

# **ECRI REPORT ON FRANCE**

**(fourth monitoring cycle)**

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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.

In the framework of its statutory activities, ECRI conducts country-by-country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work is taking place in 5 year cycles, covering 9/10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002, and those of the third round at the end of the year 2007. Work on the fourth round reports started in January 2008.

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 provide, if they consider it necessary, comments on 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 fourth round country-by-country reports focus on implementation and evaluation. They examine the extent to which ECRI's main recommendations from previous reports have been followed and include an evaluation of policies adopted and measures taken. These reports also contain an analysis of new developments in the country in question.

Priority implementation is requested for a number of specific recommendations chosen from those made in the new report of the fourth round. No later than two years following the publication of this report, ECRI will implement a process of interim follow-up concerning these specific recommendations.

**The following report was drawn up by ECRI under its own and full responsibility. It covers the situation up to 18 December 2009 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.**



## SUMMARY

**Since the publication of ECRI's third report on France on 15 February 2005, progress has been made in a number of fields covered by that report.**

The High Authority against Discrimination and for Equality (Haute autorité de lutte contre les discriminations et pour l'égalité, hereafter the HALDE), established in 2005, has a key and growing role in combating the kinds of discrimination that come within ECRI's mandate.

The new rules and tools introduced a few years ago in the field of criminal law provisions to combat racism are beginning to bear fruit in terms of the criminal justice system's response to racist offences. In the political sphere, openly racist statements and acts of violence are generally condemned by political leaders and met with strong reactions.

France's legal apparatus for combating discrimination through criminal, civil and administrative law was recently reinforced and measures have been taken in order to improve the application of legal provisions to combat racial discrimination.

The French authorities have already taken or are in the process of taking policy measures to combat discrimination and to promote equal opportunities and diversity in the field of employment, education and in the broadcasting media.

As regards education, a number of preventive measures have been taken to raise pupils' awareness of the problems of racism and discrimination, for instance, through partnership agreements with certain anti-racism NGOs or with the HALDE.

Some amendments made to the legislation on the status of non-citizens and on asylum have advanced non-citizens' fundamental rights, notably with regard to asylum procedure. The authorities have continued to take a number of measures aimed at fostering the integration of non-citizens, in particular with regard to women and young immigrants. A National Immigration History Museum (Cité nationale de l'histoire de l'immigration) was opened in 2007.

There has been genuine reflection and widespread debate on the question of measuring diversity and on "ethnic statistics" as tools for improving the fight against discrimination or for measuring diversity.

**ECRI welcomes these positive developments in France. However, despite the progress achieved, some issues continue to give rise to concern.**

As concerns the implementation of criminal law provisions to combat racism, one problem which remains outstanding is the too high number of victims of racist acts or racial discrimination who hesitate to lodge complaints, particularly with the police.

The problem of racial discrimination persists in access to employment, education, housing, and goods and services, and affects notably minority groups such as visible minorities, Muslims, Travellers and Roma from the countries of central and eastern Europe.

There is a problem of disproportionate representation of children from immigrant backgrounds in certain schools. Despite a significant mobilisation against racism in schools, racist and/or antisemitic acts (verbal or physical attacks) are still being reported within schools.

A number of remarks by politicians, including by elected persons and members of the government, in particular on questions of immigration and integration, have been perceived as encouragements to expression of racism and, particularly, xenophobia. Some French media sometimes convey racist prejudices and stereotypes. According to a number of sources, the situation in France concerning racism on the Internet is a serious cause for concern.

As regards the situation of itinerant Travellers, despite some progress in the implementation of the laws making it mandatory to build stopping places, the objectives of these laws have not been achieved and the number of stopping places available is therefore still insufficient to meet the demand.

Many Roma from the countries of central and eastern Europe remain in an extremely precarious situation as regards access to decent housing, health care and education.

Both Travellers having French nationality and Roma from the countries of central and eastern Europe continue to suffer from a generally hostile climate of opinion, including racist prejudice.

Verbal and physical attacks against persons of Muslim faith and attacks against mosques or Muslim graves continue to take place in France and a degree of wariness of Muslims continues to exist among certain segments of the general public.

Antisemitic acts still occur in France. The acts recorded in recent years include violent attacks against persons of Jewish origin, places of worship and property belonging to persons of Jewish origin, and also verbal violence and antisemitic flyers and graffiti.

The current legislation relating to non-citizens is generally described as making it more difficult to defend the fundamental rights of non-EU citizens and as having the result of making their legal status in France more precarious in a number of respects, which ultimately complicates the process of integration.

The government's policy of setting targets for the removal of non-citizens in an irregular situation has apparently already engendered tensions within French society and the administrations concerned and has led to excesses in practice regarding the apprehension, detention and return of foreigners. Some measures taken by the authorities to regulate immigration and combat illegal immigration, including the above-mentioned targets, have been described by human rights and anti-racism NGOs as contributing to the stigmatisation of non-citizens, in particular on account of a form of presumption of fraud.

While ECRI in general welcomes the measures taken by the French authorities to foster the integration of non-citizens, it nonetheless warns in this report against possible excesses of compulsory measures such as the reception and integration contract between the immigrant and the State and integration tests before granting immigrants leave to enter France.

Allegations persist concerning discriminatory conduct by law enforcement officials in respect of members of minority groups, in particular visible minorities. A number of sources have stressed that racial profiling is a serious problem in the case of identity checks.



**In this report, ECRI requests that the French authorities take further action in a number of areas; in this context, it makes a series of recommendations, including the following.**

In view of the key role played by the High Authority against Discrimination and for Equality (*Haute autorité de lutte contre les discriminations et pour l'égalité*, HALDE) in combating racial discrimination, ECRI recommends that the French authorities continue to support this institution. Particular care should be taken to ensure that this institution is regularly consulted and that real co-operation is developed between the HALDE and the authorities, notably by taking into account the opinions and recommendations issued by the HALDE in its fields of expertise.\*

ECRI encourages the French authorities to set up rapidly a system which would allow for better treatment of victims who lodge complaints with the police, and particularly victims of racist acts in order to further improve the criminal justice system's response to racist offences. ECRI strongly recommends that the French authorities pursue and step up their efforts to improve the implementation of criminal law provisions to combat racial discrimination, in particular by continuing to inform victims specifically on this issue and to raise awareness of the existing provisions among persons working in the justice system.

ECRI recommends that the French authorities pursue their efforts to combat racial discrimination in all aspects of access to employment, housing, education and to promote equal opportunities and diversity in all of these fields.

ECRI strongly recommends that the French authorities continue to take steps to curb the exploitation of racism in political discourse. ECRI strongly recommends that the French authorities combat all manifestations of racism, in particular against visible minorities, Muslims, Travellers and Roma from countries of eastern and central Europe.

ECRI strongly recommends that the French authorities pursue and reinforce their efforts to combat forms of racist expression propagated via the Internet. It underlines the importance of monitoring this question and informing the public on developments in this field. ECRI recommends that an information campaign targeting the general public be carried out to publicise the ban on the use of statements inciting to racial hatred disseminated via the Internet and the fact that it is possible to report content breaching this ban.\*

ECRI strongly recommends that the authorities find, as a matter of urgency, solutions for the effective, ongoing schooling of itinerant or semi-itinerant Traveller children, adapted to their lifestyle in consultation with the Traveller community. In particular, steps should be taken to prevent any refusal by a municipal authority to enrol such children in school.\*

ECRI strongly recommends that the French authorities review the legislation on immigration and the rights of non-citizens and the related practice so as to identify any problems with regard to non-citizens' fundamental rights and take all the remedial measures necessary to avoid any breaches of those rights when applying the law. ECRI recommends that the French authorities continue to take measures aimed at encouraging integration, by ensuring that integration is conceived as a two-way process entailing mutual recognition between the majority population and minority groups.

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\* The recommendations in this paragraph will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

ECRI urges the French authorities to take measures to combat all forms of discriminatory conduct by law enforcement officials, including racial profiling in particular by clearly defining and prohibiting racial profiling by law, carrying out research on racial profiling and monitoring police activities to identify racial profiling practices.

## FINDINGS AND RECOMMENDATIONS

### I. Existence and implementation of legal provisions

#### International legal instruments

1. In its third report on France ECRI recommended that France sign and ratify as soon as possible Protocol No. 12 to the European Convention on Human Rights, which institutes a general ban on discrimination, and open without delay the public debate which the French authorities believe to be a necessary step in this process.
2. The French authorities have stated that France does not intend to accede to Protocol No. 12 in the short term, as this seems undesirable given the excess workload of the European Court of Human Rights. ECRI recalls that Protocol No. 12 is one of the most important international instruments for combating racial discrimination, and that its ratification would make it possible to combat this phenomenon more effectively at national level.
3. ECRI reiterates its recommendation that France sign and ratify Protocol No. 12 to the European Convention on Human Rights at the earliest possible date.
4. In its third report ECRI recommended that the authorities ratify the European Charter for Regional or Minority Languages, sign and ratify the Framework Convention for the Protection of National Minorities and withdraw the reservations in respect of Article 27 of the International Covenant on Civil and Political Rights concerning ethnic, religious or linguistic minorities. It encouraged the French authorities to continue and intensify the debate on the potential benefits for France of fully acceding to these international legal instruments.
5. The French authorities have stated that France's position concerning these instruments remains unchanged since ECRI's last report. The French authorities have explained that the constitutional principles of the indivisibility of the French Republic and the oneness of the French people, of which no section may claim for itself the exercise of national sovereignty, prevent the recognition of collective rights of any group, whether defined by a common origin, culture, language or belief<sup>1</sup>. According to the authorities, it follows that the notion of "minorities" is alien to French law and there are therefore no plans to ratify the conventions referred to in the paragraph above or to withdraw the reservations in respect of Article 27 of the Covenant on Civil and Political Rights. ECRI nonetheless notes with interest that, as mentioned elsewhere in this report, debate in France on these questions and more generally on diversity, is continuing and intensifying<sup>2</sup>.
6. In its third report ECRI recommended that France sign and ratify the Convention on the Participation of Foreigners in Public Life at Local Level and ratify the European Convention on Nationality as swiftly as possible. It also recommended 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. The French authorities have stated that they do not intend to ratify these instruments in the short term.

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<sup>1</sup> See the Decision of the Constitutional Council N°99- 412 DC of 15 June 1999 on the ratification of the European Charter for Regional and Minority Languages.

<sup>2</sup> See in particular "Promoting equality of opportunity and diversity" below.

7. However, ECRI notes with satisfaction that, as it had recommended, on 10 January 2006 France ratified the Convention on Cybercrime and the Additional Protocol thereto concerning the criminalisation of acts of a racist or xenophobic nature committed through computer systems. These instruments entered into force in France on 1 May 2006.
8. ECRI reiterates its recommendation that France ratify the European Charter for Regional or Minority Languages, 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.
9. ECRI reiterates its recommendation that France ratify as soon as possible the European Convention on Nationality and sign and ratify the Convention on the Participation of Foreigners in Public Life at Local Level and the United Nations Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.

### **Anti-discrimination bodies and other institutions**

- *The Joint Ministerial Committee for Combating Racism and Antisemitism*
10. The Joint Ministerial Committee for Combating Racism and Antisemitism was set up in 2003 with the principles aims of: defining the orientations of government policy; ensuring the coherence and effectiveness of preventive and repressive actions taken by different ministries; deciding on a joint ministerial programme of action and ensuring its implementation. This co-ordinating tool in the fight against racism had not met since January 2005, and met again on 16 January 2009 following a new wave of racist and antisemitic acts, apparently linked to the outbreak of the conflict in the Middle East. A number of sources have underlined the importance of taking joint, concerted governmental action in the long term in the field of combating racism. In light of the problems of racism and racial discrimination highlighted in this report, ECRI considers that this Joint Ministerial Committee could meet on a more regular basis, and not just in cases of emergency. This would constitute a partial response to the need for co-ordination between all the central government authorities concerned, with a view to enhancing the effectiveness of the measures to combat racism and to communicate on the government's action. ECRI notes that there is no national action plan against racism in France yet. This Joint Ministerial Committee could be asked to participate in the adoption and implementation of a "national action plan against racism, racial discrimination and related intolerance" as foreseen by the Action Plan of the World Conference against racism in 2001.
  11. ECRI recommends that the French authorities arrange for meetings of the Joint Ministerial Committee for Combating Racism and Antisemitism to be held on a regular basis, so as to facilitate the long-term co-ordination of governmental action in this field. It recommends that the French authorities communicate on these actions and consider adopting and implementing a national action plan against racism.
- *The High Authority against Discrimination and for Equality (HALDE)*
12. In its third report ECRI welcomed the French authorities' plans to establish an independent authority to combat discrimination and promote equality. It strongly recommended that these plans be finalised and the authority set up at the earliest possible date.
  13. ECRI notes with satisfaction the establishment, in 2005, of the High Authority against Discrimination and for Equality (Haute autorité de lutte contre les discriminations et pour l'égalité, hereafter the HALDE), following the passing of

Law No. 2004-1486 of 30 December 2004. ECRI notes with interest that, in 2006, the mandate of the HALDE was reinforced and broadened to enable it better to perform its role, in particular by giving it the possibility of bringing matters before the courts of its own initiative and of proposing “penal transactions”<sup>3</sup>.

14. The HALDE is an independent administrative authority. It is competent to deal with all forms of direct or indirect discrimination prohibited by law or under international instruments to which France is a party. Discrimination prohibited by law concerns a large number of grounds of discrimination, including those coming within ECRI's mandate. The HALDE is, for instance, competent to deal with discrimination on grounds of origin, physical appearance, surname, religious beliefs and actual or assumed belonging to an ethnic group, nation or “race”. In addition, it has already concerned itself with issues linked to discrimination by reason of nationality or language.
15. The HALDE is competent to handle claims of discrimination lodged by victims or associations fighting discrimination; it can also deal ex officio with cases of discrimination. So as to examine claims the HALDE has various investigative powers. Claims can be the subject of a decision by the HALDE Council, which has eleven members<sup>4</sup>, and can lead to various forms of action: ordering that the perpetrator cease the discrimination, proposing mediation, issuing recommendations, opinions or warnings or proposing a penal transaction, which is subject to the prosecution service's approval. The HALDE also has the task of promoting equality through communication and information measures<sup>5</sup>. In 2008 it had a permanent staff of 81 and an annual budget of EUR 11,275,265.
16. Taking stock of the HALDE's first four years in activity (2005-2008), it can be seen that it has a key and growing role in combating the kinds of discrimination that come within ECRI's mandate. A total of 7,788 claims (taking all grounds of discrimination together) was registered in 2008, compared with 1,410 in 2005. Origin is the most frequently cited ground. Of the 19,027 claims received between 1 March 2005 and 31 December 2008, 30.7% concerned origin and 2% religious beliefs. Of the HALDE Council's 278 decisions in 2008, 111, or 36%, concerned the ground of origin, and 12, or 7%, the ground of religious beliefs. In its 2008 annual report the HALDE stated that it had made significant progress in ensuring that effective account is taken of discrimination, some of which comes within ECRI's mandate. It also noted some sticking points, that is to say cases in which the desired measures had not been taken in response to the Council's decisions. In particular, the percentage of positive follow-up to cases referred to the prosecution service was only 5%<sup>6</sup>.
17. Human rights and anti-racism NGOs point out that even though the HALDE is a recent institution, it has already achieved positive results. However, there is a need to ensure that its opinions are fully acted upon. To enhance its effectiveness it also still needs to make itself better known among victims of discrimination. The HALDE has stated that it carries out an active policy aimed at informing the public at large of its existence and role. It has taken or is in the

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<sup>3</sup> Under Law No. 2006-396 of 31 March 2006 on equality of opportunity. Concerning penal transactions, see “Legislation to combat racial discrimination: Criminal law provisions to combat racial discrimination” below.

