

Council of Europe contribution for the 15th UPR session regarding France

Prevention of Torture

On 19 April 2012, the Council of Europe's Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) published the report on its visit to France from 28 November to 10 December 2010, together with the French Government's response. Both documents are attached below¹.

In its visit report, the CPT notes a number of positive developments. Legal reforms had been adopted or initiated in several fields of considerable interest to the Committee (e.g. police custody, prison matters and psychiatric care). However, some of the CPT's long-standing concerns had only been partly met by the action taken by the French authorities.

During the 2010 visit, the CPT's delegation heard some allegations of excessive use of force by police officers at the time of apprehension and of blows inflicted shortly after apprehension. In its report, the Committee recommends that a message of "zero tolerance of ill-treatment" be delivered regularly to officers of the National Police Service and that legal safeguards against ill-treatment be further reinforced. It also makes a number of recommendations to improve conditions of detention in police and gendarmerie cells as well as in administrative holding centres for foreign nationals. In their response, the French authorities provide information on measures taken before and after the visit to reduce the risk of police ill-treatment. They also inform the Committee of steps taken or envisaged to improve conditions of detention in police cells and in administrative holding centres.

As regards prison-related matters, the CPT's delegation received no allegations of deliberate ill-treatment of inmates by prison staff in Le Havre and Poissy Prisons. Nevertheless, at Le Havre, some cases of excessive use of force by staff when dealing with incidents were reported to the delegation; the delegation also noted that there was an appreciable risk of inter-prisoner violence in that establishment. Further, the conditions under which prisoners are transferred to local health-care establishments and receive medical treatment continue to be of concern to the Committee. In response, the French Government refers to training for junior prison staff at Le Havre Prison on the appropriate use of force. It also informs the Committee of the work of Health-Justice co-ordination bodies in relation to transfers of prisoners to local health-care facilities. As regards prison overcrowding, another issue raised by the CPT in the report, the French authorities provide details on action taken to develop non-custodial measures and plans to increase the overall capacity of the prison system.

In the field of psychiatry, patients generally spoke positively about the manner in which they were treated by hospital staff. Nevertheless, the delegation did receive a few allegations of ill-treatment of patients by certain members of the nursing staff of Paul Guiraud hospital complex and the Val de Lys-Artois public mental health establishment. The CPT also stresses that interventions by custodial staff in the care zone of the specially adapted psychiatric hospital unit for prisoners (UHSA) should be exceptional and proportionate. Further, the Committee recommends urgent action in respect of persons awaiting placement in units for difficult patients and prisoners suffering from psychiatric disorders requiring hospital care; it emerged that such patients were generally kept for prolonged periods, often under restraint, in seclusion rooms in general psychiatry departments. The Government response refers to action taken in order to prevent ill-treatment and develop good treatment practices in the establishments visited and highlights the reduction in the number of custodial staff interventions in the care zone of the UHSA after the CPT's visit. The French Government also informs the Committee of the envisaged setting-up of psychiatric intensive care units at Paul Guiraud hospital complex and of the planned increase of

¹ Available in French only.

the number of places available in units for difficult patients in order to better meet the needs of the patients concerned. The French authorities indicate that, pending the construction of further psychiatric hospital units for prisoners, a document is under preparation with a view to preventing abusive resort to isolation and to restraint vis-à-vis prisoners hospitalised in general psychiatry departments and that the necessary adjustments to the current organisation of care are under consideration.

A complete list of the CPT's recommendations, comments and requests for information is contained in Appendix I to the report.²



France 2010
port.pdf (664 KB)



France 2010
sponse.pdf (534 KB)

Fight against racism and intolerance

European Commission against Racism and Intolerance (ECRI)

On 15 June 2010, ECRI released its fourth report on France (attached below).³

ECRI's Chair, Nils Muiznieks, said that while there had been improvements in certain areas, some issues gave rise for concern, such as minorities' perception of the police, prejudice against Muslims and the tone of the immigration debate.

As regards positive developments, the legal framework to combat discrimination has been strengthened. The police, prosecutors and judges have received training and their response to racially motivated offences has improved. The High Authority against Discrimination and for Equality (HALDE) plays a key and growing role in the fight against racism. It uses its broad competences proactively and makes a strong contribution to public debate.

