

# ECRI

European Commission against Racism and Intolerance  
Commission européenne contre le racisme et l'intolérance

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## European Commission against Racism and Intolerance

### Third report on France

Adopted on 25 June 2004

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For further information about the work of the European Commission against Racism and Intolerance (ECRI) and about the other activities of the Council of Europe in this field, please contact:

Secretariat of ECRI  
Directorate General of Human Rights – DG II  
Council of Europe  
F - 67075 STRASBOURG Cedex  
Tel.: +33 (0) 3 88 41 29 64  
Fax: +33 (0) 3 88 41 39 87  
E-mail: [combat.racism@coe.int](mailto:combat.racism@coe.int)

Visit our web site: [www.coe.int/ecri](http://www.coe.int/ecri)

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## **Foreword**

*The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.*

*One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyses the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.*

*The country-by-country approach deals with all member States of the Council of Europe on an equal footing. The work is taking place in 4/5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998 and those of the second round at the end of the year 2002. Work on the third round reports started in January 2003.*

*The third round reports focus on "implementation". They examine if ECRI's main recommendations from previous reports have been followed and implemented, and if so, with what degree of success and effectiveness. The third round reports deal also with "specific issues", chosen according to the different situations in the various countries, and examined in more depth in each report.*

*The working methods for the preparation of the reports involve documentary analyses, a contact visit in the country concerned, and then a confidential dialogue with the national authorities.*

*ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to propose, if they consider it necessary, amendments to the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final report of ECRI.*

***The following report was drawn up by ECRI under its own and full responsibility. It covers the situation as of 25 June 2004 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.***

### ***Executive summary***

Since the publication of ECRI's second report on France, progress has been achieved in a number of areas covered in the report. The legal apparatus for combating racism and racial discrimination has been reinforced in the criminal, and the civil and administrative, branches of law. A free telephone help line has been created for reporting racial discrimination. Immigrant children's access to education has been improved in certain respects. Concrete measures have been taken to combat antisemitism. A National Commission on Ethics and Security has been set up. Pilot schemes such as the "reception and integration contract" for newly arrived non-citizens are underway, and special measures have been taken to aid the integration of persons with an immigrant background.

However, several recommendations made in ECRI's second report have been implemented only partially or not at all. Treaties such as the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages have not yet been ratified. Law enforcement officials and members of the judicial service receiving complaints are not always sufficiently alert to the racist aspect of offences, and the victims are not always adequately informed or assisted with the formalities. Immigrants and asylum-seekers still meet with difficulties and are sometimes as a group perceived as "cheaters". Access to education for children of immigrants and Travellers still needs to be improved. Travellers as well as immigrant Roma are confronted with difficult situations particularly as regards housing. Antisemitism has increased alarmingly in France, notably in the school environment. Muslims are up against an increase in racist acts and statements. Minority groups, including immigrants and persons with an immigrant background, have to contend with discrimination especially in access to employment and housing.

In this report, ECRI recommends that the French authorities take further action in a number of fields. It recommends *inter alia*: signing and ratifying Protocol No. 12 to the European Convention on Human Rights which sets out a general prohibition of discrimination; fully applying the existing criminal and civil law provisions to combat racism and racial discrimination; reinforcing the legal framework in civil and administrative law aimed at combating racial discrimination; and to raise the awareness of members of the judicial service to the problem of racial discrimination and the difficulty of legally proving that it exists. ECRI also recommends that a specialised body be set up to combat racism and racial discrimination. It encourages the French authorities to improve the situation of minority groups including Travellers, Roma and Muslims as well as immigrants, persons of immigrant origin and asylum seekers. It recommends continuing and intensifying the fight against antisemitism, and developing a stronger response to the problem of the exploitation of racism in politics. Finally, it encourages the French authorities to take appropriate measures to move towards an integrated society in which immigrants and persons of immigrant background gain their proper place.

## I. FOLLOW-UP TO ECRI'S SECOND REPORT ON FRANCE

### International legal instruments

1. In its second report on France, ECRI encouraged the French authorities to ratify the European Charter for Regional or Minority Languages, to sign and ratify the Framework Convention for the Protection of National Minorities, and to withdraw the reservations concerning Article 27 of the International Covenant on Civil and Political Rights. The French authorities have informed ECRI that the official position of France remains unchanged, namely that ratification of the aforementioned instruments and withdrawal of the reservation to the Covenant would be in conflict with constitutional principles. The legal concept of a minority continues to be unacceptable to France, as the Constitutional Council has stated in its case-law. According to the French authorities, the recognition of collective rights would be contrary to the principles of indivisibility, equality and unity on which the French Republic is based.
2. In its second report, ECRI encouraged the French authorities to sign and ratify the Convention on the Participation of Foreigners in Public Life at Local Level. The French authorities have explained that, before considering the ratification of this Convention, national political debate on the issue would need to be re-opened<sup>1</sup>.
3. In its second report, ECRI encouraged the French authorities to ratify the European Convention on Nationality, signed by France in 2000. The French authorities have informed ECRI that there are currently no plans to ratify this Convention.

### ***Recommendations:***

4. ECRI recommends that the French authorities ratify the European Charter for Regional or Minority Languages<sup>2</sup>, sign and ratify the Framework Convention for the Protection of National Minorities, and withdraw the reservations concerning Article 27 of the International Covenant on Civil and Political Rights. It encourages the French authorities to continue and to intensify the debate over the potential benefits that signing these international legal instruments could bring to France.
5. ECRI recommends that the French authorities sign and ratify the Convention on the Participation of Foreigners in Public Life at Local Level.
6. ECRI recommends that the French authorities ratify as swiftly as possible the European Convention on Nationality.
7. France has neither signed nor ratified Protocol No. 12 to the European Convention on Human Rights (ECHR), which sets out a general prohibition of discrimination. The French authorities have informed ECRI that they do not expect to ratify this Protocol which, according to them, significantly extends the powers of the European Court of Human Rights, until the system of safeguards instituted by the ECHR is reformed in order to address the excessive workload

<sup>1</sup> Concerning non-citizens' right to vote in France, see "specific issues" below.

<sup>2</sup> Concerning the teaching of regional and minority languages, see "Access to education" below.

of the Court and until a substantive national debate is held as to the consequences that ratifying this Protocol would have upon the French legal system. At the present time, no such debate is in progress.

8. The Convention on Cybercrime was signed on 23 November 2001, and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems was signed on 28 January 2003. The French authorities have informed ECRI that the procedure for ratifying the Convention and its Additional Protocol is underway and should be completed by the end of 2004. The United Nations Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, which came into force on 1 July 2003, has not been signed or ratified by France. The French authorities have explained that the subject matter of this Convention falls within the scope of European Union law, which means that a Community approach is therefore required.

#### ***Recommendations:***

9. ECRI recommends to the French authorities to sign and ratify Protocol No. 12 ECHR as soon as possible, and to without delay open the public debate which they believe to be a necessary step in the process.
10. ECRI is pleased to note that France is in the process of ratifying the Convention on Cybercrime and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, and encourages the French authorities to make every effort to bring the process to the earliest possible conclusion.
11. ECRI recommends that the French authorities sign and ratify the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

#### **Constitutional provisions and other basic provisions**

12. In its second report, ECRI reiterated its concern over a limitation in individual rights related to the identity of some groups of the population of France pursuant to the case-law of the Constitutional Council to the effect that the recognition of minority groups is not possible in the French constitutional order. ECRI regrets that the case-law of the Constitutional Council with respect to this issue has not been revised. ECRI hopes that France will foster the public debate which seems to have begun on this subject, and which could lead the French authorities to recognise certain rights and carry out certain measures without needing to call into question the principles of equality and indivisibility of the Republic. It notes the development of a new trend allowing minority groups to be better taken into account, for instance in the area of teaching of regional languages<sup>3</sup>.

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<sup>3</sup> See particularly "Access to education", paragraph 80 below.



### **Recommendations:**

13. ECRI strongly encourages the national authorities to initiate debate within public institutions as well as the general public as to whether – and to what extent – it is possible to recognise rights connected with the identity of minority groups without encroaching on the fundamental principles of the French Republic. ECRI recommends that those directly affected by this issue be included as full participants in this debate. Furthermore, ECRI considers that a debate of this kind could be enhanced by taking into consideration the experiences of other European states in this field.

### **Criminal law provisions**

14. In its second report, ECRI recommended that the French authorities further fine-tune legislation to combat racism and intolerance. It called *inter alia* for the lengthening of the prescriptive period laid down by the law on the press in respect of racist statements. ECRI also recommended making racist motivation an aggravating circumstance, whatever the type of offence.
15. ECRI is pleased to note that criminal legislation aimed at sanctioning racist acts and statements has been reinforced since the adoption of its second report. As concerns racist statements, the law of 9 March 2004 extended the prescriptive period from three months to one year for prosecuting the offences of: incitement to racial discrimination, hatred and violence; negationism; and racial defamation and insults. In addition, as concerns offences committed with a racist motivation, the law of 18 March 2003 provides that a racist, xenophobic or antisemitic motive may be taken into account as an aggravating circumstance leading to an increase in the severity of the applicable penalty. This aggravating circumstance may be applied with respect to the following offences: intentional homicide, torture and acts of barbarism, violence, damage to private property and, subsequent to the law of 9 March 2004, to threats, theft and extortion. The law provides that such aggravating circumstance is constituted when the offence is preceded, accompanied or followed by statements, writings, images, objects or acts of any kind that injure the honour or reputation of the victim, or of a group of persons to which the victim belongs, because of those persons' actual or presumed affiliation or non-affiliation to a given ethnic group, nation, race or religion. ECRI welcomes these recent changes that reinforce the fight against racism and intolerance. It is nevertheless too early at this stage to assess the implementation of such provisions.

### **Recommendations:**

16. ECRI recommends that the French authorities duly implement the provisions stipulating that racist motivation constitutes an aggravating circumstance in the case of the specified offences, and take the necessary steps to monitor the implementation of these new provisions.
17. ECRI recommends that the French authorities extend the applicability of the aggravating circumstance constituted by racist motivation to cover all criminal offences as suggested by ECRI in its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination.

