

France

IHF Focus: Freedom of expression and the media; fair trial and detainees rights; torture, ill-treatment and misconduct by law enforcement officials; conditions in prisons and detention facilities and prisoners' rights; religious intolerance; protection of asylum seekers and immigrants; women's rights.

Human rights violations in France were reported largely in connection with torture, ill-treatment and misconduct by law enforcement officials; freedom of expression and the media; and conditions in prisons and detention facilities and prisoners' rights. Lack of sanitary conditions, access to medical care and harsh conditions in detention continued to create precarious situations for prisoners. A 1999 parliamentary report on cults strengthened a climate of religious intolerance, putting into question France's commitment to freedom of association and belief. Draft legislation approved on 16 December constituted France's solution to the question of cults and threatened to put an end to freedom of association in France entirely.

Freedom of Expression and the Media

■ According to Reporters Sans Frontières (RSF), on 24 January, Anne Mazauric, a reporter with Télé Bocal – a local channel broadcasting to the 20th arrondissement of Paris – and cameramen Bastien Mehl and Julien Teruel were assaulted while covering a public mass organized by Action Française, an extreme-right group, held at the Place de la Concorde in Paris. Members of the group's "law and order" wing grabbed and destroyed the reporters videotape. Anne Mazauric was struck in the face and her camera was damaged. On 27 January, RSF asked the minister of justice to be kept informed of developments after the journalists filed a complaint.¹

■ In September 1989, against the background of an industrial dispute in the Peugeot company following the rejection of pay claims by management, *Le Canard enchaîné* published an article by the second applicant referring to salary increases awarded to Jacques Calvet, the company's chairman and managing director. The article carried the headline "Mr. Calvet turbo-charges his salary – his tax forms reveal more than he does. The boss has given himself a 45.9 percent raise over the last two years." Following a complaint by Calvet, criminal proceedings were brought against the applicants for handling photocopies of his tax assessments which had been obtained through a breach of professional confidence by an unidentified tax official. After acquittal at the first instance, the Paris Court of Appeal convicted the applicants of handling the photocopies. The Court of Cassation dismissed their appeal in April 1995.

An application was lodged with the European Commission of Human Rights on 3 August 1995. The commission adopted a report on 13 January 1998 in which it expressed the opinion that there had been a violation of article 10 of the convention.

The European Court of Human Rights considered that an interference with the exercise of press freedom could not be compatible with article 10 of the ECHR unless it was justified by an overriding requirement in the public interest. While recognizing the vital role played by the press in a democratic society, the court stressed that journalists could not, in principle, be released from their duty to obey the ordinary criminal law on the basis that article 10 afforded them protection. The court held that there had been no overriding requirement for the information to be protected as confidential. Article 10 protected journalists' rights to divulge information on issues of general interest pro-

¹ Reporters Sans Frontières *Newsletter No. 36, March 1999*

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vided that they were acting in good faith and on an accurate factual basis and furnished “reliable and precise” information in accordance with the ethics of journalism. The court noted that Roire had acted in accordance with the standards governing his profession as a journalist.

In sum, there had not, in the court’s view, been a reasonable relationship of proportionality between the legitimate aim pursued by the journalists conviction and the means deployed to achieve that aim, given the interest a democratic society had in ensuring and preserving the freedom of the press. There had therefore been a violation of article 10 of the Convention.

Fair Trial and Detainees’ Rights

■ On 9 November the European Court of Human Rights condemned France for having imposed more than four years of provisional detention on one of the defendants of the Islamic network of Mohamed Chalabi.² The judges held unanimously that France had violated article 5(3) of the European Convention on Human Rights, which guarantees the right to fair trial within a reasonable time.

Ismael Deboubb, alias Ali Hussein, was questioned on 8 November 1994 in Paris in the context of an operation aimed at a support network for armed groups of the Algerian opposition. On trial with 138 other defendants, Hussein was sentenced on 22 January 1999 to six years in prison by the correctional tribunal in Paris for criminal association with a view to preparing a terrorist act. He was released on 6 May after having spent four and a half years in prison; four years and two months of which had been provisional detention.

