

# **ECRI REPORT ON FRANCE**

**(fifth monitoring cycle)**

Adopted on 8 December 2015

Published on 1 March 2016

COUNCIL OF EUROPE



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## FOREWORD

The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members 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 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 takes 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, those of the third round at the end of 2007, and those of the fourth round in the beginning of 2014. Work on the fifth round reports started in November 2012.

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

ECRI's reports are not the result of inquiries or testimonial evidence. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on a large number of national and international written sources. The in situ visit provides the opportunity to meet with the parties directly concerned (both 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 ECRI report.

The fifth round country-by-country reports focus on four topics common to all member States: (1) Legislative issues, (2) Hate speech, (3) Violence, (4) Integration policies and a number of topics specific to each one of them. The fourth-cycle interim recommendations not implemented or partially implemented during the fourth monitoring cycle will be followed up in this connection.

In the framework of the fifth cycle, priority implementation is requested again for two specific recommendations chosen from those made in the report. A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

**The following report was drawn up by ECRI under its own responsibility. Except where otherwise stated, it covers the situation up to 18 June 2015; developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.**





## SUMMARY

**Since the adoption of ECRI's fourth report on France on 2 May 2010, progress has been made in a number of fields covered by that report.**

France has shown itself determined to combat racism and intolerance. A post of interministerial co-ordinator for combating racism and intolerance has been created, and two plans for combating racism and antisemitism have been adopted. The latest plan was allocated a budget of 100 million euros.

ECRI notes that the High Authority against Discrimination and for Equality (HALDE) has been merged with three other independent rights protection authorities to create the new Defender of Rights institution. The HALDE's mandate has been maintained within this new institution and may even be brought into play to deal with cases from a discrimination viewpoint which, previously, would only have been brought before one of the other three bodies.

With regard to action against hate crimes, ECRI notes that perpetrators have been prosecuted and convicted. Regular reminders of the existing provisions and how to apply them effectively have also been given to representatives of the law enforcement agencies and the courts concerned. Various private and public events have been banned on this basis. A new school curriculum in civic and democratic values has been devised.

In the area of integration, the reception and integration contract (CAI) system has been supplemented by various mechanisms geared to facilitating job-seeking or providing support for vulnerable groups. Other general measures, open to vulnerable groups too, have been taken or maintained, such as the continuation of the national urban renovation scheme, the promotion of the "diversity" award or the reform of secondary education incorporating measures to foster social mixing. On the subject of Roma, a circular aimed at ensuring that the dismantling of illegal camps is accompanied by assistance measures has been issued and a specific budget earmarked for its implementation.

**ECRI welcomes these positive developments in France. However, despite the progress achieved, some issues continue to be a cause for concern.**

ECRI notes a substantial rise in hate speech and above all violence driven by racism and intolerance, resulting in several incidents involving attempted murder, particularly in connection with antisemitism. This situation is all the more worrying given the high level of under-reporting of racist and homo/transphobic crime, the loopholes which undermine the effectiveness of the criminal provisions covering hate crimes and the commonplace use of political statements to stigmatise vulnerable groups which help to trivialise racist and intolerant attitudes within the population.

Hate speech has also increased on the Internet and social networks, despite the efforts of the authorities to curb the phenomenon, as well as during major events organised on a national scale by voluntary sector associations. This was notably the case with certain participants during events held when the law allowing same-sex marriage was being passed, with intolerant comments and attitudes targeting vulnerable groups, in particular LGBT persons.

With regard to integration, there have been few assessments of integration policies and the budgets earmarked for them have suffered cuts. Various aspects of the reception and integration contract system need improving, particularly language teaching, the evaluation of qualifications and the recognition of qualifications gained abroad. Moreover, the regulatory framework regarding the participation of women wearing the headscarf in school outings has not been fully clarified. In the case of Roma, the residence application process is plagued by failings, which deny Roma access to basic rights.

Finally, the procedures for identity checks or registering complaints exacerbate the phenomenon of under-reporting, while the systems for compiling statistics on racist and homo/transphobic crime, and also equality, do not provide insights into the situation of vulnerable groups with regard to the racist crimes or discrimination from which they suffer.

**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.**

Regarding criminal law provisions for combating hate crime, the following acts should be made criminal offences: publicly expressing an ideology claiming the superiority of a group of persons; creating or leading a group promoting racism, supporting such a group or participating in its activities. A provision expressly stipulating that racist motives constitute an aggravating circumstance for any ordinary offence should be added to the Criminal Code, and motives relating to sexual orientation and gender identity should also be considered aggravating circumstances.

Civil and administrative law provisions should be revised as regards compliance with non-discrimination policy in the allocation of public funding and public financing of political parties or organisations which promote racism.

Criminal law provisions should be harmonised and applied through uniform procedures, and staff trained in the revised provisions. Steps should be taken to stop politicians exploiting public speaking opportunities to stigmatise vulnerable groups. A system should be set up to monitor hate crimes aimed at Roma and LGBT persons along the lines of previous initiatives for vulnerable groups.

The authorities should fight racial and homophobic/transphobic stereotypes and prejudices effectively to deal better with the concrete challenges that arise due to living together in an intercultural world. To this end, school curricula and teacher training programmes should be revised in order to enable teachers and pupils to understand better societal issues linked to questions such as religions and beliefs as well as immigration matters\*.

The budgets allocated to integration policies should be maintained and their impact on vulnerable groups assessed periodically. Regulations on the wearing of veils during school outings should be clarified. Assistance measures introduced during the dismantling of illegal Roma camps should be made systematic countrywide.

In particular, steps should be taken to ensure that no legitimate application for residence submitted by persons belonging to vulnerable groups such as Roma is turned down and that the time taken to process such applications is reduced to the strict minimum required\*.

Finally, to remedy the under-reporting of hate crime, the authorities should step up training for law enforcement agency representatives with regard to dealing with the public, take measures to improve their working methods regarding the registration of complaints and identity checks and implement Ministry of Justice directives on dealing with reports of racist offences and extend these arrangements to cover homo/transphobic offences. They should also propose legislative provisions on the collection of data on equality. Finally, it should be possible to break down data relating to cases of racist and homo/transphobic crime in terms of vulnerable groups and cross-reference them with the outcome of subsequent judicial proceedings.

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

## FINDINGS AND RECOMMENDATIONS

### I. Common themes

#### 1. Legislation to combat racism and racial discrimination<sup>1</sup>

##### - Protocol No. 12 to the European Convention on Human Rights

1. The French authorities have informed ECRI that they have no plans to sign or ratify Protocol No. 12. ECRI believes that this Protocol, which was adopted on 4 November 2000 and provides for a general ban on discrimination, is a key element in the fight against racism and intolerance.

2. ECRI once again recommends that France ratify Protocol No. 12 to the European Convention on Human Rights.

3. ECRI has on several occasions examined the various provisions of criminal, civil and administrative law with reference to its General Policy Recommendation (GPR) No. 7 on national legislation to combat racism and racial discrimination. The analysis below will deal with the points not yet studied or with continuing shortcomings.

##### - Criminal law

4. With regard to paragraphs 18.a), b) and c) of GPR No. 7, ECRI notes that the provisions making public incitement to violence, hatred or discrimination or public insults or defamation criminal offences are part of the Law on Freedom of the Press of 29 July 1881 (Articles 24.7, 32.2 and 33.3 respectively), while those that make threats a criminal offence are part of the Criminal Code (Article 222-18-1). At this stage of its analysis, ECRI would first of all like to mention an initiative announced by the President of the Republic (on 27 January 2015) and the Ministry of Justice (on 16 January 2015) to insert into the Criminal Code the various Articles of the aforementioned Law on Freedom of the Press and to make it a general rule that racist and antisemitic remarks are an aggravating circumstance of every ordinary offence (on this point, see also paragraph 9). This initiative, which is important with regard to the effectiveness of the provisions of the criminal law, will be discussed in the part of the report on hate speech.

5. ECRI notes that these legal provisions refer in particular to origin, ethnicity, nationality, race, religion, sexual orientation and gender identity as characteristics of victims of racist behaviour classified as criminal offences (referred to below as “prohibited grounds”). Prohibited grounds missing from this list are, therefore, citizenship, skin colour and language. The authorities argue that French case-law indicates that the first two of these three grounds are nevertheless covered. This is confirmed, for example, by a judgment of the Court of Cassation of 24 June 1997 as far as citizenship is concerned, two judgments of the Court of Cassation of 23 June 2009 and 25 June 2013 with regard to skin colour, and the three judgments of the Paris Court of Appeal of 7 June 2004, the Rennes Court of Appeal of 15 November 2010 and the Saint-Denis de la Réunion Court of Appeal of 24 November 2011.<sup>2</sup> ECRI is aware, however, that a continuing shortcoming remains as far as language is concerned.

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<sup>1</sup> In accordance with ECRI’s General Policy Recommendation (GPR) No. 7, racism is understood as meaning the belief that a ground such as “race”, colour, language, religion, nationality or national or ethnic origin justifies contempt of a person or group of persons or the notion of superiority of a person or group of persons. Similarly, “racial discrimination” is understood as meaning any differential treatment based on these grounds, which has no objective and reasonable justification.

<sup>2</sup> Judgments on various cases involving employment discrimination, physical violence, insults and public incitement to discrimination on the ground of skin colour.

6. ECRI notes that French law contains no provision criminalising the public expression with a racist aim of an ideology that claims the superiority of or denigrates a group of persons on prohibited grounds, a provision called for by paragraph 18.d) of GPR No. 7. In a climate in which there has been an increase in intolerance and racist behaviour in recent years (see the sections on hate speech and violence), ECRI believes that this is a shortcoming that the state should try to remedy.<sup>3</sup>
7. With regard to paragraph 18.e), ECRI notes that Articles 24 and 24a of the Law on Freedom of the Press explicitly criminalise the defence of crimes against humanity or war crimes,<sup>4</sup> as well as denying crimes against humanity. The French authorities argue that these provisions also cover the justification of these crimes as well as the justification and condoning of crimes of genocide, as confirmed by case-law.<sup>5</sup> This Law also makes disputing crimes against humanity a criminal offence. According to the French authorities, the courts have ruled that this Law criminalises the denial or trivialisation of these crimes and that it also applies to war crimes and genocide.<sup>6</sup> However, ECRI notes certain limits to the scope of the provisions relating to genocide. For example, Article 24a of the Law on Freedom of the Press refers to Article 6 of the Charter of the International Military Tribunal annexed to the London Agreement of 8 August 1945. Moreover, a law of 29 January 2001 acknowledged the existence of the Armenian genocide but contained no legal provisions concerning its denial. A legislative proposal aimed at criminalising, amongst other things, the denial of this genocide and complementing the existing legal provisions was tabled on 12 October 2006 but was blocked on several occasions. On 22 December 2011, the National Assembly passed a new bill condemning the denial of acts of genocide recognised by the state. It was passed by the Senate on 23 January 2012 but was ultimately rejected by the Constitutional Council on 28 February that year. ECRI accordingly notes that the scope of the French legal provisions on criminalising the denial or trivialisation of crimes of genocide remains narrow.
8. ECRI notes that the Criminal Code contains no specific provision<sup>7</sup> making it a criminal offence to create or lead a group that promotes racism, to provide support for such a group or to participate in its activities with the intention of contributing to the offences referred to in paragraphs 18.a), b), c), d), e) and f) of GPR No. 7, a provision called for by subparagraph g).
9. As far as paragraph 21 of GPR No. 7 is concerned, ECRI noted in its 4<sup>th</sup> report that, subsequent to the Law of 9 March 2004 on adapting the justice system to developments in crime, the Criminal Code provided that racist motivation could be taken into account as an aggravating circumstance for an entire range of offences committed against persons or property (especially in cases of intentional homicide, torture and acts of barbarism, violence leading to death or

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<sup>3</sup> CERD (2015): paragraph 7.

