, if the indications are that the extra time will enable the document to be procured.

121. Appeal may be lodged against the orders by the president of the court or the magistrate he designates; the president of the court of appeal or his designated representative must issue a ruling within 48 hours of submission of the appeal.

122. The provisions relating to the order dated 2 November 1945 on entry into and residence within France by foreigners and later amendments (Acts dated 6 July 1992 and 24 August 1993) do not apply to the French overseas territories or the community of Mayotte owing to the special geographical,

historical and social circumstances of those territories. On the other hand, Act No. 96-609 of 5 July 1996, containing a number of provisions relating to the overseas possessions, extended the ordinary law provisions on administrative detention of foreigners to them.

(iii) Judicial confinement

123. Last, reference should be made to a special form of detention, since the initial decision emanates from a judicial authority. This is the procedure set up under Act No. 93-1417 of 30 December 1993 and inserted into article 132-70-1 of the new Penal Code.

124. This article states that if a court finds a foreigner guilty of a crime covered by article 27 of the order dated 2 November 1945, it may stay the pronouncement of sentence and require the defendant to submit to the competent administrative authority travel documents permitting his expulsion, or furnish the elements needed for such expulsion. In such a case the decision to stay sentence is accompanied by an order to commit the defendant to judicial confinement for a maximum of three months. Commitment is to premises not under the authority of the Prisons Administration. The usual safeguards apply, i.e. the individual concerned is informed that he may while in confinement request the assistance of an interpreter, a doctor or counsel. He may also communicate with anyone he pleases and receive visits authorized by the judicial authorities.

125. The public prosecutor and the president of the court with jurisdiction over the place of confinement can visit the premises and check on the conditions of detention at any time.

126. During the stay of sentence the defendant may call for the confinement order to be lifted, and the court which ordered the confinement can lift the order of its own motion. If application for the order to be lifted is refused by a court of first instance, the decision can be appealed.

(e) Committal to a psychiatric service, without their consent, of mentally disturbed individuals

127. Act No. 90-527 of 27 June 1990, on the rights and protection of persons committed with psychiatric problems and the conditions of commitment, gave people committed without their consent to psychiatric services greater rights.

(i) The two forms of committal without consent

128. Two distinct forms of committal come under this heading: committal at the request of a third party (Public Health Code, arts. L.333 to L.341), and committal proprio motu (ibid., arts. L.342 to L.351).

129. Committal at the request of a third party can take place only if the psychiatric problems from which an individual is suffering prevent him from giving consent and his condition warrants immediate attention combined with full-time surveillance in a hospital environment. The request must come

either from a member of the patient's family or from a person likely to be acting in his interests, and must be accompanied by two medical certificates indicating that the conditions the law lays down are met.

130. The Act of 27 June 1990 provides for a number of monitoring mechanisms, from admission to discharge:

- **A check upon admission** must be performed by the director of the establishment before the individual concerned is admitted. The director must ensure that the request has been formulated in accordance with the regulations (articles L.333 and L.333-1);

- **Within 24 hours of admission**, the patient must be examined by the psychiatrist at the establishment, who must issue a medical certificate justifying committal without consent;

- **Regular medical checks** are performed during commitment; a second check is scheduled to take place during the three days preceding completion of the first fortnight in care; on expiry of the maximum one-month period indicated by the doctor in the certificate, a further check must be performed and another certificate issued. Commitment may be prolonged for maximum (renewable) periods of one month (article L.337);

- **The administrative and judicial authorities must by law be notified** of the procedure: the medical certificates authorizing committal at the request of a third party are forwarded to the departmental committee on psychiatric committals and to the prefect, who must in turn notify the government procurators at the courts with jurisdiction over the patient's home and hospital establishment.

131. Every establishment maintains a register in which is recorded, within 24 hours of admission, all relevant information concerning the committal of the individual concerned (personal details, identity of the person requesting committal, medical certificates). The register must be shown to persons visiting the establishment (article L.341).

132. Committal proprio motu applies to people whose disorders threaten "public order or the public safety" (article 342). In Paris it is ordered by the prefect of police, and in the départements by the prefects, who do so on the strength of a detailed medical certificate from a psychiatrist not employed at the receiving establishment. The order takes the form of an administrative decision (arrêté), which must be submitted in writing and explain how it was arrived at. Committal proprio motu is subject to the same regular checks as committal at the request of a third party: a medical certificate within 24 hours of admission, then after a fortnight of care and thereafter every month at least. The departmental committee on psychiatric committals and the public prosecutor must be informed of all such cases.