<sup>4</sup> A number of decisions taken by the HALDE Council are referred to in this report. See for instance: “Discrimination in various fields”.

<sup>5</sup> A number of subsequent parts of this report mention the action taken by the HALDE in various fields since its inception.

<sup>6</sup> Concerning the criminal law response to racial discrimination, see “Legislation to combat racial discrimination: - Criminal law provisions to combat racial discrimination” below.

process of taking a number of measures aiming for closer proximity to potential victims of discrimination, such as the creation of regional delegations<sup>7</sup> and of a network of local correspondents who run weekly walk-in sessions<sup>8</sup>. The organisation has its own web-site and a phone line enabling potential victims to contact it.

18. A number of sources have underlined that the HALDE needs to be further consolidated, notably in the light of the discussions on the future Rights Defender. Following the adoption of constitutional law No. 2008-724 of 23 July 2008 on modernisation of the institutions of the 5th Republic, the French Constitution provides for the creation of an institution of Rights Defender to guarantee respect for rights and freedoms by public authorities and all bodies having a public service role or for which the Rights Defender is given jurisdiction under an organic law. At the time of preparation of this report, the relevant draft legislation provided that any individual or legal entity alleging a breach of rights or freedoms by a public authority would be able to lodge a complaint directly with the Rights Defender. The latter would also be able to receive complaints concerning acts by private individuals which affect a child's rights or constitute breaches of the rules of ethics in security matters, with the possible consequence that this institution would replace not just the Mediator of the Republic but also two other existing institutions, the Children's Defender and the National Commission on Security Ethics<sup>9</sup>. This bill also provides that the Rights Defender shall be involved in the activities of the HALDE, on request. ECRI welcomes the fact that an institution such as the Rights Defender has been provided for in the French Constitution. At this stage it is not possible to foresee the final content of the organic law. ECRI underlines that it is important to ensure that, in the framework of the establishment of this new institution, the protection of rights currently safeguarded by existing authorities not be undermined<sup>10</sup>, above all with regard to the HALDE's current responsibility for combating discrimination, not least in the area of racial discrimination which requires a degree of specialisation.

19. In view of the key role played by the High Authority against Discrimination and for Equality (*Haute autorité de lutte contre les discriminations et pour l'égalité*, HALDE) in combating racial discrimination, ECRI recommends that the French authorities continue to support this institution. Particular care should be taken to ensure that this institution is regularly consulted and that real co-operation is developed between the HALDE and the authorities, notably by taking into account the opinions and recommendations issued by the HALDE in its fields of expertise.

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<sup>7</sup> To date there are regional delegations in Rhône-Alpes, Provence-Alpes-Côte d'Azur, la Réunion, Ile de France and Antilles-Guyane.

<sup>8</sup> At the beginning of March 2009, 85 local correspondents had been recruited, of whom 76 had taken up their duties, and 125 recruitments were scheduled by the year end.

<sup>9</sup> On the subject of the CNDS, see also below "Conduct of law enforcement officials".

<sup>10</sup> In this connection, see the Memorandum published by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, following his visit to France from 21 to 23 May 2008, paragraph 15, CommDH(2008)34, Strasbourg, 20 November 2008.

## **Criminal law provisions to combat racist statements and acts**

- *Content of the criminal law provisions to combat racist statements and acts*<sup>11</sup>
- 20. France has considerable legal resources with which to combat racist statements and racist acts<sup>12</sup>. For example the Law on Freedom of the Press of 29 June 1881 criminalises inter alia the following acts, committed in public: defamation, insults and incitement to discrimination, hatred or violence on grounds of origin or of belonging, or not-belonging, to a given ethnic group, nation, race or religion<sup>13</sup>. This law applies to Internet content.
- 21. In its third report ECRI recommended that the French authorities extend the aggravating circumstance constituted by racist motivation, applicable to certain offences, to cover all criminal offences. Subsequent to the law of 9 March 2004, mentioned in ECRI's previous report, the Criminal Code provides that a racist motive can be taken into account as an aggravating circumstance in respect of a whole series of offences against persons or property<sup>14</sup>. No new provision has been adopted in this respect since 2004. The French authorities have informed ECRI that they currently have no intention either to introduce a general aggravating circumstance in French law or to supplement the list of offences for which a racist motivation constitutes an aggravating circumstance. Nonetheless, the authorities do not rule out the possibility of supplementing the list on a case by case basis if necessary.
- 22. ECRI reiterates its recommendation that the French authorities extend the principle of aggravating circumstances constituted by racist motivation, which is only applicable to certain criminal offences, to all criminal offences.
- 23. ECRI recommends that the French authorities continue evaluating the effectiveness of the criminal law provisions to combat racism. This should involve identifying, notably on the basis of recent case-law, any deficiencies to be remedied or possible improvements and clarifications to be made and then amending the law where necessary. In this connection, ECRI draws the authorities' attention to its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, which sets out guidelines.
- *Implementation of the criminal law provisions to combat racist statements and acts*
- 24. In its third report ECRI recommended that the French authorities take measures aimed at duly implementing the criminal law provisions to combat racism. It recommended in particular that they ensure that victims wishing to lodge complaints regarding racist acts or acts of racial discrimination received support and assistance and that they continue to raise awareness among judges, prosecutors and law enforcement officials of the need to combat racist acts and acts of racial discrimination.

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<sup>11</sup> As in the text of ECRI's General Policy Recommendation N°7 on national legislation to combat racism and racial discrimination, "racism" shall mean the belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons." See Paragraph 1 a) of the Recommendation.

<sup>12</sup> Concerning the criminal law provisions to combat racial discrimination, see "Legislation to combat racial discrimination: - Criminal law provisions to combat racial discrimination" below.

<sup>13</sup> See Article 24 of the Law on Freedom of the Press of 29 June 1881.

<sup>14</sup> Subsequent to this law the aggravating circumstance constituted by racist motivation applies to intentional homicide, torture and acts of barbarism, violence leading to death or injury, damage to private property, threats, theft and extortion.

25. As regards the criminal justice system's response to racist offences, the National Consultative Commission for Human Rights (hereinafter the CNCDH), which has been monitoring this question for a number of years, noted in its 2008 report that over the previous five years the number of convictions for racist or antisemitic offences had grown<sup>15</sup>. The CNCDH considers that this increase reflects an improved response to this type of offence by the criminal courts. It believes that the figures can be linked to the initial impact on the criminal justice system's activities, as from 2005, of the new rules and new operating methods (in particular the appointment of contact prosecutors ("magistrats référents")) introduced in 2004<sup>16</sup>. ECRI has been able to note itself, in the official statistics provided by the Government, an increase in criminal convictions for racist acts in the last years. These statistics indicate that, on the whole, the number of new racist, antisemitic or "anti-religion" cases registered by prosecutors' offices tends to increase (3697 new cases in 2005, 3911 in 2006, 3653 in 2007 and 3955 in 2008) and that the percentage of cases in which there has been a "criminal-justice-system response" has also increased slightly<sup>17</sup>. Out of the 678 convictions entered in individual offenders' criminal records in 2008 (provisional number) in respect of offences linked to racism, antisemitism or discrimination, 458 concern the offence of publicly insulting - verbally, in writing or via an image or a means of publicly available electronic communication - a person on ground of his/her race, religion or origin. The CNCDH also deems it encouraging that, in 2008, extensive use was made of procedural alternatives to prosecution, which primarily have an educational purpose, in particular for cases involving under-age or young-adult offenders. In general, anti-racism NGOs have informed ECRI that they too have noted an improvement in the criminal justice system's response to racist acts in recent years, although there is still room for progress. They explained to ECRI that, in a few rare instances, they did not know, or comprehend, why decisions had been taken to drop certain cases or to deem that the racist motivation of an offence had not been established. ECRI hopes that the provision of more detailed information in such matters will make it possible to ascertain and make better known the reasons for such decisions and also, if necessary, to find means of ensuring that a racist offence does not go unpunished, notably thanks to reinforced co-ordination between the contact prosecutors.
26. ECRI welcomes the fact that the new rules and tools introduced a few years ago are beginning to bear fruit in terms of the criminal justice system's response to racist acts. However, the anti-racism NGOs consider that one problem which remains outstanding is the too high number of victims of racist acts who hesitate to lodge complaints, particularly with the police. ECRI notes with interest that the authorities are currently taking steps aimed at guaranteeing that victims in general are better received and supported by the police, which should also benefit victims of racism<sup>18</sup>. In recent years training and awareness-raising measures concerning the apparatus for combating racism and its importance have been implemented in respect of the police, prosecutors and judges, including with the aim of raising awareness of the need to fight discrimination<sup>19</sup>.

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<sup>15</sup> See the CNCDH's annual report on the fight against racism, antisemitism and xenophobia, 2008, La Documentation française, p. 12.

<sup>16</sup> See ECRI's third report on France, paragraphs 15 and 23.

<sup>17</sup> The 2008 data are provisional. For the terminology used (racist, antisemitic or "anti-religion" cases), see paragraph 27 below.

<sup>18</sup> In this connection, see also "Conduct of law enforcement officials" below.

<sup>19</sup> In this connection, see "Legislation to combat racial discrimination" below.



27. ECRI notes that France has a number of statistical and other tools that can serve to monitor the criminal law response to racist acts. They include the collection by the Ministry of the Interior of data on racist, antisemitic and xenophobic acts. Since 2005 the Ministry of Justice has also had a system for monitoring the justice system's responses to offences of racism and antisemitism that come to the prosecution services' knowledge. It takes into account racist, antisemitic and, in accordance with a specific definition used by the Ministry of Justice, "antireligious" offences<sup>20</sup>. In its 2008 report the CNCDH drew attention to the ongoing improvement of the statistical tools available in this field, but also noted some continuing deficiencies and a lack of consistency<sup>21</sup>. The problems noted include the failure of some prosecution services to report to the Ministry of Justice the statistics necessary for publishing full, reliable information, shortcomings in data collection by the Ministry of the Interior and the fact that comparisons of the figures published by the Ministry of the Interior and by the Ministry of Justice are not possible. ECRI underlines the importance of being able to perform close monitoring of trends with regard to racist incidents and the way they are handled by the criminal justice system. Progress therefore still needs to be made towards a reliable system of collecting data on application of the criminal law provisions to combat racism. ECRI hopes that the steps taken or about to be taken by the authorities will rapidly allow improved monitoring of these matters.
28. ECRI recommends that the French authorities continue to provide all members of the justice system - police officers, prosecutors and judges - with initial and in-service training in the criminal law provisions to combat racism, so as to guarantee their proper implementation. It also recommends that lawyers be offered the possibility of undergoing training on this subject.
29. ECRI encourages the French authorities to set up rapidly a system which would allow for better treatment of victims who lodge complaints with the police, and particularly victims of racist acts.
30. ECRI strongly encourages the French authorities to improve and supplement the existing systems for collecting data on racist incidents and the way they are handled by the criminal justice system. In this connection it draws the authorities' attention to the section III of its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing that concerns the role of the police in combating racist offences and monitoring racist incidents.

### **Legislation to combat racial discrimination**

31. In its third report ECRI recommended that the French authorities do more to raise the awareness of judges, prosecutors, law enforcement officials and the general public of the problem of racial discrimination<sup>22</sup>.
32. France's legal apparatus for combating discrimination, in particular racial discrimination, includes the provisions criminalising discrimination and civil and

<sup>20</sup> The antireligious offences are those committed on the grounds of Muslim, Christian or any other faith.

<sup>21</sup> See the CNCDH's annual report on the fight against racism, antisemitism and xenophobia, 2008, La Documentation française, p. 21 concerning the Ministry of the Interior data and p. 56 concerning the Ministry of Justice data.

<sup>22</sup> For a definition of racial discrimination, see paragraph 1 b) and c) of ECRI's General Policy Recommendation N°7 on national legislation to combat racism and racial discrimination, which explains that this expression covers discrimination for motives such as race, colour, language, religion, nationality and national or ethnic origin.

administrative law provisions. It was recently reinforced, in particular through the establishment of the HALDE in 2005<sup>23</sup>.

- *Criminal law provisions to combat racial discrimination*
33. Article 225-1 of the Criminal Code prohibits discrimination on grounds, inter alia, of origin, physical appearance, surname and actual or assumed belonging, or not belonging, to a given ethnic group, nation, race or religion. This ban applies with regard to the supply of goods and services, the normal exercise of any economic activity, recruitments, internships and dismissals. The Labour Code also lays down criminal penalties for racial discrimination perpetrated in a whole series of ways (see Article 122-45 of the Labour Code).
  34. It is generally acknowledged that the criminal law provisions to combat racial discrimination have so far been little implemented for a number of reasons. Victims of racial discrimination are often reluctant to lodge a complaint for lack of confidence in law enforcement officials or because they consider it would be pointless. There is still a lack of knowledge of the criminal law to combat discrimination. Criminal justice system operators are not yet sufficiently aware of the problem of racial discrimination and the means to be used to combat it. By way of example, for the whole of 2007, only ten persons received convictions for racial discrimination that were entered in their criminal records. Both the French authorities and the anti-racism NGOs consider that this figure is far from a true reflection of the situation regarding racial discrimination in France and that it is therefore necessary to reinforce the criminal law response to this problem.
  35. ECRI notes with interest that, since the publication of its third report, the French authorities have taken a number of measures, some of which it had itself recommended so as to improve the application of the criminal law to combat racial discrimination. Firstly, the scope of the contact prosecutor in matters of racism and antisemitism appointed in each prosecution service has been broadened to include the issue of discrimination. Subsequent to instructions issued by the Ministry of Justice on 11 July 2007, each prosecution service now has an anti-discrimination unit led by the contact prosecutor. The latter works in close co-operation with a specialist, appointed by the State Prosecutor for having a background in fighting discrimination. The role of the anti-discrimination units includes in particular encouraging victims of discrimination to come forward and to lodge complaints and taking targeted measures to give an impetus to the criminal law policy to combat discrimination.
  36. In addition, on 14 December 2007, the Ministry of Justice signed two framework agreements, the first with the International League against Racism and Antisemitism (LICRA) and the second with SOS Racisme, to set up an active partnership with the prosecution services and in particular the anti-discrimination units. The aim is to enhance the information and assistance available for victims of discrimination and to train and inform justice system operators dealing with these matters.
  37. With regard to admissible evidence, Law No. 2006-396 of 31 March 2006 added an Article 225-3-1 to the Criminal Code, which provides that offences of discrimination are established even where they are committed against one or more persons who sought to secure the goods, acts, services or contracts concerned with the specific aim of revealing the existence of discriminatory behaviour, provided that such behaviour has been proved. In other words, the law now recognises the discrimination test method, sometimes referred to as

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<sup>23</sup> See "The High Authority against Discrimination and for Equality (HALDE)" above.