<sup>4</sup> UE(2014a): 3.1.3

<sup>5</sup> The authorities refer to judgments in cases involving the denial of the Holocaust, for example by the publication of an illustration showing Hitler crowned with palm leaves (Paris Criminal Court, 10 November 1998), the justification of "Hitler's sadism" (Paris Court of Appeal, 9 May 2001) and the justification of the deportation of Jews, the use of the gas chambers and the implementation of the final solution (Paris Court of Appeal, 11 September 2002).

<sup>6</sup> With regard to crimes of genocide, see the above footnote. As far as war crimes are concerned, the authorities refer for example to a Court of Cassation judgment of 7 December 2004 in proceedings concerning cases of torture that occurred during the events in Algeria.

<sup>7</sup> ECRI refers to the wording of paragraph 3 of the introduction to GPR No. 7, which stresses that "criminal law has a symbolic effect which raises the awareness of society of the seriousness of racism and racial discrimination and has a strong dissuasive effect".

injury, damage to private property, threats, theft and extortion).<sup>8</sup> ECRI then reiterated its recommendation that the principle of aggravating circumstances constituted by racist motivation be extended to all offences. ECRI has not been informed about any significant developments in this connection but notes the announcement of a legislative initiative (see paragraph 4). As regards homophobic/transphobic motivation, Article 132-77 of the Criminal Code provides for sentences to be increased for some offences<sup>9</sup> when committed because of the victim's sexual orientation. ECRI further notes that the government wishes to make racism, homophobia/transphobia and antisemitism an aggravating circumstance in all crimes and offences.<sup>10</sup>

10. ECRI recommends (1) that the following conduct is expressly criminalised: (i) the public expression of an ideology claiming the superiority of or depreciating or denigrating a group of persons; (ii) the creation or leadership of a group which promotes racism, support for such a group or participation in its activities; (2) that a provision is added to the Criminal Code expressly providing for racist motivation to constitute an aggravating circumstance of every ordinary offence; and (3) that the homophobic and transphobic motivation is also considered an aggravating circumstance of every ordinary offence.

11. Finally, ECRI understands that the liability of legal entities established by Article 121-2 of the Criminal Code can be claimed only for racist offences criminalised by the Code or for ordinary offences to which an aggravating circumstance may apply but not for racist offences provided for by the Law on Freedom of the Press. In this connection, ECRI believes that protection against racist hate crimes will be significantly improved following the successful completion of the initiative described above (see paragraph 4) to incorporate into the Criminal Code the provisions of the Law on Freedom of the Press that make public incitement to violence, hatred, discrimination and public insults or defamation criminal offences.

- **Civil and administrative law**

12. With regard to paragraph 5 of GPR No. 7, ECRI notes that French legislation contains no provision establishing the possibility of maintaining or adopting special temporary measures to prevent or provide compensation for disadvantages suffered by individuals owing to their race, colour, language, religion, nationality or origin or to facilitate their full participation in all areas of life. ECRI also notes that the French state gathers no data on equality and would accordingly find it difficult to implement positive discrimination measures based in particular on race or ethnic or national origin. This complex question will be discussed below in the section on specific issues and ECRI refers to the recommendations made there.

13. With regard to paragraph 6 of GPR No. 7, ECRI notes that discrimination by association is not covered by any code, but that the existence of such discrimination had been acknowledged by the Court of Justice of the European Union in its *Coleman* judgment of 17 July 2008.<sup>11</sup> At national level, the HALDE (now replaced by the Defender of Rights) established the existence of discrimination by association by the trade unions with regard to the dismissal of a trade union delegate's companion working at the same company, and the Caen Conseil de prud'hommes (Employment Tribunal), to which the HALDE

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<sup>8</sup> UE(2014a): 3.4.

<sup>9</sup> Especially murders, torture and acts of barbarism, various cases of violence, insult and defamation, and threats.

<sup>10</sup> This initiative corresponds to Line No. 12 of the 2015-2017 Action Plan to combat racism and antisemitism presented in §41 et seq.

<sup>11</sup> CJUE (2008).

had presented its observations, adopted this line of reasoning in its judgment.<sup>12</sup> Neither giving instructions to others to discriminate nor the announced intention to discriminate are explicitly mentioned by the law but are nonetheless punished. As far as giving instructions to discriminate is concerned, issuing an order to incite others to commit an offence makes the person concerned an accomplice and is covered by other provisions of the Criminal Code.<sup>13</sup> Finally, with regard to the announced intention to discriminate, this may correspond to the category of incitement to discrimination and fall within the scope of Article 24-8 of the Law on Freedom of the Press (public incitement to racial discrimination) or Article R. 625-7 of the Criminal Code (non-public incitement to racial discrimination).

14. The Public Procurement Law refers to the principle of equal treatment, but this reference merely obliges the contracting authorities not to engage in any discrimination among the bidders during a competitive bidding process and does not oblige them, as called for by paragraph 9 of GPR No. 7, to ensure that the parties to whom contracts, loans, grants or other benefits are awarded respect and promote a policy of non-discrimination.
15. ECRI recommends that the Public Procurement Law be revised in such a way as to make it compulsory for parties to whom contracts, loans, subsidies or other benefits are awarded to respect a policy of non-discrimination, to extend this obligation to respect for and the promotion of such a policy and to provide that a breach of this condition shall entail the cancellation of the contract, the subsidy or any other benefit.
16. With regard to paragraphs 16 and 17 of GPR No. 7, ECRI notes that there is no specific provision on the suppression of public financing of organisations (including political parties) that promote racism.
17. ECRI recommends that the legislation be amended to provide specifically for the suppression of public financing of political parties or organisations that promote racism.

- **Specialised national bodies**<sup>14</sup>

18. As ECRI pointed out in its 4<sup>th</sup> report<sup>15</sup> and subsequently in its conclusions on the implementation of the recommendations subject to interim follow-up,<sup>16</sup> the institution of the Defender of Rights (hereinafter the “Defender”) was established in 2011 following the merger of the High Authority against Discrimination and for Equality (HALDE) with three other independent authorities (the National Ombudsman, the Children’s Ombudsman and the National Commission on Professional Ethics in the Security Services).
19. In its 4<sup>th</sup> report, ECRI noted how firmly in line HALDE was with the wording of its GPRs.<sup>17</sup> In its interim conclusions, ECRI also noted that the institution of the Defender was now enshrined in the Constitution (whereas the HALDE had been established by an ordinary law) and that it had the same powers as the HALDE. ECRI refers to the section in its report on issues specific to France for an analysis of certain aspects of the operation of this institution.

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<sup>12</sup> HALDE (2007) and decision of the Caen Conseil de prud’hommes No. F06/00120 of 25 November 2008.

<sup>13</sup> Articles 121-6 and 121-7 of the Criminal Code.

<sup>14</sup> Independent authorities expressly charged with combating at national level racism, xenophobia, antisemitism, intolerance and discrimination based, for example, on ethnic origin, skin colour, nationality, religion and language (racial discrimination).

<sup>15</sup> ECRI (2010): paragraph 18.

<sup>16</sup> ECRI (2013): pp. 5-7.

<sup>17</sup> GPR No. 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level and No. 7 on national legislation to combat racism and racial discrimination.

## 2. Hate speech<sup>18</sup>

### - Data and magnitude of the phenomenon

20. The data on hate speech provided by the Ministry of the Interior with regard to threats<sup>19</sup> recorded by the police indicate an overall increase of 6% in the number of instances in the last three years (1,193 in 2012, 1,010 in 2013 and 1,256 in 2014). Racist acts, excluding anti-Muslim and antisemitic acts, have gone down by 5% (606 in 2012, 528 in 2013 and 577 in 2014). Anti-Muslim acts fell by 48% (149 in 2012, 164 in 2013 and 78 in 2014). On the other hand, antisemitic acts rose by 39% (438 reports in 2012, 318 in 2013 and 610 in 2014). ECRI is disappointed that it has received no information on reports of homophobic/transphobic acts, but notes that the government plans to produce such statistics with effect from 2016.

21. Additionally, ECRI notes a fall in the tolerance of diversity since 2009<sup>20</sup> as well as the prevalence of antisemitic stereotypes, especially in various segments of French society.<sup>21</sup> It therefore observes an increase in intolerance and points out that hate speech has led to acts of racist violence, especially by extremist groups (see paragraph 48). This phenomenon will be analysed in the following section.

### - Political discourse

22. In its 4<sup>th</sup> report, ECRI recommended that the authorities continue to take steps to prevent the exploitation of racism in the political sphere.<sup>22</sup> However ECRI notes that racism is still present in the discourse of French politicians. The Roma<sup>23</sup> in particular,<sup>24</sup> are a recurrent target of that discourse. ECRI would refer here by way of example to statements made by Jean-Marie Le Pen (former president of the National Front) on 22 September 2012, Gilles Bourdouleix (member of the National Assembly, formerly of the UDI, and mayor of Cholet) on 21 July 2013 and Manuel Valls (then Minister of the Interior) on 14 March and 24 September 2013. Muslims are also regularly stigmatised. Examples of this are the exploitation by various politicians of the issue of the distribution of halal meat raised by Marine Le Pen in the run-up to the 2012 presidential elections and the announcement of the organisation by the UMP of a convention on French Islam and Islam in France (see also paragraph 26). ECRI is concerned about this situation, which is helping to trivialise the stigmatisation

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<sup>18</sup> This section deals with racist, homophobic and transphobic speech. For a definition of hate speech, see Recommendation No. R (97) 20 of the Committee of Ministers to member states on hate speech, adopted on 30 October 1997.

<sup>19</sup> The French authorities distinguish between “actions” and “threats”. The term “actions” refers to assaults and property damage (violence), whereas the term “threats” refers to statements or writings (incitement to hate and discrimination). By default, the use of the word “act” refers in this section to “threats”.

<sup>20</sup> Established in 2008 according to the method developed by J. Stimson, the longitudinal tolerance index developed by the CNCDH enables the changes in French attitudes to diversity since 1990 to be measured in consolidated form.

<sup>21</sup> Reynier (2014), “*L’antisémitisme dans l’opinion publique française - Nouveaux éclairages*”, Fondapol, November 2014. According to this study, three segments of French society are particularly receptive to antisemitic stereotypes: sympathisers of the National Front and those who vote for Marine Le Pen, a proportion of the Muslim population and sympathisers of the Left Front and those who vote for Jean-Luc Mélenchon.

<sup>22</sup> ECRI (2010): paragraph 76.

<sup>23</sup> The term “Roma” used at the Council of Europe refers to Roma, Sinti, Kale and related groups in Europe, including Travellers and the Eastern groups (Dom and Lom), and covers the wide diversity of the groups concerned, including persons who identify themselves as Gypsies and those referred to as “Travellers”.

<sup>24</sup> In its 2014 report, and drawing on the results of an opinion poll conducted by BVA in November 2014, with the help of a team of researchers from the Institute of Political Studies (Sciences Po), Nonna Mayer, Guy Michelat, Vincent Tiberj and Tommaso Vitale, the CNCDH considers that Roma (migrants) represent the group that is the most vulnerable to racism, intolerance and discrimination.

of these vulnerable groups, the effects of which will be seen below (see paragraph 24).