133. Under article L.345 the prefect, acting on the detailed opinion of a psychiatrist, may during the three days preceding completion of the first

month in care order commitment to be extended for three months. At the end of that time, commitment may be extended for maximum (renewable) periods of six months by following the same procedure.

(ii) Checks on committals without consent

134. Individuals committed without their consent can contest their treatment. The Act of 27 June 1990 establishes departmental committees on psychiatric committals which are responsible for monitoring committals on psychiatric grounds, committals without consent in particular (articles L.332-3 and L.332-4). They visit establishments to which patients can be committed without consent and receive complaints from inmates. Individuals committed proprio motu can challenge the relevant administrative decisions on grounds of a breach of the regulations or the rules governing jurisdiction and procedure. If they do so, their appeals are heard in the administrative courts.

135. If, on the other hand, appeal is lodged on grounds of unwarranted detention, jurisdiction rests with the judicial courts. Under article L.351 of the Public Health Code, any person committed without his consent, whether at the request of a third party or proprio motu, may seek to be discharged by applying to the president of the court of major jurisdiction responsible for the area where the establishment is situated. The president can then issue an interim relief order authorizing immediate release of the individual concerned. The third paragraph of article L.351 states: "The president of the court of major jurisdiction may also, at any time and on his own authority, take up the matter and order the commitment without consent to be discontinued. To this end, any interested individual may bring to the president's attention any information about the situation of a committed person that he may deem useful."

(iii) The rights of individuals committed without their consent

136. The Act of 27 June 1990 carefully spells out the rights and liberties of patients committed without their consent, in article L.326-3 of the Public Health Code. The first paragraph of the article sets forth the principle that restrictions on the exercise of personal freedoms by an individual committed without his consent shall be limited to those required by the individual's state of health and the progress of his treatment, stipulating that: "in all circumstances, the dignity of the committed individual must be respected and his return to society sought".

137. Hence the list of rights in the following paragraphs of the article should not be considered exhaustive:

> [The individual committed without his consent] must be informed upon admission, and thereafter on request, of his legal standing and rights.
>
> He shall at all events be entitled:
>
> 1. To communicate with the authorities mentioned in article L.332-2;
>
> 2. To apply to the committee to be established pursuant to article L.332-3;

3. To seek the advice of a doctor or lawyer of his choice;

4. To send and receive correspondence;

5. To consult the rules and regulations of the establishment as defined in article L.332-1 and to be given any appropriate explanations;

6. To exercise his right to vote;

7. To engage in religious or philosophical activities as he chooses.

With the exception of those mentioned in 4, 6 and 7 above, these rights may be exercised at their request by the patient's relatives or persons likely to act in his interests.

138. The authorities mentioned in article L.332-2 are the prefect, the competent judicial authorities and the mayor of the commune. The committee mentioned in article L.332-3 is the departmental committee on psychiatric committals, which is responsible for receiving complaints from committed individuals.

139. The Act of 27 June 1990 extended the liability to criminal proceedings of directors of establishments that do not observe the provisions governing committal without consent, and introduced a new offence covering doctors at establishments that take in patients committed without their consent (articles L.352 to L.354 of the Public Health Code).

ARTICLE 12

140. Where there are reasonable grounds to believe that an act of torture has taken place, not merely an investigation but a judicial inquiry is called for if the victim brings an action as described under article 13 below. It should be recalled that under article 40, second paragraph, of the Code of Criminal Procedure, "any constituted authority, public official or civil servant who in the performance of his or its duties learns of a crime or offence shall be required to advise the public prosecutor without delay and to transmit to the public prosecutor all related information, reports and documents".

141. The State authorities may take the initiative of assigning senior officials or the inspecting body of the entity concerned, such as the general inspectorates of the national police or gendarmerie, to conduct an administrative or formal investigation. They may then institute judicial proceedings under article 36 of the Code of Criminal Procedure, which states: "The Minister of Justice may report to the procurator general breaches of the criminal law of which he has knowledge, enjoining him, by written instruction placed on the file of the proceedings, to institute or cause to be instituted, legal action, or to submit to the competent court such warrants as the Minister may deem appropriate."

142. Under articles 40, first paragraph, and 41 of the Code, the procurator general receives complaints and reports and determines what action should be taken on them. He then takes or causes to be taken such action as is required

to identify and prosecute offences. As regards detainees in particular, articles D.280 to D.282 of the Code of Criminal Procedure require the chief of a prison establishment to notify his superiors and the prefect and government procurator without delay of "any serious incident affecting order, discipline or security in the prison" or the death of any inmate.