“situation testing”, that consists in setting up an operation to gather proof of discrimination, which the Court of Cassation's case-law had already accepted as having evidential value in criminal cases. A Ministry of Justice circular (NOR/JUSD630082C) of 26 June 2006 presents this legislation with the aim of encouraging its application by the prosecution services.

38. In recent years the HALDE has done much to reinforce application of the criminal law provisions to combat discrimination, not least racial discrimination. It has contributed a great deal to raising awareness among justice system operators and also the general public and potential victims. In particular, the HALDE has signed partnership agreements with the French police force (in December 2006) and with the gendarmerie (in December 2007). These agreements are aimed at implementing good practices in combating all kinds of discrimination prohibited by law and at raising police officers' awareness of the different types of discrimination and providing them with the tools they need to perform their tasks, such as training materials and joint measures, drawing on the HALDE's expertise. For example, police officers have been provided with model reports for recording acts of discrimination and guides for investigators have been published to assist them in identifying and investigating cases of discrimination.
39. Since 2006 the HALDE has been authorised to propose a “penal transaction” in cases of discrimination, which has to be accepted by the parties and approved by the prosecutor. The transaction involves the payment of a fine, subject to an upper limit of EUR 3,000 for individuals and EUR 15,000 for legal entities, and possibly of compensation to the victim. Measures to publicise the decision may also be imposed. If a transaction is refused, or accepted but not implemented, the HALDE can bring a direct action against the perpetrator in the criminal courts. It is still premature to take stock of the impact of this new criminal law measure and to determine whether it is effective. Some people have voiced misgivings about the low ceilings imposed on the amount of the fine and about the risk of a degree of reduced effectiveness, since a transaction of this kind does not have the exemplary nature of a court decision.
40. ECRI strongly recommends that the French authorities pursue and step up their efforts to improve the implementation of the criminal law provisions to combat racial discrimination, in particular by continuing to inform victims specifically on this issue and to raise awareness of the existing provisions among persons working in the justice system.
41. ECRI recommends that the effectiveness of the penal transaction procedure in cases of racial discrimination be assessed on the basis of the results attained so far and that any adaptation measures which prove necessary be taken.

- *Civil and administrative law provisions to combat racial discrimination*

42. Alongside the criminal law provisions there is a series of civil and administrative law provisions banning racial discrimination. Since ECRI's third report, the existing legislation has been reinforced on a number of occasions, with a view to transposing the relevant EU Directives<sup>24</sup>, in particular subsequent to the passing of Law No. 2004-1486 of 30 December 2004 establishing the High Authority against Discrimination and for Equality, Law No. 2006-396 of 31 March 2006 on equality of opportunity and Law No. 2008-496 of 27 May 2008 concerning certain measures to adapt Community law in the field of fighting discrimination. Current French law defines direct and indirect discrimination and

<sup>24</sup> Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

prohibits such behaviour on grounds of actual or assumed belonging, or not belonging, to an ethnic group, race or religion in the fields of social protection, health care, social benefits, education, access to goods or services or the supply of goods or services, as well as in matters of employment and trade union membership and activism. The law provides for the burden of proof to be shared. In other words, where a person submits to the competent court facts which permit a presumption of discrimination, it is for the defendant to prove that the impugned act was justified by objective elements in no way entailing discrimination. The legal texts concerning the prohibition of racial discrimination have been complemented and modified several times in the last few years. The relevant provisions are disseminated among different codes and laws. Since it is important that both legal specialists and the public at large have a clear idea of the scope of the prohibition of racial discrimination in French law, it would be useful to foresee a compilation of the relevant texts with their explanations. This would allow a better understanding of the scope of the legal provisions available at the moment.

43. Since its establishment, above all recently, the HALDE has made considerable efforts to raise awareness among the general public and to train justice system operators (civil and administrative court judges, members of the labour courts, lawyers) with regard to the civil and administrative law provisions to combat discrimination, not least racial discrimination. The further training courses proposed by the Legal Service Training College (Ecole nationale de la magistrature) include sessions on discrimination run in partnership with the HALDE. However, there is a general consensus that victims need to be better informed of their rights in this field and also that judges and other key operators concerned must be given an opportunity to familiarise themselves with the existing legislation and the very concept of direct and indirect discrimination.

44. ECRI recommends that the French authorities assess the civil and administrative law provisions to combat racial discrimination to determine whether they are sufficient, taking due account of its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination. If this assessment brings to light deficiencies to be remedied or improvements and clarifications to be made, the necessary amendments should be implemented. In particular, ECRI encourages the authorities to consider the elaboration of a compendium or a compilation of the legal provisions to combat racial discrimination which would allow for easier comprehension of all of the standards applicable in this field.

45. ECRI recommends that the French authorities pursue their efforts to inform the public of the provisions in force to combat racial discrimination and of any provisions adopted in future. It also underlines the importance of sustaining and reinforcing the efforts to train all justice system operators in the new legislation to combat racial discrimination, laying particular emphasis on the provisions concerning the burden of proof.

## **II. Discrimination in various fields**

### **Employment**

46. In its third report ECRI recommended that the French authorities implement an equal opportunities policy in the field of employment.

47. ECRI expresses its concern at a number of reports and discrimination tests showing that the problem of discrimination on grounds of origin in the area of employment, particularly access to employment, remains significant<sup>25</sup> and affects inter alia persons perceived as being of immigrant, North African or sub-Saharan African origin or of the Muslim religion. Some cases of racial discrimination in access to employment have been sanctioned by the courts, although the anti-racism NGOs consider that the penalties are not always sufficiently dissuasive, particularly where large corporations are concerned<sup>26</sup>.
48. ECRI notes with interest that the French authorities have already taken or are in the process of taking measures to combat this type of discrimination and to promote equal opportunities and diversity in the field of employment. It is not possible to list all of the measures adopted here. For instance, the 2006 law on equality of opportunity provides for the use of anonymised CVs in job applications in companies with 50 or more employees, although to the best of ECRI's knowledge this measure had not yet been implemented at the time of drafting this report. A diversity award was set up in 2008 and should begin to reward businesses having made efforts in this domain in 2009.
49. On 12 October 2006 employee and employer representatives concluded a national interprofessional agreement on diversity within enterprises aimed at promoting non-discrimination and equal treatment in matters of recruitment, assignment to posts, remuneration, vocational training and career progression.
50. With regard to public service employment, a number of measures have been taken to promote equality and diversity. For instance, on 2 December 2008 the competent ministry signed a Charter to Promote Equality in the Public Service. One of the concerns addressed by this charter is achieving discrimination-free recruitment conditions in meeting staffing requirements by ensuring that members of recruitment panels and selection committees undergo training and awareness-raising on the subjects of prejudice, stereotypes and the risk of discrimination.
51. In the field of prevention, the HALDE has published a number of employment related guides, including a guide entitled "Preventing discrimination in access to employment: action taken by employment intermediaries", a good practice guide for medium, small and very small businesses and craft industry employers and a guide entitled "Preventing discrimination and promoting equality: businesses' response to the HALDE".
52. In its third report ECRI recommended that the French authorities review all the occupations then inaccessible to non-EU citizens and remove any unwarranted obstacles to access to employment. In the meantime the HALDE has concerned itself with the issue of citizenship requirements in access to employment<sup>27</sup>. It has underlined that, for certain jobs, the citizenship criterion is unfounded. It accordingly recommended that this criterion be eliminated for access to the three public service corps, jobs in public establishments and enterprises and private sector jobs, except those concerned with matters of national sovereignty or the exercise of public-authority prerogatives.

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<sup>25</sup> See for example "Discrimination in access to employment on grounds of foreign origin in France: a national survey of discrimination based on the testing methodology of the ILO", E. Cediey and F. Foroni, (ISM-CORUM), International Labour Organization, 2007.

<sup>26</sup> In this connection, see "Legislation to combat racial discrimination" above.

<sup>27</sup> HALDE Council, decision No. 2009-139 of 30 March 2009

53. ECRI recommends that the French authorities pursue their efforts to combat racial discrimination in all aspects of employment, including access to employment, pay and working conditions, promotions, professional training and dismissal, and to promote equal opportunities and diversity in all of these fields.
54. ECRI strongly encourages the French authorities to follow the HALDE's recommendations when citizenship is set down as a condition of access to employment and limits such access for non-citizens.

## Education

55. In its third report ECRI encouraged the authorities to seek means of overcoming the problem of disproportionate representation of pupils with an immigrant background in certain schools, and to continue their efforts to have regional languages or mother tongues other than French taught in schools. The question of access to education for Traveller children<sup>28</sup> and Roma children from the countries of central and eastern Europe<sup>29</sup> is dealt with later in this report.
56. A number of sources have drawn attention to the problem of disproportionate representation of children from immigrant backgrounds in certain schools, which is apparently linked to the formation of ghetto housing estates and also to the allegedly poorer school performance of immigrant children or children from immigrant backgrounds<sup>30</sup>. At the same time, the French authorities are aware of the need to enhance equal opportunities in access to education for immigrant children or children from immigrant backgrounds and of the fact that, alongside other difficulties, they suffer the consequences of racism and discrimination in this field. ECRI notes with interest the adoption of a "Framework convention on fostering educational achievement and promoting equal opportunities", signed in December 2007 by a number of governmental players, including the Ministry of Education. The aim is to improve the education patterns of young immigrants or young people from immigrant backgrounds and to enhance their social and occupational integration.
57. The French authorities have also taken a number of measures to foster the mixing of social groups in school by reinforcing support for schools in special educational needs areas (zones d'éducation prioritaires - ZEP) or for pupils from disadvantaged backgrounds. ECRI notes in particular the creation, in 2006, of "educational ambition" or "educational achievement" networks in the most severely affected areas. These networks aim to enhance the school performance of children with difficulties for example by offering them the possibility of receiving support teaching in addition to attending mainstream classes or by diversifying the means of information and participation targeting pupils' parents. ECRI notes with interest that a charter on "Equal opportunities in access to top level training" has been signed by the government, the universities and the elite higher education establishments ("grandes écoles"). These measures are not aimed directly at immigrant children or children of immigrant origin but concern those of them who come from disadvantaged backgrounds. For children who are new immigrants, the principle of intensive daily instruction in French as a second language, carried out in an induction class (CLIN) at primary school and an "arrival class" (CLA) at secondary school, has been maintained. The education department centres for the schooling of

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<sup>28</sup> See "Vulnerable/Target groups: - Travellers".

<sup>29</sup> See "Vulnerable/Target groups: - Roma from the countries of central and eastern Europe".

<sup>30</sup> See for example the OCDE study published in 2006 on the PISA evaluation 2003: "Where immigrant students succeed - A comparative review of performance and engagement in PISA 2003".

new arrivals and Traveller children (CASNAV) provide teaching materials for the teachers concerned. ECRI notes with interest that the French authorities have continued their efforts to have regional languages or mother tongues other than French taught in schools.

58. In its third report ECRI recommended that the French authorities closely monitor and fight antisemitic and racist phenomena in educational establishments. ECRI notes with interest that the authorities have maintained, and in some respects reinforced, the measures to combat racism and antisemitism in school. A new computerised reporting system, ("Système d'information et de vigilance sur la sécurité scolaire" - SIVIS) introduced at the start of the 2007-2008 school year makes it possible to report violent acts committed in secondary schools, particularly those of a racist or antisemitic nature. A number of preventive measures have been taken to raise pupils' awareness of the problems of racism and discrimination through partnership agreements with certain anti-racism NGOs or with the HALDE. Every year, around 21 March, awareness-raising activities are run in schools in the context of the education against racism week. Despite this mobilisation, ECRI is concerned to learn that racist and/or antisemitic acts (verbal or physical attacks) are still being reported within schools<sup>31</sup>. According to the SIVIS statistics, in the 2007-2008 school year racist or antisemitic incidents accounted for 5% of all violent acts reported at secondary school level.
59. ECRI notes that, at the request of the HALDE, a study on stereotypes and discrimination in school text books was carried out in 2007-2008. This study<sup>32</sup> showed that visible minorities were little represented in school text books and also that stereotypical ideas and prejudices concerning persons of foreign origin could be found in some books, and were even conveyed by certain teachers. The study also drew attention to the good practices of certain school book publishers.
60. In its third report, ECRI strongly encouraged the French authorities to ensure the follow-up of the law on displaying religious allegiance in schools and to make sure that dialogue was privileged over any exclusion, stigmatisation or radicalisation of pupils concerned. 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, which can lead to exclusion, must be preceded by dialogue with the pupil.
61. In recent years, the law in question has continued to be the subject of debate in France. ECRI notes that some pupils have been excluded from state schools by this law. The authorities underline however that its use has not caused any major problems and that those who are excluded have the possibility to continue their schooling in a different manner. Some NGOs have informed ECRI that overall there have been few difficult cases and that the application of this law generally does not cause any problems. Other NGOs consider that exclusions are not the solution and that in some cases there is no veritable dialogue preceding exclusion. They consider that the application of this law risks bringing about social exclusion of pupils and the radicalisation of their position. As in its previous report, ECRI recalls that it is important to avoid any negative consequences of this law on pupils affected, in particular young Muslim females wearing the veil, who form the majority of the population

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<sup>31</sup> See the figures published by the Ministry of Education in the CNCDH's 2008 annual report.

<sup>32</sup> Final report commissioned by the HALDE: "Place des stéréotypes et des discriminations dans les manuels scolaires" (Stereotypes and discrimination in school text books), 207 p. See also the HALDE Council's decision No. 2008-218 of 27 October 2008 based on this study.

concerned. Muslim representatives have underlined the fact that this law has reinforced the stigmatisation of Muslim women who wear the veil<sup>33</sup>. In addition, the erroneous interpretation of the ban on displaying religious allegiance has allegedly led to cases of discrimination against women wearing the veil<sup>34</sup>. ECRI stresses that the effects of this law should be examined from the point of view of indirect discrimination and the possible stigmatisation of those concerned.