18. In its second report, ECRI noted that the provisions outlawing racial discrimination were insufficiently implemented, due particularly to the difficulties encountered in proving the existence of discrimination in criminal law<sup>4</sup>. ECRI notes that the number of convictions on counts of racial discrimination is increasing, especially for cases of discrimination in access to goods and services. This development is partly due to the acceptance in penal law of evidence obtained through the method of “testing” as an admissible form of proof. This method seeks to establish the existence of a discriminatory practice by involving persons whose minority ethnic origin is visible. Testing sets out to demonstrate, chiefly through personal testimony, that these persons are not treated in the same manner as members of the majority population placed in exactly the same circumstances. For example, testing may be carried out at the entrance to a discotheque. Or, in response to an advertisement for a job, applications may be sent in with identical CVs in which the only variations are the person’s name and/or photo.
19. The Court of Cassation<sup>5</sup> has ruled that evidence gathered in this manner is not to be deemed unlawful or unfair, in application of the principle of freedom of evidence in criminal proceedings. On various occasions, anti-racism associations have made successful use of this technique. ECRI notes, however, that in order to fully persuade judges, evidence obtained through testing often has to be corroborated by a thorough investigation carried out by the police and the prosecution.
20. ECRI is pleased to note that penal legislation aimed at combating racial discrimination has been strengthened in several respects. The law of 16 November 2001 relating to the fight against discrimination has widened the field of application of relevant penal legislation by *inter alia* prohibiting discrimination on the grounds of physical appearance and surname. ECRI welcomes this initiative which should facilitate prosecution of this specific type of racial discrimination. This law has also extended the scope of application of penal legislation sanctioning discrimination in employment to cover internships as well as professional training opportunities. Furthermore, the law of 9 March 2004 increased the applicable penalties for racial discrimination. Previously, a person committing an act of racial discrimination could be liable to a penalty of up to two years of imprisonment and a 30 000 euro fine. Now, the penalty can be as high as three years of imprisonment and a 45 000 euro in fines. Where a discriminatory refusal of admission takes place in a premises open to the public, or with the aim of denying access, or where the discrimination is the act of a person vested with public authority, the penalties have increased from three to five years of imprisonment, and from a 45 000 to a 75 000 euro fine.

#### **Recommendations:**

21. ECRI welcomes these positive developments relating to proof of racial discrimination in criminal law and encourages the French authorities to continue their efforts in this direction. Judges, prosecutors and law enforcement officials should in particular co-operate with associations that fight against racial

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<sup>4</sup> Concerning proof of discrimination in civil and administrative law, see “Civil and administrative law provisions” below.

<sup>5</sup> Court of Cassation, Criminal Division, 11 June 2002, *Sos Racisme*.

discrimination to ensure that perpetrators are effectively sanctioned.

22. ECRI recommends to the French authorities to raise awareness among judges and prosecutors of problems of racial discrimination and of difficulties of proof. ECRI also recommends that magistrates and law enforcement officials be thoroughly informed about the new provisions aimed at combating racial discrimination in such a manner as to promote the full application of these provisions. An information campaign directed at the general public would also reinforce the implementation of these provisions.

23. In its second report, ECRI noted that the provisions aimed at combating racism and racial discrimination were still insufficiently implemented. ECRI is pleased to note that several measures have been taken to improve the enforcement of criminal law in this area. To mention but a few of these measures, the Ministry of Justice recently published two circulars, one on 21 March 2003 and the other on 18 November 2003, reminding prosecutors of the importance of combating racist, antisemitic or xenophobic acts committed on the national territory. Prosecutors are to request penalties that reflect the seriousness of these crimes, and they are to scrupulously ensure that victims are informed of the judicial outcome of the proceedings. In addition, each office of the prosecution is to appoint a referent magistrate responsible for overseeing relations with anti-racism associations and ensuring an appropriate response by the criminal justice system in this area. Handbooks on legal ways to combat racism have been made available to prosecutors. ECRI has been informed that victims often hesitate to lodge complaints of racist acts and statements concerning them, but especially of acts of racial discrimination. ECRI notes that in the opinion of non-governmental organisations, the law enforcement officers and justice officials to whom complaints are referred are not always sufficiently aware of the racist aspect of the offences, and the victims are not always adequately informed about avenues available to pursue complaints or supported in doing so, which can have the effect of discouraging them.

#### ***Recommendations:***

24. ECRI strongly encourages the French authorities to fully implement the directives of the Ministry of Justice aimed at a more thorough application of the criminal law provisions against racism and intolerance.

25. ECRI recommends that the French authorities make sure to offer the necessary support and assistance to victims wishing to lodge complaints against racist acts and instances of racial discrimination. It considers that the role of the referent prosecutor in charge of managing relations with anti-racism associations in each main prosecution service could be assigned a more comprehensive function of follow-up of cases which involve racist acts and acts of racial discrimination. The suggested specialisation would allow the handling of case files and also the mentoring of victims to be improved. ECRI recommends that efforts be continued to raise awareness among judges, prosecutors and law enforcement officers of the need to combat racist acts and acts of racial discrimination, and to give the victims of such acts proper support.

## Civil and administrative law provisions

26. In its second report, ECRI recommended that the French authorities introduce a single and comprehensive body of legislation designed to combat discrimination in the sphere of administrative and civil law.
27. The law of 16 November 2001 allowed the European directives for combating discrimination to be partially transposed into domestic law<sup>6</sup>. Discriminatory practices in employment are henceforth prohibited, whether direct or indirect, and witnesses in a discrimination case are protected from all types of reprisals. The burden of proof no longer rests solely on the person claiming to be a victim of discrimination; the law provides for a shared burden of proof between the victim and the author of an alleged discriminatory act. Anyone claiming to be a victim must bring forward preliminary factual evidence from which the existence of direct or indirect discrimination may be inferred. In the light of that evidence, it rests with the respondent to prove that his or her decision was based on objective considerations entirely unconnected with discrimination. The court makes its decision after having ordered, if need be, whatever measures of investigation it deems necessary. The law also allows for trade unions to bring court actions on the victim's behalf, unless the victim objects. The law of 17 January 2002 extended the prohibition of discrimination to cover rented accommodation, providing for the same sharing of the burden of proof as exists in the field of employment. This readjustment of the burden of proof seems to be too recent for its operation to be evaluated; there are so far no relevant statistics.
28. The French authorities have informed ECRI that they plan to rapidly enact a general, non-codified law providing for a shared burden of proof in cases of discrimination and covering the entire field of application of Directive 2000/43/EC. This Directive relates not only to employment and housing, but also to social protection, including social security and health care, social advantages, education, and access to and provision of goods and services. It is foreseen that a national specialised body to fight against discrimination will be set up.<sup>7</sup>

### **Recommendations:**

29. ECRI welcomes the adoption of provisions providing for a shared burden of proof of the existence of racial discrimination in civil and administrative law. It strongly recommends that the French authorities train judges and lawyers appropriately in order to encourage the full implementation of these provisions.
30. ECRI recommends to the authorities to provide the public with information, for example through an awareness raising campaign, about the existence of the new provisions outlawing racial discrimination. Emphasis should be placed on the complementary relationship between civil and administrative law and criminal law, as both forms of law have a positive role to play in the fight against racial discrimination.

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<sup>6</sup> Directive 2000/43/EC of the Council of the European Union implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Directive 2000/78/EC of the Council of the European Union establishing a general framework for equal treatment in employment and occupation.

<sup>7</sup> See "Specialised bodies and other institutions" below.

31. ECRI strongly recommends to the French authorities to extend without delay the civil and administrative legal framework aimed at combating discrimination to cover all types of discrimination in all spheres of life, having due regard to ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination. It stresses the importance of extending the system for sharing the burden of proof to all areas of civil and administrative law and especially to membership of professional organisations, education, training, health, social protection, goods and services available to the public, places open to the public, the carrying out of an economic activity, and public services.

### **Specialised bodies and other institutions**

32. In its second report ECRI – while welcoming the establishment of a study group on discrimination (GED) – encouraged the French authorities to continue to work towards the establishment of an independent authority to combat discrimination.
33. The GED has now become the GELD (groupe d'études et de lutte contre les discriminations) to clearly indicate its move towards a more active approach. The GELD has done considerable work in the field of combating discrimination. ECRI notes that the French authorities have indicated their intention to establish an independent authority to fight discrimination which would replace the GELD, taking over its activities as well as developing others. Accordingly, a report commissioned by the Prime Minister sets out the principal characteristics which such an authority might possess<sup>8</sup>. It would be competent to deal with all forms of discrimination, including racial discrimination. Its prime function would be to process individual complaints and provide support for victims of discrimination, who would be able to petition it directly. It would also be vested with a function of promoting equality, a function of delivering advice and putting proposals to the public authorities, and a function of observation, study and stimulation of research. ECRI is pleased to note that the proposal is tending towards an independent authority with powers of investigation, mediation and enforcement as well as possibilities to initiate court proceedings. ECRI has been informed by the French authorities that a bill is to be tabled in Parliament which could be adopted at the end of 2004.

### ***Recommendations:***

34. ECRI welcomes the French authorities' plans to establish an independent authority to fight discrimination and promote equality. It strongly recommends that the French authorities finalise the plan and set up the authority at the earliest possible date. ECRI also encourages the authorities to consult and co-operate with civil society in this matter.
35. ECRI recommends that the French authorities take account of its General Policy Recommendation No. 2 on specialised bodies at national level to combat racism, xenophobia, antisemitism and intolerance in deciding upon the various features of the authority which is to combat discrimination. ECRI draws

<sup>8</sup> Report "vers la Haute Autorité de lutte contre les discriminations et pour l'égalité" (towards a High Authority for suppression of discrimination and promotion of equality) presented by Bernard Stasi, delivered to the Prime Minister on 16 February 2003.

particular attention to the importance of entrenching in law the independence of this authority and of ensuring that it has guaranteed and sufficient human and financial resources to effectively carry out its mandate.

36. ECRI strongly recommends that the French authorities consider creating local agencies of the authority charged with combating discrimination and promoting equality in order to ensure that it is genuinely accessible to victims. ECRI also believes that it should be possible for victims to have access to it directly and free of charge.
37. In its second report, ECRI welcomed the creation of the “Commissions départementales pour l'accès à la citoyenneté (CODAC)” (Departmental Commissions for Access to Citizenship) and recommended that they be further publicised to facilitate victims’ access to them. It also emphasised the need for the thorough involvement of anti-racist associations in CODAC activities.
38. According to a great number of sources, the effectiveness of the CODACs is unsatisfactory. Results are variable and largely dependent upon: the priority assigned by the Prefect heading each CODAC at the département level; the human resources allocated, and on the degree of co-operation with civil society. Some Commissions are reported to be far more active than others. There is talk of reinforcing their mandate, albeit essentially for the purpose of giving them more of a preventive role in the fight against discrimination and enhancing their role in combating racism and antisemitism.
39. In 2000 the French authorities established a telephone hotline, “number 114”, specifically aimed at fighting against racial discrimination. This hotline provides a free telephone counselling service that takes calls from persons who believe they have suffered or witnessed racial discrimination. The law of 16 November 2001 reinforced and enshrined in law the existence of this telephone service. The GELD and human rights organisations have a mixed assessment of the services provided by the 114 hotline. On the one hand, they note that this service has played a key role in bringing to light the magnitude of problems of racial discrimination in France. On the other hand, they draw attention to the fact that this service falls far short of responding to victims’ expectations. ECRI is particularly concerned to learn that the handling of cases shows major deficiencies, mainly due to the poor training of the various operators involved in the process. In certain extreme cases complaints have even backfired against the plaintiffs themselves, particularly in cases of complaints against law enforcement officials.
40. There are many other institutions involved in fighting racism and intolerance in France. ECRI particularly welcomes the creation in December 2003 of the joint ministerial committee for combating racism and antisemitism. The Commission nationale consultative des droits de l'homme – National Consultative Commission for Human Rights (CNCDH), especially via its annual report on the fight against racism and xenophobia, performs an important function complemented by the Mediator of the Republic, for example in dealing with complaints lodged against the administration by non-nationals or by making proposals for reforms in the fields that come within ECRI’s terms of reference.