- **Internet**

23. In its 4<sup>th</sup> report, ECRI recommended that the authorities pursue and step up their efforts to combat online forms of racist expression.<sup>25</sup> Many organisations, such as the National Observatory against Islamophobia and LICRA (the International League against Racism and Antisemitism), draw attention to the significant rise in cyber-hate. This development is reflected in the statistical part of the PHAROS platform concerning online xenophobia, which shows a 41% increase in the number of reports in three years, with 9,431 reports of racist acts in 2012, 12,916 in 2013 and 13,295 in 2014, while in the same period the total number of cases reported to PHAROS rose by 36%. For ECRI, the situation, as evidenced by particularly striking examples of hate speech, remains a concern. For example, on 12 December 2012 the essayist Alain Soral stigmatised the Jews via his Facebook and Twitter accounts. In 2012, Anne-Sophie Leclère (National Front) published on her Facebook page a photomontage of the Minister of Justice next to a small monkey. Following the January 2015 attacks (see paragraph 49), the humourist Dieudonné M'Bala M'Bala posted a comment "I feel like Charlie Coulibaly" on his Facebook account. As far as Twitter is concerned, ECRI would also refer to the many antisemitic tweets that have proliferated under the hashtag #UnBonJuif.

- **Antisemitic hate speech**

24. In the 4<sup>th</sup> cycle, ECRI strongly recommended that the French authorities pursue their efforts to combat antisemitism. It notes that the situation described in its 4<sup>th</sup> report on France has considerably deteriorated and has referred above to incidents that have resulted from individual views expressed in public (see paragraph 22). It considers that this recurrence of antisemitic statements by individuals opens the door to their trivialisation among the public at large. For example, in January 2014 a demonstration entitled "Day of Anger" organised by some 50 associations with the aim of condemning government action brought together several thousand people in the streets of Paris. At that demonstration, antisemitic (and homophobic) statements were chanted and racist symbols and gestures were displayed. This also happened at demonstrations held to protest against the Israeli action in Gaza, especially on 13 May 2014.
25. Another example of the ripple effect of this recurrence of individual antisemitic statements is the "*quenelle*" phenomenon. Presented by Dieudonné as an "anti-system" gesture, it was subsequently adopted by various personalities in contexts that were clearly antisemitic. ECRI would refer for example to the cases of Jean-Marie Le Pen, the essayist Alain Soral (in front of the Berlin Holocaust Memorial), or the case of two members of the *Chasseurs Alpins* army unit (in front of a Paris synagogue). Furthermore, after several shows that led to debate because of their potentially racist content the French authorities determined that Dieudonné's show "The Wall" ("*Le Mur*") was antisemitic and this time reacted with resolve (see paragraph 33).

- **Islamophobic hate speech**

26. In the 4<sup>th</sup> cycle, ECRI strongly recommended that the French authorities combat all manifestations of racism against Muslims and maintain and reinforce their vigilance to ensure that Islamophobic acts do not go unpunished. It notes that the situation with regard to Islamophobic hate speech still gives cause for concern and points out that the rejection of Muslims is fuelled by the discourse of certain political leaders. It would refer for example to the statements by Marine Le Pen (December 2010) comparing street prayers to the German

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<sup>25</sup> ECRI (2010): paragraph 83.



occupation, by the President of the UMP (October 2012) on the snatching of *pains au chocolat* from youngsters by Muslim hooligans during Ramadan, and by the mayor of Nice (July 2013) on whether Islam was compatible with democracy. It would also mention the statements made by the mayor of Venelles (May 2015) on his Twitter page calling for a ban on the Muslim faith in France as a reaction to the announcement of the UMP convention on Islam in France.

- **Homophobic/transphobic hate speech**

27. In its annual reports,<sup>26</sup> SOS Homophobie provides some details on the number and nature of homophobic/transphobic acts. From 2010 to 2014, the number of reports rose from 1,483 to 2,197. For 2014, the statistics show that 47% of reports concerned insults and 18% defamation, while 40% of all the acts reported occurred online. Homophobic/transphobic hate speech came to a head in France at the time of the passing of Law No. 2013-404 of 17 May 2013 legalising same-sex marriage (also known by the term “marriage for all”). The public debate that took place on that occasion gave rise to a large number of cases of homophobic/transphobic hate speech, especially by some participants in mass public demonstrations held in January and March 2013.

- **The authorities’ response**

28. There are many responses to hate speech. These include a criminal-law response, but other measures can make an equal contribution to containing this phenomenon, such as administrative or preventive measures or the adoption of general or specific policies. With regard to the criminal-law response, ECRI notes that the various cases referred to above were dealt with appropriately and led either to criminal convictions or to disciplinary measures, for example against the Chasseurs Alpains in the case mentioned above (see paragraph 25). ECRI notes that Jean-Marie Le Pen and Dieudonné M’Bala M’Bala have both been convicted about ten times for various cases of racist insults or defamation or incitement to racial hatred. In response to his publication on Facebook following the 11 January attacks that year, Dieudonné was also convicted on 18 March 2015 for condoning acts of terrorism and incitement to hatred (see paragraph 23). Gilles Bourdouleix has been convicted for condoning crimes against humanity because of his comments against the Roma (see paragraph 22).
29. In general terms, the statistics on convictions in the last few years forwarded to ECRI by the Ministry of Justice show a relatively constant, or indeed lower, conviction rate. For example, with regard to incitement to hatred or discrimination on the grounds of origin, race, ethnicity, nationality or religion 68 convictions were recorded in 2009, 72 in 2010, 51 in 2011, 66 in 2012 and 50 in 2013. As far as insults or defamation on the grounds of race, ethnicity, nationality or religion are concerned, 387 were recorded in 2009, 382 in 2010, 293 in 2011, 314 in 2012 and 259 in 2013. With regard to sexual orientation or gender identity, there was one conviction in 2012 for incitement to hatred or discrimination, and in the case of insults or defamation there were 13 in 2009, 12 in 2010, 11 in 2011, 16 in 2012 and 21 in 2013. Trends in this conviction rate contrast with the numbers of cases reported, which have risen significantly. This phenomenon is discussed in the section of this report dealing with specific issues (see paragraphs 106-119). Finally, ECRI regrets that it has been unable to obtain any information on the statistics on the reporting of cases and their processing by the police and refers to its analysis in the section of this report dealing with specific issues.

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<sup>26</sup> ECRI has received no information from the French authorities on reports of homophobic/transphobic acts (see paragraph 93).

30. The many convictions involving Jean-Marie Le Pen and Dieudonné M'Bala-M'Bala have prompted ECRI to analyse the effectiveness of the French criminal law provisions. In its 4<sup>th</sup> report, ECRI recommended that the French authorities continue evaluating the effectiveness of the criminal law provisions to combat racism.<sup>27</sup> ECRI understands that the provisions making hate speech a criminal offence are to be found in two separate bodies of law, namely the Law on Freedom of the Press (which punishes public incitement to violence, hatred or discrimination and public insults or defamation) and the Criminal Code (which punishes threats). However, the limitation period for offences punishable under the Law on Freedom of the Press is less than that provided for by the Criminal Code. Furthermore, legal entities are not covered by that law. Moreover, the applicable judicial procedures are different and, finally, racist and homophobic/transphobic grounds can only be considered aggravating circumstances for a limited number of ordinary offences. ECRI believes the ability to combat hate speech would be improved if the French authorities were to harmonise these different provisions<sup>28</sup>. If measures were to be taken to this effect, ECRI thinks it would be important to train everyone involved in implementing the new provisions.
31. ECRI recommends that the French authorities harmonise both the provisions that make hate speech a criminal offence and the associated procedures. Where applicable, ECRI recommends that the authorities ensure that all concerned members of the justice system are given training with regard to any new measure introduced in this area.
32. With regard to administrative law, ECRI notes that disciplinary measures were taken against the *Chasseurs Alpains* in the above-mentioned case (see paragraph 25) and that the French authorities have applied Article L. 212-1 of the Code of Internal Security; in response to the *Méric* case (see paragraph 48) four extremist movements ("*Troisième Voie*", "*Jeunesses nationalistes révolutionnaires*", "*l'Œuvre française*" and "*Jeunesses nationalistes*") were dissolved by means of presidential decree.
33. ECRI also notes that the French authorities have constantly reminded people through ministerial directives that there are mechanisms and systems that make it possible to combat hate speech. For example, in the case of the show "*Le Mur*" (see paragraph 25), Manuel Valls, then Minister of the Interior, distributed a circular on 6 January 2014 containing a very comprehensive reminder to the relevant authorities about the various legal, regulatory and judicial provisions that enable a show to be banned. On the basis of that circular, the *Préfet* of the Loire-Atlantique issued a decree on 7 January 2014 banning the show "*Le Mur*" by Dieudonné M'Bala M'Bala in Nantes on the ground that it contained "statements of an antisemitic nature inciting racial hatred and, in violation of human dignity, justifying and condoning the discrimination, persecution and exterminations committed during the Second World War." The Conseil d'État, hearing an appeal on the legality of this decree issued by the *Préfet*, held on 9 January 2014 that respect for freedom of expression did not preclude, in exceptional circumstances, the authority responsible for ensuring public order from banning the expression of opinions if such a measure (necessary, appropriate and proportionate) was the only way of preventing serious disruption of the peace. Accordingly, it upheld this ban. Measures taken by the mayors of Tours and Orléans to ban this show in their municipalities were also confirmed by the Conseil d'État in two orders dated 10 and 11 January 2014.

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<sup>27</sup> ECRI (2010): paragraph 23.

<sup>28</sup> The initiative described in §4, aiming in particular to insert into the Criminal Code the various articles of the Law on Freedom of the Press criminalising racist hate speech, is the subject of public debate in France. ECRI refers here to the opinion on the fight against hate speech on the Internet adopted by the CNCDH on 12 February 2015 and notes its reservations in this respect.

34. Finally, ECRI notes that the French authorities, having recourse to the provisions of Law No. 2004-575 of 21 June 2004 with respect to confidence in the digital economy, which the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance considers good practice,<sup>29</sup> have reacted to the rise in hate speech online, especially by engaging in discussions with Twitter to ensure that the details of authors of antisemitic tweets can be disclosed to the judicial authorities with a view to instituting criminal proceedings. This measure took effect when the first information was handed over in July 2013.
35. Apart from their criminal-law and administrative-law responses, the French authorities have taken a series of measures to combat hate speech, for example their action to combat online racist and homophobic/transphobic statements. In its 4<sup>th</sup> report,<sup>30</sup> ECRI recommended that the authorities pursue and reinforce their efforts to combat forms of racist expression propagated via the Internet. In its interim conclusions, ECRI considered the French authorities' efforts in this area to be satisfactory, especially with the strengthening of the PHAROS platform for reporting cases and its association with the Central Office to Combat Offences Linked to Information and Communication Technologies (OCLCTIC). ECRI notes that this system is now very well known to the public at large: for example, 8,605 content items were reported in 2011, a figure that rose to 13,295 in 2014.
36. In the area of prevention, and with regard to combating racist prejudice and stereotypes, mention should also be made of the "Large-scale school mobilisation in support of the values of the Republic" initiative. Its aim is to review the role of the education systems, especially in the light of the increase observed in discrimination and inequality, the growing gap between the values expressed and the actual situation experienced, as well as the rising demands, which can go as far as denying the values of the Republic enshrined in Article 1 of the Constitution<sup>31</sup> and the law. A series of measures was announced in January 2015.<sup>32</sup> These aimed at strengthening the transmission of the country's values, creating a pathway to citizenship education, reinforcing measures to deal with dropping out of school and with social and territorial determinisms, and measures to help the most vulnerable. This document refers in particular to a special continuing education programme for teachers and education staff to help them discuss with pupils issues relating to citizenship, secularism and combating prejudices. Apart from the secular teaching of religious beliefs, this programme provides for the creation of a new moral and civic education curriculum, which will come into effect from September 2015 and will involve 300 hours spread over the entire period of schooling. Furthermore, on 9 April 2015, a circular from the Minister for the Civil Service established as a new priority for the vocational training of state employees the question of professional obligations arising from the principles of secularity and neutrality.
37. The government also informed ECRI of several initiatives to prevent racist and homophobic/transphobic behaviour in sport. These include the drafting and dissemination among all sports federations of a handbook on tools for observing and recording behaviour contrary to the values of sport, including racism and homophobia. The French Football Association has extended its

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<sup>29</sup> Ruteere (2014): paragraph 45.