Openly racist statements and acts of violence are generally condemned by politicians. Amendments to the asylum procedure have in some cases advanced non-citizens' rights. There has been genuine reflection and discussion in the political arena on the question of measuring diversity and "ethnic statistics", which would allow the evaluation of the impact of general policies on ethnic and religious groups.

However, despite recent changes in the field of criminal law, many victims fail to report racist acts to the police. The low number of convictions does not reflect the true situation as regards racism in France. The police frequently resort to racial profiling and take law enforcement decisions on the basis of racial, ethnic or religious stereotypes rather than on the basis of individual behaviour.

Discrimination on grounds of "race", colour, language, religion, nationality or national or ethnic origin persists in access to employment, education, housing, and goods and services. Children from immigrant backgrounds are disproportionately represented in certain schools.

There are not enough stopping places for Travellers and Roma; some live in unacceptable conditions; in general, they face a hostile climate of opinion. Part of the population expresses doubts about Muslims' real willingness, and even their ability, to "respect French values". The debate on the prohibition of the niqab has increased feelings of discrimination among Muslims and may result in further excluding some Muslim women from society.

² pp. 85-105.

³ A summary of the report can be found on pp. 7-10.

Certain politicians exploit racist and xenophobic stereotypes. Some of the measures intended to promote integration, such as the reception and integration contracts and the integration tests to which prospective immigrants are subjected before travelling to France, could have counter-productive effects. The Government's stated aim to have a fixed number of illegal immigrants removed from the territory has led to excesses. There is widespread suspicion that non-citizens engage in fraud to obtain residence permits and access to rights.

The report contains findings and recommendations regarding the following issues:

- I. Existence and implementation of legal provisions⁴
- II. Discrimination in various fields including employment, education, housing, goods and services⁵
- III. Racist violence⁶
- IV. Racism in public discourse⁷
- V Vulnerable/target groups including Muslim communities, Jewish communities, travellers Roma from the countries of central and eastern Europe, non-citizens and visible minorities⁸
- VI. Antisemitism⁹
- VII. Conduct of law enforcement officials¹⁰
- VIII. Promoting equality of opportunity and diversity¹¹
- IX. Monitoring racism and racial discrimination¹²

ECRI selected the following three specific recommendations for which it requests priority implementation from the authorities¹³:

- Support and regularly consult the High Authority against Discrimination and for Equality (HALDE) and take into account its opinions and recommendations;
- Combat racist expression on the Internet, in particular through a campaign informing the general public that it is possible to report content inciting to racial hatred;
- Ensure the ongoing schooling of itinerant or semi-itinerant Traveller children, adapted to their lifestyle in consultation with the Traveller community.



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Council of Europe Commissioner for Human Rights

Commissioner's letter to Eric Besson, French Minister for Immigration, Integration, National Identity and Development Solidarity

On 21 September 2010, the Commissioner for Human Rights, Thomas Hammarberg, published a letter on the rights of migrants in France addressed to the French Minister for Immigration, Integration, National Identity and Development Solidarity, Eric Besson in which he calls on the authorities to comply fully with European standards. "Improvements need to be made to uphold

⁴ pp. 11-20.

⁵ pp 20-25.

⁶ pp. 25-26.

⁷ pp. 26-29.

⁸ pp. 29-41.

⁹ p. 41.

¹⁰ pp. 41-43.

¹¹ p. 43.

¹² pp. 44-45.

¹³ p. 47.

migrants' rights in France", said Thomas Hammarberg. "There is a need for reform not only as far as the reception of migrants and asylum are concerned, but also with particular regard to detention and returns".

The letter was a follow-up to the visit made on 19 May 2010 to Calais and the surrounding area, when the Commissioner met migrants, civil society representatives and the local authorities. He also had talks with Mr Besson.

Efforts have been made to open up accommodation centres to all asylum seekers. However, in practice, asylum seekers continue to be housed in shameful and insecure conditions. "There is a tendency to process asylum requests more and more quickly whereas they need time and careful analysis. The proposal to resort to "accelerated" procedures in an ever-growing number of cases is worrying."

The Commissioner pointed out the negative consequences of determining specific numbers of foreigners to be deported. This entails a danger of abuse and a deterioration of relations between the law enforcement agencies and people who could be considered foreigners. The Commissioner finds it a matter of particular regret that these numbers are constantly rising.