### **Recommendations:**

41. ECRI recommends that the French authorities overhaul and improve initiatives such as the CODACS and the telephone hotline “number 114”, within the framework of current reflection about establishing an independent authority to combat discrimination and promote equality. The critical appraisals of certain authorities and civil society representatives should be taken into account in any reform initiatives.

### **Education and awareness-raising**

42. In its second report, ECRI encouraged the French authorities to promote a fuller appreciation of cultural diversity among school pupils. ECRI is pleased to learn that the education programs have been further developed at all levels, especially in the field of civic education, thereby giving the teachers tools to make pupils aware of the values fundamental to democracy, including those of equality and respect for others. These values are also taught in different subjects throughout the curriculum, and special projects are devoted to other topics falling within ECRI’s mandate, such as the positive aspects of immigration for French society and the need to fight against racism.<sup>9</sup> For instance, an “anti-racist” week is now held in schools in March.

### **Recommendations:**

43. ECRI encourages the French authorities to pursue their course of action by intensifying teacher training in this field so that teachers are fully equipped to convey the necessity of combating racism and intolerance and the benefits of cultural diversity, resulting particularly from immigration.

### **Reception and status of non-citizens**

#### **- Immigration**

44. In its second report, ECRI encouraged the French authorities to pursue their stated intention to clarify and legalise the position of those immigrants whose status was unclear. It called for measures to improve the general climate of opinion concerning immigrants.
45. Legislation dealing with the entry and stay of non-citizens has long been criticized in France. On 26 November 2003 a new law concerning “control of immigration and residence of foreigners in France and nationality” was enacted. It seeks to enhance integration policy<sup>10</sup>, to combat illegal immigration and to reinforce the legal safeguards for non-citizens. Human rights NGOs have been criticising the “dual penalty”. It gives the possibility of expelling from French territory a non-citizen who has finished serving a prison sentence, on the grounds that he or she constitutes a serious threat to law and order. In

<sup>9</sup> On this point, see also “Specific issues” below.

<sup>10</sup> On this point, see “Specific issues”.

particular, NGOs note that it places non-nationals in an unfavourable position in comparison with nationals sentenced to terms of imprisonment for similar offences, who cannot be expelled.

46. The new law aims at bringing improvements by eliminating the « dual penalty » under certain conditions : when the non-citizen came to France before the age of thirteen, when he/she has been living in France for 20 years, or for 10 years if he/she is married to a French national or when he/she is the parent of a child with French nationality, it will not be possible to expel the non-citizen, save in the case of conduct which may constitute a threat to the fundamental interests of the State or which is related to terrorist-type activities or constitutes an explicit and deliberate incitement to discrimination, hatred or violence against a specific person or a group of persons.
47. However, NGOs have underlined that the improvements brought by this law remain largely insufficient. ECRI notes with concern that the law does not fully guarantee the right to private and family life, in every sense of the term.

#### ***Recommendations:***

48. ECRI strongly recommends that the French authorities ensure that no expulsion order is served on non-citizens in violation of their private and family life. In this respect, ECRI draws attention to Article 8 of the European Convention on Human Rights and to the case-law of the European Court of Human Rights, according to which expulsion or removal of a non-citizen must not infringe his/her right to private and family life.
49. The law on control of immigration extended to 32 days the maximum time for which a non-citizen without legal status may be detained. The French authorities have informed ECRI that this extension of the detention period was accompanied by the strengthening of the legal safeguards benefiting non-citizens, particularly through the creation of a national inspectorate of detention centres and other places of detention, responsible for monitoring that the rights of non-citizens are respected as well as the conditions of their accommodation during detention. However, NGOs have expressed their concern over the extension of the maximum detention period, especially considering that the prescribed legal safeguards are not always effectively implemented. For instance, the provision of an interpreter during proceedings is not always adequately guaranteed in practice.
50. ECRI notes that the detention facilities and the zones specially designated for persons awaiting clarification of their legal status (“zones d'attente des personnes en instance” - ZAPI) – are criticised by NGOs. They especially criticise the poor conditions of detention, although there have been improvements in this area. The main grievance against the authorities is their not allowing the NGOs sufficient access to places of detention and waiting areas. ECRI notes, however, that the authorities recently allowed some organisations such as the Red Cross, ANAFE (National Association for assisting foreigners at the borders), Cimade and the Office for International Migrations to enter and/or staff these areas, which should improve the circumstances of persons held.



**Recommendations:**

51. ECRI strongly recommends to the French authorities to resort as little as possible to detaining non-citizens, and above all to only make use of the possibility of lengthening the detention period in cases of strict necessity.
52. ECRI strongly recommends that the French authorities continue their efforts to improve living conditions and legal aid for non-citizens in detention centres or zones specially designated for persons awaiting clarification of their legal status.
53. ECRI recommends that the French authorities continue to intensify their co-operation with NGOs providing support for non-citizens. It should also be ensured that NGOs have genuine and adequate access to detention centres and waiting areas.
54. In its second report, ECRI addressed the question of the procedure for legalising the situation of non-citizens illegally present on French territory. It urged the French authorities to ensure that any administrative instructions concerning implementation of the law on legalisation were in line with the spirit of the law and did not contain elements which would render legalisation excessively difficult.
55. At present, no general legalisation operation is underway in France, but the problem of the “sans-papiers” or undocumented non-citizens, i.e. the non-citizens illegally present in France, seems a long way from being resolved according to the human rights organisations. ECRI notes that there still exist specific legalisation procedures allowing the situation of each non-citizen to be considered case by case. For example, a non-citizen who proves he has close personal and family ties in France or that he has lived in the country for over ten years can apply for legalisation. It is estimated that there are several tens of thousands of legalisations of this sort per year. ECRI is pleased to note that in December 2002 prefects were requested via a circular to accept more flexible modes of proof than formerly and to maintain a dialogue with NGOs supporting the “sans-papiers”.

**Recommendations:**

56. ECRI recommends that the French authorities continue the process of legalising non-citizens without legal status, taking their individual situations into account as far as possible. In particular, it is necessary to avoid letting them be placed in a position of insecurity and dependence on employers illegally using them as labour.
57. Overall, the recent trend in immigration policy has been criticised by human rights NGOs. It seems that immigration continues to be a sensitive political issue and that the authorities adopt a restrictive stance that is reflected in legislation in this area. ECRI is concerned over reports by NGOs to the effect that the recently adopted legislative provisions foster in public opinion a widespread suspicion of non-citizens as fraudulent. These provisions tend to present a negative image of non-citizens, as people trying to cheat on all levels, whether by marriages of convenience, false claims of fatherhood or feigning ill-

health in order to be allowed to enter or remain on French territory at all costs. ECRI warns against such a policy which is liable to stigmatise the entire immigrant population in the eyes of the public.

58. Furthermore, in practice the provisions which safeguard the rights of non-citizens are not always properly applied by the public institutions. Some officials are reported to adopt a distrustful attitude, for instance by requesting documents over and above those prescribed by law for a given formality. ECRI has also been informed of problems over the excessive length of the waiting period to which non-citizens are subject. These delays may partly be due to a shortage of staff in those public bodies in contact with non-citizens, but in some cases they are also due to a lack of sensitivity amongst such staff as to the specific situation in which non-citizens find themselves. The delays pose significant problems as the legal status of non-citizens depends on the procedures in question, for example whether or not the right to work is granted.

#### ***Recommendations:***

59. ECRI recommends that the French authorities take steps to ensure that non-citizens do not come under a generalised suspicion of being fraudulent, that could lead to the stigmatisation of the entire immigrant population. In this respect, the authorities should exercise particular caution as to the legislative provisions that they adopt, as well as with regard to their statements concerning non-citizens.
60. ECRI strongly recommends to the French authorities to ensure that public bodies implement the legislation in strict accordance with the rights of non-citizens, and to sanction any misbehaviour discovered in this area. Training courses should also be planned for civil servants in order to raise their sensitivity to the specific situation of non-citizens.

#### **- *Refugees and asylum-seekers***

61. In its second report, ECRI recommended that the French authorities refrain from treating asylum-seekers as criminals, even if their claims are not considered to be valid by the authorities. It also recommended that the authorities introduce measures to counter public misconceptions or prejudices concerning refugees and asylum-seekers.
62. Since the adoption of ECRI's second report on France, a new law on asylum has come into force. It aims to create a single asylum application procedure, to shorten the length of the procedure, and to replace the "territorial asylum" procedure with subsidiary protection provisions. ECRI welcomes certain advances resulting from the law, for instance the possibility of granting asylum even where non-state agencies are responsible for the alleged persecution. However, ECRI is concerned over the criticisms levelled by human rights NGOs to the effect that the new law is primarily intended to limit the number of asylum requests and admissions of non-citizens to French territory. ECRI notes especially that the time allowed for filing an asylum request has been reduced, which the NGOs believe makes it excessively difficult to exercise the right of filing for asylum. A danger also exists that the resolve to shorten the procedure by accelerating it may result in an expeditive procedure that does not fully

respect the right to request asylum. For example, there are allegedly cases where, under the accelerated procedure applicable at the border, a request was initially refused as being *manifestly unfounded* whereas the applicant obtained asylum at an exceptional re-examination of the request. The French authorities have indicated that the limitation of the period of time for filing an application is part of their efforts to reduce the time taken to consider applications for asylum to ensure that asylum seekers do not find themselves in an uncertain or precarious situation for an excessively long period of time.

63. It has been reported moreover that in practice, access to the procedure is not always guaranteed either because the applicants are obstructed by the authorities or because they do not receive adequate legal aid and linguistic assistance. ECRI is nevertheless pleased to be informed that there are staff training courses which, most significantly, have allowed progress to be achieved regarding time taken to register asylum requests, or have called attention to the ethical rules applicable in this field.
64. ECRI is concerned over reports that not all asylum seekers have access to suitable housing conditions and that some, including entire families, have no accommodation and find themselves out in the street. The authorities have informed ECRI that they are endeavouring, in difficult financial circumstances, to improve the conditions in which asylum-seekers are accommodated. In 2004 an additional three thousand places are to be offered in CADAs, special accommodation centres.
65. Finally, ECRI notes that the majority population still harbours prejudices and stereotypes about asylum seekers and refugees. Several NGOs consider such misrepresentations are heightened by certain aspects of governmental policy which create an impression of a substantial number of “bogus asylum seekers” attempting to misuse the procedure.