ARTICLE 13

143. Anybody who believes he has been subjected to torture is entitled under the ordinary law to lodge a complaint.

144. Under article 85 of the Code of Criminal Procedure, "any person who claims to have suffered injury as a result of a crime may, by lodging a complaint, institute civil proceedings before the competent examining magistrate". Proceedings may be brought against named individuals or persons unknown. In case law, for civil proceedings to be so brought it is sufficient that the circumstances described enable the judge to admit the possibility of the injury alleged and a direct link between it and a breach of the criminal law. Thus the victim can himself trigger criminal proceedings, causing an information to be laid and, where appropriate, a prosecution to be brought against the culprit.

145. Like any free person, detainees may apply to the criminal courts under ordinary law. It should be recalled that they may communicate privately with their lawyers (arts. 727, D.67 to D.69 and D.419 of the Code of Criminal Procedure) and request an interview with the magistrates and officials responsible for inspecting or visiting the establishment with no member of the prison staff present.

146. Protection of the complainant and witnesses against any ill-treatment or intimidation in connection with the complaint lodged or evidence given is organized in accordance with the Penal Code, in particular articles 222-17, 222-18, 322-12, 322-13, 222-1 and 222-3, 222-11 to 222-13, 322-1 and 322-3 and 434-15 of the new Penal Code.

(a) Protection against threats

Article 222-17: Threatening to commit a criminal act against individuals where the attempted act is punishable shall, if repeated or expressed in writing, in an image or in other material form, be punishable by six months' imprisonment and a fine of 50,000 francs.

The penalty shall be increased to three years' imprisonment and a fine of 300,000 francs in the event of a death threat.

Article 222-18: Threatening by any means whatsoever to commit a criminal act against individuals shall, if accompanied by the order to fulfil a condition, be punishable by three years' imprisonment and a fine of 300,000 francs.

The penalty shall be increased to five years' imprisonment and a fine of 500,000 francs in the event of a death threat.

Article 322-12: Threatening to cause destruction, damage or deterioration hazardous to individuals shall, if repeated or expressed in writing, in an image or in other material form, be punishable by six months' imprisonment and a fine of 50,000 francs.

Article 322-13: Threatening by any means whatsoever to cause destruction, damage or deterioration shall, if accompanied by the order to fulfil a condition, be punishable by one year's imprisonment and a fine of 100,000 francs.

The penalty shall be increased to three years' imprisonment and a fine of 300,000 francs in the event of a threat to cause destruction, damage or deterioration hazardous to individuals.

(b) Protection against acts of torture or violence

- For torture, article 222-3 includes among the aggravating circumstances of the offence defined in article 222-1, which makes torture a crime, the fact of committing acts of torture "against a witness, victim or claimant for criminal indemnification either to prevent him from reporting an incident, lodging a complaint or seeking justice or because he has done so".

- Acts of violence are punishable pursuant to articles 222-11 to 222-13:

Article 222-11: Violence resulting in complete incapacity for work for more than eight days is punishable by three years' imprisonment and a fine of 300,000 francs.

Article 222-12: The offence defined in article 222-11 shall be punishable by five years' imprisonment and a fine of 500,000 francs if committed:

[...]

4. Against a magistrate, juror, lawyer, public or ministerial officer or any other person vested with public authority or employed in the public service in or in connection with the performance of his mission or duties if the victim's position was apparent or known to the perpetrator;

5. Against a witness, juror or claimant for criminal indemnification either to prevent him from reporting an incident, lodging a complaint or seeking justice or because he has done so.

[...]

Article 222-13 stipulates a penalty of three [years'] imprisonment and a fine of 300,000 francs for violence that does not result in complete incapacity to work for more than eight days if committed against the same persons as in the preceding article.

(c) Protection against destruction of physical property

Article 322-1: The destruction, damage or deterioration of property belonging to another shall be punishable by two years' imprisonment and a fine of 200,000 francs unless only minor damage results.

Article 322-3: The offence defined in article 322-1, first paragraph, shall be punishable by five years' imprisonment and a fine of 500,000 francs [...]:

[...]

3. If committed to the detriment of a magistrate, juror, lawyer, public or ministerial officer or any other person vested with public authority or employed in the public service with a view to influencing his behaviour in the performance of his mission or duties;

4. Against a witness, juror or claimant for criminal indemnification either to prevent him from reporting an incident, lodging a complaint or seeking justice or because he has done so.

