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European Commission Against Racism and Intolerance

First report on France

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INTRODUCTION

The European Commission against Racism and Intolerance (ECRI) was set up in 1994, at the instigation of the first Summit meeting of Heads of State and Government of the member States of Council of Europe, to combat the growing problems of racism, xenophobia, anti-Semitism and intolerance threatening human rights and democratic values in Europe. The members of ECRI were chosen for their recognised expertise in questions relating to racism and intolerance.

The task given to ECRI was to: review member States' legislation, policies and other measures to combat racism, xenophobia, anti-Semitism and intolerance and their effectiveness; propose further action at local, national and European level; formulate general policy recommendations to member States; and to study international legal instruments applicable in the matter with a view to their reinforcement where appropriate.

One aspect of the activities developed by ECRI to fulfil its terms of reference is its country-by-country approach, which involves carrying out an analysis of the situation in each of the member States in order to provide governments with helpful and concrete proposals.

The procedure adopted for the preparation of country-specific reports can be summarised thus:

- a. The preliminary collection of information as well as the preparation of the texts of the preliminary draft reports are carried out in small working groups of ECRI. Preliminary sources of information used are wide-ranging, including, inter alia, replies provided by governments to a questionnaire sent out by ECRI, input from the relevant national members of ECRI, information on national legislation collected for ECRI by the Swiss Institute of Comparative Law¹, information from international and national non-governmental organisations, various publications and the media.
- b. ECRI examines and discusses the preliminary draft report on each country in plenary session and adopts a draft report.
- c. The report is sent to the relevant government for a process of confidential dialogue conducted through a government-appointed national liaison officer. The draft country report is re-examined and possibly revised in the light of the comments provided by the latter.
- d. The report is then adopted in its final form by ECRI in plenary session, and transmitted through the Committee of Ministers of the Council of Europe, to the government of the country in question. Two months after this transmission, the report is made public, unless the government of the country concerned expressly requests that it is not made public.

A first series of ECRI's country-specific reports was made public in September 1997 and a second series in March 1998². A third series of country-specific reports was transmitted to the governments of the countries concerned in April 1998, and is thus now being made public³.

¹ The report prepared by the Swiss Institute (ref: CRI (97) 38), covering relevant legislation in member States of the Council of Europe is available from ECRI's Secretariat.

² The first two series comprise reports on Belgium, the Czech Republic, Finland, Germany, Greece, Hungary, Iceland, Ireland, Liechtenstein, Lithuania, Luxembourg, Malta, Norway, Poland, San Marino, Slovenia and Switzerland.

³ Reports on Bulgaria, France, Italy, the Netherlands, Portugal and Slovakia.

The following report contains ECRI's analysis and proposals concerning France.

It should be noted that ECRI is carrying out its country-by-country procedure by preparing reports for all forty member States of the Council of Europe. This third series of reports, for which the procedure was completed by April 1998, will be followed by other series of reports during 1998 on the remaining member States of the Council of Europe. The order in which the reports are produced has no significance other than that these are the first reports to be completed. It is intended to complete the first round of country reports by the end of 1998.

The publication of this report represents the start of an on-going and active process of exchange between ECRI and the authorities of each of the member States, in order to identify solutions to the problems of racism and intolerance facing Europe. ECRI will also welcome the input of non-governmental organisations and other parties working in this field to ensure that its work is as constructive and helpful as possible.

REPORT ON FRANCE⁴

Introduction

France, as one of the larger European countries, and one which has a long experience of immigration, due in part to its history as a far-reaching Empire, has a long-standing and well-developed body of legislation and policies to deal with the problems of racism, xenophobia, antisemitism and intolerance. These were recently strengthened when the new Penal Code came into force in March 1994.

However, in spite of repeated and constant efforts to eradicate problems of racism and intolerance, France is still suffering from frequent and sporadic outbursts of racist activity, including some anti-Semitic incidents, as well as continuing discrimination in many fields of social and economic life. The considerable Muslim community in France, mainly of North African origin, is particularly the subject of intolerant and discriminatory attitudes. France has also one of the strongest and best-established extreme right-wing political parties in Europe, the National Front, which presents an openly racist and xenophobic ideology. Current efforts should therefore be maintained and intensified to combat these manifestations.