<sup>30</sup> ECRI (2010): paragraph 83.

<sup>31</sup> "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. It shall be organised on a decentralised basis. Statutes shall promote equal access by women and men to elective offices and posts as well as to positions of professional and social responsibility."

<sup>32</sup> See <http://www.education.gouv.fr/cid85644/onze-mesures-pour-un-grande-mobilisation-de-l-ecole-pour-les-valeurs-de-la-republique.html>.

monitoring of behaviour to include all acts of a discriminatory nature and the French Basketball Federation has established a similar monitoring mechanism. Two million euros have been set aside to enable other federations to develop such mechanisms.

38. Finally, ECRI notes that, although racist acts have been constantly condemned at the highest level of the French state, the same is not necessarily true of the political parties and politicians, especially in the run-up to elections. For example, in ECRI's opinion the exploitation of the issue of the distribution of halal meat was not appropriately condemned. ECRI also notes that, although the UDI expelled Gilles Bourdouleix from the party after his comments against the Roma (see paragraph 22), the parties with a similar political leaning did not put up candidates for the municipal elections in Cholet, thereby paving the way to his re-election in 2014. ECRI believes that it is crucial in a period characterised by a rise in intolerance and racist violence to avoid the exploitation of racism in politics.<sup>33 34</sup>
39. ECRI recommends that the French authorities take more effective steps to curb the exploitation of racism in politics.

- **2015-2017 plan to combat racism and antisemitism**

40. One of the French authorities' responses to hate speech warrants particular attention. In its 4<sup>th</sup> report,<sup>35</sup> ECRI expressed regret at the relative inaction of the Joint Ministerial Committee for Combating Racism and Antisemitism (CILRA) and recommended that the authorities co-ordinate government action. ECRI notes that the French state has taken several steps in this direction. In February 2012, a Joint Ministerial Delegation for Combating Racism and Antisemitism (DILCRA) was set up. Accordingly, as called for by ECRI<sup>36</sup> and the CERD,<sup>37</sup> an initial plan for combating racism and intolerance was adopted.
41. In late 2014, the Prime Minister, wishing to give "new impetus to the government's policies on combating racism, antisemitism and xenophobia", placed DILCRA under his direct supervision. Tasked with drawing up, co-ordinating and driving forward the government's policy on combating racism and antisemitism and providing the CILRA secretariat, DILCRA was given responsibility for co-ordinating the work to draw up the new plan. This new 2015-2017 plan to combat racism and antisemitism "Mobilising France against racism and antisemitism" (hereafter, the "2015 plan"), was presented by the Prime Minister on 17 April 2015 and has been allocated by the state a budget of 100 million euros over three years.
42. ECRI notes that many measures contained in this 2015 plan will contribute to implementing its recommendations. For example, measures 1 and 2 relate to a government communication campaign in the first half of 2015 and a participatory campaign in the second half; measure 11 is about incorporating legislation to combat hate speech in the general criminal law in order to simplify the rules of investigation and judgment; the aim of measure 12 is to make racism and antisemitism an aggravating circumstance for all crimes and lesser offences; the main aim of measures 18 to 22 is to ensure the legal representation in France of hosting services of content intended for the French public and to set up a national unit to combat online hate speech.

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<sup>33</sup> CERD (2015) : paragraph 8a.

<sup>34</sup> CommDH(2015) : paragraphs 48-49.

<sup>35</sup> ECRI (2010) : paragraph 11.

<sup>36</sup> ECRI (2010) : paragraph 23.

<sup>37</sup> CERD (2010) : paragraph 9.

43. ECRI believes in particular that combating the prevalence of both racist and homophobic/transphobic stereotypes and prejudices is a priority area for action and understands that measures 24 to 27 to equip schools with the means of transmitting and giving full effect to the values of the Republic will help make significant progress in this regard. ECRI understands that these measures correspond in particular to the secular teaching of religious beliefs, already featuring in school curricula, and a new moral and civic education curriculum (see paragraph 36). It is, however, aware that the main aim of these initiatives is the transmission of knowledge based on principles, rules, historical facts or theoretical concepts. ECRI is concerned that both the content of these new educational curricula and the training of education staff will not focus sufficiently on resolving the specific practical issues relating to living together that arise every day, both in private and social life in general and in the school environment in particular.<sup>38 39</sup> ECRI also believes that these measures should include combating homophobia/transphobia.
44. ECRI recommends that the French authorities fight racial and homophobic/transphobic stereotypes and prejudices effectively to deal better with the concrete challenges that arise due to living together in an intercultural world. To this end, ECRI recommends that school curricula and teacher training programmes are revised in order to enable teachers and pupils to understand better societal issues linked to questions such as religions and beliefs as well as immigration matters.

### **3. Racist and homophobic/transphobic violence**

#### **– Extent of the problem**

45. The data provided by the Ministry of the Interior on reports to the police of acts of racially motivated violence indicate an overall increase in such acts of 14% over the last three years (349 in 2012, 264 in 2013 and 397 in 2014). Racist acts excluding anti-Muslim and antisemitic acts have fallen by 14% (118 reports in 2012, 97 in 2013 and 101 in 2014). However, anti-Muslim racist acts have risen by 2% (54 reports in 2012, 62 in 2013 and 55 in 2014) and antisemitic racist acts by 36% (177 reports in 2012, 105 in 2013 and 241 in 2014). The provisional data communicated to ECRI suggest that this total has already been reached for the first six months of 2015 alone. Once again, ECRI expresses regret at not having received any information on reports of homophobic/transphobic acts. The annual reports of SOS Homophobie, based on reports it has received, give some idea of the extent of this homophobic/transphobic violence. For example, in 2014 out of 2,197 reports received 13% were about cases of assault, 3% about property damage or theft and 1% about sexual assault.
46. ECRI notes that racist violence is growing in all areas, sometimes with complete impunity, as shown by a case concerning French Railways (SNCF): over a period from 2011 to 2013, staff of this public company sent racist text messages, sang neo-Nazi songs on railway premises and, according to a report by the SNCF's ethics officer quoted by several sources, went as far as inflicting physical and verbal violence on users of North African origin.
47. With regard to violence against Roma, a number of particularly serious examples may be mentioned. On 27 September 2012, some fifty individuals attacked a group of about fifty Roma in the Cité des Créneaux area of Marseille. The group, some of the members of which carried weapons, are alleged to have threatened to set fire to their personal effects. On 16 January 2013, a

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<sup>38</sup> CERD (2015), paragraph 8c.

<sup>39</sup> CommDH(2015), paragraph 46.

Roma couple living near the Place de la République in Paris were victims of an acid attack.

48. Similarly, acts of violence by extremist groups are continuing to take place, as shown for example by the case of Clément Méric, an antifascist activist who died in June 2013 from blows inflicted by a skinhead. ECRI also notes a large increase in the desecration of cemeteries and places of worship. According to information supplied by the Ministry of the Interior, cases in which Christian places of worship were targeted rose from 527 in 2011 to 673 in 2014, those targeting Muslim places of worship went up from 50 to 64 over the same period and those involving attacks on Jewish places of worship from 44 to 70.
49. Above all, however, ECRI notes that there has been a proliferation of antisemitic attacks of unprecedented ferocity. In March 2012, Mohamed Merah killed three Jewish children and a father in front of a school in Toulouse. On 6 October 2012, an explosive device was thrown into a Hyper Casher supermarket in Sarcelles (Seine-Saint-Denis). On 1 December 2014, a Jewish couple in Créteil were held against their will, the woman was raped and their flat was burgled. According to the public prosecutor, the attackers “assumed that being Jews meant they had money”, recalling the identical motivation of the assailants in the “Gang of Barbarians” case, in which a young Jew was held and tortured to death in January 2006, as confirmed by the subsequent judgments and the appeal verdict delivered in December 2010. For ECRI, these two cases show that the prevalence of racist prejudices and stereotypes constitutes a problem that the French authorities must urgently address, and it reiterates its recommendation in this connection (see paragraph 44). Antisemitic hatred was also involved in the attacks by French citizens on the Jewish Museum in Belgium in May 2014 (four killed) and at a Hyper Casher supermarket at Porte de Vincennes, Paris (five killed) in January 2015. The latter case involved not only antisemitic hatred but also the problem of religious radicalisation, since, according to the information available, it was discovered that the perpetrator had co-ordinated his attack with the perpetrators of the attack carried out at the same time on the premises of the satirical weekly “Charlie Hebdo” (12 killed).

– **The authorities’ response**

50. In the light of the statistics provided by the Ministry of Justice, ECRI notes that the conviction rate is relatively stable. For example, as far as attacks on the grounds of origin, race, ethnicity, nationality or religion are concerned, 84 convictions were recorded in 2009, 68 in 2010, 42 in 2011, 73 in 2012 and 67 in 2013. With regard to attacks on the grounds of sexual orientation or gender identity, there were 53 in 2009, 42 in 2010, 42 in 2011, 52 in 2012 and 44 in 2013.
51. ECRI notes that the authorities took immediate steps to deal with the most serious attacks. Significant assets were deployed to ensure the swift identification, search for and arrest of the criminals. Measures were taken to protect the population. In 2013 and 2014, the state allocated some €500,000 for securing Jewish places of worship. After the January 2015 attacks, this protection was reinforced by a military presence in all 717 Jewish schools and places of worship as well as in over 1,000 mosques. ECRI understands that the Ministry of Defence has to this end launched a plan to recruit nearly 10,000 individuals for a period of three years, and the Ministry of the Interior has given a *Préfet* the task of co-ordinating this effort.
52. The government has also taken action to respond to the threat by extremists. For example, following the Merah case (see paragraph 49), the General Directorate for Internal Intelligence (DCRI) was reformed and became the General Directorate for Internal Security (DGSIS), which is responsible for

monitoring both left-wing and right-wing extremists and conducting investigations in this connection. These measures made it possible, for example, to arrest the Norwegian right-wing extremist Kristian Vikernes, whose wife had just procured firearms, in July 2013.<sup>40</sup> They also made it possible to identify the radicalisation of the perpetrators of the above-mentioned attacks but no preventive action could be taken on this basis. Accordingly, on 13 November 2014 the government passed a law on combating terrorism, and this was supplemented by an intelligence bill, which was approved by the National Assembly on first reading on 5 May 2015.<sup>41</sup> These new provisions will, amongst other things, help improve the prevention of radical acts.

53. ECRI also notes that the authorities strengthened their co-operation with civil society on the now well-established partnership model between the Jewish Community Protection Service (SPCJ) and the Ministry of the Interior by establishing similar co-operation with the French Council of the Muslim Faith (CFCM) and LICRA. These partnerships make it possible to share information thereby helping to improve the authorities' detection of racist incidents, to provide better initial care of victims and, where necessary, advise them on how to lodge a complaint. The authorities consider that these partnerships have positive effects. Noting these positive results in the case of two vulnerable groups in particular, ECRI believes it is necessary to establish similar arrangements for Roma and LGBT people.
54. ECRI recommends that the French authorities set up a partnership similar to those already existing with the CFCM, the SPCJ and LICRA with civil society organisations that provide support for the Roma population and LGBT people, in order to improve both the detection of racist acts of violence of which these vulnerable groups are victims and the follow-up action to the lodging of complaints in this connection.