62. ECRI recommends that the French authorities pursue and step up their efforts to ensure that the education system guarantees all children of immigrant origin equality of opportunity in access to education, particularly higher education, and ultimately access to employment. In particular, ECRI strongly encourages the authorities to seek means of avoiding the disproportionate representation of pupils with an immigrant background in certain schools. In this connection, ECRI draws attention to its General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education.
63. ECRI recommends that the French authorities revise the content of school syllabuses and text books so as to eliminate any encouragement of prejudice and stereotyping in respect of any minority group and ensure that this content better reflects the diversity of society, including references to minority groups' contribution to society.<sup>35</sup>
64. ECRI recommends that the French authorities carry out an evaluation of the law on the displaying of religious allegiance at school from the point of view of issues of indirect discrimination and stigmatisation. ECRI recommends placing emphasis on the quality of the dialogue foreseen by the law to avoid where possible any exclusion of pupils when this law is being applied.

## Housing

65. In its third report ECRI recommended that the authorities take measures to combat racial discrimination in the housing sector. The situation in this field seems to be fundamentally unchanged, and the shortage of social housing and low-cost dwellings in major urban areas is still a problem. Immigrants or persons from immigrant backgrounds apparently continue to be particularly affected by difficulties of access to housing<sup>36</sup>. ECRI notes with concern that, according to a number of sources, direct and indirect racial discrimination towards immigrants, persons of immigrant origin and other visible minority groups remains a problem in both the private and the public housing sectors. Concerning private housing, for example, a testing operation conducted by the HALDE in 2006 in three regions showed that applicants of North African or Black African origin were nine times less likely to obtain the apartment being offered than the benchmark applicants<sup>37</sup>. With regard to social housing, a key problem is the lack of transparency of the system for allocating dwellings, which in the opinion of certain specialists can help create an environment conducive to potential discriminatory practices.

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<sup>33</sup> See below, "Vulnerable groups : Muslim communities"

<sup>34</sup> See below, "Vulnerable groups : Muslim communities"

<sup>35</sup> See also ECRI's General Policy Recommendation No. 10 on combating racism and racial discrimination in and through school education.

<sup>36</sup> See, for example, the European Committee of Social Rights' decision of 5 December 2007, Complaint No. 39/2006, FEANTSA v. France, in which the Committee raised the problem of the longer waiting times to be allocated social housing encountered by immigrant families (paragraph 160).

<sup>37</sup> See the HALDE's 2006 Annual Report, p. 39. The HALDE has since run another testing operation, in November 2008, which showed that persons with an African-sounding surname encounter greater difficulties in obtaining an appointment to visit an apartment.



66. ECRI notes with interest that a number of bodies have addressed the problem of discrimination in access to housing and issued recommendations on the subject. For example, the government asked the HALDE and the National Council for Housing (Conseil national de l'Habitat - CNH) to organise a Consensus Conference on Social Diversity in Housing, which led to a series of recommendations that were submitted to the Ministry of Housing and the City on 23 October 2007. The Supreme Council for Integration issued an opinion on the housing of persons from immigrant backgrounds in December 2007, which contains relevant information on discrimination problems and makes recommendations on means of preventing them<sup>38</sup>. The French authorities have continued to take measures aimed at facilitating access to housing for persons from disadvantaged backgrounds, pursuing urban renewal, desegregating urban ghettos and promoting a social mix in the housing sector.
67. ECRI is pleased to learn that, in April 2008, the HALDE ran an information campaign including the distribution of brochures for landlords and housing professionals. It has similarly taken steps with regard to social housing organisations. In addition, in recent years court rulings or decisions by the HALDE Council have sanctioned cases of racial discrimination in access to private housing, which shows that the ban on racial discrimination in this field does not remain just an empty principle.
68. ECRI strongly recommends that the French authorities continue their efforts to combat racial discrimination in access to housing in both the public and the private sectors. It recommends to the authorities that they continue to seek appropriate solutions to the structural problems of access to social housing, notably by continuing to increase the park of available social housing and by reviewing the system for allocating such housing so as to make it more transparent.
69. ECRI recommends that the French authorities continue to make private and public providers more aware of the prohibition of racial discrimination in the housing sector and inform the public of the right of housing applicants to not be victims of racial discrimination.

### **Goods and Services**

70. Several instances of discrimination in access to goods and services are discussed in this report, notably concerning visible minorities or Travellers<sup>39</sup>.

### **III. Racist violence**

71. Even though information communicated to ECRI does not suggest that racist violence is a particularly serious problem in France, there have been a number of acts of violence which shows that the problem must be closely monitored. In particular, there have been cases of physical attacks against persons on the grounds of their ethnic origin or their religion, notably against persons belonging to visible minorities, and against Muslims or Jews. Furthermore, a number of racially-motivated attacks against places of worship such as mosques or synagogues have taken place and some cemeteries have been desecrated on racist grounds<sup>40</sup>. Some perpetrators of racist violence belong to extreme right-

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<sup>38</sup> Supreme Council for Integration, "Le logement des personnes immigrées : Avis à Monsieur le Premier Ministre" (Housing of persons of immigrant origin. Opinion submitted to the Prime Minister), December 2007, [www.hci.gouv.fr](http://www.hci.gouv.fr).

<sup>39</sup> See in particular "Vulnerable groups: - Travellers; and - Visible minorities".

<sup>40</sup> See in particular "Vulnerable groups : - Muslim communities ; - Roma from countries of central and eastern Europe", and "Antisemitism".

wing movements<sup>41</sup>, while others, such as certain fundamentalist Muslims, seem to be motivated by a form of identity-based radicalisation and withdrawal. ECRI also notes with concern the case of three Roma attacked by a crowd in Marseille in June 2008 following rumours of child kidnapping. In the opinion of the CNCDH “in matters of racism it would seem that, for a number of years now, violence has been gaining ground, since the perpetrators no longer settle for threats and insults, but actually resort to physical violence”<sup>42</sup>.

72. As mentioned in other sections of this report, the authorities are seeking to respond to these violent acts in a number of ways<sup>43</sup>. However, according to a number of NGOs, the cases identified by the authorities doubtless do not reflect the reality of events, since persons who contact these NGOs concerning racist attacks often prefer not to lodge a complaint with the police.

73. ECRI reiterates its above recommendations concerning implementation of the criminal law provisions to combat racism in the context of combating racist violence.

#### **IV. Racism in public discourse**

##### **Exploitation of racism and xenophobia in politics**

74. ECRI notes with concern the persistence of extreme-right parties in the French political landscape since its last report. In a number of sections of this report, ECRI notes that leading political figures at all levels generally take a firm stance against many forms of racism, including islamophobia and antisemitism. This also applies to the vast majority of members of the principal political parties. In at least one case, a party member who made racist remarks has been excluded from the party leadership. In another case the leader of a political party was penalised by the courts for racist statements. ECRI welcomes the fact that openly racist statements are generally condemned in French politics and meet with strong reactions when uttered.

75. However, it must be underlined that a number of remarks by politicians, including by elected persons and members of the government, in particular on questions of immigration and integration, have been perceived as encouragements to expressions of racism and, particularly, xenophobia. Cases of verbal excesses by leading politicians have been reported to ECRI. There is therefore a need for continuing vigilance to ensure that racist stereotypes, notably concerning groups such as immigrants, Blacks, Muslims, Travellers or Roma, are not propagated and exploited in politics<sup>44</sup>. This is why ECRI underlines that political leaders must be particularly careful when they are drafting and explaining their policies to make sure that the message transmitted to society as a whole does not foment or encourage intolerance.

76. ECRI strongly recommends that the French authorities continue to take steps to curb the exploitation of racism in politics. To this end, it draws the attention of the authorities to its General Policy Recommendation N°7, in which it details the steps which can be taken in this regard, as well as for other recommendations mentioned above<sup>45</sup>.

<sup>41</sup> See “Groups propagating racist ideology” below.

<sup>42</sup> See the CNCDH's annual report on the fight against racism, antisemitism and xenophobia, 2008, La Documentation française, p. 24. (unofficial translation)

<sup>43</sup> See in particular “Criminal law provisions to combat racist statements and acts” and “Discrimination in various fields: - Education”.

<sup>44</sup> See also “Vulnerable/Target groups: - Non-citizens” below.

<sup>45</sup> See “Criminal law provisions to combat racist statements and acts”.

## Racism in the media

77. In its third report ECRI encouraged the French authorities to intensify their efforts to enhance the representation of cultural diversity and of immigrants or persons with an immigrant background in France in all the media, notably by putting into practice an initiative of the audiovisual authority (Conseil Supérieur de l'Audiovisuel - CSA) and the Supreme Council for Integration. ECRI is pleased to note that the 2006 law on equality of opportunity makes the CSA responsible for contributing to action in support of social cohesion and the fight against discrimination in the broadcasting field and for ensuring that the programmes scheduled by radio and television stations reflect the diversity of French society. The CSA has decided that its action should focus, as a matter of priority but not solely, on the diversity of origins. In 2007 it set up an Observatory of Diversity in the Audiovisual Media, bringing together professionals and representatives of public bodies, with the aim of guiding its activities in this area. A study commissioned by this observatory shows that persons perceived as "non-white" are under-represented on French television and that over a ten-year period little progress has been made regarding representation of diversity. On the basis of this study, there are proposals, inter alia, to create a media diversity barometer and to ask broadcasters publicly to enter into a series of specific short-term and medium-term commitments.
78. ECRI notes that certain French media sometimes convey racist prejudices and stereotypes, as was the case with a television programme entitled "Delinquency: the Roma way" ("Délinquance: la route des Roms"), sanctioned by the CSA and the justice system for inciting racial discrimination. In other cases, media sometimes mention the ethnic origin of the alleged perpetrator of an offence although this type of information disclosure is not strictly necessary. Such practice may perpetuate racist prejudice amongst the general public and should therefore be avoided. ECRI also notes information according to which intolerant viewpoints are sometimes displayed on discussion forums concerning press articles published on the Internet. The articles which provoke these comments do not themselves contain any racist connotations. Even though these forums are supposed to be moderated, sometimes racist statements remain accessible to readers for a certain period of time. ECRI has no knowledge of a regulatory body similar to the CSA for the print media. It is its understanding that, in the context of the national consultations (Etats généraux) on the press<sup>46</sup> being held in 2008-2009, a debate is taking place on ethical standards applicable to the print media.
79. ECRI encourages the French authorities to pursue, without interfering in editorial independence, their efforts to raise media awareness of the need to ensure that reports by the media and the content of discussion boards on their Internet sites do not create an atmosphere of hostility towards and rejection of members of minority groups. It recommends that they initiate a debate with the media and the relevant civil society organisations on the best means of doing so, in particular by encouraging consideration of the possibility of including in media codes of ethics standards for the written press a commitment to not contribute to the dissemination of stereotypes and racist prejudice.

## Racism on the Internet

80. According to a number of sources, the situation in France concerning racism on the Internet is a serious cause for concern. There has reportedly been a significant increase in the web pages and discussion boards with racist content accessible from French Internet sites. This problem concerns racist propaganda

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<sup>46</sup> <http://www.etatsgenerauxdelapresseecrite.fr/>.

sites which disseminate hate speech against immigrants or persons of immigrant origin, in particular North Africans, against Muslims and Black persons, or against Jews<sup>47</sup>. Chain emails denigrating Muslims or Travellers, for example, are also a recurring problem. The problem of racism on the Internet of course also concerns sites located outside France, so effective action in this area also requires international co-operation.

81. There is a whole legal apparatus to combat Internet content inciting racial hatred<sup>48</sup>. Sites which are against the law can be reported to the prosecution service. In addition, the Central Office to Combat Offences linked to Information and Communication Technologies (OCLCTIC) is monitoring these questions and has a platform for receiving, processing and referring notifications of unlawful content (Plateforme d'Harmonisation, d'Analyse, de Recoupement et d'Orientation des Signalements - PHAROS). A government site for reporting unlawful Internet content ([www.internet-signalement.gouv.fr](http://www.internet-signalement.gouv.fr)) was launched in early 2009. It can be used to report, sometimes while remaining anonymous, Internet content inciting racial hatred or stirring up discrimination on grounds of origin, although the site itself merely refers to "unlawful content". This description is vague and should perhaps be more explicit so that Internet users know they can report sites containing incitements to racial hatred. Further, according to some NGOs, no public information has so far been made available on the follow-up action given to reporting of Internet sites inciting racial hatred. In its 2007 and 2008 annual reports the CNCDH encouraged the establishment of an observatory of racism, antisemitism and xenophobia on the Internet. This would make it possible to publish information, even of a general nature, on developments in this field.
82. ECRI notes that following the entry into force of the 2004 law on confidence in the digital economy, which it welcomed in its previous report, on 19 June 2008 the Court of Cassation dismissed an appeal on points of law against a decision requiring Internet service providers to block access from French territory to a site hosted abroad which was offering to supply brochures with antisemitic and Holocaust-denial content.
83. ECRI strongly recommends that the French authorities pursue and reinforce their efforts to combat forms of racist expression propagated via the Internet. It underlines the importance of monitoring this question and informing the public on developments in this field. ECRI recommends that an information campaign targeting the general public be carried out to publicise the ban on the use of statements inciting to racial hatred disseminated via the Internet and the fact that it is possible to report content breaching this ban.

### **Racism in sport**

84. In recent years a number of incidents of verbal violence of a racist (above all against Black or North African players) or antisemitic nature have been noted at French football grounds. Measures have been taken at a number of levels to combat this phenomenon. In 2009, for the first time, a player for an amateur club was brought to court for having made racist remarks about another player during a football match. The appeal proceedings were still pending at the time of drafting this report. The competent sports authorities have also imposed disciplinary penalties on football clubs for certain fans' racist behaviour at matches. There have also been cases of fans who have been prosecuted for

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<sup>47</sup> See "Criminal law provisions to combat racist statements and acts", "Education".

<sup>48</sup> Concerning the criminal law provisions applicable in this field see "Criminal law provisions to combat racist statements and acts: - Content of the criminal law provisions to combat racist statements and acts" above.

uttering racist insults. In the field of prevention, the Ministry of Health and Sport supports awareness-raising and training measures at national level to fight racism and antisemitism in football. It has also announced that the creation of an observatory on violence in football is being examined, with the aim of permitting better monitoring of incidents and also of supporting and raising the profile of the many local initiatives taken to prevent and combat football-related violence.

85. ECRI strongly encourages the French authorities to pursue and reinforce their efforts to combat racism in sport, particularly football, in partnership with the main operators in this sphere. It draws the authorities' attention to its General Policy Recommendation No. 12 on combating racism and racial discrimination in the field of sport, which contains guidelines.