Some of the key areas identified by ECRI as meriting particular attention include:

- the "fine-tuning" of legislation in force to ensure that it is effective;
- the need for further training and guidelines for law enforcement officials;
- education and awareness-raising at all levels;
- possible tensions between France's traditional policy on non-recognition of minority groups and the diversity of its population;
- the need to reconsider certain aspects of practice as regards refugees, asylum seekers and illegal immigrants;
- the need to improve statistical records in the areas of discrimination, racial harassment and the size of minority groups.

⁴ Note: Any development subsequent to 18 September 1997 is not covered by the following analysis and is not taken into account in the conclusions and proposals.

I LEGAL ASPECTS⁵

A. International legal instruments

1. France has ratified all the relevant legal instruments in the field of combating racism and intolerance, with the exception of the European Charter for Regional or Minority Languages and the Framework Convention on the Protection of National Minorities. These instruments should be signed and ratified. Although France has clearly stated its reasons for non-ratification of the Charter for Regional or Minority Languages⁶, it is nevertheless felt that such ratification would contribute towards the enrichment of the cultural and linguistic characteristics of the country. France made a reservation to Article 27 of the International Covenant on Civil and Political Rights based on the non-recognition of the existence of ethnic and linguistic minorities in France. However, it is a fact that in France ethnic and other groups exist and that these groups face discrimination. It is therefore felt that this consideration should be borne in mind when the French authorities draw up future policies, which should include the withdrawal of the French reservation to Article 27.

B. Constitutional provisions

2. Article 2 of the Constitution affirms equality before the law without distinction of origin, race or religion. In its decision of 22 January 1990, the Constitutional Council applied this principle of equality to non-citizens residing in the territory of the French Republic; however, the Constitutional Council acknowledges the legislator's right to establish rules applying only to non-citizens, such as the rules concerning the carrying and production of documents attesting to the lawfulness of their entry to and residence in France. The Constitutional Council has always firmly abided by the principle that the French constitutional order is based on the equality of citizens before the law, which leads to the fact that France does not recognise minority groups. ECRI is concerned that the rights connected with identity of some groups of the population of France are not allowed for as a result of this principle.

C. Criminal law provisions

3. France has made important amendments in the Act of 13 July 1990, which, inter alia, strengthened the panoply of penalties available, created a new offence of disputing crimes against humanity, and introduced new rights extending the list of associations entitled to act and introducing a right of reply for them. Furthermore, the new Criminal Code which came into force on 1 March 1994 introduced more stringent penalties for racist offences. Such amendments have strengthened the range of legislative measures designed to combat racism. However, there is still room for improvement. Consideration could now be given to "fine-tuning" the relevant legislation in this field to remove any remaining obstacles which may hinder its efficiency.
4. A further bill extending the Criminal Code to cover expressions which are "likely to" incite to racial hatred, discrimination or violence, and to reinforce certain penalties was

⁵ A full overview of the legislation existing in France in the field of combating racism and intolerance is provided in the publication CRI (95) 2 rev, prepared by the Swiss Institute of Comparative Law (see bibliography).

⁶ It is stated in France's reply to ECRI's questionnaire that France already fulfils many of the obligations as set out in this Charter, and that signature would pose problems as regards certain Constitutional provisions, practical and financial implications and the political philosophy of the Republic.

to be put before Parliament in Spring 1997, but seems to have been dropped from the agenda for the time being. The bill aims to improve the legal provisions preventing the dissemination of racist or xenophobic messages, and particularly to simplify prosecution procedures in the field of combating racism. It would for example remove the current obligation for courts to make reference to a "specific ethnic group, race, nation or religion" when passing sentence for racist expressions. Thus, expressions concerning the "inequality of races", which are not presently covered under criminal law since they do not refer to a specific race, would be penalised. The bill also takes into account, in press offences, the lengthening of the prescriptive period under statute of limitations beyond the three months period that obtains at present, since the current rather narrow procedural rules in force greatly impede the action of public prosecutors' departments and associations to curb racism. The above-mentioned draft law was examined in September 1996 by the National Consultative Commission on Human Rights, which gave a favourable opinion, and is supported by the large majority of associations working in the field of combating racism. ECRI strongly supports the adoption by Parliament of this bill as rapidly as possible.