Commissioner Hammarberg reminded France of its human rights commitments and also focuses on certain aspects of the immigration, integration and nationality bill to be debated in the French National Assembly. "Many of the proposed changes are a step backwards. For example, the authority given to Préfets to prohibit a migrant from entering the Schengen area for a period of three years could raise questions of compliance with the European Convention on Human Rights."

The bill also provides for a reduction in judicial supervision when a foreigner is detained, and therefore the extent and frequency of such supervision could suffer as a result. More generally, detention is resorted to all too frequently. The Commissioner called on France to find alternatives to this deprivation of freedom, especially for families with children.

Lastly, he welcomed France's commitment to helping certain European countries which are suffering from excessive migration pressure. In this connection, Commissioner Hammarberg reminded the French authorities of the need to suspend sending asylum seekers to Greece until the Greek national asylum system becomes fully operational and in line with European standards.

Commissioner's letter to Brice Hortefeux, French Minister of the Interior, Overseas France and Local Authorities

On 2 November 2010, the Commissioner for Human Rights, Thomas Hammarberg, published a letter to Brice Hortefeux, French Minister of the Interior, Overseas France and Local Authorities. "I was deeply disturbed to learn of the desecration of 37 graves in the Muslim section of Strasbourg cemetery on 24 September. Sadly, this despicable act is not the only one of its kind. Four Jewish or Muslim cemeteries have been vandalised this year in the greater Strasbourg area alone", he said.

The Commissioner emphasised that "states have an obligation to protect all religious buildings from any damage or destruction. If damage occurs, states must make every effort to investigate properly and to prosecute and punish those responsible".

As cases of desecration and attacks on places of worship escalate in France, and particularly in Alsace, the Commissioner recommended the adoption of effective measures. "The perpetrators of such offences must never be allowed to feel that they will go unpunished." Better co-ordination of all the public actors concerned would enable prevention to be improved. It is also important to

ensure the quality and reliability of data collected about racist or xenophobic offences, from their detection to justice decisions.

The Commissioner concluded his letter by inviting the Minister to engage in detailed dialogue with him to combat such desecrations and prevent them from becoming commonplace.

Both letters from the Commissioner for Human Rights and the replies from the French Ministers are attached below (only in French).



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Protection of Minorities

Framework Convention for the Protection of National Minorities

France has not yet signed or ratified the Framework Convention for the Protection of National Minorities. For this reason, it is not yet concerned by the monitoring procedure undertaken by the Council of Europe Advisory Committee on this Convention.

European Charter for Regional or Minority Languages

France has signed but not yet ratified the European Charter for Regional or Minority Languages. Thus, the country is not yet covered by the monitoring carried out by the Committee of Independent Experts under the Charter.

Social and economic rights

France ratified the European Social Charter on 09/03/1973 and the Revised European Social Charter on 07/05/1999, accepting all of its 98 paragraphs.

It accepted the Additional Protocol providing for a system of collective complaints on 07/05/1999, but has not yet made a declaration enabling national NGOs to submit collective complaints.

Cases of non-compliance

Thematic Group 1 "Employment, training and equal opportunities"

► Article 10§5 – Right to vocational training – Full use of facilities available
Equal treatment of nationals of other States Parties lawfully resident or regularly working in France is not guaranteed as regards access to scholarships granted on the basis of social criteria for higher education
(Conclusions 2008, p. 16 'Conclusion')

► Article 15§1 – Right of persons with disabilities to independence, social integration and participation in the life of the community - Education and training for persons with disabilities
Persons with autism are not guaranteed effective equal access to education
(Autism-Europe v. France (no. 13/2002) and Conclusions 2008, p. 20 'Conclusion')

Thematic Group 2 "Health, social security and social protection"

▶ Article 3§2 – Right to safe and healthy working conditions – Safety and health regulations
Self-employed workers are not sufficiently protected
(Conclusions 2008, p. 9 ‘Conclusion’)

▶ Article 12§1 – Right to social security – Existence of a social security system
Minimum invalidity and survivor's pensions are manifestly inadequate
(Conclusions 2009, p. 24 ‘Conclusion’)

▶ Article 12§4 – Right to social security – Social security of persons moving between states
Nationals of States Parties not covered by Community regulations or not bound by an agreement concluded with France have no possibility of accumulating insurance or employment periods completed in other countries
(Conclusions 2009, p. 29 ‘Conclusion’)