The government contended that there had been reasonable cause to suspect that the defendant had committed the offence and that the detention was justified in light of the gravity of the incriminating facts, the importance of imposing sanctions, and the risk of “flight”. The European Court of Human Rights held that “just cause” to believe a detainee had committed an offence was a condition, *sine qua non*, of maintaining a person in detention, but that at a certain point that condition is no longer sufficient. Thus the court must establish whether the other motives held by the authorities continued to justify the deprivation of liberty. The court further held that the preservation of public order and the risk of repeated offences were pertinent factors, but did not in themselves justify such a long period of detention.

The court noted that the defendant had only been questioned an average of twice a year. Moreover, it did not follow from the file that the defendant had, through his behavior, contributed in any particular way to the curbing of the directive or to the delay of proceedings. From that point on, the duration of detention could not be attributed to either the complexity of the case, however certain, or to the behavior of the defendant. The court concluded that the length of deprivation of liberty suffered by the defendant should have been based on more convincing justification, and therefore the detention infringed article 5(3).

Torture, Ill-Treatment and Misconduct by Law Enforcement Officials

Judicial developments in several cases of ill-treatment and killings by law enforcement officers highlighted concerns that

² *Affaire Deboubb alias Hussein Ali v. France, European Court of Human Rights, Strasbourg, 9 November 1999*

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courts felt uneasy about handing down anything but nominal sentences to police officers for crimes of violence or excessive force and that while prosecutors were often too passive in applying the law, some appeared to play an active part in perpetuating a situation of effective impunity where police officers were concerned.³

■ In a judgment delivered in Strasbourg on 28 July in the case of *Selmouni v. France*⁴, the European Court of Human Rights held unanimously that there had been a violation of article 3 (prohibition of torture) and article 6(1) (right to a hearing within a reasonable time) of the European Convention on Human Rights.

The applicant, Ahmed Selmouni, a Dutch and Moroccan national, was in prison in Montmedy as of late 1999. On 7 December 1991, following his detention in Bobigny from 25–29 November, the expert appointed by the investigating judge examined Selmouni and listed the visible injuries on his body, concluding that they had been sustained at a time that corresponded to the period of police custody.

On 1 February 1993, the applicant lodged a criminal complaint, together with an application to join the proceedings as a civil party, for offences committed between 25 and 29 November 1991 by police officers in the performance of their duties.

On 21 October 1998, the police officers identified were put on trial. In a judgment of 24 March 1999, the Versailles Criminal Court sentenced the police officers to three years imprisonment, except for the officer in charge, for whom a four-year prison sentence was handed down and an arrest warrant was immediately issued. In a judgment of 1 July, the Versailles Court

of Appeal convicted the police officers of assault with or under the threat of use of a weapon, occasioning total unfitness for work (for less than eight days in the case of Selmouni and more than eight days in the case of the other victim), by police officers in the course of their duty and without legitimate reason. The police officers were given suspended sentences of 12 to 15 months. The officer in charge was sentenced to 18 months imprisonment, 15 of which were suspended.

The European Court of Human Rights found that all the injuries recorded in the various medical certificates, and the applicants' statements regarding the ill-treatment to which he had been subjected while in police custody, established the existence of physical and – undoubtedly – mental pain and suffering (notwithstanding the regrettable failure to order a psychological report of Selmouni after the events complained of).

Under the circumstances, the court was satisfied that the physical and mental violence committed against the applicant's person had caused "severe" pain and suffering, had been particularly grave and cruel and that such conduct had to be regarded as torture for the purpose of article 3 of the convention.

Conditions in Prisons and Detention Facilities and Prisoners' Rights

Several cases of suicide in detention facilities raised concern over the harsh conditions under which detainees' were kept. Hindered access to necessary and adequate medical care, as well as death in questionable circumstances, further called into question prisoners' rights.