#### **Recommendations:**

66. ECRI strongly recommends that the French authorities deploy all the human and financial resources needed to remedy the present shortcomings in the asylum procedure. In particular, the staff responsible for receiving asylum requests in the first instance should be reinforced to avoid undue delays in the consideration of requests or hasty decisions to refuse a request on the grounds that it is manifestly unfounded.
67. ECRI recommends that the French authorities take urgent steps to remedy the problems remaining in terms of accommodation for asylum-seekers.
68. ECRI recommends that the French authorities provide training in human rights for all staff who come into contact with asylum-seekers, and raise their awareness of the problems asylum-seekers’ face, in order to make the asylum procedure easier for applicants. It also recommends that the French authorities take care not to encourage negative attitudes about asylum-seekers and refugees in public opinion. In addition, ECRI recommends that the authorities ensure that they do not propagate prejudices and stereotypes about these groups of persons.

- **Trafficking in human beings**

69. France is a country of destination for the traffic in human beings, whether it concerns prostitution or forced labour. Some progress has been made in protecting victims of human trafficking, particularly as regards non-citizens who are victims of prostitution. A protective measure applying to such victims who are illegally present in France has been introduced by law. They can qualify for a 6 month temporary residence permit provided they co-operate in securing the arrest of their exploiters. While this measure tends towards the better protection of the victims of the traffic in human beings, NGOs have pointed out that the prescribed protection remains inadequate, in particular because it is limited to victims who cooperate with the police and because the duration of the residence permit is too short.

**Recommendations:**

70. ECRI recommends that the French authorities take additional measures to combat trafficking in human beings, by means of preventive action and awareness-raising in all sectors of the population concerned. In particular, ECRI encourages the French authorities to further pursue their approach, by extending the protection to all victims of trafficking and by effectively penalising the traffickers.

- **Non-citizens in overseas départements and territories (DOM-TOM)**

71. In its second report, ECRI found the situation of non-citizens in some of France's overseas départements and territories (DOM-TOM) to be a matter for concern, particularly in terms of discrimination, right to asylum and exploitation on the labour market. ECRI urged the French authorities to address these problems immediately.
72. ECRI notes that the situation of non-citizens in the DOM-TOM is not very well documented and that there is a lack of data from which an appropriate picture of the situation could be formed. It is nevertheless clear that there are very many immigrants seeking to enter these territories, particularly French Guyana, the Antilles and Mayotte, a large number doing so in an illegal manner. According to the French authorities, this migration pressure is far stronger than on the mainland. ECRI is pleased to learn that in the opinion of certain NGOs the administrative staff working in contact with immigrants in these zones are better trained than formerly and better acquainted with the rights of non-citizens. However, this improvement is insufficient to adequately address the problems that persist in this area which were raised by ECRI in its second report.

**Recommendations:**

73. ECRI strongly encourages the authorities to continue developing the reception facilities for non-citizens in the DOM-TOM, especially for asylum-seekers, so as to cope with the particular situation which prevails in these areas as far as migration flows are concerned.
74. ECRI encourages the French authorities to take steps to ensure attentive

monitoring of the situation of non-citizens in the DOM-TOM, irrespective of their legal status, particularly as regards discrimination, racism and intolerance. ECRI also encourages the authorities to take whatever measures the monitoring process reveals as necessary in order to address any problems.

### Access to education

75. In its second report, ECRI encouraged the French authorities to try to remedy the problem of the disproportionate representation of pupils of immigrant origin in certain schools, to take steps for the rapid integration of foreign pupils with insufficient French language skills, and to recall very forcefully the rule that it must be possible for all immigrant children to be enrolled in school.
76. The problem of disproportionate representation persists in France. It is generally recognised as arising essentially from the urban ghetto phenomenon and from the policy of enrolment in a school attached to the locality where the child resides. The creation of “zones d’éducation prioritaire” (ZEP) - areas with special educational needs - has allowed certain advances to be achieved but has not solved the problem of disproportionate representation.
77. Circular no. 2002-063 of 20 March 2002 reiterated the conditions of enrolment and instruction for pupils of foreign nationality in primary and secondary courses. ECRI is pleased to note that the circular stipulates that the enrolment of a pupil of foreign nationality cannot, irrespective of age, be made contingent on the production of a residence permit. This circular points out that “no distinction may be made between pupils of French and foreign nationality as regards access to public education services”. Circular no. 2002-101 of 25 April 2002 specifies the conditions of enrolment of children of Travellers and non-sedentary families in school. They must at least be temporarily accepted in primary schools, even when the documents needed for their enrolment are incomplete<sup>11</sup>. However, ECRI expresses its concern over allegations of continued refusal by authorities, in certain cases, to enrol children whose parents are in an illegal situation or to enrol children who are Travellers, although compelled by law to do so.
78. A significant effort has been made in recent years to facilitate instruction in French for pupils who have just arrived in France. ECRI takes note of circular no. 2002-100 of 25 April 2002 on the organisation of schooling for pupils who are newcomers to France and lack adequate French language proficiency or educational grounding. This circular stresses the fact that “special attention should be given to new arrivals” and accordingly recommends that the pupils and their families be given all necessary information and support. After an evaluation, all newly arrived pupils are enrolled in ordinary classes corresponding to their age and level of schooling. Provision is made for intensive daily instruction in French as a second language, carried out in an “induction class” (CLIN) at primary school and in an “arrival class” (CLA) at secondary level. The size of both classes is limited to 15 pupils. The aim is to enable pupils’ progressive and early inclusion in the general curriculum. Pupils arriving in France at an age close to the limit for compulsory education can benefit from special arrangements intended to help them learn French and also to enter working life.

<sup>11</sup> See Circular n° 91-220 of 30 July 1991.

79. The law of 15 March 2004 stipulated that the wearing of signs or apparel whereby pupils openly display a religious allegiance is forbidden in state primary, lower secondary and upper secondary schools. The law provides that disciplinary action in the matter must be preceded by dialogue with the pupil. The law has been extensively debated, and there has been anxiety in some quarters about its possible ill-effects in that Muslim girls of school age who wear the headscarf as a religious symbol may be driven to social exclusion and radicalisation of their position. The French authorities have informed ECRI that the law was enacted with a view to upholding the principle of secularity in France. ECRI hopes that there will be no negative consequences for young Muslim females wearing the veil, who form the majority of the population concerned. In this connection, ECRI encourages the French authorities to assess this measure from the perspective of indirect discrimination<sup>12</sup>, particularly at the time of carrying out an evaluation of the law's implementation as provided for in the law.
80. ECRI notes an improvement in the area of teaching of regional languages in French schools; pupils who so desire find more and more opportunities to study these languages. These opportunities range from introductory courses to bilingual schools and cover languages such as Breton, Basque and Alsatian.
81. Teaching of "languages and cultures of origin" (ELCO) is an initiative aimed at immigrant children and involves a large number of foreign languages. This system has nevertheless been described as in need of review, a process which would have to include a redefinition of its goals, as it is still founded on a presumption of the pupil's eventual return to his or her country of origin. The authorities have informed ECRI that the education department and other relevant departments in each of the countries concerned are currently holding joint discussions on the methods used for "teaching languages and cultures of origin" (ELCO), particularly with a view to teaching Italian, Portuguese and, more recently, Algerian Arabic.

#### **Recommendations:**

82. ECRI strongly encourages the authorities to take steps to address the problem of disproportionate representation of pupils with an immigrant background in certain schools.
83. ECRI welcomes the adoption of circulars intended to promote the integration and enrolment in schools of immigrant children and of Traveller children. It recommends that the authorities take all necessary measures to ensure that these circulars are thoroughly implemented throughout French territory.
84. ECRI urges the French authorities to closely monitor the implementation of the law on the display of visible signs of religious belief at school, and to ensure that dialogue is favoured in order to avoid any exclusion, stigmatisation or

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<sup>12</sup> According to ECRI's General Policy Recommendation No 7 on national legislation to combat racism and racial discrimination, indirect racial discrimination exists in cases where an apparently neutral factor such as a provision, criterion or practice cannot be as easily complied with by, or disadvantages, persons belonging to a group designated by a ground such as "race", colour, language, religion, nationality or national or ethnic origin, unless this factor has an objective and reasonable justification. This latter would be the case if it pursues a legitimate aim and if there is a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

radicalisation of the pupils concerned.

85. ECRI strongly encourages the French authorities to continue to intensify their efforts to have regional languages or mother tongues other than French taught at school.

### **Access to housing**

86. In its second report, ECRI urged the French authorities to strengthen their efforts to combat discrimination in the housing sector, stressing the need to make provision for the additional obstacles that immigrants encounter.
87. The housing situation has not improved and even appears to be worsening owing to a shortage of social housing or low-cost dwellings. The French authorities are aware of the problem, and point out that young people who are immigrants or from an immigrant background are significantly affected by this phenomenon which may result as much from a series of shortcomings in the system as from deliberate individual acts. As concerns access to housing, ECRI notes with concern that the general shortage of housing for people with low levels of income is compounded by difficulties arising from racial discrimination in the case of immigrants, persons of immigrant origin and other visible minority groups. The problem of racial discrimination affects both sale and rental of housing, and the perpetrators of such discrimination may be either private individuals and entities (private owners or estate agencies) or social lessors, such as some of the public offices administering low-rent housing (HLM - habitations à loyer modéré). ECRI is also concerned about allegations that some municipal mayors exercise their right of pre-emption when immigrants or persons of immigrant origin attempt to purchase a property within the municipal boundaries, purely in order to prevent the sale.
88. The French authorities have instituted a new policy on towns and urban renewal aimed at de-segregating urban ghettos and promoting a social mix. They have introduced a large-scale plan to tackle housing shortages, which will finance 500 000 low-rent dwellings over a 5-year period and bring a further 100 000 housing units onto the private market over the same period, as from 2005. They have set up a working group on discrimination in access to housing in the framework of the Conseil National de l'Habitat (CNH) (national council for housing). They have reinforced the legal machinery for fighting discrimination in housing rental<sup>13</sup> and recently published an information booklet against discrimination in this sector. They are also in the process of seeking a solution for the improvement of social housing allocation procedures by facilitating the possibilities of appeal open to persons who consider that they have not been offered housing for unjustified reasons.

### ***Recommendations:***

89. ECRI strongly recommends that the French authorities review all regulations and practices concerning access to housing so as to identify and eliminate all existing discrimination.

<sup>13</sup>See above under "Civil and administrative law provisions".

90. ECRI recommends making private and public providers more alert to the prohibition of racial discrimination in the housing sector and finding ways to strengthen their motivation to combat discrimination. Those who have committed racial discrimination should be suitably penalised.