### **Groups propagating racist ideology**

86. ECRI is concerned to learn that there are some active neo-Nazi and extreme right-wing groups or groups propagating racist or antisemitic ideology in France. In its 2008 annual report on the fight against racism the CNCDH reported an increase in the proportion of incidents involving racist violence or threats attributable to extreme right-wing movements (16%) in 2008. Since it is primarily young people who the perpetrators or victims concerned, this would seem to be leading to an increase in threatening and violent behaviour in schools. A small group was dissolved by presidential decree in 2006, on the basis of a 1936 law on combat groups and private militias, on the ground that it had spread ideas and theories aimed at justifying and encouraging racial discrimination, hatred and violence and that it advocated antisemitism.

87. ECRI strongly recommends that the French authorities continue to closely monitor organisations which are extreme right-wing or which propagate racist or antisemitic ideology. Action should be taken to morally condemn and also prevent and sanction any incitements to racial hatred attributable to them<sup>49</sup>.

## **V. Vulnerable/target groups**

### **Muslim communities**

88. ECRI notes with concern that verbal or physical attacks against persons of Muslim faith and attacks against mosques or Muslim graves continue to take place in France. For instance, the Muslim graves in the military cemetery of Notre-Dame de Lorette were desecrated on three occasions in two years (2007-2008). ECRI notes that the reaction of the highest-level authorities is to take a firm, public stance condemning this type of act. However, according to a number of sources, improved co-ordination between the public operators concerned would also allow better prevention of such acts<sup>50</sup>.
89. ECRI is concerned to note that, according to surveys conducted by the CNCDH, a degree of wariness of Muslims continues to exist in France, although it declined in 2008. ECRI regrets that this wariness sometimes takes the form of doubts about Muslims' real willingness, and even capacity, to "integrate" and to "respect French values". In some cases racist prejudice with regard to Muslims continues to be disseminated, in particular on the Internet. Cases of discrimination have also been noted, especially in access to employment and to

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<sup>49</sup> See ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, in particular paragraphs 17 and 18-g) and the relevant passages of the Explanatory Memorandum.

<sup>50</sup> In this connection, see "Implementation of the criminal law provisions to combat racist statements and acts" above.

housing. ECRI has been informed of a number of incidents in which Muslim women who wear the headscarf were asked to remove it by either public service employees or private individuals, which is against the law. In some cases this is due to erroneous understanding of the scope of the principle of secularity, on the one hand, and of the legislation banning the wearing of conspicuous signs of religious belief in public schools, on the other. ECRI notes, for example, that there have been a few cases of mothers accompanying their children on school outings<sup>51</sup> or headscarf-wearing women attending training courses dispensed by vocational training organisations on public secondary school premises<sup>52</sup> who were asked to remove their scarves, although there is no legal basis for this, as the HALDE pointed out in a number of decisions<sup>53</sup>. ECRI has been informed that recent discussions on the possibility of extending the current scope of the prohibition of wearing the veil or on the possibility of introducing a ban on the wearing of burkas and niqabs in public, have increased feelings of victimisation and stigmatisation among Muslims and have reinforced the problem of discrimination or exclusion of Muslim women generally in everyday life. As already mentioned in ECRI's third report, 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. A part of public opinion still sometimes draws 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 access to employment in the security sector, with Muslims being refused jobs because of the suspicion hanging over them<sup>54</sup>.

90. Acts of islamophobic violence are firmly condemned by leading political figures, including at the very highest level. In recent years a number of courts have taken decisions penalising islamophobic statements or acts or cases of discrimination against persons belonging to the Muslim religion. According to the organisations monitoring islamophobia, the number of intolerant acts against Muslims that are reported falls far short of reality, in particular because victims are wary of coming forward or lodging complaints for a lack of confidence in the police. The Ministry of the Interior has demonstrated its will to work more closely with Muslim institutions (notably the French Council for Muslim Worship) and North African associations so as to better tackle the racism affecting members of these groups.
91. The representatives of the CFCM (French Council for Muslim Worship) report encouraging advances, such as a reinforcement of the Regional Councils for Muslim Worship and of dialogue with the authorities and inter-religious dialogue. ECRI notes that there are nonetheless issues to be settled with regard to the exercise of freedom of religion, particularly concerning the construction of mosques, a field in which it is still hard to eradicate a degree of local reticence concerning such projects.
92. ECRI strongly recommends that the French authorities combat all manifestations of racism against Muslims. Vigilance must be maintained and reinforced to ensure that islamophobic acts do not go unpunished. In this connection, ECRI draws attention to its General Policy Recommendation No. 5 on combating intolerance and discrimination against Muslims.

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<sup>51</sup> Decision of the HALDE Council n°2007-117 of 14 May 2007.

<sup>52</sup> Decision of the HALDE Council No. 2008-167 of 1 September 2008.

<sup>53</sup> As regards displaying of religious allegiance in schools, see above : "Discrimination in various fields : - Education".

<sup>54</sup> HALDE intervened in a case concerning security employees working in an airport.

93. ECRI recommends in particular that the French authorities carry out an information and awareness-raising campaign vis-à-vis public service employees and the majority population so as to prevent unlawful, discriminatory requests that Muslim women wearing the headscarf either remove it or refrain from entering a public place.
94. ECRI recommends that the French authorities pursue and reinforce their co-operation with the French Council for Muslim Worship and the regional organisations representing Muslims so as to identify solutions to the remaining problems with regard to the exercise of freedom of religion and to take steps to remove obstacles to the construction of mosques.

### **Jewish communities**

95. See “Antisemitism” below.

### **Travellers<sup>55</sup>**

96. In its third report ECRI recommended that solutions be found to house Travellers, in particular regarding the availability of stopping places for those with an itinerant lifestyle. It encouraged the authorities to ensure that Travellers had access to education. It also recommended that they take all the necessary steps to combat manifestations of racism against Travellers.
97. Concerning stopping places for Travellers with an itinerant or semi-itinerant lifestyle, implementation of the laws making it mandatory to build such sites has progressed in recent years. The French authorities have indicated that, at the beginning of 2009, 40% of the required number of places on such sites had been made available and 60% were financed. ECRI notes with regret that the objectives of these laws have not been achieved and the number of stopping places available is therefore still insufficient to meet the demand<sup>56</sup>. This situation apparently engenders tensions between local people and Travellers unable to find suitable stopping places, whereas, according to a number of sources, experience has shown that, where such sites exist, relations are considerably improved. The lack of information on the available stopping places and the existence of a system permitting the eviction of Travellers illegally occupying a site make it even more urgent that the obligation to build stopping places should be fully and duly fulfilled. The authorities have stated that a reflection is under way so as to answer the new housing needs resulting inter alia from the growing sedentarisation of Travellers. They are carrying out consultations in particular at national level, through the National Consultative Committee for Travellers, and at local level, through the similar consultative committees existing in the *départements*. Civil society organisations nonetheless point out that, in general, consultation of Travellers must be reinforced at both national and local level with regard to all the proposals and projects concerning their housing needs.

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<sup>55</sup> 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.

<sup>56</sup> See also the European Committee of Social Rights' decision of 5 December 2007, Complaint No. 39/2006, FEANTSA v. France, in which the committee concluded that there had been a violation of Article 31§3 (right to affordable housing) of the revised Social Charter taken in conjunction with Article E (non-discrimination) by reason of the deficient implementation of legislation on stopping places for Travellers.

98. A number of sources, including the HALDE<sup>57</sup> and the CNCDH<sup>58</sup>, have drawn attention to the need to reform the regulations and practices specifically targeting Travellers with an itinerant lifestyle. In particular, the latter are required by law regularly to present a travel permit (a “carnet de circulation” or “livret de circulation”, depending on the circumstances) to the police or the gendarmerie of each place where they temporarily settle, failing which they incur criminal penalties. This measure has been denounced as discriminatory and disproportionate. The authorities informed ECRI that they were going to consider reforming it, but it seems that no tangible measure has been taken to date. The law also requires Travellers with an itinerant lifestyle to have been settled in a municipality for three years in order to exercise their right to vote, whereas for other categories of persons who cannot prove they have a fixed abode the duration is six months. Here too, this difference has been deemed unjustified and discriminatory. In addition, problems with regard to the issuance of national identity cards to Travellers, including unlawful refusals to issue such documents, have been reported to ECRI. This commission also notes with concern that there are allegations of discrimination with regard to Travellers' access to public goods and services, in particular banking services, insurance cover, rental or purchase of property and access to ordinary campsites.
99. With regard to access to education, ECRI had already noted in its previous report the existence of allegations of refusals to enrol children belonging to the Traveller community in school. ECRI regrets to learn that this is still a problem and that Travellers continue to encounter many difficulties, and even refusals, when they seek to enrol their children in school, on account of their origin, although this is entirely against the law. In a number of cases the HALDE has taken action in respect of the municipal authorities behind these refusals and solutions have been found<sup>59</sup>. However, the difficulties surrounding enrolment in school constitute a real obstacle to access to equality of opportunity for Traveller children, which must be eliminated as a matter of urgency. The NGOs have pointed out that the measures taken to ensure that the children concerned can successfully complete a full course of schooling remain inadequate or insufficient to meet the real needs, which are moreover difficult to assess for lack of reliable official data. Some initiatives, such as the itinerant schools project, are having a degree of success and the possibility of extending them should be studied.
100. ECRI is very worried about information from a number of sources that Travellers continue to be confronted with generally hostile attitudes in France and with racist prejudice on the part of members of the majority population. This prejudice apparently results in forms of discrimination such as those described above and in reactions of rejection of persons belonging to this community.
101. ECRI strongly recommends that the French authorities identify without delay solutions to provide stopping places for Travellers by creating a sufficient number of well-equipped sites in suitable locations.
102. Pending a permanent, generally applicable solution to the problem of stopping places, ECRI strongly recommends that the French authorities take all the necessary steps to identify, in consultation with Travellers, humane solutions which respect the latter's dignity and choice of an itinerant lifestyle.

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<sup>57</sup> See in particular the HALDE Council's decision No. 2007-372 of 17 December 2007 and the HALDE's booklet on “Discrimination against Travellers: European and national law”.

<sup>58</sup> National Consultative Commission for Human Rights (CNCDH), “Study and proposals on the situation of Roma and Travellers in France”, 7 February 2008.

<sup>59</sup> See, for example, the HALDE Council's decision No. 2007-30 of 12 February 2007.



103. ECRI urges the French authorities to review all the dispensatory provisions and practices which apply to Travellers and, if need be, to remove any discriminatory elements which have been identified, notably concerning identity papers and the right to vote.
104. ECRI strongly recommends that the authorities find, as a matter of urgency, solutions for the effective, ongoing schooling of itinerant or semi-itinerant Traveller children, adapted to their lifestyle in consultation with the Traveller community. In particular, steps should be taken to prevent any refusal by a municipal authority to enrol such children in school.
105. ECRI recommends that the authorities conduct an awareness-raising campaign targeting the general public so as to combat all kinds of intolerance and hostility towards Travellers and all ensuing forms of racial discrimination.

### **Roma from the countries of central and eastern Europe**

106. In its third report ECRI recommended that solutions be found to the problems encountered by Roma from the countries of central and eastern Europe regarding housing, health care and access to education. It also recommended that the necessary measures be taken to combat all manifestations of racism against Roma.
107. Roma of Romanian or Bulgarian nationality, who constitute a large proportion of migrant Roma in France, have had access to employment since 2007, but limited to a list of 150 occupations only, following the extension of the EU transitional arrangements with respect to free movement of persons. They cannot be employed unless the employer pays taxes in the form of a fixed sum of approximately 900 EUR.
108. The human rights NGOs that closely monitor the situation of migrant Roma point out that the latter are particularly concerned by the policy of setting targets for the removal of non-citizens from France<sup>60</sup>. For instance, they underline that as a consequence they are specially affected by the humanitarian return procedure applicable to nationals of EU member States. This procedure, which was introduced in 2006, consists in proposing assistance for the return of foreigners in a state of destitution or extreme precariousness, whether or not they are legally resident in French territory<sup>61</sup>. The authorities stress the voluntary nature of such returns and the assistance given to the persons concerned. However, reports have denounced the system's ineffectiveness, in particular because EU nationals can return to French territory, and some have already done so, and, above all, because returns are not genuinely voluntary in nature. Some migrant Roma who leave the country under these circumstances reportedly do so under pressure and not on a voluntary basis.

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<sup>60</sup> See in particular the 2007-2008 report by the national human rights action group Romeurope, September 2008. See also "Vulnerable/Target Groups: - Non-citizens" below.

<sup>61</sup> In the context of this procedure, which applies to all foreigners, including EU nationals, the French State offers the foreigner, as well as his or her spouse and children, the possibility of returning to their country of origin or a host country. Assistance is provided in the form of the payment of a sum of money as well as facilitating and covering the costs of the return journey of the persons concerned.

109. ECRI regrets to note that many Roma from the countries of central and eastern Europe<sup>62</sup>, remain in an extremely precarious situation as regards access to decent housing and health care<sup>63</sup>. Throughout France there are cases of Roma living in very rudimentary camps, mostly on the outskirts of cities, with sometimes disastrous consequences for their health. ECRI is concerned that a number of sources have pointed out that there is still a problem of brutal forced evictions from these camps involving the confiscation or destruction of personal belongings. In addition, in some cases the persons concerned are allegedly not necessarily being offered any decent alternative housing solution.
110. At the same time, even if some municipalities have adopted measures to foster the social integration of Roma, the results are varied. The “integration housing” consists in finding temporary living solutions in mobile homes or bungalows for Roma families who were previously living in slums. The families benefit from social accompaniment, often provided by associations. NGOs have underlined to what extent it is necessary to put emphasis on a long term integration project for these families who have the right to return to France and to find a more long term solution rapidly if this initiative is to avoid creating a new form of social exclusion. The measures taken in support of migrant Roma at the national and local levels are to be welcomed, but continued vigilance is needed as to the potential negative effects of some of these measures, so as to rectify them without delay if need be.
111. Schooling of migrant Roma children remains a problem, not only on account of the obstacles encountered by their families in terms of housing and living conditions, which make access to education difficult, but also because some municipalities refuse to enrol them in school. A number of sources have indicated that these refusals are primarily linked to the children's ethnic origin and are completely unlawful.
112. ECRI regrets to learn from a number of sources that Roma from the countries of central and eastern Europe suffer from a generally hostile climate of opinion, including racist prejudice, which also targets Travellers<sup>64</sup>. ECRI notes that this prejudice is sometimes conveyed by the media<sup>65</sup>. Roma are also sometimes the victims of racial discrimination, and even racist violence<sup>66</sup>. A number of sources consider that the measures taken to combat racism in France do not constitute a sufficient response to anti-Gypsyism.
113. ECRI recommends that the French authorities continue and reinforce their efforts, in consultation with Roma and civil society representatives, to identify solutions for improving the unacceptable living conditions of the Roma families by finding decent housing arrangements and pay special attention to access to health care and education. In particular, an assessment should be made of the measures already implemented, such as assistance with voluntary return or the “integration housing”, with the aim of ensuring that they are fully consistent with

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<sup>62</sup> Also referred to as “migrant Roma”, 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. They are estimated to number some ten thousand people in France.