³ *Amnesty International, Concerns in Europe January–June 1999*

⁴ *Selmouni v. France, European Court of Human Rights, Strasbourg, 28 July 1999.*

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■ A detainee at the Detention Center of Neuvic-sur-l'Isle died on 19 June after being placed in a disciplinary cell. S.Z. hung himself from the wire netting that obstructed the window in the cell. He was 23-years-old and would have been released in the coming months. On 29 May 1998, a circular addressed to prison directors called for greater vigilance on behalf of penitentiary personnel at night and on weekends – times which generate anxiety for the detained; particularly those detainees in disciplinary cells. The conditions of detention in disciplinary quarters were particularly unbearable. Situated on the fourth floor with blocked windows, there was an unbearable heat in the summer. The *Observatoire international des prisons* recalled article 351 of the procedural penal code which states that “the windows must be sufficiently big in all premises holding the detained. The organization of the windows must enable the entry of fresh air.”⁵

■ Michel Hicham Guttsch, 21-years-old, died in the night of 23 August at the hospital d'Auxerre, after hanging himself in his cell. Guards and another detainee asserted that he had not been himself for several days – a proposition those close to Hicham find difficult to believe. They asserted that the body bore no trace of strangulation, but did show a haematoma behind the ear. His family, who did not believe that Hicham committed suicide, protested the refusal of authorities to transmit an autopsy report.⁶

■ On 25 July, Daniel G, (31), died in his cell at the *maison d'arrêt de Longuenesse*. A nurse had seen him the night before for intestinal trouble, nausea and malaise. The

nurses diagnosed him with gastroenteritis and sent him back to his cell without further examination and without seeking the advice of a doctor. Daniel G's state of health deteriorated and his co-detainee tried, in vain, to call for help until early the next day when the cells were opened. Daniel G was dead when the nurse arrived.⁷

■ On 8 September, three wardens from the *maison d'arrêt* at Grasse who had molested a young detainee on New Year's Eve in 1997 were given a three-month suspended sentence. In the course of the hearing, the accused denied the abuse, deeming their forceful intervention necessary to return the peace after a quarrel between detainees. On 2 January 1998, the plaintiff, who was a minor at the time of the event, gave a written statement describing how he was insulted and hit by the agents. A doctor confirmed evidence of scratch marks and injury to the thorax cage. In total, eight detainees of North-African origin, three of whom were minors, complained to the chief that they had suffered abuse that night. They asserted that the seven wardens were drunk and made racist remarks.⁸

■ On 27 May, Moshen Sliti died at the Retention Center in d'Arenc. Sliti, a 41-year-old Tunisian who had lived in France for 19 years and was the father of two French children, was struck with “double peine” despite his personal and familial attachments in France. Suffering from serious renal pathology, he was retained for five days when he began having convulsions. He was taken to hospital hours after the onset of his malaise, where he later died. Once again, the fundamental right of ac-

⁵ *Observatoire international des prisons: Section française, “Dedans Dehors” No. 15 September–October 1999*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

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cess to medical care of detained and retained persons was put into question.⁹

■ On 17 July at Roissy airport, a Malian passenger on flight RK161 Paris-Bamako fell victim to physical violence by public agents in charge of seeing him back to the border. The *Mouvement contre le racisme et pour l'amitié des peuples* was notified by passenger Maitre Mamadou Diarra, President of the Malian Federation of UNESCO Clubs. His testimony spoke to the brutality and inhumanity with which the agents attempted to send this man back against his will. Handcuffed, he was forcefully kept in his chair and hit on several occasions; his throat was squeezed in order to stop him from screaming. The protests of a group of passengers and the intervention of the pilot put an end to the abuse and the victim was disembarked.¹⁰

Religious Intolerance

Religious tolerance in France was impeded by government action aimed at weakening the financial standing of certain religious groups. Jehovah's Witnesses came under particular scrutiny, with the effect that the practice of their religious beliefs was considerably hindered.