#### **4. Integration policies**

##### **– General integration policies**

55. France's integration policies were described and analysed by ECRI in its 4<sup>th</sup> report on the country.<sup>42</sup> The principal aim of these policies is to put in place the resources to receive nationals of non-European Union countries. They set out a process of integration focusing on the reception and initial settlement of immigrants, as well as the stabilisation phase and preparation for acquiring French nationality. Furthermore, immigrants can also be entitled to certain services and benefits, such as employment services (jobcentres), vocational training services and unemployment benefits, as well as healthcare and housing.
56. With regard to the actual process of integration, ECRI noted in its 4<sup>th</sup> report<sup>43</sup> that the arrangements were mainly based on "reception and integration contracts" (*contrats d'accueil et d'intégration*, CAIs) and recommended that the French authorities not only review this system but also continue to take steps to encourage integration. ECRI also recommended that they continue their efforts to promote diversity and equal opportunities.<sup>44</sup> In recent years, this system has been enhanced by several other schemes to help people into employment, provide assistance to vulnerable groups and prevent discrimination through various mechanisms, such as the regional immigrant integration programmes

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<sup>40</sup> ECRI (2015): paragraph 39.

<sup>41</sup> This Intelligence Act was promulgated on 24 July 2015 and published in the Official Gazette on 26 July 2015.

<sup>42</sup> ECRI (2010): paras. 125-130.

<sup>43</sup> ECRI (2010): paragraph 131.

<sup>44</sup> ECRI (2010): paragraph 149.

and the *département* integration plans. The integration through employment dimension has been reinforced with the establishment of a vocational skills assessment system that enables migrants to make the most of their qualifications and skills. In 2010 a multi-annual framework agreement between the Ministries of Immigration and Employment, the French Office of Immigration and Integration (OFII) and the jobcentres was drawn up in order to promote the vocational guidance of those who sign reception and integration contracts and shorten the times taken to enter employment.

57. Apart from these measures specifically targeting immigrants, ECRI notes that various general policies can also benefit vulnerable groups and consequently help to implement its recommendations on their integration or on combating the discrimination of which they are victims. This applies for example to the “urban social cohesion contracts” (CUCS), which, ECRI notes, contain an anti-discrimination component that responds to the recommendations it made in its 4<sup>th</sup> report.<sup>45</sup> The prevention of discrimination has been supported by the implementation of the “diversity award”, the creation of which was referred to by ECRI in its 4<sup>th</sup> report. In the field of education, ECRI notes the passing in July 2013 of a framework law on reforming French schools, which led to the adoption in May 2015 of a reform of secondary schools in which personal assistance will be strengthened and measures will be taken to put an end, according to the Ministry of Education, to the ghettoisation<sup>46</sup> of these schools, and, in particular provide for the gradual allocation of educational resources to ensure greater equality and set up common catchment areas in several schools to promote social diversity, thereby responding to the concerns expressed by ECRI in its 4<sup>th</sup> report.<sup>47</sup> In the housing field, mention might also be made of the continuation of the national urban renewal plan, already noted by ECRI.
58. With regard to the implementation of these integration policies, and according to data from the Ministry of the Interior, the proportion of the state budget<sup>48</sup> specifically earmarked for the reception of immigrants, for the provision of language courses and for various integration measures was €50 million in 2013 and €46 million in 2014, and nearly €42 million has been budgeted for 2015. These measures have enabled CAIs to be concluded with people arriving in France to help them settle on a long-term basis, and 100,000 such contracts were concluded in 2010, 2011 and 2012 and more than 108,000 in 2013. Since the introduction of the CAIs, nearly 2.5 million people now have a residence permit as a result of these contracts. More than 380 organisations with nearly 840,000 employees have been awarded the “diversity award”.<sup>49</sup> Finally, according to data from the National Agency for Urban Renewal (ANRU), since 2003 no fewer than 400 projects have received nearly €12 billion in grants, thereby improving the quality of life of almost 4 million inhabitants in nearly 490 neighbourhoods.
59. As far as the effects of these policies are concerned, ECRI refers by way of example to a study published by the National Institute for Statistics and Economics (INSEE) in November 2011,<sup>50</sup> which presents a clear picture of the

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<sup>45</sup> ECRI (2010): paragraph 54.

<sup>46</sup> A study published in June 2015 sheds light on the segregation issue, providing further evidence of the reality of the situation, particularly from the point of view of social segregation. See Ly and Rugert (2015), *Mixité sociale et scolaire, ségrégation inter- et intra-établissement dans les collèges et lycées français*, June 2015

<sup>47</sup> ECRI (2010): paragraph 62.

<sup>48</sup> See, for example: extracts from the draft 2014 and 2015 immigration, asylum and integration budget. It should be noted that the total amount of this budget also covers the funding of other activities, especially in connection with the acquisition of citizenship.

<sup>49</sup> According to information published by AFNOR in August 2012.

<sup>50</sup> INSEE (2011), Île-de-France, November 2011, p. 376.



situation in the Île-de-France region, which contains about 40% of the total number of immigrants in France. This study reveals that significantly more immigrants than members of the majority population consider themselves victims of discrimination. It also shows that a larger proportion of immigrants than the majority population leave the school system without the school leaving certificate (*baccalauréat*), suffer from a higher unemployment rate and live in overcrowded accommodation. The study also shows a general improvement in all these areas compared with the situation observed in 1999. However, despite noting these results that show that the efforts made have produced tangible results, ECRI expresses regret at the drop in the budgets allocated to these areas in the last three years (see paragraph 58).

60. ECRI recommends that the French authorities maintain and, if possible, increase the size of the budget allocated to integration policies.
61. ECRI welcomes these significant developments but would nevertheless like to voice a number of concerns about the way these integration policies are designed. In its 4<sup>th</sup> report,<sup>51</sup> ECRI recommended that the French authorities assess the results of the new measures adopted to this end so that their effectiveness in reducing discrimination on grounds of origin could be verified and adjustments made if necessary. ECRI notes that for the most part the various policies mentioned above generally contain no provisions concerning their evaluation. According to recent studies,<sup>52</sup> some programmes have not been assessed at all or else only basic statistics are available at the very most, with no breakdown according to target groups, thereby making it hard to establish to what extent these policies have actually been able to benefit vulnerable groups.
62. ECRI once again recommends that the French authorities take steps to ensure that any current or future policy to promote the integration of vulnerable groups contains provisions laying down the conditions for a periodical assessment to determine their effects.
63. As far as the design of general integration policies is concerned, ECRI notes that the initial emphasis of the integration process on language learning is to the detriment of integration through employment, since the assessment of qualifications and assistance to find a job take place at a later stage. Furthermore, the language course is not believed to be sufficiently adapted to the actual daily situations of people looking for a job. The assessment of qualifications takes place too late in the integration process and is limited to a cursory and superficial review of skills and qualifications. Finally, ECRI understands that the procedure for recognising degrees and diplomas acquired abroad does not function as well as it should.<sup>53</sup>
64. ECRI recommends that the French authorities review the reception and integration contracts (CAI) scheme and, in particular, adapt language courses to facilitate immigrants' access to employment, carry out an assessment of qualifications at an earlier stage, including by making use of interpretation services if necessary and make the procedure for recognising degrees and diplomas acquired abroad more efficient.
65. ECRI notes that the French authorities have taken on board the situation with regard to integration policies and understands that a draft law on the rights of foreigners in France is being examined by the Law Commission and the Foreign Affairs Committee but has not yet been put on the National Assembly's agenda. According to the information it has received so far, ECRI understands

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<sup>51</sup> ECRI (2010): paragraph 149.

<sup>52</sup> Safi (2014): p. 20. Institut Montaigne (2014): p. 69.

<sup>53</sup> Safi (2014), pp. 12 ff.

that this law plans in particular to increase the number of language courses, provide more assistance for the most vulnerable and review the mechanisms for vocational integration.

66. Finally, ECRI observes a feeling of resentment among certain vulnerable groups about the lack of response by the authorities to the question of reparations in respect of the slave trade and France's colonial past. It understands that the statements made by the President of the Republic in May 2015 do not preclude reparations other than of a strictly financial nature. It also notes various measures taken by the government, such as the passing of Law No. 2001-434 of 21 May 2001 recognising the slave trade and slavery as a crime against humanity (the "Taubira law"), and on that basis the setting up of the Committee for the Memory of Slavery which became, in 2009, the Committee for the Memory and History of Slavery.

67. ECRI recommends that the French authorities carry on the debate further to the statement made by the President of the Republic in May 2015 on the question of reparations other than of a strictly financial nature in respect of the slave trade and France's colonial past, in consultation with civil society, and to formulate a policy in this connection.

#### – **Integration of Muslim women**

68. Civil society has drawn attention to the fact that the integration of Muslim women poses a particular problem, especially from the point of view of wearing a headscarf. In its 4<sup>th</sup> report, ECRI recommended 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 and discriminatory requests that Muslim women wearing the headscarf either remove it or refrain from entering a public place. The French authorities have given an assurance that they have taken steps in this regard. The promotion of the "diversity award" also helps to support these measures.

69. With regard more particularly to the case of Muslim women asked to remove their headscarves when participating in school outings as accompanying parents, ECRI notes that the Conseil d'État issued an opinion in December 2013 stating that accompanying parents are not public service employees and therefore not obliged to observe religious neutrality. However, Circular No. 2012-056 which recommended prohibiting mothers wearing a headscarf from accompanying school outings has not been withdrawn or amended following this Conseil d'État opinion, and ECRI notes that schools have broad discretion regarding the implementation of these provisions and that similar incidents continue to take place on a regular basis.

70. ECRI recommends that the French authorities clarify the regulations concerning the wearing of a headscarf by mothers who accompany school outings and take steps to ensure that decisions taken by school authorities are in no way discriminatory, including by providing for the appropriate sanctions if necessary.

71. In its 4<sup>th</sup> report, ECRI drew attention to the discussions on banning the burka or the niqab in public. In October 2010 Law No. 2010-1192 prohibiting the concealment of the face in public was passed. ECRI takes note of the judgment of the European Court of Human Rights in *S.A.S. v. France*, application no. 43835/11, in which the Court considered this ban justified with regard to the French objective of promoting "living together".

72. In its 4<sup>th</sup> report, ECRI referred to problems resulting from the misinterpretation of Law No. 2004-228 of 15 March 2004 concerning, in application of the principle of secularity, the wearing of signs or clothing displaying religious allegiance in state primary, lower secondary and upper secondary schools. ECRI notes that there have been repeated cases of this nature, for example in April 2015 in the

town of Charleville-Mézières, where a girl turned up at a school in a skirt that the school authorities considered too openly showed religious affiliation. ECRI notes that in both this and other cases the Ministry of Education reacted by reminding those involved of the applicable provisions and of their own obligations.

73. In its 4<sup>th</sup> report, ECRI also stressed the problem of discrimination in the field of employment. Here, too, several cases of dismissal in which wearing a headscarf was a factor have contributed to the development of case-law in this area. In the “*Baby Loup*” case, the Court of Cassation confirmed in a judgment delivered in June 2014 the conditions under which a private undertaking or an association can limit an employee’s freedom to demonstrate his or her religious convictions. In another case, in April 2015 the Social Division of the Court of Cassation referred a request for a preliminary ruling to the Court of Justice of the European Union on whether the wishes of a company’s client no longer to see any services provided by an employee wearing a Muslim headscarf may or may not constitute an occupational requirement exception referred to in Directive 78/2000/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.<sup>54</sup> The Court’s reply will help further clarify the question of the discrimination of which women wearing a headscarf may be victims.
74. As the French authorities have no system for collecting data on discrimination, the ECRI delegation looked at these cases during consultations with organisations that represent the different religious or non-faith-based communities and with various NGOs, in particular in the *département* of Seine-Saint-Denis and in Clichy-sous-Bois. These unanimously agreed that the republican system, the principle of the equality of all citizens and the secular organisation of society were values that fostered peaceful co-existence.
75. ECRI believes that two situations can jeopardise this balance in the republican system. First, as already pointed out in connection with hate speech, politicians may, by adopting a narrow conception of secularity, come up with proposals perceived as giving rise to discrimination. ECRI would refer for example to the decision taken in March 2015 by the mayor of Chalon-sur-Saône to stop offering alternative meals containing no pork in his municipality’s canteens, and to various bills, such as the “Ciotti” bill to extend the headscarf ban contained in the 2004 law to classrooms and to teaching and research locations in public higher education establishments, and the “Laborde” bill to impose the principle of secularity on private facilities that look after small children. ECRI notes that the National Consultative Commission for Human Rights (CNCDH), the National Observatory of Secularity and the National Economic, Social and Environmental Council are calling for this bill to be withdrawn. ECRI once again reiterates here its recommendation concerning the exploitation of racism in political discourse (see paragraph 39). Lastly, ECRI notes that the concept of secularity is the subject of intensive debate in French society, but finds that measures 24 to 27 of the 2015 plan aiming to equip schools with the means of transmitting and giving full effect to the values of the Republic will help clarify this at the level of the school system and understands that measures 6 to 8 of this plan will make it possible to meet a similar objective among French society as a whole.