5. Another area which could be considered would be to allow, through appropriate legislative amendments, for a wider judicial interpretation of the terms used in the charge against defendants accused of defamation or abuse or incitement to hatred, thus bringing the situation in this respect more into line with the normal criminal law principles. At present, victims have to employ the right legal definition of the activities they report, otherwise if the indictment is wrong, the court cannot find as to the existence of a different offence, as it may in ordinary criminal cases.
6. Possible measures which might be taken to improve the implementation of legislation to combat racist acts could include:
 - instructions to the departments of Public Prosecutors to play a more active role by requesting judicial investigations on their own authority in the significant number of alleged human rights violations which come to their attention through the daily operation of the courts, since at present such cases are often ignored in default of formal complaints from injured parties.
 - increasing resources available to the criminal justice system in order to alleviate the current delays and unreasonably lengthy procedures⁷.
 - emphasising the gravity of such offences by repeating circular directives which have been sent on several occasions to Prosecutors directing them to improve the implementation of legislation against racism and discrimination. Prosecutors should also be directed to ensure that the seriousness of these offences is reflected in their sentencing pleas to the courts.
 - ensuring that all public servants such as magistrates, prosecutors and law enforcement officers are made aware of the relevant provisions of international human rights instruments, by allocating specific time to this topic in training courses and making explicit reference to international norms and standards in the rules and procedures of the different services.

D. Civil and administrative law provisions

⁷ The law of 10 July 1991 concerning legal aid represents a step forward in this respect.

7. Most of the areas of discrimination in public life, such as refusal to provide goods and services and discrimination in employment, are contained in the anti-racist provisions in the Penal Code. However, there are specific civil and administrative laws and decrees in the area of education, employment and housing, which are focused on racism and discrimination. Since racism and discrimination which occur in everyday life are notoriously difficult to prove, steps should be taken to encourage and assist victims to come forward and bring cases.

E. Specialised bodies

8. The National Consultative Commission on Human Rights was set up in 1947 on the initiative of René Cassin, one of the authors of the Universal Declaration of Human Rights. It is an independent commission, composed of representatives of human rights NGOs, unions, various human rights experts as well as representatives of the government, whose mission is to advise the Prime Minister on international and national issues related to human rights. This body does not deal exclusively with the problems of racism and intolerance; it has a broader mandate. However, this field is one of its main areas of concern.
9. The institution of the Mediator of the Republic was set up in 1973 to deal with complaints concerning the administration and the public services in general. It has delegates in each French département. This institution is little used in the field of racial discrimination or abuses by the police and has no coercive power. One possible explanation for the lack of cases concerning racial discrimination dealt with by this body might be that the Mediator of the Republic can only be approached by a citizen through an MP.
10. There is no strictly specialised body dealing with the problems of racism and intolerance, and although the role played by the National Consultative Commission on Human Rights in this field is very important, consideration should be given to establishing a specialised body in this field, taking into account the principles set out in ECRI's general policy recommendation N° 2 on specialised bodies at national level to combat racism, xenophobia, antisemitism and intolerance.

II POLICY ASPECTS

F. Reception and status of non-citizens

- *Immigration*

11. France is often described as an immigration country and a "land of asylum". However, like other European countries, it has tightened the rules on immigration and asylum in recent years with a series of laws and regulations. The so-called "Debré law" has now entered into force after much public and political controversy: ECRI notes in particular the negative comments made in November 1996 by the National Consultative Commission on Human Rights concerning this law. The text strengthens the Pasqua laws of 1993 on illegal immigration while regularising the situation of certain categories of illegal immigrants: however, concern has been expressed that some immigrants previously residing in a legal fashion in France may now find themselves in an irregular situation. New rules on immigration are to be voted in Parliament shortly and it is hoped that these new rules will solve some of the problems noted in connection with previous legislation. As a general rule, ECRI stresses that frequent changes in regulations and policies on immigration may create a climate of mistrust and resentment between immigrants and the rest of the population. It is hoped that the government will pursue its stated intention of stabilising the situation and clarifying the position of those immigrants whose status is irregular or unclear.