<sup>63</sup> In this connection see the Memorandum published by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, following his visit to France from 21 to 23 May 2008, paragraphs 146-159, CommDH(2008)34, Strasbourg, 20 November 2008.

<sup>64</sup> See above “Racism in public discourse: - Racism in the media”. See above: “Vulnerable/target Groups: - Travellers”.

<sup>65</sup> See above “Racism in public discourse: - Racism in the media”.

<sup>66</sup> See above, “Racist violence”.

the needs of the persons concerned and taking rapid remedial action to correct any counter-productive impacts if necessary.

114. ECRI again strongly recommends that the French authorities take steps to prevent all illegal, forcible expulsions of Roma families from their homes that place Roma families in a desperate position. In particular it warns against any excessive use of force during such expulsions.
115. In general, ECRI recommends that the French authorities take additional measures to improve the situation of Roma from the countries of central and eastern Europe, in consultation with the representatives of these communities, so as to combat and prevent racism and racial discrimination towards them. It again draws the authorities' attention to its General Policy Recommendation No. 3 on combating racism and intolerance against Roma/Gypsies, which proposes a series of legislative measures and policy initiatives that governments can take to this end.

### **Non-citizens**

116. Since ECRI's third report the legislation on the status of non-citizens and on asylum has been amended, particularly subsequent to the Law of 20 November 2007 on immigration control, integration and asylum (Law No. 2007-1631). Some of these amendments have advanced non-citizens' fundamental rights, notably with regard to asylum procedure. However, human rights NGOs and other sources have informed ECRI of their concerns about a general tightening of the legislation relating to non-citizens. Civil society representatives consider that the legislation has become extremely complex, to the point that it is hard to comprehend for those chiefly concerned and even for immigration law specialists. The current legislation was generally described as making it more difficult to defend the fundamental rights of non-EU citizens and as having the result of making their legal status in France more precarious in a number of respects, which ultimately complicates the process of integration.
117. Concerning the fundamental rights of non-citizens in France, ECRI cannot reiterate here all of the problems that have been reported to it. It wishes to address certain specific matters which have come to its notice in so far as they are linked to a risk that the situation of the non-citizens concerned may become more precarious in France, with a worsening of the climate of opinion regarding them, endangering their integration prospects. In all these matters ECRI shares the concerns of the Council of Europe Commissioner for Human Rights and draws attention to the recommendations made by the latter in his 2008 memorandum<sup>67</sup>. Many sources have raised the alarm concerning the humanitarian problems confronting certain non-citizens in northern France, a region to which migrants are flocking with the aim of reaching the United Kingdom. These people live in squats or improvised camps in the woods in extremely precarious circumstances, especially with the closure of the Red Cross centre at Sangatte in 2002. In Mayotte, conditions at the administrative detention centre for foreigners with unlawful immigration status seem to be particularly problematic, particularly as concerns overcrowding. More generally, as regards administrative detention, many NGOs have informed ECRI of their concerns about a risk of reduced protection of the rights of persons detained in administrative detention centres due to a government project. The plans are to no longer entrust a single experienced NGO, CIMADE, which has been responsible for providing support and assistance within the administrative

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<sup>67</sup> Memorandum published by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, following his visit to France from 21 to 23 May 2008, paragraphs 92-125, CommDH(2008)34, Strasbourg, 20 November 2008.

detention centres for the last twenty-five years. The intention is to apply a public procurement procedure in order to select a number of NGOs which will be given access to the administrative detention centres and authorised to defend the rights of those being detained there. Many associations see this as a fragmentation and weakening of the protection and support provided to the persons concerned. ECRI does not intend to take a side in this debate but warns against any risk of undermining the protection of the fundamental rights of those being detained in the administrative detention centres and hopes that the pending reform will have no negative consequences.

118. A number of sources have indicated that regularisation of the situation of undocumented immigrants for private and family life reasons has reportedly become more difficult since the adoption of its previous report. The possibility of regularising their status is now primarily linked to their obtaining an employment contract in an occupation appearing on a list of sectors affected by labour shortages. This list varies in length according to the region of France concerned and also to the nationality of the potential employee. The HALDE has issued an opinion on this regularisation system's potentially discriminatory nature on grounds of origin<sup>68</sup>, but, to the best of ECRI's knowledge, the authorities have left the system unchanged. ECRI underlines the general importance of finding humane solutions for the regularisation of very vulnerable persons who have been living in France for a long period of time and who have strong social and familial links to the country.
119. ECRI notes some worrying reports concerning the difficulties encountered by persons wishing to enter France under the legislation on family reunification, resulting from tighter legal requirements in this field, particularly as regards the income criterion. Depending on the size of the family, it is foreseen to require income superior to 1.2 times the minimum wage. The HALDE underlines that given that the minimum wage is supposedly enough for French people to live decently, it is coherent to think that the same is true of foreigners. Thus, it considers that there is no reason to establish a distinction based on nationality, a criterion which has nothing to do with the aim of the measure<sup>69</sup>. In practice, certain couples wishing to marry, at least one of whom is a non-citizen present in France without lawful immigration status or is still living in his or her country of origin, apparently come up against obstacles and unjustified waiting times, due inter alia to overzealousness by certain officials seeking to prevent sham marriages. The authorities have for their part stated that these measures' only aim is to prevent fraud and protect certain vulnerable individuals against forced marriages. However, according to the human rights NGOs, they have very serious negative repercussions for genuine couples<sup>70</sup>.
120. ECRI shares the Commissioner for Human Rights' concerns<sup>71</sup> about the apparently already serious consequences of the government's policy of setting targets for the removal of non-citizens from France. On 31 March 2009 a target figure of 27,000 removals of irregularly present foreigners, whether voluntary or not, was set. Furthermore, regarding arrests and convictions of smugglers and other people involved in exploiting illegal immigration the 2009 objective is 5,000 arrests. These targets apparently engender tensions within French society and the administrations concerned and lead to excesses in practice

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<sup>68</sup> HALDE Council decision No. 2008-149 of 15 September 2008.

<sup>69</sup> HALDE Council decision No. 2007-370 of 17 December 2007.

<sup>70</sup> See, for example, the report published by Cimade/Les amoureux au ban public, "Peu de meilleur et trop de pire (Little better, too much worse)", April 2008.

<sup>71</sup> Memorandum published by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, following his visit to France from 21 to 23 May 2008, paragraphs 98-125, CommDH(2008)34, Strasbourg, 20 November 2008.

regarding the apprehension, detention and return of irregular migrants<sup>72</sup>. The policy of setting target figures apparently sometimes results in the quantitative aspect having priority over the need to take the individual situation of each person concerned into account. For example, there have allegedly been cases of foreigners who reside legally in another member State of the European Union and who are passing through France being detained. The human rights NGOs complained in this connection of the strong pressures exerted on individuals and organisations providing humanitarian assistance to foreigners with irregular immigration status. They refer in particular to cases in which persons assisting irregularly present foreigners out of solidarity have been subjected to police or other pressures. The authorities state that they confine their action to combating unlawful immigration, targeting the traffickers and other profiteers. It seems that persons who cannot be included in this category have been affected, whether trafficking victims or those who seek to assist such victims.

121. Apart from the issue of non-citizens' fundamental rights, ECRI is concerned about the trend in the general climate of opinion regarding non-citizens. Some measures taken by the authorities to regulate immigration and combat illegal immigration, including the above-mentioned targets, have been described by human rights and anti-racism NGOs as contributing to the stigmatisation of non-citizens. In its previous report ECRI already expressed concerns about reports by NGOs to the effect that the legislative provisions adopted at the time fostered widespread suspicion of non-citizens as fraudulent and recommended that the authorities take remedial measures. ECRI notes that criticisms are still being voiced notably with regard to certain measures recently introduced pursuant to the immigration law of 2007 (see above). A provision of this law allowing applicants for visas lasting more than three months to undergo genetic tests (DNA tests) to prove family ties in the event of serious doubts regarding the authenticity of their civil status documents caused a controversy at the time of its adoption. It was criticised not only because it was likely to pose serious problems with regard to the right to private and family life, but also because it contributed to the stigmatisation of the non-citizens concerned on account of a form of presumption of fraud. ECRI notes that, at the time of drafting this report, the application of this provision has been frozen in view of the difficulties it would pose and that it is apparently even possible that the provision will be reconsidered.
122. Regarding the climate of opinion concerning non-citizens and the danger of their being stigmatised, ECRI notes the protests voiced by human rights associations and other civil society representatives following the creation in 2007 of a Ministry of Immigration, Integration, National Identity and Co-Development<sup>73</sup> (hereafter the Ministry of Immigration). The criticisms concern the linking of the terms "immigration" and "national identity", which could give the impression that national identity, a concept seemingly without any well-defined substance, needs protecting from the dangers potentially posed by immigration. The authorities consider that the ministry's name poses no problem and explain in the official description of the ministry that "immigration, integration and national identity are complementary and very closely linked". The authorities have explained that "because of her own identity, which she can be proud of, France has the means to integrate immigrants who respect our

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<sup>72</sup> Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights following his visit to France from 21 to 23 May 2008, paragraphs 98-125, CommDH(2008)34, Strasbourg, November 2008. On this question, see also the findings on the humanitarian return of EU citizens of Roma origin under "Roma from the countries of central and eastern Europe". As regards the impact of the policy of setting targets on racial profiling, see below in "Conduct of law enforcement officials".

<sup>73</sup> Since renamed the Ministry of Immigration, Integration, National Identity and Mutually-Supportive Development.

values, and can organise immigration in a confident way.” It is nonetheless necessary to lend an attentive ear to a certain number of protests which should at the least give rise to consideration of the message conveyed by the use of the expression “national identity” in this context and the way it is perceived by the message's principal addressees, namely immigrants. ECRI notes that a public debate was opened on 2 November 2009 by the Ministry of Immigration on national identity. This debate should lead to concrete proposals in this field. ECRI hopes that during this debate, the need to respect differences and combat xenophobia and discrimination in French society will be highlighted. ECRI underlines the extent to which it is important to resist the temptation to express opinions inciting the rejection of immigrants or persons of immigrant origin or any forms of difference during this debate.

123. At a more general level, the human rights and anti-racism NGOs drew ECRI's attention to the impact on the climate of opinion regarding non-citizens of the immigration policy implemented since ECRI's previous report. They maintain that, whereas leading political figures generally take a firm stance against racism, in particular islamophobia and antisemitism, the current immigration policy and the present focus on the need to control immigration and to counter illegal immigration entail a risk of encouraging a certain form of xenophobia. Civil society representatives have pointed out in particular that in some people's minds “selective immigration” is becoming synonymous with immigration for work reasons and “inflicted immigration” with immigration on grounds of family reunification. Some civil society representatives underline that the new possibility of regularising the situation of undocumented immigrants with jobs, whereas other undocumented immigrants encounter many difficulties in obtaining their regularisation, fosters this idea that the sole foreigners who are welcome are those in work. Some people could come to the conclusion that, unlike immigration for work reasons, immigration on family reunification grounds merely constitutes an additional burden on French society and poses problems with regard to the newcomers' integration. ECRI stresses that it is essential not to take measures which might encourage a climate of hostility towards non-citizens and that each measure taken concerning them should be judged by this yardstick. It considers that the protection of the right to family life for immigrants is an essential part of successful integration. ECRI also underlines the impact of political leaders' rhetoric on the general climate of opinion regarding non-citizens and on the risks of exploitation of xenophobia in political discourse. It calls for extreme vigilance in this respect so as to prevent any deterioration of the situation.
124. ECRI strongly recommends that the French authorities review the legislation on immigration and the rights of non-citizens and the related practice so as to identify any problems with regard to non-citizens' fundamental rights and take all the remedial measures necessary to avoid any breaches of those rights when applying the law. This review of the legislation should be carried out in close consultation with the institutions safeguarding human rights such as the National Consultative Commission for Human Rights (CNCDH) and the High Authority against Discrimination and for Equality (HALDE), as well as with international and national organisations that defend the rights of non-citizens, including asylum seekers and refugees.
125. The new immigration legislation contains a number of provisions on integration of non-citizens. In 2007 a Reception, Integration and Citizenship Directorate was established by decree within the Ministry of Immigration. Since April 2009 the French Office for Immigration and Integration (OFII) has replaced two other bodies, the National Agency for Reception of Foreigners and Migration (ANAEM) and the National Agency for Social Cohesion and Equal Opportunities (ACSE). ECRI is pleased to note that the authorities recognise the need for

measures aimed at fostering the integration of non-citizens and that they have continued to propose such measures, in particular with regard to women and young immigrants. It nonetheless warns against possible excesses in this field, notably following the introduction of two new measures: the reception and integration contract (CAI), which is now compulsory, and integration tests before granting immigrants leave to enter France.

126. In its third report ECRI noted with interest the reception and integration contract scheme for new immigrants and asked the authorities to ensure the scheme's effectiveness through personalised accompaniment. ECRI nonetheless warned against the risk of increasing the precariousness of non-citizens' situation in France by making granting of a residence card (valid for 10 years) subject to an integration criterion, in so far as a person's degree of integration depends not just on their own will but also on other factors. Despite ECRI's warning the new legislation on the reception and integration contract made such contracts compulsory for certain categories of non-EU citizens as from 1 January 2007<sup>74</sup>. The signatories undertake to participate in language and civics courses. For its part the state provides this training free of charge, including classes in French institutions and the values of the French Republic, in particular gender equality and secularity, up to 400 hours of language classes depending on the foreigner's needs, an information session on life in France and social support if warranted by the signatory's personal or family situation. Where a non-citizen shows a blatant disregard for complying with the contract the prefect can decide not to renew his or her residence permit. Moreover, compliance with the contract is also taken into account for granting of the residence card (duration ten years) which can be applied for by all foreigners who can prove that they have lived in France without interruption for five years.
127. There is also a global CAI covering the whole family. The non-citizen concerned and his or her spouse are required to conclude with the authorities a reception and integration contract for the entire family whereby they commit themselves to undergo training in the rights and duties of parents in France and to comply with the compulsory schooling requirement. Where a non-citizen or his or her spouse shows a blatant disregard for complying with this contract the payment of family allowances may be suspended. According to the HALDE, making the ongoing payment of family allowances subject to compliance with the reception and integration contract amounts to discrimination on grounds of national origin<sup>75</sup>. Nonetheless, to the best of ECRI's knowledge, this provision is still in force at the time of drafting this report.
128. ECRI notes that, since 2007, certain categories of non-EU citizens wishing to come to France under the family reunification arrangements<sup>76</sup> are required to sit an integration test even before their arrival in the country, which in certain cases is additional to the subsequent signature of a CAI. According to information supplied by the Ministry of Immigration, integration is a process which begins in the country of origin itself and extends over a number of years following the foreigner's arrival in France. The preparations must begin prior to migration, particularly through learning of the French language and republican values, proficiency in which is assessed by means of a test sat by family reunification applicants over the age of 16 and under the age of 65 and by foreign spouses

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<sup>74</sup> Some people are exempted from this obligation, such as foreigners having completed their school education in a French secondary school abroad for at least 3 years. For the other cases, see article L311-9 of the Code of entry and residence of foreigners and the right to asylum.