On 26 June, the Council of Europe Parliamentary Assembly adopted, unanimously, a recommendation that gives priority to the prevention against dangerous sects. "Major legislation on sects is undesirable," reiterated the assembly in a debate organized during its summer session.

The recommendation, which was adopted following the debate, pointed to the risk that any legislation passed in this area

might well interfere with the freedom of conscience and religion guaranteed by article 9 of the European Convention on Human Rights. Nonetheless, the serious incidents which had occurred in recent years did warrant an insistence that the activities of groups referred to as "sects" – which the assembly did not feel it necessary to define – be carried out in keeping with the principles of democratic societies.

Therefore it was vital to have access to reliable, objective information on these groups, directed in particular at teenagers within the framework of school curricula and at the children of followers of groups of a religious, esoteric or spiritual nature. Consequently, the assembly called on the governments of member states to support the setting up of independent, national or regional information centers on sects; to include information on the history and philosophy of important schools of thought and or religion in general school curricula; to use the normal procedures of criminal and civil law against illegal practices carried out by these groups; to encourage the setting up of non-governmental organizations to protect victims, but also to take firm steps against any discrimination or marginalisation of minority groups and encourage a spirit of tolerance and understanding towards religious groups. The assembly also requested that the committee minister of the Council of Europe set up a European Observatory on groups of a religious, esoteric or spiritual nature, to make it easier for national centers to exchange information.¹¹

On 16 December, the French Senate unanimously approved draft legislation introduced by Nicolas About, a member of

⁹ *Mouvement Contre le Racisme et pour l'Amitié des Peuples, Communiqués, 31 May 1999.*

¹⁰ *Ibid, 27 July 1999.*

¹¹ *IHF report to the OSCE Review Conference: Human Dimension Issues Vienna-Istanbul, 1999; see also Council of Europe Press Service, 22 June 1999: <http://www.coe.fr/cp/99/351a.htm>*

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the Orientation Council of the Interministerial Mission to Fight Against Cults (*Mission interministérielle de lutte contre les sectes*), amending the French law of 10 January 1936 and a number of other laws. The discussion in the Senate was introduced under the heading "Fighting Cults." "Cults" were the subject of the law approved on 16 December, although the term "cult" was ultimately not used. Article 1 allows the government to dissolve organizations and groups that have been found guilty of various criminal offences at least twice and are regarded as a "threat to public order or a major danger to human personality." The Senate discussion made clear that both the "threat to public order" and the "danger to human personality" referred to the criteria used to identify "dangerous cults" in the 1996 report (where mind control played a key role) and that the list of "dangerous cults" in that report will be an important point of reference.

According to Human Rights Without Frontiers, the law approved by the Senate means that the government will be entirely free to dissolve and ban any unpopular association and any association it does not approve of. Although introduced to address "cults" and "cultists", it goes far beyond religion and – if approved by the Chamber of Representatives – will eliminate freedom of association in France altogether. Given the current sentiments toward religious minorities in France, the law may be seen as an attempt to endanger the legal and administrative status of minorities.¹²

Jehovah's Witnesses¹³

Since 1995, Jehovah's Witnesses in France have had to deal with many legal difficulties that hinder the practice of their religious beliefs. Two parliamentary inquiry reports in 1995 and 1999 – both conducted by deputy Brard – were published on cults. These political documents contributed to the setting of a repressive administrative policy and media condemnation of Jehovah's Witnesses.

Tax audits conducted between 1995 and 1997 established the non-profit and non-commercial nature of the activities of Jehovah's Witnesses. However, the religious contributions that they received were taxed nonetheless. On 18 January 1999, the tax department required the payment of tax on religious donations received between 1993 and 1996 by hundreds of thousands of Jehovah's Witnesses to their national association *Les Témoins de Jehovah*, in the amount of FRF 297,403,534 (U.S.\$ 45.7 million). For the first time in France, a religious group was taxed in violation of the principles of non-discrimination and freedom of worship. On 14 June, a legal petition was submitted to the president of the European Parliament and is now being examined by parliamentary officials. All real estate belonging to the association *Les Témoins de Jehovah* was mortgaged by the tax administration in February.