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<sup>54</sup> This directive was transposed into French law by Article L. 1133-1 of the Labour Code.

76. ECRI further notes that certain groups use ethnic or religious identity as a means to promote demands, which may go as far as denying the country's values enshrined in Article 1 of the Constitution,<sup>55</sup> or opposing the law. The study carried out jointly in 2014 with the Observatory of Religious Practice in the Workplace (OFRE) and the Randstad Institute shows, for example, that employees' religion-related requests concern: a wish not to work with a woman (about 8%), not to work with colleagues who are not of the same faith (about 8%), not to work under a woman's orders (about 5%), and the refusal to work with a colleague on other religious grounds (about 3%). ECRI considers it important here to remind all sections of society of the fundamental principles of human rights and is surprised not to find any evidence of such a measure in the 2015 action plan.
77. ECRI recommends that the French authorities expand the 2015 action plan to combat racism and antisemitism by including in it a new measure (or clarifying an existing measure) to conduct an awareness-raising campaign on the human rights principles applicable with regard to racial discrimination and on the laws to be complied with in this area.
78. Lastly, ECRI notes that the integration of Muslim women must also be promoted through the way in which they are depicted in school textbooks, as it had already observed in its 4<sup>th</sup> report,<sup>56</sup> and that this question also concerns very broadly all vulnerable groups comprising persons from the former colonies. It considers that responses to these questions will reinforce its recommendations above with regard to education (see paragraph 44).
79. ECRI recommends that the French authorities pursue their efforts to remove from school textbooks and syllabuses all references encouraging prejudice and stereotyping in respect of vulnerable groups.

– **Integration of Roma<sup>57</sup>**

80. As we have seen above, French integration policies mainly focus on immigrants; accordingly, they may apply to foreign Roma from countries that are not members of the European Union. In the case of Roma from countries that are members of the European Union, the provisions of general law apply in principle and ECRI considers it important to see whether these provisions cover the specific needs of this vulnerable group. In its 4<sup>th</sup> report, ECRI made several recommendations concerning Roma,<sup>58</sup> especially with regard to the dispensatory provisions and practices concerning stopping places or housing. ECRI considers that the conclusions drawn up by the Council of Europe's Commissioner for Human Rights following his visit to France in September 2014 tie in with its own and believes that not enough progress has been made. This is confirmed by the still inadequate enforcement, despite continued progress, of the law on the reception and accommodation of Travellers<sup>59</sup> and the decisions of the Council of Europe's European Committee of Social Rights (ECSR) pointing to discrimination against Roma in the case of access to

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<sup>55</sup> 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. It shall be organised on a decentralised basis. Statutes shall promote equal access by women and men to elective offices and posts as well as to positions of professional and social responsibility.

<sup>56</sup> ECRI (2010): paragraph 63.

<sup>57</sup> ECRI once again points out that this term is used in accordance with the Council of Europe's definition.

<sup>58</sup> ECRI (2010): paragraphs 101-103 and 113.

<sup>59</sup> The government informed ECRI that it was working on draft legislation on the status, reception and accommodation of Travellers, repealing Law No. 69-3 of 3 January 1969 on the exercise of itinerant activities and the arrangements applicable to persons travelling in France with no fixed abode or residence. This draft legislation, abolishing movement permits and the obligation to be registered with a municipality was tabled before the National Assembly where it was given a first reading on 9 June 2015.

housing.<sup>60</sup> ECRI refers to the Commissioner's report for a more detailed analysis of these issues.

81. In its 4<sup>th</sup> report, ECRI also recommended that the French authorities take steps to prevent all forced and illegal evictions of Roma families from their homes that would place them in an extremely difficult situation. Among the various measures taken by the French authorities, ECRI notes the adoption in August 2012 of an interministerial circular on illegal improvised camps with the main aim of having any camp clearance preceded by an assessment of individual situations and putting in place all appropriate assistance measures with regard to schooling, access to health care and housing. In September 2012, the Prime Minister assigned the head of the Interministerial Department for Accommodation and Access to Housing (DIHAL) the task of preparing for and supervising operations to clear illegal camps. Finally, ECRI notes that a National Consultative Commission for Travellers (CNCGDV) was set up in response to a report by the Court of Auditors in 2012 that drew attention to inadequacies in the reception of and assistance provided to Travellers and to a report produced at the Prime Minister's request by the *Préfet* Hubert Derache in 2013. Decree No. 2015-563 of 20 May 2015 sets out the new composition and operation of this Commission and confirms its involvement in the framing of public policies, in particular by assigning it a consultative role in draft legislation and regulations relating to Travellers.
82. According to a report published by the FRA in 2012 following a survey carried out in 11 EU states in 2011,<sup>61</sup> 6% of Roma received government assistance in their search for housing compared with 25% in the rest of Europe. Since 2013, a budget of €4 million has been earmarked for funding the assessment and housing assistance measures provided for by the above-mentioned circular. This budget enabled 44 projects to be carried out in 13 regions in 2013 and 61 projects in 16 regions in 2014. An evaluation of these projects shows that in 2013 these measures enabled 395 individuals to access housing, 639 people to access accommodation, 908 children to go to school, 303 job-seekers to obtain employment and 1,910 individuals to benefit from health mediation. In March 2014, the government also assigned responsibility for carrying out a national shanty town clearance scheme to the social housing builder ADOMA. A January 2015 report taking stock of the operations carried out by ADOMA shows that 693 people were assessed, of whom 273 were given accommodation and 93% of their children were enrolled in schools. ECRI understands that these arrangements were put in place in the form of local pilot projects. In view of the encouraging results recorded where these projects have been rolled out, ECRI believes that these initiatives constitute good practices that ought to be applied nationwide.<sup>62</sup>
83. ECRI welcomes the adoption of the 2012 interministerial circular and recommends that the French authorities ensure that the arrangements for assessing people and for identifying and taking measures to provide social assistance, including in particular rehousing people and monitoring children's schooling are applied in practice nationwide. These measures should be implemented before any illegal camps are cleared and the resources available should accordingly be increased.
84. In its 4<sup>th</sup> report,<sup>63</sup> ECRI recommended that the French authorities find solutions as a matter of urgency for the effective, ongoing schooling of itinerant or semi-itinerant Traveller children adapted to their lifestyle, and that they prevent any

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<sup>60</sup> CEDS (2012).

<sup>61</sup> FRA-PNUD (2012).

<sup>62</sup> CERD (2015): paragraph 9d.

<sup>63</sup> ECRI (2010): paragraph 104.

refusal by a municipal authority to enrol them at school. ECRI noted in its interim conclusions<sup>64</sup> the significant progress made in this area but pointed out at the same time that it was too early for it to be evaluated. It is necessary to add to these conclusions the above-mentioned steps taken by the French authorities to clear illegal camps (see paragraphs 81-83) and promote the schooling of Roma children. As has been seen, these measures are producing results, but all the associations consulted by ECRI on this subject state that the situation is far from satisfactory, and it should be noted that the Council of Europe's Commissioner for Human Rights has reached the same conclusion.<sup>65</sup>

85. ECRI would, however, like to stress that the issue of the schooling of Roma children has more broadly to do with access to basic rights. It therefore believes that having no address for administrative purposes ("domiciliation" in French), which Roma people have difficulty in obtaining, should be added to the list of grounds cited by some municipalities for turning down applications for enrolment. Established by Articles L.264-1 to 10 of the Social Work and Family Code (CASF), "domiciliation" (hereafter "residence application") is an arrangement whereby individuals with no fixed abode or living in mobile or insecure accommodation can receive their mail and assert their civil, civic and social rights, especially access to legal aid or rights to statutory, regulatory and contractual social benefits (earned income supplement, jobcentre services, universal health cover). These addresses are issued by the Municipal Social Welfare Centres (CCAS) or by accredited bodies.
86. Several NGOs and civil society associations have alerted ECRI to the fact that residence applications have very often been turned down or that processing them is subject to prohibitive delays. A decision of the Defender of Rights (MDE-2013-92, of May 2013)<sup>66</sup> very clearly shows the link that exists between the lack of an address and the difficulty in registering children for school. Another decision (MSPMLD-2015-012, of January 2015)<sup>67</sup> illustrates a difficulty of a similar nature in a tragic case of the burial of a Roma baby. An order of the Nantes Administrative Court of 30 March 2015 established the facts. ECRI is concerned about this situation because, as the National Consultative Commission for Human Rights (CNCDH) noted in an opinion issued in November 2014 on respect for the fundamental rights of people living in shanty towns and putting an end to the violation of rights, the rejection of a "residence" application constitutes "the administrative expression of a refusal to recognise their right to a proper existence, a right to which all human beings are entitled, and deprives them of access to other rights".
87. ECRI recommends that the French authorities take immediate and proactive measures to ensure that no legitimate "residence" application submitted by persons belonging to vulnerable groups such as Roma is turned down and that the periods for processing these applications are reduced to the absolute minimum.

## **II. Issues specifically concerning France**

### **1. Recommendations of the fourth cycle subject to interim follow-up**

#### **- Concerning the specialised body**

88. In its 4<sup>th</sup> report, ECRI recommended that the French authorities continue to support the High Authority against Discrimination and for Equality (HALDE) in view of the key role that it plays in combating racial discrimination. It pointed out

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<sup>64</sup> ECRI (2012).

<sup>65</sup> CommDH(2015): paragraph 156.

<sup>66</sup> See [www.defenseurdesdroits.fr/decisions/Défenseur/MDE-2013-92.pdf](http://www.defenseurdesdroits.fr/decisions/Défenseur/MDE-2013-92.pdf).

<sup>67</sup> See [www.defenseurdesdroits.fr/decisions/ddd/MSP-MLD-2015-012.pdf](http://www.defenseurdesdroits.fr/decisions/ddd/MSP-MLD-2015-012.pdf).

that particular care should be taken to ensure that this institution is regularly consulted and that real co-operation is developed with the authorities, in particular by taking into account its opinions and recommendations in its own fields of expertise.

89. In its interim conclusions,<sup>68</sup> ECRI noted that the HALDE had been merged with three other independent authorities and that its terms of reference had been taken over by a new institution, the Defender of Rights. ECRI emphasised various positive aspects, such as the Defender of Rights' constitutional status, the strengthening of his status, independence and powers, but expressed regret at a significant drop in the number of discrimination cases submitted to the new institution. The Defender did, however, confirm the explanation given at the time of the interim evaluation. Following an in-depth investigation, he was able to establish various methodological biases in the compilation of complaints<sup>69</sup> and to revise the statistics as a result. Making the necessary corrections enabled the conclusion to be drawn that the number of complaints had not gone down but had actually risen. The adjusted figures indicate 3,055 complaints in 2010, 2,769 in 2011, 3,132 in 2012, 3,673 in 2013 and 4,535 in 2014.
90. The Defender also drew ECRI's attention to the fact that this development reveals a qualitative improvement as the merging of different responsibilities into a single institution made it possible to establish synergies between the different components of a problem area and accordingly also cover various problems from the point of view of discrimination, and therefore give the complainants more comprehensive protection.