### Travellers<sup>14</sup>

91. Travellers are people whose French nationality dates back many generations wishing to preserve their culture of travel and a certain number of whom adopt an itinerant lifestyle that they wish to continue. In its second report, ECRI recommended that the French authorities address the question of areas where Travellers can stop. This question remains problematic despite the two “Besson” laws requiring some municipalities to build official stopping-places. The authorities have indicated that some municipalities in departments where the first reception plans were adopted have encountered difficulties in meeting the two-year requirement imposed by the Law of 5 July 2000, which has now expired, owing to the time required for procedures that have to be completed prior to the implementation of the departmental plan, in particular for bringing these plans into line with land use plans. As a result, the Law of 13 August 2004 concerning local freedoms and responsibilities prolongs the two-year period set by the aforementioned Law of 5 July 2000, from the date of expiry, if the municipality or joint municipal body has, within the two-year period, clearly demonstrated its intention to comply with its obligations. In conjunction with this measure, the government commitment to meeting part of the cost of equipping and upgrading stopping places has been extended by a further two years in the case of the aforementioned local authorities. However, ECRI notes that significant delays in the implementation of the “Besson” laws place Travellers in a very awkward position in many respects, including in terms of their children’s access to education.
92. The number of stopping-places available falls far short of the real needs. Some of those built display major inadequacies, being situated in locations that are far away from towns and/or that are unsuitable and present health risks. Amenities on these sites are often insufficient, particularly as concerns access to water and electricity. However, ECRI notes that some of the sites built are satisfactory. In these cases, it is generally felt that the beneficial effects were immediately evident in the Travellers relations with the authorities and the local population.
93. The recently adopted Article 322-4-1 of the Penal Code prohibits unlawful occupation of land in municipalities which have complied with the Besson law, and prescribes very severe penalties, some of which have already been imposed, such as a six-month prison sentence and confiscation of the offending vehicle. ECRI is concerned about the consequences which the enforcement of this provision could have in a context of severe shortage of stopping-places throughout the national territory. ECRI considers it necessary to adopt a human approach to the problem by seeking temporary solutions for the families of Travellers pending full implementation of the Besson laws.

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<sup>14</sup> Concerning the state of opinion with regard to Travellers, see “Specific issues” below.



**Recommendations:**

94. ECRI strongly recommends that the French authorities without delay fully implement the Besson laws on stopping places for Travellers, ensuring that the sites created are sufficiently numerous, suitably located and properly equipped. Until such time as this solution materialises, ECRI urges the authorities to make every effort to find humane solutions in consultation with the Travellers, respecting their dignity and choice of an itinerant lifestyle.

**Roma from the countries of Central and Eastern Europe<sup>15</sup>**

95. Roma from the countries of Central and Eastern Europe are migrants who come to France to escape the deplorable living conditions they experience in their respective countries. Such persons were generally sedentary in their country of origin. In recent years considerable numbers of Roma originating from the countries of Central and Eastern Europe have come to France, many of whom either have temporary permission to stay on French territory, are seeking asylum or find themselves in an illegal situation. ECRI is deeply concerned over information to the effect that these people live in extremely difficult conditions, often in very rudimentary camps on the outskirts of towns. Among other problems, this situation poses serious health risks, particularly for the children living in the camps. Apparently some children have not been able to enrol in school either, despite the fact that this should be possible.
96. ECRI is worried by allegations that forced, collective evictions of Roma families from their camps occur without any satisfactory alternative being offered for their re-housing. ECRI is especially alarmed by information according to which some of these eviction operations carried out by law enforcement officials have been very violent and have been followed by immediate destruction of the caravans in the camp, even though all the personal belongings of the families had been left inside. In some cases the national courts have had to intervene because the evictions were carried out illegally. ECRI has also received allegations of property being seized by the authorities.
97. The Ministry of the Interior has established a programme in co-operation with Romania to repatriate Roma nationals of that country. However, human rights NGOs have stated that the programme does not work, for various reasons: the aid granted to the persons concerned is minimal; insignificant numbers of Roma have been repatriated; their situation upon return is inadequately followed up; and the problems which prompted them to come to France persist.

**Recommendations:**

98. ECRI urges the French authorities to look into the problems encountered in France by Roma from the countries of Central and Eastern Europe. It is a matter of particular urgency to find solutions in order to improve the unacceptable living conditions of these families by finding suitable housing arrangements. Special attention should also be paid to the children, particularly as concerns health and

<sup>15</sup> Regarding the climate of opinion as regards Roma from the countries of Eastern Europe, see "Specific issues" below.

access to education. ECRI strongly recommends that the French authorities take steps to prevent any illegal and violent forcible evictions that place Roma families in a desperate position.

## Antisemitism

99. In its second report, ECRI recommended that the French authorities keep the situation regarding antisemitism under review. ECRI is seriously concerned to learn of the significant deterioration in the situation since the adoption of the second report, a change that became apparent in the end of year 2000, following the flare-up of the Israeli-Palestinian conflict. A significant increase of antisemitic acts in France has since been noted, reaching a peak in 2002 and now decreasing once more, while still remaining at a very high level. Furthermore, the violence of such antisemitic acts seems to be on the rise.
100. According to the National Advisory Committee on human rights, antisemitic acts account for a majority of racist acts enumerated, as they make up 72% of the total number of crimes of racist threats and violence registered in 2003. The number of acts committed by persons sympathetic to right-wing extremist movements remains constant. According to several sources, the strong increase which has occurred in the last years seems rather to result from acts committed by youth from difficult neighbourhoods, of Arab origin and Muslim religion, who also engage in delinquent activity against everything which stands for law and order as a reaction to the social exclusion from which they suffer<sup>16</sup>. It is thought that these young people tend to seek self-identification with the Palestinians and are attempting to reproduce the Israeli-Palestinian confrontations on French territory by attacking the Jewish community. Events demonstrate that the increase in antisemitic acts is substantially linked with the international news of conflicts between Israelis and Palestinians but also the war in Iraq or international terrorism. The antisemitic acts recorded include: physical assaults; arson; desecration of synagogues; vandalism of shops and denominational schools, threats; insults; as well as an increase of negationist contentions<sup>17</sup>. The representatives of the Jewish community consider that aside from the numbers, the problem in France lies in a change of the general climate of public opinion towards members of the Jewish community. This climate has worsened, arousing a sense of unease and anxiety within the Jewish community.
101. The French authorities are aware of the problem of antisemitism and have adopted a firm stance in an effort to curb the phenomenon. All the measures taken have been designed to combat not only antisemitism, but also racism, and some of them are described in other parts of this report. The government has displayed a clear political will, and is focusing its response on providing security for places of worship and schools, cracking down on antisemitic and racist acts, and aiming to prevent racism and antisemitism in the school environment. ECRI also notes that an Ambassador responsible for the international dimension of the Shoah, dispossession of property and the duty of remembrance has been appointed. 27 January has been selected as a day of Holocaust remembrance and prevention of crimes against humanity. The French authorities are working closely with the representatives of the Jewish

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<sup>16</sup> In this matter, see also "Specific issues" below.

<sup>17</sup> On the subject of antisemitism at school, see "Specific issues" below.

community to monitor the situation. In 2004 the fight against racism was declared to be a *Grande Cause Nationale* and information campaigns to counter this scourge are being conducted in Paris and other cities.

### **Recommendations:**

102. ECRI strongly recommends that the French authorities continue to intensify their efforts aimed at combating antisemitism. It encourages the French authorities to conduct research into and identify the causes of the increase in antisemitism in order to take the most appropriate measures to prevent and fight against this phenomenon. In this respect, ECRI draws the attention of the French authorities to its General Policy Recommendation N° 9 on the fight against antisemitism.

### **Media**

103. In its second report, ECRI expressed its hope for the swift adoption of measures aimed at increasing the visibility in French media of the real role of minority communities in the country.
104. ECRI notes with interest the joint initiative by the Supreme Council for Integration and the audiovisual authority (CSA) to determine the most appropriate short and medium term strategies for improving the media representation of cultural diversity and of persons with an immigrant background on the French television channels. The agreements between the CSA and the private channels already contain explicit mention of the need to improve this representation. It remains necessary to extend this stipulation to the state channels and to request that all channels produce a report allowing for regular evaluation in this sphere.

### **Recommendations:**

105. ECRI welcomes the initiative of the Supreme Council for Integration and the audiovisual authority, and strongly encourages the French authorities to implement this initiative and to continue to intensify their efforts to enhance the representation by all media of cultural diversity and of immigrants or persons with an immigrant background in France.
106. The propagation of racist and antisemitic views by the media remains a worrying problem in France especially as regards the Internet and satellite television. ECRI notes with concern that Internet sites aimed at the French population disseminate xenophobic, antisemitic and/or anti-Islamic ideas. Furthermore, certain satellite channels with a significant audience in France make antisemitic broadcasts in Arabic. While it has been possible to take action in respect of certain websites, the French authorities sometimes meet with legal obstacles to their action which are impossible to overcome, due especially to the extraterritorial origin of the transmissions. ECRI notes with satisfaction that a Law adopted on 21 June 2004<sup>18</sup> obliges Internet access providers and site

<sup>18</sup> Law No. 2004-575 of 21 June 2004 on confidence in the digital economy.

hosts to help combat incitement to racial hatred and that another Law adopted on 9 July 2004 now makes it possible to prevent certain channels from broadcasting if they are inciting to violence or racial hatred<sup>19</sup>.

### **Recommendations:**

107. ECRI strongly encourages the French authorities to sustain and to increase their efforts to block access to all websites, television channels or other media which disseminate xenophobic, antisemitic or anti-Islamic contentions. It advises them to co-operate at international level with other states to avoid any legal loopholes that make possible the broadcasting of this kind of material. ECRI draws particular attention to its General Policy Recommendation No. 6 on combating the dissemination of racist, xenophobic and antisemitic material via the Internet.

### **Conduct of law enforcement officials**

108. In its second report, ECRI expressed the hope that a non-judicial independent body would be set up to consider cases of breaches committed by law enforcement officials and prison staff. It encouraged the authorities to intensify their efforts with regard to human rights training for police and prison department officers.
109. ECRI notes with anxiety that complaints persist concerning ill-treatment inflicted by law enforcement officials on members of minority groups. The complaints implicate police and gendarmerie officers, prison staff and personnel working in the ZAPI ("zones d'attente des personnes en instance"; zones specially designated for persons awaiting clarification of their legal status). They allege acts of physical violence, humiliation, racist verbal abuse and racial discrimination. ECRI notes that the complaints about discriminatory identity checks also persist. ECRI is especially concerned about information from NGOs to the effect that when someone lodges a complaint against a law enforcement official, the latter almost invariably retaliates with a charge of insulting an officer of the law or malicious accusation, which weakens the position of the civil plaintiff.
110. ECRI notes with satisfaction that a national commission on the ethics of public security was set up under the law of 6 June 2000. This independent administrative authority is responsible for ensuring compliance with ethical rules by persons engaged in security-related activities on French territory. Any person who has suffered from or witnessed unethical acts can forward a complaint to a member of the national assembly or the senate, who will transmit it to the commission if they consider that it comes within the remit of the commission and warrants its intervention. The commission has more and more complaints before it; twenty or so were received in 2001, and seventy in 2003. The authorities are required to co-operate with the commission, which puts to the public authorities and to the managers of relevant private entities any opinion or recommendation intended to remedy the breaches found or to prevent their recurrence. The addressees of the opinion or recommendation are under an obligation to report the follow-up given to it. The commission is

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<sup>19</sup> Law No. 2004-669 of 9 July 2004 on electronic communications and audiovisual communication services.

required to inform the public prosecutor of acts which it deems constitute a criminal offence.