[...]

Attempted destruction, damage or deterioration attracts the same penalties.

(d) Protection against subornation

Article 434-15: The use of promises, offers, gifts, pressure, threats, bodily violence, wiles or artifice during the course of proceedings or with an eye to a judicial claim or defence for the purpose of inducing another either to make or issue a false deposition, statement or attestation or to refrain from making or issuing a deposition, statement or attestation shall be punishable by three years' imprisonment and a fine of 300,000 francs even if the subornation has no effect.

ARTICLE 14

Paragraph 1

147. If an act of torture were to be committed in the circumstances specified in article 1, paragraph 1, i.e. "by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity", the first question that would arise in French law in respect of redress would be to determine the competent court. The answer is straightforward. Since an act of torture unquestionably constitutes a serious infringement of individual liberty, the ordinary courts, as the guardians of fundamental freedoms, would have jurisdiction pursuant inter alia to article 136 of the Code of Criminal Procedure, the third paragraph of which states: "... in cases of infringement of personal liberty the dispute may never be taken up by the administrative authority, the courts of law always having exclusive jurisdiction".

148. From the standpoint of administrative case law, an act of torture ought to be categorized as an act of violence since it clearly cannot be linked to the application of a legislative or administrative text or to the exercise of a power belonging to the administration. Consequently, the judiciary would have full jurisdiction over the matter and would be competent inter alia to provide redress by awarding damages for any injury resulting from the act in question. Both civil and criminal law should apply.

149. The basis of civil responsibility is laid down in articles 1382 and 1383 of the Civil Code:

> Article 1382: Any act by a person which causes injury to another obliges the person by whose fault the injury occurred to make redress.
>
> Article 1383: Every individual is responsible for the injury he causes not only by his acts but also by negligence or imprudence.

The injured party has the option of bringing a civil action, which it may do before a civil court.

150. In this case, however, inasmuch as the injury for which redress is sought is not originally civil but stems from a criminal offence or fault, an action may also be brought before the criminal courts under article 3 of the Code of Criminal Procedure: “a civil action may be brought at the same time and before the same court as the prosecution”.

151. Criminal proceedings are more expeditious and less costly than civil action. The authority of the court’s decision in criminal proceedings cannot be challenged in civil proceedings until the victim has been heard in the criminal proceedings. This appears to be best for the administration of justice itself since, by having the civil action judged by the criminal court, it avoids conflicting judgements. Choosing this option may nevertheless have its drawbacks for the victim who, as a party to the proceedings, cannot testify as a witness either during the preliminary investigation or during the hearings: if the victim is the principal witness for the prosecution, his failure to appear as such may weaken the case. He must therefore decide in the light of the circumstances how best to pursue his complaint. That this option is available to him does, in any event, serve to preserve his interests.

152. If the victim opts for criminal prosecution, the Court of Assises, which has jurisdiction over criminal matters, will rule on the civil action after handing down its judgement on the criminal charges, as prescribed in article 371 of the Code of Criminal Procedure:

> Once the Court of Assises has announced its decision on the prosecution it shall, without the jury present, rule on the applications for damages filed either by the applicant for criminal indemnification against the defendant or by the acquitted defendant against the applicant for criminal indemnification, after the parties and the public prosecutor have been heard.

153. Under article 372, “in the event of an acquittal or of waiver of punishment, the applicant for criminal indemnification may seek redress for injury caused through the defendant’s fault as established by the facts on which the prosecution was based”.

154. When the civil action is brought before a civil court, the civil proceedings are distinct from the criminal trial and subject to the procedural rules applicable in civil law. But because they are still concerned with the procurement of redress for criminal injuries resulting from a criminal act, the civil court must defer its decision until the criminal court, sitting before or during the civil hearings, has itself delivered a judgement on the criminal charges; it is also required to respect the decision handed down by the criminal court.

155. As regards the fairness and adequacy of the compensation, it must be borne in mind that under the case law on the subject (cf. Cass. Crim., 8 February 1983), reparation for the injury suffered by the victim must be made “in full, not just to some extent”.

156. Under article 375 of the Code of Criminal Procedure as amended by the Act of 4 January 1993, “the court shall sentence the perpetrator of the offence to pay to the applicant for criminal indemnification a sum that it shall determine to cover expenses incurred by the applicant and not paid by the State. The court shall have due regard for fairness or the economic circumstances of the guilty party. It may of its own motion declare on grounds deriving from the same considerations that such a sentence is uncalled-for”.