- **With regard to racism on the Internet**

91. ECRI refers to its discussion of this question in the section on hate speech (see paragraphs 23 and 35). It notes that the implementation of measures 18 and 19 of the 2015 plan should be able to constitute an appropriate response to its 4<sup>th</sup> cycle recommendations on this subject.

- **With regard to the schooling of Traveller children**

92. ECRI refers to its discussion of this question in the section on integration policies (see paragraphs 84-87).

**2. Policies to combat discrimination and intolerance with respect to LGBT persons**

- **Data**

93. ECRI notes that Article 8 of Law 78-17 of 6 January 1978 prohibits the collection and processing of personal data, so there are no figures on the number of LGBT persons living in France. However, some data gathering is permitted provided that the data are anonymised, the person concerned gives his or her express consent and the operations are justified by the public interest. ECRI refers here in particular to an INSEE study<sup>70</sup> published in 2011 indicating that about 200,000 people are living as same-sex couples, 60% of them male couples and that 10% state that they are living with a child.
94. ECRI reiterates that Recommendation CM/Rec(2010)5 of the Council of Europe's Committee of Ministers on measures to combat discrimination on grounds of sexual orientation or gender identity states that personal data referring to a person's sexual orientation or gender identity may be collected if

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<sup>68</sup> ECRI (2012).

<sup>69</sup> Intra-institutional duplication due to multiple counting of one and the same complaint (submitted to the delegates but counted again at headquarters) and inter-institutional duplication (complaints lodged earlier with more than one of the four bodies whose merger resulted in the institution of the Defender).

<sup>70</sup> INSEE (2013).

this is necessary for specific, lawful and legitimate purposes. It is clear that it is impossible without this information to establish the basis of the framing and implementation of policies to combat intolerance and discrimination against LGBT persons.

95. ECRI recommends that the authorities carry out surveys and collect data on LGBT persons in France and on the discrimination and intolerance of which they may be victims.

- **Legislative issues**

96. As far as the use of the criminal law to combat homophobia and transphobia is concerned, ECRI reiterates that sexual orientation and sexual “identity” are included as grounds in the provisions making incitement to hatred, violence or discrimination a criminal offence and refers to the discussion in paragraphs 5, 9 and 10. Furthermore, Law No. 2008-496 of 27 May 2008 prohibits any discrimination based on sexual orientation or sexual identity in the fields of healthcare, education, access to goods and services, and employment. This ban is repeated in Articles L1132-1 et seq. of the Labour Code, and Article 6 of Law No. 83-634 of 13 July 1983 extends it to the civil service.

97. There is no specific legal or regulatory provision in French law governing a change of a person’s gender designation in the public records. However, the courts have long recognised the possibility of such a change for this category of people.<sup>71</sup> An opinion supporting an application for a change of civil status is issued by a judicial decision, following an opinion given by a psychiatrist, as soon as the hormone treatments that bring about a permanent physical or physiological transformation have led to an irreversible change of gender without there necessarily being a need to remove the genital organs. The CNCDH criticises the considerable lack of legal certainty here and advocates legislative intervention.<sup>72</sup> ECRI understands that bills are currently being drafted on this subject.

98. ECRI recommends that the French authorities quickly carry out the legislative work that will enable the procedure for changing a person’s gender designation in the public records to be regulated. As this is such a sensitive issue, ECRI recommends that the authorities involve the organisations that represent LGBT persons and take into account the opinion of the CNCDH.

99. As far as asylum is concerned, sexual orientation and gender identity are among the grounds taken into account for granting refugee status. ECRI notes that no law makes explicit reference to this possibility but that international protection is granted on the basis of the 1951 Geneva Convention, in particular on the ground of belonging to a social group. The applicability of this concept to sexual orientation was recognised in the 1990s in the decisions of the Refugees Claims Commission (which later became the National Court for the Right of Asylum) and the Conseil d’État. Similarly, LGBT persons can be granted “subsidiary protection”.

- **Discrimination in various areas**

100. The report<sup>73</sup> published in May 2013 by the European Union Agency for Fundamental Rights (FRA) following its survey on LGBT persons in the European Union provides information on discrimination against LGBT persons in France in various areas of life. It notes, for example, that 41% of those

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<sup>71</sup> Judgments Nos. 91-11.900 and 91-12.373 of 11 December 1992 delivered by the plenary assembly of the Court of Cassation following a judgment against France by the European Court of Human Rights on 25 March 1992 in the B. v. France case, No. 13343/87.

<sup>72</sup> CNCDH (2013).

<sup>73</sup> FRA (2013c).



questioned, compared with the European average of 47%, stated that they had felt victims of discrimination the previous year because of their sexual orientation. In the case of individuals seeking employment in particular, this rate is 11% in France compared with 13% in Europe. The survey also shows that 13% of those questioned had reported the most recent case of discrimination of which they had been victims, compared with the European average of 10%.

101. The annual reports of the association SOS Homophobie also contain useful information for assessing the situation. Over the last five years, the association has recorded a significant increase in the number of reported incidents: 1,259 in 2009 compared with 2,197 in 2014, with a peak of 3,517 in 2013. A sudden rise between 2012 and 2013 (+78%) can be largely explained by the explosion of homophobic/transphobic hatred following the debates on and passing of the law to allow same-sex marriage (see the section on hate speech, paragraph 27). In 2014, 20% of reports related to cases of discrimination in various areas, 1% of them concerning cases of dismissal. Above all, however, the number of cases relating to the school environment rose by 25% between 2012 and 2013, justifying an appropriate response (see paragraph 103).
102. The French authorities acknowledged the situation and in October 2012 launched a programme of government measures against violence and discrimination committed on grounds of sexual orientation or gender identity, the aim being to bring homophobia out into the open and overcome indifference towards it. Apart from the above-mentioned steps taken by the authorities (see paragraph 27), reference may also be made to the passing of a law extending from three months to one year the period of limitation applicable to discriminatory statements based on gender, sexual orientation, gender identity or disability, as well as government support for the LGBT Commitments Charter of the association "Autre cercle".
103. In the field of education in particular, SOS Homophobie reports a rise in the number of cases of homophobia at schools, with 88 cases reported to the association in 2012, 110 in 2013 and 103 in 2014. In its report for 2014, it noted that in 23% of cases the perpetrator of an assault was a member of the school personnel and that, in those instances, the act nearly always took place at a private denominational school and took the form of discrimination or barely veiled insults, for example in sex education classes. Finally, 10% of young victims say they feel like committing suicide. SOS Homophobie also reports that the victims in 13% of cases are teachers or members of the school personnel.
104. After it had been established that the situation had reached alarming proportions among very young people, a study<sup>74</sup> was carried out in 2013 to assess the discrimination suffered by young LGBT people at school. A pilot project, "*Les ABCD de l'égalité*" ("ABCD of Equality"), the aim of which was to combat gender stereotypes from a very young age and teach values of equality and respect between girls and boys, women and men was carried out in 2013. It was succeeded in 2014 by the Equality between Girls and Boys at School action plan. ECRI notes that numerous organisations consider these initiatives insufficient when it comes to combating homophobic/transphobic prejudices at and by schools, as evidenced by the adoption and signing of a declaration in May 2015 calling for the implementation of the recommendations in the Teychenné report and for the fight against homophobia/transphobia to be stepped up in the field of education. ECRI reiterates its recommendation on combating stereotypes in the education system (see under hate speech, paragraphs 43-44) and considers that combating homophobic/transphobic stereotypes should be part of general action to counter discrimination.

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<sup>74</sup> M. Teychenné (2013).

### 3. Raising the profile of hate crime and racial discrimination

105. In this report, ECRI has repeatedly noted that there is insufficient data to have a clear picture of the situation with regard to either racist and homophobic/transphobic crime or discrimination. It has also noted the lack of studies and assessments by the authorities in respect of integration and anti-discrimination policies and the effects of these policies on vulnerable groups. This situation is all the more worrying as ECRI notes an increase in hate speech and violence motivated by racism and intolerance. ECRI consequently believes that much work needs to be done in these areas.
- **Combating the under-reporting of racist and homophobic/transphobic crime**
106. Research by the European Union Agency for Fundamental Rights (FRA) in all EU countries shows that victims of hate crime often do not make a complaint.<sup>75</sup> As far as France is concerned, the phenomenon of under-reporting is highlighted by the “living environment and security” victimhood surveys conducted regularly by INSEE in partnership with the National Observatory of Crime and Criminal Responses (ONDRP). A study published in 2010<sup>76</sup> points to the significant under-reporting of cases of hate speech and shows that 92% of abuse and 76% of threats go unreported. In 2013, the ONDRP published a study<sup>77</sup> containing an analysis of trends in the victimhood rate for racist, antisemitic and xenophobic abuse. It shows that about 1.5% of people over 14 years of age were victims of such abuse in 2012. If this figure is extrapolated to the population of France as a whole, it can be estimated that hundreds of thousands of people a year over the entire country are victims of racist abuse, which is in stark contrast to the figures reported by the Ministry of the Interior (see paragraph 21).
107. For ECRI, there are several reasons that may help to explain this phenomenon. ECRI already noted in its 4<sup>th</sup> report that the conduct of law enforcement officers in the case of identity checks on members of vulnerable groups remains a matter of concern since the way in which they are carried out may provoke public disorder. ECRI would refer here in particular to the riots in Trappes in 2013, which were triggered after a check was carried out on a woman wearing a full-face veil, or in Clichy-sous-Bois in 2005 after the accidental deaths of two youths who had tried to evade an identity check (in May 2015, the courts acquitted the two police officers involved in that case). Another aspect of these checks is the problem of ethnic profiling, a study of which cited by ECRI in its 4<sup>th</sup> report goes some way to substantiate the existence of this situation, which civil society organisations have said continue to be regular practice. Finally, the organisations have also drawn ECRI’s attention to the fact that victims of racist acts who wish to file a report with the police have either been discouraged from making a full formal complaint or encouraged to ask for the details to be merely recorded in the police daybook.
108. With regard to the conduct of identity checks, ECRI notes the efforts being made by the French authorities. It refers to the adoption of a new Code of Ethics for the Police and Gendarmerie, which emphasises the need for exemplary relations with the population, and to sustained efforts to provide initial and in-service training with regard to these new provisions. As far as the issue of ethnic profiling is concerned, it notes that police uniforms now bear an identification number, but there have been many claims that these numbers are too long and too small, making them difficult to read. What is more, they are

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<sup>75</sup> FRA (2013b).

<sup>76</sup> Chaussebourg (2010).

<sup>77</sup> ONDRP (2013).

removable. ECRI notes that the CNCDH (in 2010) and the Defender of Rights (in 2012) proposed various practical solutions to this problem such as the requirement for police officers to provide an identity check receipt bearing their name, but they have not been tested despite the requests from these institutions for this to be done. Finally, as regards the matter of entries in the police daybook, ECRI understands that the Ministry of Justice regularly issues a reminder about the obligation to record offences of a racist nature in the form of a formal complaint and not as a daybook entry, but the Ministry of the Interior apparently does not intend to put an end to this practice. ECRI understands that only formal complaints are sent to the prosecuting authorities and that, accordingly, a significant proportion of racist or homophobic/transphobic acts are not subject to any judicial procedure.