<sup>75</sup> HALDE Council Decision No. 2007-370 of 17 December 2007.

<sup>76</sup> There are exemptions. See the Law on immigration control, integration and asylum of 20 November 2007 (Law N°2007-1631).

of French citizens. ECRI has received reports that this new requirement has the effect of extending waiting times for family reunification by several months.

129. ECRI regrets that the integration related obligations of persons wishing to live in France have been reinforced for certain non-citizens, whereas successful integration depends not just on their own will but also on other factors. In general the NGOs have underlined that it is problematic to leave it to the prefects to assess a person's will to integrate, since the concepts at stake, such as integration and republican values, are so vague that this confers a discretionary power on the prefect and even entails a risk of arbitrary treatment. ECRI underlines that any system of penalties or rights that are conditional on integration should be based on the principle of proportionality between the aim pursued and the measures taken to achieve that aim and should be applied so as to ensure full respect for diversity and prevent any risk of arbitrary treatment. It also stresses the importance of maintaining and increasing the proportion of integration promotion measures that consist in supporting NGOs doing fieldwork in this sphere and in actively and visibly combating all forms of discrimination and intolerance that may be suffered by non-citizens in France.
130. ECRI notes with interest that a National Immigration History Museum (Cité nationale de l'histoire de l'immigration)<sup>77</sup> was opened in 2007. Civil society representatives have drawn attention to the need to increase the number of initiatives, particularly in schools, aimed at portraying immigration and immigrants as making a positive contribution to the country not only in economic terms but also as a source of cultural enrichment. ECRI regrets to learn that, apart from certain municipal-level initiatives to establish consultative councils of foreign residents, no innovative measures have been taken to promote participation in public and political life by long-term foreign residents who are not nationals of EU member states, contrary to ECRI's earlier recommendation. Such measures would nonetheless offer the advantage of fostering non-citizens' integration in France.
131. ECRI strongly recommends that the French authorities review the new measures taken in the field of integration such as the compulsory reception and integration contract and the integration tests applicable to certain non-EU citizens to ensure that this new legislation does not have a counter-productive effect on the integration process by stigmatising the persons concerned or jeopardising their individual rights.
132. ECRI recommends that the French authorities continue to take measures aimed at encouraging integration, by ensuring that integration is conceived as a two-way process entailing mutual recognition between the majority population and minority groups. The majority population must be made more aware of the fact that immigration represents a cultural and economic enrichment for France. Immigrants' participation in public life should be reinforced, in particular by giving long-term residents who are not nationals of EU member States the right to vote in local elections.

### **Visible minorities**

133. In other parts of this report ECRI refers to the ongoing problems of racism, xenophobia and discrimination in France. These problems primarily concern persons who can be seen to belong to a visible minority on account of their skin colour, their physical appearance, their clothing or their surname. This problem particularly affects Black persons, persons of North African or Arab origin and

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<sup>77</sup> The "Cité nationale de l'histoire de l'immigration" is a public institution with a cultural, pedagogic and civic purpose and which is aimed at recognising and valorizing the place of immigrants in the construction of France.



persons originating from the French Overseas Départements and Collectivities, especially the French Antilles, or persons perceived to be of those origins<sup>78</sup>. The persistence of alleged cases of discrimination in access to entertainment venues such as discothèques should be noted.

134. ECRI draws the authorities' attention to all of its recommendations on combating racism and racial discrimination set out in this report<sup>79</sup> in so far as members of visible minorities are the principal targets of racism and racial discrimination in France.

## **VI. Antisemitism**

135. In its third report ECRI recommended that the authorities pursue and intensify their efforts to combat antisemitism. ECRI is concerned to note that antisemitic acts still occur in France. However, since 2005 an overall decrease in such acts has been noted. According to the CNCDH's annual report for 2008, with regard to antisemitic violence, while 508 antisemitic acts were recorded in 2005, they numbered 571 in 2006, 402 in 2007 and 397 in 2008. Attention must nonetheless be drawn to the fact that antisemitic acts peaked in January 2009, apparently for reasons linked to the outbreak of conflict in the Middle East in late December 2008. The acts recorded in recent years include violent attacks against persons of Jewish origin, places of worship and property belonging to persons of Jewish origin, and also verbal violence and antisemitic flyers and graffiti. Antisemitism in or around schools remains a problem. A number of sources draw attention to a significant increase in antisemitic content on the Internet<sup>80</sup>. Concerning satellite TV channels which sometimes broadcast programmes of an antisemitic nature, the authorities, through the CSA, today have means of responding to the problem and have already reacted on a number of occasions.

136. ECRI notes that a number of sources draw attention to the active role played by the French authorities in combating antisemitism in a number of fields. In general, antisemitic acts are strongly condemned by leading political figures. The police, the prosecution service and the courts generally take account of antisemitic motives where applicable. The mobilisation of law enforcement agencies to prevent antisemitic violence has also been identified as a factor that has reduced the number of acts of violence. From the standpoint of education, a number of initiatives to combat antisemitic stereotypes and prejudices have been taken in recent years. It is nonetheless necessary to continue to exercise vigilance, as can be seen from the fresh upsurge in antisemitic acts in January 2009, and to continue combating antisemitism on all fronts.

137. ECRI strongly recommends that the French authorities pursue their efforts to combat antisemitism. In this connection, ECRI draws the authorities' attention to its General Policy Recommendation No. 9 on the fight against antisemitism.

## **VII. Conduct of law enforcement officials**

138. In its third report ECRI recommended that training for law enforcement officials in human rights and in the issues of racism and racial discrimination be reinforced. It recommended adopting additional measures to put a stop to all

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<sup>78</sup> As regards Muslim communities, Travellers and Roma, see above: "Vulnerable/Target Groups". As regards Jewish communities, see below: "Antisemitism".

<sup>79</sup> See in particular "Criminal law provisions to combat racist statements and acts", "Legislation to combat racial discrimination", "Racist violence", "Conduct of law enforcement officials", "Promoting equality of opportunity and diversity" and "Monitoring racism and racial discrimination".

<sup>80</sup> In this connection, see "Racism on the Internet" above.

police misconduct in respect of members of minority groups and extending the powers of the National Commission on Security Ethics (CNDS).

139. ECRI notes with concern that allegations persist concerning discriminatory conduct by law enforcement officials in respect of members of minority groups, in particular visible minorities. In its 2004 annual report the CNDS published a study on the proportion of unethical acts involving discrimination, based on the cases it had dealt with from 2001 to 2004. At the time it observed an increase in the number of cases involving discrimination in relations between law enforcement officials and “‘visible’ population groups (dark skinned foreigners, young people of North African or Sub-Saharan African immigrant descent, French citizens from the DOM-TOM, Travellers)”<sup>81</sup>.
140. A number of sources have stressed that racial profiling is a serious problem in the case of identity checks. Racial profiling consists in the use by the police, with no objective or reasonable justification, of grounds such as race, skin colour, language, religion, nationality or national or ethnic origin when carrying out control, surveillance or investigation activities. According to the results of a recent study on identity checks carried out in Paris, persons perceived as “Black” and “Arab” are stopped at proportionally much higher rates than persons perceived as “White”<sup>82</sup>. Like this study, human rights NGOs draw attention to the impact on the frequency and practice of racial profiling of the new government policy to combat illegal immigration and the setting of targets in this field<sup>83</sup>. In general, the NGOs stated that there was a lack of trust in the police among members of minority groups, which goes so far as to result in strong tensions and clashes between minority youth and the police.
141. The authorities have stated that they have taken a number of measures to improve the situation with regard to the activities of law enforcement officials. They include: human rights training and awareness-raising sessions in police colleges; measures to raise awareness of the need to combat racism and racial discrimination<sup>84</sup>, the adoption of an equal opportunities policy in police recruitment; the 2008-2012 National Police Force Development Plan's focus on ethics and on the principle of respect for human dignity, and the similar focus of a number of circulars, including one issued in 2006 concerning police conduct with regard to juveniles. ECRI notes with interest the creation, in 2007, of the office of General Inspector of Places of Deprivation of Liberty<sup>85</sup>. The inspector's role is to ensure that the fundamental rights of persons deprived of their liberty are upheld.
142. The CNDS has pursued its activities of monitoring compliance with ethical rules and has an increasingly heavy caseload, to the point where its human resources no longer suffice to handle rapidly all the complaints before it. As already mentioned, the plans to appoint a Rights Defender could result in the elimination of the CNDS<sup>86</sup>. The latter has published a statement<sup>87</sup> pointing out

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<sup>81</sup> CNDS, 2004 Report, La Documentation française, p. 494.

<sup>82</sup> Open Society Justice Initiative, “Profiling minorities; a study of stop-and-search practices in Paris”, New York, 2009, p. 10. See below: “Vulnerable/Target groups: - Non-Citizens”.

<sup>83</sup> See “Vulnerable/Target Groups: - Non-Citizens” above.

<sup>84</sup> See “Criminal law provisions to combat racist statements and acts” and “Legislation to combat racial discrimination” above.

<sup>85</sup> Law No. 2007-1545 of 30 October 2007 establishing a General Inspector of Places of Deprivation of Liberty.

<sup>86</sup> See “Anti-discrimination bodies and other institutions: - The High Authority against Discrimination and for Equality (HALDE)” above.

<sup>87</sup> Statement by the National Commission on Security Ethics (CNDS) of 21 September 2009 in response to the announcement of the replacement of the CNDS by a Rights Defender.

that the draft organic law on the Rights Defender, which provides for the elimination of the CNDS, whose powers are to be transferred to the future institution, will have the effect of diluting within a multi-purpose institution specific responsibilities that require specialist know-how and methods. For this and other reasons, the CNDS considers that the proposed reform corresponds to a weakening of the democratic guarantees it offers citizens regarding respect for their fundamental rights.

143. ECRI urges the French authorities to take measures to combat all forms of discriminatory conduct by law enforcement officials, including racial profiling as defined above, in particular by clearly defining and prohibiting racial profiling by law, carrying out research on racial profiling and monitoring police activities to identify racial profiling practices. With regard to these issues and all other matters of relevance to the police, ECRI draws attention to its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing<sup>88</sup>.
144. ECRI recommends that the French authorities guarantee the existence of a body or bodies independent of the police and prosecution authorities, to be entrusted with the investigation of alleged cases of racial discrimination and racially-motivated misconduct by the police. It is essential to provide the body competent in such matters with all the necessary human and financial resources and to enable it to have access to all the expert know-how needed for it to exercise its task effectively. ECRI also urges the authorities to ensure that, where applicable, those responsible for the above-mentioned discrimination or misconduct are adequately and publicly sanctioned, and the sanctions made public.

#### **VIII. Promoting equality of opportunity and diversity**

145. In its third report ECRI recommended that the French authorities maintain progress towards an integrated society in which persons of immigrant background are able to have their proper place and focus upon the additional inconveniences borne by persons of immigrant background, particularly due to racial discrimination. It called on the French authorities to implement a policy of equality of opportunity in all areas of life and especially in employment, education, housing and access to public services.
146. ECRI notes that the problems raised in its previous report concerning the social exclusion of immigrants and French people of immigrant origin due to the urban ghetto phenomenon, unemployment and other forms of discrimination persist<sup>89</sup>. Indeed, there were serious riots in suburbs of Paris and of other French cities in October 2005, which caused the authorities to declare a state of emergency. New riots occurred in 2007.
147. The intensity of these riots seemed to serve as a wake-up call for the French authorities concerning the need for a more open attitude from society towards young people of immigrant origin, and particularly of North African and Sub-Saharan origin. It appears that this has led to some improvements in the fields of education, housing, employment and broadcasting, where measures have been taken to promote equal opportunities and diversity. It also appears that the authorities have realised the need for a change of attitudes of law enforcement officials in relation to minority groups. The traditional approach of limiting

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<sup>88</sup> See in particular paragraphs 1 to 4 of General Policy Recommendation No. 11 on combating racism and racial discrimination in policing and paragraphs 27 to 47 of the Explanatory Memorandum thereto, which set out guidelines in this area.

<sup>89</sup> See "Discrimination in various fields" above.

oneself to proclaiming the principle of equality before the law is progressively being replaced with the idea that equality in practice cannot be achieved without promoting equal opportunities. Some events, such as the booing of the French national anthem at football matches being played in France, and the strike movement in the French Antilles in 2008, have been described as having a link to the existence of an unsolved problem of integration, racism and racial discrimination in French society. It is important not to overlook the issues of racism and racial discrimination when seeking to establish the causes of all these social tensions, so as to identify appropriate solutions in the field for example of the fight against racial discrimination.

148. Some of the measures which have been taken to promote equal opportunities and diversity are described elsewhere in this report, such as the diversity award or the Charter for the promotion of equality in public administration<sup>90</sup>. Others include the appointment to government posts of persons reflecting France's ethnic diversity and the appointment, in 2007, of an Interministerial Delegate for Equal Opportunities for Overseas French Citizens and, in 2008, of a Commissioner for Diversity and Equality of Opportunity. Initiatives are also being taken at the local and municipal levels. For example, the training scheme of the town of Montreuil, which is considering the implementation of a local anti-discrimination initiative, includes a course on combating discrimination. Each *département* has a Commission for Promotion of Equality of Opportunity and Citizenship (COPEC). However, it seems that the results of the COPECs' work are very much a mixed bag, and although some of these commissions are active others are far less so. The current policy to promote equality of opportunity is primarily based on positive action for people from disadvantaged backgrounds, rather than being based on their ethnic origin, although it is presented as an indirect means of fostering equality of opportunity for persons from immigrant backgrounds or ethnic minority groups. Most of the measures taken in this context are too recent for their effectiveness to be evaluated, particularly in terms of reducing discrimination on grounds of origin. Furthermore, while noting these positive developments, ECRI considers that this is only the beginning of a process of a much needed reform.

149. ECRI strongly recommends that the French authorities pursue their efforts to promote diversity and equality of opportunity. The results of the new measures adopted to this end should be assessed to verify that they are effective in reducing discrimination on grounds of origin and to readjust them if necessary.

150. ECRI recommends that the French authorities strengthen the departmental Commissions for the promotion of equality of opportunity and citizenship, notably by allowing them to exchange good practices.