157. In the event, lastly, that the victim is unable to obtain full and fair compensation through the usual channels for the injuries he has suffered, article 706-3 of the Code of Criminal Procedure as established by the Act of 6 July 1990 and amended by the Act of 16 December 1992 offers a subsidiary line of recourse:

> Any person who has suffered injury as a result of actions, voluntary or otherwise, that in substance resemble a criminal act may obtain full compensation for the injuries resulting from infringements of personal rights under the following conditions:
>
> 1. The infringements do not fall within the scope of article L.126 of the Insurance Code or chapter I of the Traffic Accident Victims (Improvement of Situation and Expedition of Compensation Procedures) Act No. 85-677 of 5 July 1985, nor result from a hunting accident or the destruction of vermin;
>
> 2. The actions:
>
> - either have brought about a person’s death, permanent disability or total incapacity to work for a month or more;
>
> - or are covered by and punishable under articles 222-22 to 222-30 and 227-25 to 227-27 of the Penal Code;

3. The injured person is of French nationality. If not, the actions were committed on French territory and the injured person:

- either is a national of a State member of the European Economic Community;

- or, subject to the provisions of international treaties and agreements, was legally resident on the date of the actions or the application.

Compensation may be refused or reduced on the grounds of fault on the part of the victim.

158. This article thus establishes the principle of full compensation for injuries resulting from serious infringements of personal rights provided that the actions behind the injuries in substance resemble a criminal act; the judicial authorities do not even need to establish that a criminal act has been committed.

Paragraph 2

159. If the victim of an act of torture dies, his successors and assigns are entitled to compensation and may for that purpose apply in their own right for criminal indemnification. The condition for entering an application for criminal indemnification is that one has suffered personal injury as a result of the criminal act in question.

160. According to the case law on the subject, anyone to whom a criminal act has caused physical or moral injury, even if not directly the victim of the act, is regarded as having suffered personal injury, whether this be an heir of the deceased, his ascendants or descendants, brothers or sisters, or anyone else with stable bonds of affection and interest to the victim. The personal injury invoked by the successors and assigns must nevertheless be direct, i.e. associated by a cause-and-effect relationship with the criminal act. Moral injury through infringement of emotional ties is in certain cases regarded as direct, and the successors and assigns can then receive a pretium doloris.

ARTICLE 15

161. Under French law the question of how evidence is established arises, from the viewpoint of this article, only in criminal proceedings. In civil law, the law itself governs how evidence is established, its admissibility and its probative value; in criminal law, evidence established by any means is accepted provided that it has been sought and obtained in accordance with certain procedures and rules and that it has been produced and discussed adversarially at the hearings.

162. There are, naturally, limits to the freedom of evidence. Although the objective is to lay bare the truth, the truth cannot be sought by any means whatsoever. Torture is forbidden under the Convention and under other international instruments binding on France, as cited at the beginning of this report.

163. It was stated, in reference to article 11, that the conditions under which individuals can be questioned, inter alia while in custody, are strictly regulated, and that infringements of the bodily integrity of accused persons are severely punished under the Penal Code. Case law has also rejected all unfair procedures as provocative. French doctrine prohibits interrogation combined with the use of narcotics (injections of pentothal or "truth serum").

164. An additional safeguard is provided by the fact that the judges in criminal matters have sovereign authority to evaluate the value and probative force of evidence and must for that purpose take into consideration the circumstances in which it was obtained. Reference should be made here to articles 427 and 428 of the Code of Criminal Procedure, which state:

> Article 427, second paragraph: The court may base its decision only on the evidence produced and discussed adversarially before it during the hearings.
>
> Article 428: The courts may form their own opinion of confessions, as of any item of evidence.

165. Hence a statement that could be shown to have been obtained under torture must have been obtained against the law, and the court could not hold it against the defendant. The defendant, on the other hand, would be able to avail himself of the means described under article 13 to bring proceedings against the perpetrators of the act of torture.

ARTICLE 16

Paragraph 1

166. Other acts of cruel, inhuman or degrading treatment or punishment are covered in France by the charges applicable to torture. The information given above relating to torture generally thus also applies to them. The obligations set forth in connection with articles 10, 11, 12 and 13, in particular, are valid under the same conditions.

Paragraph 2

167. The fact that the Convention is without prejudice to any other international instrument or national law prohibiting cruel, inhuman or degrading treatment or punishment poses no problem either of interpretation or of application. It is also normal that the Convention should not affect the application of other provisions in agreements or national laws on extradition and expulsion.