109. ECRI recommends that the French authorities intensify the training of law enforcement representatives with regard to the contents of the Code of Ethics concerning the need for exemplary relations with the population, that they review the system of numbers affixed to police uniforms in order to facilitate identification, including by testing the solutions proposed by the CNCDH and the Defender of Rights, and that they take steps to implement the Ministry of Justice's instructions on recording racist offences in the form of a formal complaint and not as a record in the police daybook, and to extend this arrangement to homophobic/transphobic offences.
110. ECRI recommends that the French authorities organise a major information campaign to lower the rate of under-reporting of cases of hate speech.

- **Developing systems for recording equality statistics**

111. In its 4<sup>th</sup> report,<sup>78</sup> ECRI noted that genuine discussions had taken place since the adoption of its 3<sup>rd</sup> report on the question of measuring diversity and on "ethnic" statistics. ECRI notes that the announced analysis has been carried out and that COMEDD delivered its report in February 2010,<sup>79</sup> but its proposals to set up a system for measuring diversity and discrimination and establish a body for monitoring discrimination have so far come to nothing.
112. ECRI notes, however, that the public debate has continued. At political level, several leading figures have advocated the establishment of such a system particularly since it is not really possible to formulate policies without a detailed knowledge of the various segments of French society. ECRI would refer here to the recent views expressed by the President of the UMP in February 2015, the report produced in 2014 by senators Esther Benbassa (EELV) and Jean-René Lecerf (UMP) and the conclusions of the above-mentioned study by the Montaigne Institute (see paragraph 61). Others consider that such systems would be contrary to the Constitution. In this regard, ECRI notes that in an opinion adopted in March 2012 the CNCDH, while recognising the need to acquire tools to assess diversity and discrimination, did not support the introduction of a system for collecting ethno-racial data on equality. It also notes that this debate transcends political lines, as evidenced by the opposing positions of Manuel Valls in 2009, who was then mayor of Evry and considered that the tools were necessary, and of François Hollande, President of the Republic, who said in February 2015 that they served no purpose.
113. In ECRI's 5<sup>th</sup> monitoring cycle, the French authorities have consistently stated that they are unable to collect ethno-racial data or produce statistics on equality owing to the legal provisions in force. However, ECRI notes that this can be done in practice and would refer, for example, to the 2008-2009 "*Trajectoires et*

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<sup>78</sup> ECRI (2010): paragraph 151.

<sup>79</sup> "Inégalités et discriminations – Pour un usage critique et responsable de l'outil statistique", report by the Committee for the Measurement of Diversity and Discrimination.

*Origines* ("Paths and Origins") survey, the aim of which was to measure more closely integration and discrimination in France and whose results were published in 2010. It would also refer to the ONDRP report mentioned above (see paragraph 106) and the study *Police et minorités visibles: les contrôles d'identité à Paris* ("Police and visible minorities: identity checks in Paris") (see paragraph 107). In some cases, a CNIL dispensation has enabled data on equality to be collected. In others, use has been made of self-declarations or the "feeling of belonging" technique. In this connection, ECRI notes that, in a joint effort, the CNIL and the Defender of Rights have even developed a methodological guide entitled *Mesurer pour progresser vers l'égalité des chances* ("Measuring to make progress towards equal opportunities"). This details the legislation in force both with regard to what is not allowed and to the mechanisms that enable these prohibitions to be circumvented.

114. In a context where the official position is opposed to the collection and processing of ethno-racial data on equality but where this is the subject of intense public debate and in practice takes place anyway under certain conditions, ECRI is concerned that the matter has still not been resolved. It believes that the lack of a decision on this is leading to exploitation by politicians and inevitably resulting in the stigmatisation of vulnerable groups, as evidenced by a recent case from May 2015 in which the mayor of Béziers was involved in a scandal concerning the counting of children assumed to be Muslim in the municipality's schools.

115. ECRI recommends that the French authorities take action to lay down the parameters of a comprehensive policy for the collection of ethno-racial data on equality and propose legislative provisions in this regard.

- **Refining the systems of statistics on racist and homophobic/transphobic crime**

116. As in the case of data on equality, ECRI notes that in practice, the Ministry of the Interior provides information on criminal acts reported to the police and gendarmerie, who distinguish between racist acts in general, anti-Muslim acts and antisemitic acts. This situation is the result of the establishment of partnerships with the SPCJ, the CFCM and LICRA. However, ECRI considers that specific data should be obtained on acts of which Roma and LGBT people are victims and refers to its recommendations in this regard (see paragraph 54).

117. Finally, ECRI also notes that the statistics on convictions provided by the Ministry of Justice do not take account of the duration of proceedings and that it is not possible to have a system for monitoring cases by year of entry into the judicial procedure, which prevents them from being correlated with the statistics provided by the Ministry of the Interior and, consequently, to have a clear picture of how effectively race crime is handled from the lodging of a complaint to the delivery of the verdict.

118. The French authorities have informed ECRI that they have begun to overhaul all the systems that enable complaints to be registered both with the police and the gendarmerie and to produce a joint file on the follow-up of offences (TAJ). The TAJ system will use the same codification (NATINF) used by the criminal courts, which will enable it to be interconnected with the Ministry of Justice's CASSIOPEE system. This interconnection will enable details of court decisions and the reclassification of offences to be fed back into the TAJ system.

119. ECRI recommends that the French authorities ensure that these new systems incorporate the possibility of breaking down data by vulnerable groups and the possibility of tracking proceedings over time and linking the outcome of judicial proceedings with the cases that have led to them being brought, whatever the duration of these proceedings.

## **INTERIM FOLLOW-UP RECOMMENDATIONS**

The two specific recommendations for which ECRI requests priority implementation from the authorities of France are the following:

- ECRI recommends that the French authorities fight racial and homophobic/transphobic stereotypes and prejudices effectively to deal better with the concrete challenges that arise due to living together in an intercultural world. To this end, ECRI recommends that school curricula and teacher training programmes are revised in order to enable teachers and pupils to understand better societal issues linked to questions such as religions and beliefs as well as immigration matters.
- ECRI recommends that the French authorities take immediate and proactive measures to ensure that no legitimate “residence” application submitted by persons belonging to vulnerable groups such as Roma is turned down and that the periods for processing these applications are reduced to the absolute minimum.

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



## LIST OF RECOMMENDATIONS

The position of the recommendations in the text of the report is shown in parentheses.

1. (§ 2) ECRI once again recommends that France ratify Protocol No. 12 to the European Convention on Human Rights.
2. (§ 10) ECRI recommends (1) that the following conduct is expressly criminalised: (i) the public expression of an ideology claiming the superiority of or depreciating or denigrating a group of persons; (ii) the creation or leadership of a group which promotes racism, support for such a group or participation in its activities; (2) that a provision is added to the Criminal Code expressly providing for racist motivation to constitute an aggravating circumstance of every ordinary offence; and (3) that the homophobic and transphobic motivation is also considered an aggravating circumstance of every ordinary offence.
3. (§ 15) ECRI recommends that the Public Procurement Law be revised in such a way as to make it compulsory for parties to whom contracts, loans, subsidies or other benefits are awarded to respect a policy of non-discrimination, to extend this obligation to respect for and the promotion of such a policy and to provide that a breach of this condition shall entail the cancellation of the contract, the subsidy or any other benefit.
4. (§ 17) ECRI recommends that the legislation be amended to provide specifically for the suppression of public financing of political parties or organisations that promote racism.
5. (§ 31) ECRI recommends that the French authorities harmonise both the provisions that make hate speech a criminal offence and the associated procedures. Where applicable, ECRI recommends that the authorities ensure that all members of the justice system concerned are given training with regard to any new measure introduced in this area.
6. (§ 39) ECRI recommends that the French authorities take more effective steps to curb the exploitation of racism in politics.
7. (§ 44) ECRI recommends that the French authorities fight racial and homophobic/transphobic stereotypes and prejudices effectively to deal better with the concrete challenges that arise due to living together in an intercultural world. To this end, ECRI recommends that school curricula and teacher training programmes are revised in order to enable teachers and pupils to understand better societal issues linked to questions such as religions and beliefs as well as immigration matters.
8. (§ 54) ECRI recommends that the French authorities set up a partnership similar to those already existing with the CFCM, the SPCJ and LICRA with civil society organisations that provide support for the Roma population and LGBT people, in order to improve both the detection of racist acts of violence of which these vulnerable groups are victims and the follow-up action to the lodging of complaints in this connection.
9. (§ 60) ECRI recommends that the French authorities maintain and, if possible, increase the size of the budget allocated to integration policies.
10. (§ 62) ECRI once again recommends that the French authorities take steps to ensure that any current or future policy to promote the integration of vulnerable groups contains provisions laying down the conditions for a periodical assessment to determine their effects.
11. (§ 64) ECRI recommends that the French authorities review the reception and integration contracts (CAI) scheme and, in particular, adapt language courses to

facilitate immigrants' access to employment, carry out an assessment of qualifications at an earlier stage, including by making use of interpretation services if necessary and make the procedure for recognising degrees and diplomas acquired abroad more efficient.

12. (§ 67) ECRI recommends that the French authorities carry on the debate further to the statement made by the President of the Republic in May 2015 on the question of reparations other than of a strictly financial nature in respect of the slave trade and France's colonial past, in consultation with civil society, and to formulate a policy in this connection.
13. (§ 70) ECRI recommends that the French authorities clarify the regulations concerning the wearing of a headscarf by mothers who accompany school outings and take steps to ensure that decisions taken by school authorities are in no way discriminatory, including by providing for the appropriate sanctions if necessary.
14. (§ 77) ECRI recommends that the French authorities expand the 2015 action plan to combat racism and antisemitism by including in it a new measure (or clarifying an existing measure) to conduct an awareness-raising campaign on the human rights principles applicable with regard to racial discrimination and on the laws to be complied with in this area.
15. (§ 79) ECRI recommends that the French authorities pursue their efforts to remove from school textbooks and syllabuses all references encouraging prejudice and stereotyping in respect of vulnerable groups.
16. (§ 83) ECRI welcomes the adoption of the 2012 interministerial circular and recommends that the French authorities ensure that the arrangements for assessing people and for identifying and taking measures to provide social assistance, including in particular rehousing people and monitoring children's schooling are applied in practice nationwide. These measures should be implemented before any illegal camps are cleared and the resources available should accordingly be increased.
17. (§ 87) ECRI recommends that the French authorities take immediate and proactive measures to ensure that no legitimate "residence" application submitted by persons belonging to vulnerable groups such as Roma is turned down and that the periods for processing these applications are reduced to the absolute minimum.
18. (§ 95) ECRI recommends that the authorities carry out surveys and collect data on LGBT persons in France and on the discrimination and intolerance of which they may be victims.
19. (§ 98) ECRI recommends that the French authorities quickly carry out the legislative work that will enable the procedure for changing a person's gender designation in the public records to be regulated. As this is such a sensitive issue, ECRI recommends that the authorities involve the organisations that represent LGBT persons and take into account the opinion of the CNCDH.
20. (§ 109) ECRI recommends that the French authorities intensify the training of law enforcement representatives with regard to the contents of the Code of Ethics concerning the need for exemplary relations with the population, that they review the system of numbers affixed to police uniforms in order to facilitate identification, including by testing the solutions proposed by the CNCDH and the Defender of Rights, and that they take steps to implement the Ministry of Justice's instructions on recording racist offences in the form of a formal complaint and not as a record in the police daybook, and to extend this arrangement to homophobic/transphobic offences.



21. (§ 110) ECRI recommends that the French authorities organise a major information campaign to lower the rate of under-reporting of cases of hate speech.
22. (§ 115) ECRI recommends that the French authorities take action to lay down the parameters of a comprehensive policy for the collection of ethno-racial data on equality and propose legislative provisions in this regard.
23. (§ 119) ECRI recommends that the French authorities ensure that these new systems incorporate the possibility of breaking down data by vulnerable groups and the possibility of tracking proceedings over time and linking the outcome of judicial proceedings with the cases that have led to them being brought, whatever the duration of these proceedings.



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