▶ Article 13§1 – Right to social and medical assistance - Adequate assistance for anyone in need

1. Young persons aged under 25 are not entitled to the adequate social assistance
2. Non-EU nationals with temporary residence permit are only entitled to the RMI benefit after having resided in France for 5 years
3. It has not been established that the right of appeal for decisions concerning social assistance is effective

(Conclusions 2009, p. “” ‘Conclusion’)

▶ Article 30 – Right to protection against poverty and social exclusion

Lack of coordinated approach to promote the right to housing to persons being or risking to find themselves in a situation of social exclusion or poverty

(International Movement ATD Fourth World v. France (No. 33/2006))

Thematic Group 3 “Labour rights”

▶ Article 2§1 - Right to just conditions of work - Reasonable working time

1. The weekly working hours authorised for managers who fall under the annual working days system is excessive and the legal guarantees in the collective agreements system are not sufficient

(Confédération Française de l'Encadrement (CFE-CGC) v. France (No. 9/2000), Confédération Française de l'Encadrement (CFE CGC) v. France (No. 16/2003), Confédération générale du travail (CGT) v. France (No. 22/2003), Confédération Générale du Travail (CGT) v. France (No. 55/2009), Confédération Française de l'Encadrement (CFE-CGC) v. France (No. 56/2009))

2. On-call periods where no effective work is performed are assimilated to rest periods

Confédération Générale du Travail (CGT) v. France (No. 55/2009)

(Conclusions 2010, pp. 5-6 ‘Conclusion’)

▶ Article 2§3 - Right to just conditions of work - Annual holiday with pay

It has not been established that the right to make up for loss of leave time in the event of illness or an accident occurring during this period, is guaranteed.

(Conclusions 2010, p. 7 ‘Conclusion’)

▶ Article 2§5 - Right to just conditions of work - Weekly rest period

The assimilation of on-call periods to rest periods has negative consequences on the weekly rest day

(Confédération Générale du Travail (CGT) v. France (No. 55/2009))

▶ Article 4§2 - Right to a fair remuneration - Increased remuneration for overtime work

1. The number of hours of work performed by employees who come under the annual working days system and who do not benefit from a higher rate for overtime, under this flexible working time system, is abnormally high

(Confédération Française de l'Encadrement (CFE-CGC) v. France (No. 9/2000), Confédération Française de l'Encadrement (CFE CGC) v. France (No. 16/2003), Confédération Générale du Travail (CGT) v. France (No. 55/2009), Confédération Française de l'Encadrement (CFE-CGC) v. France (No. 56/2009)) (Conclusions 2010, p. 11 'Conclusion')

2. The system of financial compensation for overtime worked by members of "the supervision and enforcement corps" of the national police force do not entitle them to benefit from a higher than normal rate of remuneration

(European Council of Police Trade Unions (CESP) v. France No. 57/2009)

► Article 4§4 - Right to a fair remuneration - Reasonable notice of termination of employment
Two months is not reasonable notice for employees with more than fifteen years service
(Conclusions 2010, p. 12 'Conclusion')

► Article 5 - Right to organise
Closed shop practices that continue to exist in the book sector
(Conclusions 2010, p. 15 'Conclusion')

► Article 6§4 - Right to bargain collectively - Collective action
1. Only representative trade unions have the right to call strikes in the public sector
2. Deductions from the wages of striking state employees are not always proportional to the duration of the strike
(Conclusions 2010, p. 20 'Conclusion')

Thematic Group 4 "Children, families, migrants"

► Article 7§2 – Right of children and young persons to protection - Prohibition of employment under the age of 18
The legislation does not lay down an absolute prohibition for persons under the age of 18 to work on dangerous activities outside the vocational training context or without having had such training beforehand
(Conclusions 2011, p. 6 'Conclusion')

► Article 8§3 - Right of employed women to protection of maternity - Time off for nursing mothers
1. The remuneration of breastfeeding breaks is not guaranteed for employed women covered by the Labour Code
2. Women working in the civil service are not entitled to breastfeeding breaks
(Conclusions 2011, p. 14 'Conclusion')

► Article 16 – Right of the family to social, legal and economic protection
The housing conditions of Travellers' families are not adequate
(Conclusions 2011, p. 19 'Conclusion')