***Recommendations:***

111. ECRI strongly encourages the French authorities to provide law enforcement officials with every facility necessary to work under satisfactory conditions and in a manner that strictly respects the human dignity and rights of the persons whom they take into custody. This would involve reinforcing training on human rights and on sensitivity to problems of racism and racial discrimination. Training courses on cultural diversity should also be organised.
112. ECRI recommends the adoption of additional measures to put a stop to all police misconduct including ill-treatment of members of minority groups. ECRI strongly encourages the extension of the powers of the national commission on the ethics of public security and the facilitation of access to it by members of the public. It invites this authority to pay close attention to any elements of racism or racial discrimination that may be present in some of the cases submitted to it.

**Monitoring the situation**

113. In its second report on France, ECRI encouraged the French authorities to develop statistics broken down by ethnicity in order to collect accurate data concerning both racial discrimination and the social indicators relating to certain sectors of the population. In this matter, no real progress has been made, as the idea of collecting data on the basis of ethnic identity is still not readily accepted in France. ECRI notes, however, the existence of a few isolated studies revealing that there are problems of racial discrimination but, in ECRI's opinion, these studies remain insufficient to allow a real national strategy on this issue to be devised. ECRI considers that more accurate information on the real situation of various social groups in a number of areas of social and economic life would be useful in helping to reveal direct and indirect forms of discrimination, or institutionalised discrimination.

***Recommendations:***

114. ECRI recommends researching ways to improve the monitoring systems by collecting relevant information broken down according to categories such as religion, language, nationality and national or ethnic origin. The monitoring should be carried out in accordance with the principles of data protection and confidentiality, on the basis of a system of voluntary self-identification, clearly explaining the reasons why the information is collected. Furthermore, the data collection system on racism and racial discrimination should also take into consideration the gender dimension, particularly from the viewpoint of possible double or multiple discrimination.

## II. SPECIFIC ISSUES

### Climate of opinion

115. ECRI is concerned by certain developments which have occurred regarding racism and intolerance in public opinion since the adoption of its second report in December 2000. Several indicators point to a risk of escalation which it is important to impress upon the French authorities. This should encourage them to take all necessary steps to prevent French public opinion from lapsing into racism and intolerance.
116. A first indicator concerns the rise of antisemitism in schools. ECRI is very concerned by information to the effect that the problem of antisemitism<sup>20</sup> has been spreading to the school environment for the last few years, and even into primary schools. Antisemitic acts are recorded, such as insults and threats, but also physical assaults and harassment, on Jewish pupils in schools or their surrounding areas. Antisemitic insults are apparently becoming commonplace and sometimes pupils contest the teaching of Holocaust history in lessons. At a more general level, ECRI notes an increase of racist phenomena within the school environment and that antisemitic acts form a significant proportion of the racist acts identified.
117. The French authorities are aware of the problem of antisemitism and racism at school, and ECRI welcomes the numerous initiatives which have been taken in this respect. It notes in particular that a “school violence watch” unit has been created, and that screening devices have been set up in order to block access to racist and antisemitic websites in schools. Statistics concerning violent acts carried out in schools are now classified in such a manner as to make it possible to identify those violent acts with a racist motivation. A contact person for issues relating to racism and antisemitism has been appointed in each educational district. Training has also been provided in order to help teachers to better counter racism and antisemitism amongst students and make them aware of the need to fight against such phenomena.

### **Recommendations:**

118. ECRI strongly recommends that the French authorities closely monitor the development of antisemitic and racist phenomena at all levels of education, and to continue and intensify their efforts aimed at fighting resolutely against such manifestations.
119. ECRI recommends that the French authorities provide all necessary means to teaching and supervisory staff in order that they may benefit from favourable conditions to fight against antisemitism and intolerance in the school environment. In particular, teacher training in this area should be intensified.
120. ECRI recommends that the French authorities encourage and organise the dialogue that is necessary in order to combat antisemitism and racism in schools, involving teachers, pupils and pupils’ parents.

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<sup>20</sup> On the general subject of antisemitism, see above “Antisemitism”.

121. A second indicator of the deterioration in the climate of opinion in France emerges from the proliferation of racist manifestations towards Roma and Travellers<sup>21</sup>. The arrival in recent years of Roma originating from the countries of Central and Eastern Europe seems to have revived and increased the racist prejudices and stereotypes harboured by part of the majority population towards French Gypsies and Travellers. Today, both the Travellers and the immigrant Roma are victims of multiple forms of racism. These are all the more problematic in that they lump together populations which are in very different situations. ECRI is particularly concerned about the openly racist remarks made by public figures including certain local leaders or by members of the majority population who sometimes join together in rejecting Travellers or Roma present in their municipality. NGOs also report harassment of Roma, Gypsies and Travellers by police officers.

***Recommendations:***

122. ECRI strongly recommends that the French authorities take whatever measures are necessary to combat all manifestations of racism against immigrant Roma and Travellers. It particularly encourages the French authorities to conduct an awareness-raising campaign directed at the general public in order to counter all manifestations of intolerance and rejection. It is especially necessary to avoid perpetuating attitudes that lump together persons whose situations are actually very different.
123. The third indicator of the negative trend in public opinion relates to Muslims, who have been an object of manifestations of racism and intolerance, increasingly so over the last few years. Several reports indicate that there has been a recent shift in anti-immigrant and anti-Arab/North African racism towards racism directed at Muslims, although the population targeted by this racism remains substantially the same. Thus, mosques or Muslim graves are vandalised; Muslim religious leaders physically assaulted; and threats and insults directed against Islam and Muslims. These manifestations tend to increase as a reaction to certain international events such as the terrorist attacks in the United States and Europe and the conflict in Iraq. Sometimes elements of public opinion draw inaccurate parallels between terrorists, religious extremists and the Muslim population as a whole. In some cases these prejudices are said to prompt discrimination, especially in the field of employment, with Muslims being refused jobs because of the suspicion hanging over them.
124. It should be noted that the population at large seems to have a rather positive perception of Islam and Muslims, according to a survey ordered by the National Advisory Commission on Human Rights. In addition, the French authorities have consistently expressed their political resolve to combat all forms of intolerance against Muslims and reject any parallel between Islam and terrorism. Nonetheless prejudices maintain a hold on certain persons, often through ignorance of Muslim religion and culture. ECRI particularly warns against rhetoric conveying the idea that French society cannot integrate Muslims because of the alleged cultural divide between the followers of this religion and the majority of the French population. Furthermore, some reports

<sup>21</sup> Concerning Travellers and Roma, see above.

indicate that the Muslim religion does not always enjoy equal treatment with other religions, and that Muslims sometimes encounter the resistance of public authorities in matters of building mosques or obtaining Muslim burial grounds in cemeteries. In this respect, ECRI notes with interest that the Conseil français du culte musulman (French Council for Muslim Worship) was elected in 2003 as an organisation representing Muslims in France, specifically responsible for relations with the authorities. There are also councils representing Muslims at regional level. ECRI hopes that developments of this kind will make it possible for the Muslim religion to be treated on an equal footing with the other main religions of France, whether vis-à-vis the authorities or in public opinion.

#### **Recommendations:**

125. ECRI strongly recommends that the French authorities take all necessary measures to fight against racist manifestations of any kind directed against Muslims. It particularly encourages the French authorities to conduct an awareness raising campaign aimed at the general public so that any expression of intolerance and rejection may be avoided. ECRI draws attention to its General Policy Recommendation N° 5 on combating intolerance and discrimination against Muslims.
126. ECRI recommends that the French authorities maintain and intensify their co-operation with the French Council for Muslim worship and with the regional bodies representing Muslims. It stresses the importance of this co-operation in areas such as the construction of places of worship, the provision of Muslim burial grounds in cemeteries, and leave during religious festivals, so that everyone's religious convictions may be more fully accommodated with due regard for republican secularity.
127. ECRI stresses that racist and xenophobic prejudices can be exacerbated by public discourses that play on the fears of the population. ECRI is concerned about the persistent presence of racist and xenophobic statements in French politics, and the persistent success of parties which employ racist or xenophobic propaganda. It notes with concern that the candidate fielded by the National Front, an extreme-right party, received very strong support in the first round of the presidential elections in 2002 and that representatives of extreme-right parties head certain French municipalities.

#### **Recommendations:**

128. ECRI recommends the intensification of institutional response to the exploitation of racism and xenophobia in politics. It draws attention to the principles laid down in the *Charter of European political parties for a non-racist society* and hopes that these principles will be fully reflected in French political life.

#### **Necessity of moving towards an integrated society**

129. The racist occurrences described above are partly linked with the failure of attempts to integrate immigrants and persons with an immigrant background. Integration has failed because immigrants, but also French people of immigrant origin, experience significant social exclusion. The urban ghetto phenomenon is



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one of its principal aspects, as this population lives predominantly in underprivileged districts. Another aspect of the failure of integration relates to the difficulties encountered by this population in the sphere of employment, with a very high unemployment rate and racial discrimination of various kinds continuing to be major problems, especially for young people. This failure is said to have resulted in identity-based withdrawal, tending towards “*communautarisme*” (communitarianism). Thus, as a reaction to their feeling of exclusion, persons who lack reference points in French society apparently establish other ones by expressing their affiliation with an ethnic or religious community and violently rejecting other communities.

130. This identity-based radicalisation and withdrawal remain marginal at present, but the reconsideration of integration policy in France is urgently required. ECRI is pleased to observe that the French authorities are aware of the need to assign a fresh priority to integration. Accordingly, they have adopted new measures relating both to immigrants who have recently arrived in France and to persons of immigrant origin. ECRI considers nonetheless that additional measures could be taken in these two areas.
131. Concerning new immigrants, the French authorities have launched the “reception and integration contract”, a pilot scheme which was introduced in 2003 in a few départements and is being progressively extended to others. It is a contract in the republican spirit following a logic of rights and mutual obligations, concluded between the State and a non-citizen who has just arrived in France with the intention of settling permanently. Signature of the contract is non-compulsory, and confers eligibility for a series of benefits such as language training, referral to the vocational training system, and obligatory civic instruction. The contract provides for individual social support. The non-citizen for his part undertakes to attend courses and attend the interviews allowing monitoring of the contract. An initial appraisal of the “reception and integration contracts” indicates that the arrangement meets with considerable success among non-citizens, but also that there are still difficulties to be resolved. It is not easy to adapt to the participants’ diverse levels of education and languages, and a high dropout rate is observed, which, according to the authorities, is mainly the result of material constraints.
132. Following the recent amendments to the legislation on immigration, it has been established that for one category of immigrants (persons entering France for family reunification, parents of children who are French nationals, non-citizens holding a right of residence on grounds of private and family life), granting of the resident’s card (i.e. a long-term residence permit) is subject to “the immigrant’s republican integration into French society”. Such integration is measured particularly by proficiency in the French language and knowledge of the principles governing the French Republic. Human rights NGOs have expressed concern over this new requirement which is liable to increase the precarity of such immigrants’ situation in France. They have pointed out in particular that the prefect has discretionary power to ascertain whether or not a person is “integrated”, thereby opening the door to subjective, arbitrary criteria. Furthermore, such a condition of integration should only be stipulated if the public authorities give these persons genuine access to integration. However, existing initiatives are inadequate, and the aforementioned contract is still at the stage of a pilot scheme and does not necessarily concern the population in question.

