APPENDIX

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

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

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

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

"APPENDIX TO ECRI's THIRD REPORT ON FRANCE

OBSERVATIONS BY THE FRENCH AUTHORITIES

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

1. Executive summary

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

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

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

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

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

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

2. Paragraph 3

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

3. Paragraph 7

France is party to the main international instruments prohibiting discrimination. It has, for example, ratified the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 14 of which prohibits all forms of discrimination. It is also party to the International Convention on the Elimination of all forms of Racial Discrimination, which it signed on 7 March 1966 and which came into force in France in 1971, and it is party to the International Covenant on Civil and Political Rights of 16 December 1966, which came into force in France in 1981.

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

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

4. paragraphs 12 et 13

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

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

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

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

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

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

Finally, ECRI notes in its report "the development of a new trend allowing minority groups to be better taken into account, for instance in the area of teaching of regional languages". In this connection the French Government wishes to point out that there is no intention of "recognising rights connected with the identity of minority groups", as ECRI suggests in its report. However, it should be pointed out that the fact that France does not acknowledge the existence of collective rights for certain communities does not prevent the French Government from conducting proactive policies in some fields. This applies to policies aimed at financially vulnerable groups of the population, often living in "deprived

areas". It so happens that some members of these groups are of immigrant origin. These policies are, however, based on economic criteria and are not aimed at "minority groups". The same applies to the teaching of regional languages, which has been fostered in some regions to enhance a specific cultural heritage while keeping within the limits imposed by French constitutional principles.

5. paragraphs 28, 32 and 33

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

6. paragraph 47

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

7. paragraph 57

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

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

8. paragraph 62

The so-called 'asylum at the border' procedure, which is a procedure for entering French territory and not a procedure for the granting of a status, was amended on 30 July 2004. Opinions on whether or not the application to stay in France is manifestly unfounded are now issued by the OFPRA (l'Office français de protection des réfugiés et apatrides – French Office for the Protection of Refugees and Stateless Persons), whereas they were previously issued by the Ministry of Foreign Affairs. This reform was introduced to ensure consistency between procedures. There are safeguards to ensure that applications are examined thoroughly and fairly.

9. paragraph 63

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

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

At all events, the prefectures, the first stage of the procedure, do not have the authority to find applications for asylum inadmissible. They are able, under the limited conditions set out in Section 8 of the amended law of 25 July 1952 on the right to asylum, only to implement the priority procedure or to apply European Council Regulation No. 343/2003 of

18 February 2003 establishing the criteria and mechanisms for determining the member state responsible for examining an asylum application lodged in one of the member states by a non-EU national.

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

10. paragraphs 65 and 68

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

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

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

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

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

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

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

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

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

11. paragraph 69

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

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

12. paragraph 76

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

13. paragraph 79

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

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

14. paragraph 106

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

15. paragraph 113

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

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

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

16. paragraph 117

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

17. paragraph 131

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

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

18. paragraph 132

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

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

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

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

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

19. paragraph 143

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

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

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