## **IX. Monitoring racism and racial discrimination**

151. ECRI notes with interest that, since the adoption of its previous report, there has been genuine reflection and widespread debate on the question of measuring diversity and on "ethnic statistics" as tools for improving the fight against discrimination or for measuring diversity. For instance, on 16 May 2007 the National Commission for Information Technology and Liberty (Commission nationale de l'informatique et des libertés, hereafter: CNIL) published ten recommendations on measuring diversity and protecting personal data. The committee set up to reflect on the wording of the Preamble to the Constitution submitted a report to the President of the Republic in December 2008, which states that the committee would consider it incomprehensible for ethnic statistics to be banned in so far as combating discrimination entails being able

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<sup>90</sup> See in particular "Discrimination in various fields" above and "Racism in public discourse".

to measure it<sup>91</sup>. The Commissioner for Diversity and Equality of Opportunity, appointed on 19 December 2008, has been given the task of considering the issue of how to endow France with statistical tools for measuring the country's diversity and identifying with precision the areas where it is lagging behind or making progress in all social spheres, in particular schools, public service employment, the business sector, the media and politics. The commissioner has accordingly set up a Committee for Measuring and Evaluating Diversity and Discrimination (COMEDD), which has not yet published its findings at the time of drafting this report.

152. ECRI notes that some people, including certain specialists in combating racism and discrimination, are speaking out against any form of ethno-racial categorisation or ethnic statistics, for fear that measures of this kind reinforce racism and racial discrimination rather than helping to combat them. In its decision No. 2007-557 DC of 15 November 2007 the Constitutional Council deemed unconstitutional a provision of the law on immigration aimed at allowing the processing of personal data indirectly or directly revealing individuals' racial or ethnic origins for the purpose of performing studies on the diversity of origins, discrimination and integration, subject to authorisation by the CNIL. The Constitutional Council held that the processing of data necessary to carry out studies on diversity could not be based on ethnic or racial origin without infringing the Constitution. On reading the official commentary on the decision, it can be seen that it is the use of ethno racial difference that would be in breach of the Constitution references, not the use of objective data such as the surname, geographical origin or nationality prior to the acquisition of French citizenship, or even the processing of subjective data such as those based on the "sentiment of belonging"<sup>92</sup>. ECRI is satisfied in that this approach is close to its own position on the issue. The reflection and debate should therefore be pursued so as to identify appropriate statistical measurement tools making it possible to facilitate the fight against discrimination while avoiding the pitfall of reinforcing racist stereotypes through the statistics produced.

153. ECRI strongly encourages the French authorities to pursue their efforts aimed at establishing a comprehensive, consistent system for collecting data making it possible to assess the situation regarding the various minority groups in France and to determine the extent of manifestations of racism and direct or indirect racial discrimination in different fields of life. In this connection it recommends that they envisage collecting data broken down according to categories such as ethnic or national origin, religion, language or nationality, so as to identify manifestations of discrimination, while ensuring that this collection is systematically carried out in accordance with the principles of confidentiality, informed consent and individuals' voluntary self-identification as members of a particular group. This data collection system should be developed in close co-operation with all the operators concerned, including civil society organisations. The system should also take into consideration the potential existence of cases of double or multiple discrimination.

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<sup>91</sup> Report by the Committee to Reflect on the Preamble to the Constitution (Comité de réflexion sur le Préambule de la Constitution), p. 60.

<sup>92</sup> See the comments on Decision No. 2007-557 DC of 15 November 2007, Law on immigration control, integration and asylum, published in the compendium ("Cahiers") of the Constitutional Council, [www.conseil-constitutionnel.fr](http://www.conseil-constitutionnel.fr).



## INTERIM FOLLOW-UP RECOMMENDATIONS

The three specific recommendations for which ECRI requests priority implementation from the French authorities, are the following:

- In view of the key role played by the High Authority against Discrimination and for Equality (*Haute autorité de lutte contre les discriminations et pour l'égalité*, HALDE) in combating racial discrimination, ECRI recommends that the French authorities continue to support this institution. Particular care should be taken to ensure that this institution is regularly consulted and that real co-operation is developed between the HALDE and the authorities, notably by taking into account the opinions and recommendations issued by the HALDE in its fields of expertise.
- ECRI strongly recommends that the French authorities pursue and reinforce their efforts to combat forms of racist expression propagated via the Internet. It underlines the importance of monitoring this question and informing the public on developments in this field. ECRI recommends that an information campaign targeting the general public be carried out to publicise the ban on the use of statements inciting to racial hatred disseminated via the Internet and the fact that it is possible to report content breaching this ban.
- ECRI strongly recommends that the authorities find, as a matter of urgency, solutions for the effective, ongoing schooling of itinerant or semi-itinerant Traveller children, adapted to their lifestyle in consultation with the Traveller community. In particular, steps should be taken to prevent any refusal by a municipal authority to enrol such children in school.

A process of interim follow-up for these three recommendations will be conducted by ECRI no later than two years following the publication of this report.





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## **APPENDIX: GOVERNMENT'S VIEWPOINT**

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

ECRI, in accordance with its country-by-country procedure, engaged into confidential dialogue with the authorities of France on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version (which, in line with ECRI's standard practice, could only take into account developments up until 18 December 2009, date of the examination of the first draft).

The authorities also requested that the following viewpoint be reproduced as an appendix to the report.



## **ANNEXE AU QUATRIEME RAPPORT DE L'ECRI SUR LA FRANCE** **OBSERVATIONS DES AUTORITES FRANCAISES**

Le Gouvernement français prie la Commission européenne contre le racisme et l'intolérance (ECRI) de bien vouloir trouver ci-après les observations qu'il souhaite voir annexées au 4<sup>ème</sup> rapport de l'ECRI sur la France.

### **1. Paragraphe 3**

Si la ratification de la Convention européenne sur la nationalité n'est pas à l'ordre du jour, le Gouvernement français rappelle toutefois que la France a ratifié dès 1965 la Convention européenne sur la réduction des cas de pluralité des nationalités.

### **2. paragraphes 23**

Le Gouvernement continue à évaluer l'efficacité des dispositions pénales destinées à lutter contre le racisme et les discriminations à travers les condamnations de ce chef inscrites au casier judiciaire national et par le biais d'un dispositif statistique spécifique.

Ainsi, depuis le 8 février 2005, il existe un outil statistique rempli par les parquets pour appréhender mensuellement la réponse judiciaire concernant les infractions à caractère raciste, anti-religieux, antisémite et discriminatoire.

Selon les données collectées dans ce dispositif statistique, le nombre d'affaires nouvelles enregistrées par les parquets pour des affaires à caractère raciste, antisémite ou anti religieux a très légèrement augmenté en 2008 après avoir connu un recul en 2007. Ainsi, le nombre des actes enregistré s'élevait à 3911 en 2006, 3653 en 2007 et 3960 en 2008.

Dans le même temps, le taux de réponse pénale gagne environ 8 points en un peu plus de trois ans, passant de 72,1% en 2006 contre 80 % pour les trois premiers trimestres de 2009.

Enfin, le déploiement progressif d'une nouvelle chaîne pénale informatique permettra, grâce à son infocentre, d'accroître la finesse d'analyse sur les orientations pénales, par nature d'infraction, dont celles relatives aux infractions racistes et discriminatoires. A ce jour, 80 des 179 tribunaux de grande instance disposent de cette nouvelle application.

### **3. paragraphe 28**

*« L'ECRI recommande aux autorités judiciaires françaises de poursuivre la formation de tous les acteurs de la chaîne judiciaire tant le cadre de la formation initiale que continue »*

Outre les actions de formations mise en place par l'Ecole Nationale de la magistrature, le Gouvernement précise que de nombreuses formations ont été mises en œuvre en direction des officiers de la police judiciaire par les magistrats référents chargés de l'animation des pôles anti-discrimination. Ces actions de formation ont vocation à perdurer.

Parallèlement à ces actions de formation, des politiques d'information en direction du grand public sont mises en œuvre.

#### **4. paragraphe 29, 40**

Sur les recommandations de l'ECRI relatives aux traitements des victimes, il convient de rappeler que l'action du Gouvernement dans le cadre de la lutte contre les discriminations, le racisme, l'antisémitisme et la xénophobie vise notamment à favoriser le dépôt des plaintes de victimes, ceci en permettant plus précisément aux associations intervenant dans ce domaine de saisir directement les magistrats des pôles anti-discrimination de certains faits.

Par une décision en date du 5 mars 2009, il a été demandé aux procureurs généraux d'étendre la compétence des pôles anti-discriminations à tous les actes commis à raison de l'appartenance de la victime à une ethnie, une race ou une religion déterminée ou en raison de son orientation sexuelle.

L'objectif ainsi visé est double. Il s'agit d'une part, de confier à un magistrat spécialisé le traitement de l'ensemble des infractions à caractère raciste ou xénophobe. Cela vise d'autre part, à favoriser les échanges entre les parquets, les associations et les représentants des communautés religieuses, cet échange étant essentiel pour apporter des réponses pertinentes aux faits à caractère raciste ou xénophobe et permet surtout de mieux prendre en compte, par ce biais, les aspirations des victimes.

En outre, un arrêté du 1<sup>er</sup> avril 2009 rappelle aux procureurs de la République la possibilité de demander à toute association d'aide aux victimes de discrimination ou de racisme d'intervenir pour les soutenir dans toutes les démarches de la procédure.

#### **5. paragraphe 85**

Les actes de racisme dans le sport sont sévèrement réprimés par les autorités françaises. Le Gouvernement a attiré l'attention de tous les services concernés sur la nécessité de porter une attention particulière aux incidents survenant en marge des manifestations sportives notamment lorsque ceux-ci présentent un caractère raciste ou xénophobe.

Plus récemment, le 28 janvier 2010, les autorités françaises ont lancé un large processus de dialogue pour lutter contre la violence dans le football et notamment contre les actes racistes et xénophobes. A cette occasion, des associations telles que la LICRA ont participé à des ateliers de sensibilisation des supporters des clubs de football.

#### **6. paragraphe 143-1**

Les affirmations de l'ECRI sur le profilage racial, en tant que critère retenu par les forces de l'ordre pour réaliser les contrôles d'identité doivent être contestées. Il convient, en effet de rappeler que les contrôles d'identité sont, pour la plupart d'entre eux, pratiqués dans des zones où la délinquance est importante et concernent des personnes ayant un comportement généralement observé chez les auteurs d'actes de délinquance (groupes stationnant de manière prolongée dans des lieux où circulent de nombreux piétons usagers de transports en commun ou clients



de commerces, individus s'intéressant visiblement aux sacs et/ou objets en possession des piétons, etc.).

Les critères retenus par les policiers pour exercer leurs contrôles reposent sur une analyse raisonnée de la délinquance en fonction du lieu où les contrôles sont menés et du comportement le plus souvent observé chez les auteurs des types d'actes de délinquance de proximité les plus constatés localement.

Contrairement à ce qui a été indiqué à l'ECRI, il y a lieu de souligner que l'apparence ethnique en tant que telle n'a aucun intérêt dans la lutte contre la délinquance et qu'elle n'intervient pas en conséquence dans la décision de contrôler telle ou telle personne. En effet, le comportement et, notamment, la réaction à la vue du policier (fuite ou tentative de se dissimuler, par exemple) constitue le principal critère.

Les critères d'âge, de sexe et de style d'habillement peuvent être pris en compte, mais seulement à titre subsidiaire.

## **7. paragraphe 144**

Sur la recommandation par laquelle « *L'ECRI exhorte également les autorités à veiller à ce que, le cas échéant, les auteurs des discriminations ou comportements susmentionnés [comportement abusif à caractère raciste de la police] soient sanctionnés de façon appropriée et de rendre les sanctions publiques* ».

Les autorités françaises tiennent à rappeler qu'elles ne tolèrent en aucune manière les actes de mauvais traitements commis par les agents des forces de l'ordre, quelles que soient les situations ou les personnes les subissant.

A cet égard, les autorités françaises sont très attentives aux conditions dans lesquelles doivent être traitées les personnes lors d'une arrestation, d'une garde à vue ou de toute autre mesure privative de liberté ainsi que lors de l'exécution d'une mesure d'éloignement prise à l'égard d'un étranger.

Une très grande attention est notamment portée à trois grands principes, énoncés dans le code de déontologie du 16 mars 1986 et déclinés dans le guide pratique de déontologie revu en 2001 : le respect absolu des personnes, quelles que soient leur nationalité ou leur origine, l'utilisation strictement nécessaire et proportionnée de la force, la protection des personnes appréhendées et le respect de leur dignité.

Dans cet esprit, les autorités françaises s'emploient à organiser une formation adaptée, à assurer un contrôle vigilant et sanctionnent avec rigueur tout manquement avéré. Dans ce cadre, le volet consacré à la déontologie a été renforcé depuis 1999 et le principe de respect de la dignité de toutes les personnes et l'interdiction de mauvais traitements sont particulièrement soulignés.

Des modules de formation associent la Commission nationale de déontologie de la sécurité (CNDS) et la Haute autorité de lutte contre les discriminations et pour l'égalité (HALDE). Des stages spécifiques peuvent également être organisés. Ainsi, un stage a été mis en place sur le thème "[du] policier face aux différences", afin de permettre une meilleure prise en

compte des personnes, respectueuse de différences notamment culturelle ou religieuse.

Parallèlement à la formation, l'effort est mis sur l'encadrement des agents par leur hiérarchie et le contrôle, notamment par les corps d'inspection des conditions d'arrestation et de rétention des personnes.

Enfin, parce qu'elles sont chargées de l'application de la loi et disposent de l'exercice de la force légitime, les forces de sécurité intérieure font partie des services publics les plus contrôlés par des mécanismes aussi bien externes qu'internes aux institutions.

Sur un plan interne, le respect des droits de l'homme fait l'objet d'un contrôle de la part de l'autorité hiérarchique ainsi que des corps spécifiques que sont l'Inspection générale de la police nationale (IGPN) et l'Inspection générale de la gendarmerie nationale (IGGN).

Par ailleurs, de nombreux mécanismes de contrôle externes ont été mis en place. Tout d'abord, on peut souligner que la justice engage des poursuites pénales en cas d'infractions pénales commises par des policiers. Ensuite, la France a institué des autorités administratives indépendantes chargées par le législateur de missions spécifiques de protection des droits de l'homme. On peut notamment citer la Haute autorité de lutte contre les discriminations et pour l'égalité (HALDE), la Commission nationale de déontologie de la sécurité (CNDS) et le contrôleur général des lieux de privation de libertés.

En outre, il convient d'ajouter que plusieurs mécanismes internationaux permettent de contrôler le respect des droits de l'homme en France que ce soit par une juridiction comme la Cour européenne des droits de l'homme ou des comités notamment le Comité européen de prévention de la torture (CPT).

Enfin, tout fonctionnaire de police qui s'écartere des lois et des règles éthiques s'expose à une double sanction pénale et disciplinaire. Ainsi, en 2009, parmi les 3109 sanctions disciplinaires prononcées à l'égard de policiers (contre 3423 en 2009, 3318 en 2007 et 3228 en 2006) 128 se rapportaient à des violences avérées dont 7 ont conduit à la révocation ou à une mesure assimilée des agents.