► Article 17§1 – Right of mothers and children to social and economic protection – Assistance, education and training
1. All forms of corporal punishment of children are not prohibited
2. The maximum periods of pre-trial detention of children are too long
(Conclusions 2011, p. 22 'Conclusion')

► Article 19§4 - Right of migrant workers and their families to protection and assistance - Equality regarding employment, right to organise and accommodation
1. It has not been established that in respect of access to employment, working conditions and accommodation migrant workers enjoy treatment which is not less favourable than that of nationals
2. The housing conditions of Roma migrant workers in a legal situation are not adequate
(Conclusions 2011, p. 28 'Conclusion')

► Article 19§6 - Right of migrant workers and their families to protection and assistance - Family reunion

The requirement for foreign nationals wishing to be joined by their close relatives to have been residing lawfully in France for at least eighteen months is excessive
(Conclusions 2011, p. 30 'Conclusion')

► Article 19§8 - 6 Right of migrant workers and their families to protection and assistance - Guarantees concerning deportation

During the reference period Roma were expelled for reasons not permitted by the Charter
(Conclusions 2011, p. 31 'Conclusion')

► Article 19§10 - Right of migrant workers and their families to protection and assistance - Equal treatment for the self-employed

The situation in France is not in conformity with Article 19§10 of the Charter on the same grounds for which it is not in conformity with paragraphs 4, 6 and 12 of the same Article
(Conclusions 2011, p. 32 'Conclusion')

► Article 19§12 - Right of migrant workers and their families to protection and assistance - Teaching mother tongue of migrant

It has not been established that France promotes and facilitates the teaching of the migrant worker's mother tongue to the children of migrant workers
(Conclusions 2011, p. 33 'Conclusion')

► Article 31§1 – Right to housing - Adequate housing

1. The length of residence requirement to be entitled to submit an application to the committee in charge of the DALO procedure is excessive
2. Unfit housing is considerable and suitable amenities are lacking for a large number of dwellings
3. Failure to create a sufficient number of stopping places for Travellers and poor living conditions and operational failures on such sites
4. Access to housing for settled Travellers is lacking
5. Progress as regards the eradication of substandard housing conditions is insufficient for a large number of Roma

(Conclusions 2011, p. 41 'Conclusion' and European Federation of National Organisations Working with the Homeless (FEANTSA) v. France (No. 39/2006) for all the above grounds except the first one, and European Roma Rights Centre (ERRC) v. France (No. 51/2008) for the third and fifth grounds)

► Article 31§2 – Right to housing - Reduction of homelessness

1. The measures to reduce the number of homeless persons are insufficient
2. The implementation of the legislation on the prevention of evictions is not satisfactory and there is a lack of measures to provide rehousing solutions for evicted families
3. Travellers' human dignity was not respected while carrying out eviction procedures

(Conclusions 2011, pp. 45-46 'Conclusion' and International Movement ATD Fourth World v. France No. 33/2006, European Federation of National Organisations Working with the Homeless (FEANTSA) v. France (No. 39/2006) and European Roma Rights Centre (ERRC) v. France (No. 51/2008))

► Article 31§3 – Right to housing - right to affordable housing

1. Insufficient supply of housing accessible to low-income groups and of social housing, in particular because of the shortfall of construction of social housing and of shortcomings of the system of legal redress
2. The social housing allocation system and the related remedies are not functioning correctly
3. The implementation of legislation on stopping places for Travellers is deficient

(Conclusions 2011, p. 49 'Conclusion' and International Movement ATD Fourth World v. France No. 33/2006 and European Federation of National Organisations Working with the Homeless (FEANTSA) v. France (No. 39/2006))

Please see attached below the Conclusions regarding France from 2008, 2009, 2010 and 2011, as well as the fact sheet.



France2008_en.pdf



France2009_en.pdf



France2010_en.pdf



France2011_en.pdf



France_en.pdf

Action against Trafficking in Human Beings and

A delegation of the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) carried out a country visit in France from 26 to 30 March 2012. GRETA's final report on the implementation of the Convention by France will be established at its 15th meeting (26-30 November 2012).

Preventing and Combating Violence against Women and Domestic Violence

France has signed but not yet ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence. For this reason, it not yet concerned by the monitoring procedure to be carried out by a Group of experts on action against violence against women and domestic violence (GREVIO) once the convention enters into force.