133. In its second report, ECRI encouraged the French authorities to carry out a review of all the occupations which at present are inaccessible to non-citizens of the European Union in order to determine whether or not these restrictions are justified, and to eliminate any unwarranted obstacles thereby identified. ECRI notes that the situation in this area is unchanged and that several million public service posts remain inaccessible, even though they do not involve the exercise of public authority. ECRI notes, however, that some posts have been opened up to non-citizens in the RATP (Parisian public transport authority), but that other sectors remain completely closed, such as the SNCF (national railways).
134. In its second report, ECRI encouraged the French authorities to grant the right to vote in local elections to non-citizens legally resident for a long period in France in order to promote their integration. Although this question continues to come up in public debate, ECRI notes that extending the right to vote in local elections to non-citizens who do not come from a European Union Member State is not an immediate issue in France.

***Recommendations:***

135. ECRI welcomes the “reception and integration contract” scheme and encourages the French authorities to take this initiative further. Regular appraisals should be made and the programs improved and adapted in order to be thoroughly effective. This presupposes training for all staff and provision of all required human and financial resources in order to offer immigrants training that is not merely symbolic, but has genuine content. ECRI stresses the importance of personalised accompaniment, in order that programs may be adapted to each person’s linguistic and vocational guidance needs.
136. As to the practice of making the resident’s card subject to integration, ECRI strongly recommends to the French authorities to ensure that integration is not rendered impossible in so far as immigrants’ possibilities for integration do not solely depend on their own will but also on the action of public bodies and that of French society as a whole. It also encourages the French authorities to ensure that this system does not make the situation of non-citizens precarious when the opposite effect is desired.
137. ECRI reiterates its recommendation requesting the French authorities to review all occupations at present inaccessible to non-citizens of the European Union in order to ascertain whether or not these restrictions are justified, and to remove any unwarranted obstacle identified. This measure would have the effect of aiding the integration of immigrants in France by affording easier access to employment.
138. ECRI recommends that the French authorities facilitate access to public life for non-citizens who have been in France for a long period, for example by giving them the right to vote and stand for election at local level or by setting up more consultative bodies to represent non-citizens at local level as prescribed by the Convention on the Participation of Foreigners in Public Life at Local Level.
139. Concerning the integration of persons of immigrant origin, there are signs of open acknowledgment among relevant circles that special measures are genuinely needed to enable these persons to have equal opportunities in

everyday life. However it is sometimes claimed that such measures could be perceived as discriminatory against the majority population and would not be readily accepted by society at large. Nonetheless, ECRI observes that a number of special measures along satisfactory lines have been taken. These may be regarded as “positive measures”, without it being possible to qualify them as “positive discrimination”.

140. Institutions specialising in integration have been set up or re-launched. There is a joint ministerial committee on integration which met in 2003 for the first time since 1990. The action and support fund for integration and combating discrimination (FASILD) is a public administrative entity responsible for promoting the integration of first or second generation immigrants and combating any discrimination against them. The Supreme Council for Integration, made up of 16 independent personalities, is a body mandated to reflect upon and make proposals, that issues its opinions on “all issues relating to the integration of residents of foreign nationality or origin” at the request of the Prime Minister or the Joint Ministerial Committee.
141. On the subject of fighting racial discrimination in employment, which particularly affects youth with an immigrant background, ECRI recommended in its second report that the French authorities provide training on all aspects of racial discrimination in employment specifically for the staff of the national employment offices (ANPE). It also called for similar training in the private sector.
142. The ESPERE project (“engagement du service public de l’emploi pour restaurer l’égalité” – commitment of the public employment service to restoration of equality), organised in the framework of the European EQUAL programme, is concerned with training all staff working in the public employment services (SPE – service public de l’emploi), in particular ANPE (job agency) staff, with a view to combating racial discrimination and the phenomenon of double discrimination in employment and training. The ongoing LATITUDE project relates to awareness-raising and training for staff, including management, of major temporary employment agencies. It also conducts activities to raise the awareness of their client enterprises, and the employers’ and trade union organisations, to the fight against discrimination.
143. In its second report, ECRI welcomed the existence of sponsorship programs for young people to improve their access to working life. ECRI is pleased to learn that the sponsorship system is working well and has been reinforced by the French authorities, particularly in aid of persons discriminated against because of their ethnic origin. In addition, the national education authority has decided to open preparatory classes in secondary schools in “zones d’éducation prioritaire” (areas with special educational needs) in order to assist the entry of young people originating from underprivileged districts to the superior professional colleges.
144. ECRI notes with concern that women of immigrant origin are especially prone to exclusion and to dual discrimination on the grounds of ethnic origin and gender. The French authorities have informed ECRI that they are focusing upon the integration of women of immigrant backgrounds, notably through an action programme covering different fields of life including the education and employment sectors.

***Recommendations:***

145. ECRI strongly encourages the French authorities to maintain progress towards an integrated society in which persons of immigrant background are able to gain their proper place. It recommends that the authorities regularly evaluate the impact of the new approach and complement it should the need arise.
146. ECRI particularly recommends to the French authorities to focus upon the additional disadvantages borne by persons of immigrant background, particularly due to racial discrimination. The French authorities are urged to implement a policy of equal opportunity in all areas of life and especially in employment, education, housing and access to public services.
147. ECRI emphasises the pressing need for the French authorities to foster the integration of the country's various groups as a mutual process which may help prevent a racist reaction from the members of one group against those of another.

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## APPENDIX

### **The following appendix does not form part of ECRI's analysis and proposals concerning the situation in France**

ECRI wishes to point out that the analysis contained in its third report on France, is dated 25 June 2004, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, ECRI's draft report on France was subject to a confidential dialogue with the French authorities. A number of their comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the French authorities requested that the following viewpoints on their part be reproduced as an appendix to ECRI's report.





## “APPENDIX TO ECRI’S THIRD REPORT ON FRANCE OBSERVATIONS BY THE FRENCH AUTHORITIES

Please find enclosed the observations of the French Government, which it asks the European Commission against Racism and Intolerance (ECRI) to append to its 3<sup>rd</sup> report on France.

### 1. Executive summary

With regard to the comment made by ECRI that immigrants and asylum-seekers are on the whole perceived as “cheaters”, the French government wishes to make the following observations.

Although it is the French administrative authorities’ duty to ensure that the supporting documents submitted by foreigners with their request to enter and reside in France are authentic, and to be vigilant with regard to any attempts at fraud, such checks should on no account be regarded as evidence of a general mistrust of foreigners and asylum-seekers.

Although France, which like all European countries is facing strong migratory pressure, must take the necessary steps to prevent illegal immigration, its immigration and asylum policy is based on a willingness to integrate foreigners who are lawfully resident in France and protect people facing situations in which their life or freedom is at risk, and on a desire for procedures concerning foreigners to be accompanied by full legal safeguards. The recent laws of 26 November 2003 and 10 December 2003 comply with these principles.

For example, the law of 10 December 2003 reforming the right of asylum offers asylum-seekers new safeguards: account is taken of persecution by agents other than the state authorities, subsidiary protection is given to those who are not protected under the Geneva Convention, and the procedure is a single procedure supervised by a single judge.

The Constitutional Council keeps the situation under close review, and, when dealing with complaints, national courts ensure that administrative practices are in strict compliance with the law and relevant treaties.

For all these reasons, to claim that foreigners are considered to be “cheaters” by the authorities does not reflect either French legislation or practice.

### 2. Paragraph 3

Although there are currently no plans to ratify the European Convention on Nationality, the French Government wishes to point out that France ratified the European Convention on the Reduction of Cases of Multiple Nationality in 1965.

### 3. Paragraph 7

France is party to the main international instruments prohibiting discrimination. It has, for example, ratified the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 14 of which prohibits all forms of discrimination. It is also party to the International Convention on the Elimination of all forms of Racial Discrimination, which it signed on 7 March 1966 and which came

into force in France in 1971, and it is party to the International Covenant on Civil and Political Rights of 16 December 1966, which came into force in France in 1981.

Over the last few years France has strengthened its legislation and regulations in order to combat all forms of discrimination more effectively.

However, it does not intend in the near future to accede to Protocol No. 12 to the European Convention on Human Rights given that this protocol significantly extends the Court's powers and that the latter already has an excessive workload. The Court has had to deal with a massive increase in the number of applications, which has necessitated a thorough review of its functioning (see Protocol No. 14 to the European Convention on Human Rights). The entry into force of a new protocol, which will doubtless bring about an influx of new applications, does not therefore currently appear to be advisable.

#### 4. paragraphs 12 et 13

ECRI states that: *“In its second report, ECRI reiterated its concern over a limitation in individual rights related to the identity of some groups of the population of France pursuant to the case-law of the Constitutional Council to the effect that the recognition of minority groups is not possible in the French constitutional order. ECRI regrets that the case-law of the Constitutional Council with respect to this issue has not been revised. ECRI hopes that France will foster the public debate which seems to have begun on this subject, and which could lead the French authorities to recognise certain rights and carry out certain measures without needing to call into question the principles of equality and indivisibility of the Republic. It notes the development of a new trend allowing minority groups to be better taken into account, for instance in the area of teaching of regional languages”*.

In this connection the French Government wishes to point out that Article 1 of the French Constitution enshrines the French concept of human rights as follows: *“France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs (...)”*.

The French Republican structure is therefore founded on a social pact which transcends all differences and to which every individual can willingly adhere, whatever his or her origins or personal beliefs.

It follows that the legal concept of “minority” does not exist in French law, which does not mean that the specific characteristics of people's identities are not recognised. The affirmation of one's identity is a personal choice, not one based on criteria that can, a priori, be used to define a particular group.

This approach safeguards the right of each individual to acknowledge cultural, historical, religious or philosophical traditions, and the right to turn one's back on these traditions. Any defence of cultural specificity must go hand in hand with the right to reject the concept. France has always supported this view before international organisations, by highlighting the possible adverse effects of an overly rigid conception of the protection of minorities, in particular the attempt to lay down general criteria for membership of minorities or even carry out censuses of people belonging to these minorities.

Furthermore, the French Government notes that the social models founded on this community-based approach, which identifies the existence of minority groups within society, have not proved to be particularly effective, or at least not more effective than the French model, in combating racism.