- *Refugees and asylum seekers*

12. The 1951 UN Convention on Refugees lays down conditions to be respected, particularly when sending refugees back to their country of origin or to a third country where their security could be put at risk. The expulsion of asylum seekers and illegal immigrants should always be undertaken in the full respect of human rights. Furthermore, supplementary measures to counter public misconceptions or prejudices concerning refugees and asylum seekers should be introduced.

G. Education and training

- *Police training*

13. Despite specific training for police officers in combating racism and intolerance and a deontology code for the police forces, several cases of ill-treatment of detainees by law enforcement officials have been documented in France over recent years. A high proportion of such cases involve detainees of non-European ethnic origin. It is therefore felt that further special measures could be adopted to clear up any problems which may exist in the treatment of detainees by law enforcement officials. One important measure in this respect would be the setting-up of a non-judicial independent body to consider cases of ill-treatment by law enforcement officials. In this respect, attention is drawn to the Council of Europe study and guidelines on "Police training concerning migrants and ethnic relations". In addition, ethnic minorities are underrepresented among law enforcement officials: recruitment could be broadened to include more members of different ethnic backgrounds.

- *School education*

14. France's policy is based on integration and many efforts have been made by the Ministry of Education in that field, in the respect of cultural differences and in a spirit of tolerance. Complementary actions to normal school programmes have also been set up, like "Les éducatives périscolaires" (AEPS), the School Solidarity Network or the Open School Operation. These efforts should be sustained and developed.

- ***Awareness-raising***

15. In a climate of public opinion where refugees, asylum-seekers and immigrants are often blamed for economic and social problems, it is especially important that public figures and politicians condemn any manifestations of racism, anti-Semitism and intolerance and resist the temptation to combat support for extreme right-wing parties or views by a disproportionate focusing of their own policies on the issues raised by such parties.

H. Employment

16. Discrimination against immigrants (mainly of northern African origin and black people) is a difficult issue to tackle. Although there are provisions in the law about this type of discrimination, many companies are still reluctant to employ or even accord interviews to immigrants. Such discrimination is difficult to monitor; there are very few complaints from the victims although it seems to be rather common practice. A better implementation of the law might be sought, as well as a strengthening of policies designed to improve the access of immigrants to the labour market. Access to the mechanisms of complaints could be facilitated and awareness-raising campaigns about legislation and rights in this field initiated to encourage victims to come forward.

I. Statistics

17. Statistics on racist acts are published in the reports of the National Consultative Commission on Human Rights. The Ministry of Interior keeps a record of racist acts, and the Ministry of Justice's statistics show the subsequent stages in the suppression of racist crime and the outcome of complaints to the courts.
18. It is difficult to obtain an exact evaluation of the size of the different ethnic groups in France, because, in accordance with the Republican ideal where every national is a citizen, there is officially no categorisation of ethnic or racial groups in the statistics⁸. The main categories used are thus "foreigners" and "immigrants". It is therefore difficult to collect data in order to analyse discrimination based on race, colour or ethnic origin. Possible ways of dealing with this gap in statistical information might be considered.

⁸ "La prévention du racisme dans l'entreprise en France", Fondation européenne pour l'amélioration des conditions de vie et de travail.

J. Media

19. The media has an important role to play in combating racism, anti-Semitism and intolerance. The mass media should be encouraged to report such incidents in a responsible manner and to raise public interest in other cultures and illustrate the benefits of cultural diversity. Reviewing the codes of self-regulation may be useful in this respect. Attention is drawn to recent Council of Europe initiatives on the role of the media in combating racism and intolerance.

General data as supplied by national authorities

For reasons of consistency, ECRI, in its CBC reports, has, in this box, reproduced statistical data only from the replies of Governments to ECRI's questionnaire. The questionnaire was sent to the French authorities on 13 July 1994.

ECRI accepts no responsibility for the data below.

3 596 602 non-citizens

Population of France: 57.8 million (1 January 1994, metropolitan France). This figure is taken from the Council of Europe publication "Recent demographic developments in Europe" (see bibliography).

BIBLIOGRAPHY

This bibliography lists the main published sources consulted during the examination of the situation in France: it does not cover all the various sources of information (media, contacts within the country, national NGOs etc) which were utilised.

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