The will of the French government to impose a 60 percent tax on the donations

¹² Human Rights Without Frontiers, "Final Solution Against Cults and Sects? Senate Approves Draconian Law", 22 December 1999; see also Human Rights Without Frontiers, "New French Law Proposition Against Associations, Including Religious Minorities", 23 December 1999: <http://www.hrwf.net>

¹³ Based on information from the office of Alain Garay, attorney at Paris Court, "Jehovah's Witnesses' Situation in France: Discrimination and Serious Violations of Freedom of Conscience", 1 September 1999.

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made to Jehovah's Witnesses seriously undermined the very existence of their organization and the association's operation as a whole. The implementation of such discriminatory action would also jeopardize 200,000 Jehovah's Witnesses in France. Resorting to this tax policy directly violated religious freedom in France and isolated Jehovah's Witnesses in France from their co-religionists throughout Europe. Moreover, in practice, many political and administrative French authorities continued to ignore judgments rendered by the European Court of Human Rights advocating the respect and protection of Jehovah's Witnesses worship.

Muslims

■ On 21 September, the French government upheld a decision to expel two Muslim girls from their junior high school after they wore traditional Islamic scarves in class. The girls, both 12 years of age and Turkish nationals, were expelled from the Jean Monnet high school in the town of Flers in February. The row over the right to wear scarves went to the center of a decades-long debate in France about how to preserve the secular nature of the public education system. The debate has brought France's long tradition of separation of church and state into conflict with the freedom of religious expression. The decision was denounced by many for being discriminatory, detrimental to the interests of the students and contrary to the mission of the school and the public service.¹⁴

Protection of Asylum Seekers and Immigrants

In 1999, more than four out of every five persons seeking French protection were dismissed. Procedural delays, conditions

of accommodation in detention centers, the considerable increase in proof demanded of suspects and the brutality of certain expulsions constituted as many barriers to the glory of the "European Fortress".¹⁵ France's "sans-papiers", literally unable to obtain the papers necessary for effective integration into French society, were maintained in a state of legal and political vulnerability.

■ France's "sans-papiers" began a march in Toulouse on 21 August that ended in Paris on 2 October. The purpose of the march had been to make known their despair at being maintained in a state of lawlessness and also to pay homage to Bogdan – a "sans-papiers" of Polish nationality who, after spending ten years on French territory, was unable to obtain regularization. He committed suicide after being ultimately refused by the prefecture.

Women's Rights

On 16 February Hawa Greou, a 52-year-old Malian immigrant, was sentenced to eight years in prison for "premeditated violence against 15-year-old minors leading to female genital mutilation (FGM)" in an unprecedented case which pitted French law against African tradition. The case began on 2 February in a Magistrates Court in Paris. Greou was tried with 26 mothers of the girls, who received sentences of up to two years with probation. This was the second conviction for Greou, who received a one-year prison sentence with probation for the same offence in 1994. The prosecution was the largest brought against the practice of female circumcision in France and the first to be tried by a woman, Judge Martine Varin. It was also the first to be triggered by the complaint of a victim, whose mother – one

¹⁴ *Mouvement Contre le Racisme et pour l'Amitié entre les Peuples, Communiqués, 2 February 1999; see also The Detroit News, 22 September 1999.*

¹⁵ *Mouvement Contre le Racisme et pour l'Amitié entre les Peuples, Communiqués, 27 August 1999.*

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of the defendants – was jailed for two years. Female circumcision was criminalised in France in 1984, but it was not until 1991 that the first conviction was handed down.¹⁶

The decision was a welcome indication that FGM is now accepted as a violation of women's fundamental human rights. While the practice had previously been accepted on grounds of religion or cultural relativism, it is now included in human rights documents and acknowledged as an infringement of women's right to bodily integrity and self-determination. ■■■

¹⁶ *BBC News, BBC Online Network, Wednesday 17 February 1999; see also World News Inter Press Service (IPS): www.ips.org*