Finally, ECRI notes in its report “*the development of a new trend allowing minority groups to be better taken into account, for instance in the area of teaching of regional languages*”. In this connection the French Government wishes to point out that there is no intention of “*recognising rights connected with the identity of minority groups*”, as ECRI suggests in its report. However, it should be pointed out that the fact that France does not acknowledge the existence of collective rights for certain communities does not prevent the French Government from conducting proactive policies in some fields. This applies to policies aimed at financially vulnerable groups of the population, often living in “deprived areas”. It so happens that some members of these groups are of immigrant origin. These policies are, however, based on economic criteria and are not aimed at “*minority groups*”. The same applies to the teaching of regional languages, which has been fostered in some regions to enhance a specific cultural heritage while keeping within the limits imposed by French constitutional principles.

#### **5. paragraphs 28, 32 and 33**

The French Government wishes to point out that on 7 December 2004, on the second reading, the National Assembly approved draft legislation on the setting up of a High Authority to combat discrimination and promote equality. Moreover, Part II of this law concerns the implementation of the principle of equal treatment of persons, regardless of ethnic origin, thereby transposing Directive no. 2000/43/EC of 29 June 2000.

#### **6. paragraph 47**

The debate on the law of 26 November 2003 has shown that the French authorities attach great importance to upholding the fundamental rights granted to foreign nationals on French territory, including the right to private and family life; restrictions to these rights are strictly governed by law and implemented under the supervision of a court.

#### **7. paragraph 57**

With regard to recent legislation on immigration, ECRI warns the French authorities against a policy which “*is liable to stigmatise the entire immigrant population in the eyes of the public*”.

The Government wishes to point out that although the law of 26 November 2003 reinforces controls on the entry and residence of foreign nationals in France, this policy is accompanied by numerous legal safeguards and is inseparable from the law designed to strengthen the integration of foreigners lawfully residing in France.

#### **8. paragraph 62**

The so-called ‘asylum at the border’ procedure, which is a procedure for entering French territory and not a procedure for the granting of a status, was amended on 30 July 2004. Opinions on whether or not the application to stay in France is manifestly unfounded are now issued by the OFPRA (*l’Office français de*

*protection des réfugiés et apatrides* - French Office for the Protection of Refugees and Stateless Persons), whereas they were previously issued by the Ministry of Foreign Affairs. This reform was introduced to ensure consistency between procedures. There are safeguards to ensure that applications are examined thoroughly and fairly.

### 9. paragraph 63

The Government wishes to make the following observations with regard to ECRI's claim that where refugees and asylum-seekers are concerned "*access to the procedure is not always guaranteed either because the applicants are obstructed by the authorities or because they do not receive adequate legal aid and linguistic assistance*".

The cases in which applications for asylum may not be registered by the OFPRA are strictly limited and defined. In accordance with Article 1 of the decree of 14 August 2004 relating to the OFPRA and the refugees appeals board, these are applications which are incomplete, not submitted within the given time or not written in French.

At all events, the prefectures, the first stage of the procedure, do not have the authority to find applications for asylum inadmissible. They are able, under the limited conditions set out in Section 8 of the amended law of 25 July 1952 on the right to asylum, only to implement the priority procedure or to apply European Council Regulation No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the member state responsible for examining an asylum application lodged in one of the member states by a non-EU national.

French legislation also allows for asylum seekers to be given assistance in preparing their applications. This is the role, for example, of a number of local or national associations. Local authorities also play a significant role in providing this type of support.

### 10. paragraphs 65 and 68

In France no parallel is drawn between illegal immigrants and refugees as in some other countries.

A recent opinion poll<sup>1</sup> revealed that 80% of French people consider it important that there should be a right to asylum; 82% are prepared to accept that people who have been refused asylum should nevertheless stay in France if the situation in their country of origin is unsafe or if there is a war or an armed conflict; 78% agree that people should stay if they already have family ties in France and 69% agree that they should stay if they have waited several years for a reply to their application for asylum.

There are therefore no grounds for stating that "*certain aspects of governmental policy (...) create an impression of a substantial number of "bogus asylum seekers" attempting to misuse the procedure*". No parallel is drawn between illegal immigrants and refugees in France.

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<sup>1</sup> BVA poll of 11 and 12 June 2004 for the daily newspaper *Libération* and the "Forum réfugiés" association in which 1003 people of 15 years and over were asked to give their opinion on this issue.

The Law of 10 December 2003, which amends Law No. 52-893 of 25 July 1952 on the right of asylum, substantially changes the way in which asylum is applied in France. This law offers asylum-seekers new safeguards: account is taken of persecution by agents other than the authorities of their homeland, subsidiary protection is given to those who are not protected under the Geneva Convention and the procedure is a single procedure supervised by a single judge. It not only ensures that asylum-seekers are entitled to a fair procedure but also that the latter is not used for other purposes.

Above all, it brings the full set the procedures under a single authority - the OFPRA - which now has jurisdiction with respect to asylum, as laid down in international treaties, and subsidiary protection, the new name for territorial asylum; it formally abandons the criterion of persecution by the state authorities alone. These provisions came into force on 1 January 2004.

The implementing decree provides details of the procedures and time-limits and thus sets a clear set of guidelines for everyone. It meets the expectations of both asylum-seekers and the public authorities.

The so-called ‘asylum at the border’ procedure, which is a procedure for entering French territory and not for granting a particular status, was amended on 30 July 2004. The Ministry of the Interior rules on the application for entry once an opinion has been given on whether the application is founded. Until recently such opinions were issued by the Ministry of Foreign Affairs and were virtually always accepted by the Ministry of the Interior. Since 30 July 2004, these opinions are issued by the OFPRA. These changes to the asylum at the border procedure were made at the instigation of certain associations.

Finally, the authorities are endeavouring, in difficult financial circumstances, to improve the conditions in which asylum-seekers are accommodated. In 2004 an additional three thousand places are to be offered in CADAs, special accommodation centres, and the OFPRA’s operating budgets have more than doubled over the past two years.

#### **11. paragraph 69**

In the French Government’s opinion, the statement that the duration of the residence permit granted to foreigners who are victims of human trafficking is “too short” needs to be qualified, as this measure is based on a gradual approach aimed at dealing with the problem of criminal networks.

First of all, a provisional 6-month residence permit giving the holder the right to work is issued to foreigners who lay a complaint or testify against the person who is exploiting them. This permit is subsequently renewed until the judicial proceedings have been completed. A 10-year residence permit may be issued to the person concerned at the end of the proceedings, if there is a conviction. The prefectural authorities also have the authority to issue a temporary residence permit, which is valid for one year during the judicial proceedings, particularly if there has been a conviction in the lower courts and provided that the asylum-seeker has been able to prove the serious and lasting nature of his integration into French society. In this respect, the relevant departments work in close co-operation with victim-support associations

## 12. paragraph 76

With regard to the disproportionate representation of foreign pupils in some schools, it should be pointed out that it is the mayor's duty to define the catchment area covered by each of the schools in his/her municipality and to issue an enrolment certificate indicating the school which a child must attend (Article L 139-5 of the education code).

## 13. paragraph 79

It should be pointed out that when pupils returned to school in September 2004, this law had been generally accepted and only a very limited number of pupils refused to comply with the new regulations.

Moreover, contrary to the fears expressed by some parties, this law is intended to facilitate the social integration of young people by showing them the benefits of a secular system that is designed to limit the risks of defensive community isolationism.

## 14. paragraph 106

It should be noted that Section 6.7 of Law No. 2004-575 of 21 June obliges Internet access providers and site hosts to help combat incitement to racial hatred **by implementing a procedure which makes it easy for Internet users to draw their attention to this sort of content**, which they must then report to the public authorities. They are also obliged to publicise the ways in which they endeavour to counter such phenomena. The aim is to prevent and penalise the dissemination of this type of content.

## 15. paragraph 113

The compiling of statistics broken down by the ethnicity of the French population is inconceivable in the light of the indivisibility of the nation and the equality of all citizens before the law, which form the basis of French republican principles (cf. paragraph 4 above).

The collection of statistics on the basis of ethnic identity, implying that there is a concept of citizenship which distinguishes between individuals according to the specific ethnic group to which they belong, is therefore impossible in France.

The prohibition on gathering or using personal data which either directly or indirectly reveals racial or ethnic origin is set out in Law No. 78-17 of 6 January 1978 on data processing, personal data files and freedoms, the founding text concerning personal files.

## 16. paragraph 117

ECRI notes in this paragraph that a *“school violence watch”* unit has been created, and that screening devices have been set up in order to block access to racist and antisemitic websites in schools. To be more accurate, it is a **“watch unit to prevent racist and anti-Semitic acts in schools”**.

### 17. paragraph 131

ECRI's claim that there is "*a high dropout rate*" from the reception and integration contract calls for the following comments:

The ways in which training is organised have in fact been gradually changed to meet the requirements of foreign nationals, in particular in terms of timetabling. The drop-out rate is therefore mainly the result of material constraints and should not be seen as a deliberate decision by foreigners to sign the contract without following the relevant training courses.

### 18. paragraph 132

ECRI's claim that the integration criterion introduced under Article 14 of the Order of 2 November 1945 as a condition for the issue of a residence permit is based on "*subjective, arbitrary criteria*" is incorrect.

It is true that, as stipulated in the circular for the implementation of the Law of 26 November 2003, Prefects have discretionary power to ensure that resident status is granted to foreign nationals who have clearly demonstrated their willingness to integrate into French society and working life.

Prefects' discretionary power should, however, be seen as a guarantee that each application will be individually examined, taking account of the foreign national's overall situation.

The "integration" criterion is based on a range of objective factors (knowledge of the French language, children's education, and vocational training courses attended), with the ultimate aim of combating all forms of defensive community isolationism.

This is the spirit in which it was also decided that it was not sufficient for a foreign national simply to be the parent of a French child or a family member having entered the country via family reunification procedures in order to qualify for long-term resident status.

### 19. paragraph 143

In recent years, the Ministry of Education introduced "Classes préparatoires aux grandes écoles" [CPGE] (preparatory classes for the *grandes écoles*, the superior professional colleges) in upper secondary schools in deprived areas. The number of these CPGEs has now more or less levelled off, given that the number of students is, on the whole, no longer rising. Efforts are therefore now being focused at an earlier stage on partnerships between upper secondary schools in these areas and *grandes écoles*, in particular through the "interministerial committee on integration" (CII), where the emphasis is placed on the integration of young people from difficult neighbourhoods and particularly young people of immigrant origin.

The aim is to develop the ambitions of young people from these areas who do well at school and guide them towards higher education. To this end, the Ministry of Education, Higher Education and Research and the "*Conférence des Grandes Ecoles*" are drawing up a national agreement, which will serve as a model for locally drafted agreements.

In support of this measure, 30,000 scholarships are granted every year to upper secondary school pupils, a third of whom now come from designated deprived neighbourhoods. Further scholarships could subsequently become available for higher education.”





