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**ECRI CONCLUSIONS
ON THE IMPLEMENTATION OF THE RECOMMENDATIONS
IN RESPECT OF FRANCE SUBJECT TO INTERIM FOLLOW-UP**

Adopted on 20 March 2013¹

¹ Any developments which occurred after 5 December 2012, date on which the ECRI working group on France met to discuss the information received on measures taken to implement the recommendations chosen for interim follow-up, are not taken into account in this analysis.

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FOREWORD

As part of the fourth round of ECRI's monitoring work, a new process of interim follow-up has been introduced with respect to a small number of specific recommendations made in each of ECRI's country reports.

Accordingly and in line with the guidelines for the fourth round of ECRI's country-by-country work brought to the attention of the Ministers' Deputies on 7 February 2007¹, not later than two years following the publication of each report, ECRI addresses a communication to the Government concerned asking what has been done in respect of the specific recommendations for which priority follow-up was requested.

At the same time, ECRI gathers relevant information itself. On the basis of this information and the response from the Government, ECRI draws up its conclusions on the way in which its recommendations have been followed up.

It should be noted that these conclusions concern only the specific interim recommendations and do not aim at providing a comprehensive analysis of all developments in the fight against racism and intolerance in the State concerned.

¹ CM/Del/Dec(2007)986/4.1.

1. *In its report on France (fourth monitoring cycle) published on 15 June 2010, ECRI recommended that in view of the key role played by the High Authority against Discrimination and for Equality (Haute autorité de lutte contre les discriminations et pour l'égalité, HALDE) in combating racial discrimination¹, the French authorities continue to support this institution. Particular care should have been taken to ensure that this institution was regularly consulted and that real co-operation was developed between the HALDE and the authorities, notably by taking into account the opinions and recommendations issued by the HALDE in its fields of expertise.*

HALDE ceased to exist in May 2011. Its mandate has been taken over by a new institution, the Défenseur des droits (the Defender of Rights), into which four independent authorities have been merged: the Médiateur de la République, the Défenseur des enfants, the Commission nationale de déontologie et de la sécurité (CNDS) and HALDE².

On 23 June 2011, the first Defender of Rights was appointed for a period of six years. As provided for by Article 11 of his Institutional Act³, one of his three Deputies is in charge of the fight against discrimination and promotion of equality. The same article provides for the establishment of three Councils, including a Council on anti-discrimination and equality matters, which replaces HALDE's Council. The authorities have informed ECRI that all of HALDE's staff members have been transferred to the new anti-discrimination and equality institutional set-up of the Defender of Rights.

Compared to HALDE, the Defender enjoys constitutional status, since the new institution is provided for by Article 71-1 of the French Constitution, while HALDE had been created by ordinary law⁴. The Defender is appointed by the President of the Republic, following consultation with the Parliament and the Senate, for a six-year non-renewable term. This position is incompatible with membership of the government or parliament. According to Article 3 of his Institutional Act, the Defender of Rights and his three Deputies must resign from all other positions, whereas HALDE's President's functions could be cumulated with an elective function, public employment or another professional activity⁵.

The Defender of Rights enjoys similar investigative powers with HALDE, including the right to visit premises. In addition, the Defender can ask that all required investigations be carried out under the supervision of a judicial authority (Article 22 of the Institutional Act).

As it was the case with HALDE, the Defender can recommend any solution that he deems necessary to ensure respect for the rights and freedoms of the victim, to resolve the problems put to him or to prevent their recurrence (Article 25 of the Institutional Act). In addition, there is an explicit provision on the possibility to achieve a friendly

¹ According to ECRI's General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, "racism" shall mean "the belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons; "racial discrimination" shall mean "any differential treatment based on a ground such as race, colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification".

² Article 4 of Institutional Act (Loi Organique) No. 2011-333 of 29 March 2011, establishing the Defender of Rights.

³ Institutional Act (Loi Organique) is an act laying down the principles governing the organisation of government bodies or other public authorities. Institutional acts are provided for in the French Constitution and, although they do not form part of it, have constitutional force, overruling ordinary law.

⁴ Law No. 2004-1486 of 30 November 2004 concerning the establishment of HALDE.

⁵ See "comparative table", 2011 Annual Report of the Defender of Rights, p.10.

settlement through mediation (Article 26 of the Institutional Act). The Defender can also propose an “equitable solution”⁶ (Article 25 of the Institutional Act). Moreover, he can propose to the competent authority to take disciplinary action, whenever he deems it appropriate (Article 29 of the Institutional Act).

The Defender can consult the Council of State on matters related to the interpretation of laws or by-laws and can render its opinion public (Article 31 of the Institutional Act). In addition, the Defender can ask the Council of State or the Court of Audit to conduct studies on matters related to his mandate (Article 19 of the Institutional Act).

In view of the above, ECRI acknowledges that the law creating the Defender of Rights preserves the functions and staff formerly given to HALDE while reinforcing the status, independence and powers of the independent authority specifically entrusted with the fight against racism and racial discrimination (“specialised body”).

ECRI deems therefore that the establishment of the Defender of Rights has not undermined *per se* the institutional framework for the protection against racial discrimination, thus satisfying the essence of the first part of ECRI’s recommendation, despite the fact that HALDE has ceased to exist.

However, ECRI has been informed of a decrease of 35% in the number of discrimination cases dealt with by HALDE⁷ and the Defender of Rights in 2011 (8,503) compared to the cases dealt with by HALDE in 2010 (13,064)⁸. In addition, ECRI has received information that only 27 decisions were adopted between November 2011 and November 2012 by the Defender’s Council on matters related to discrimination and equality, compared to 279 decisions adopted in 2010 by HALDE’s Council.

According to the Defender of Rights this decrease is related to the new institutional setting which comprises the competence of four bodies. A number of “mixed” cases (i.e. cases that do not only involve discrimination) were dealt with by other departments of the Defender of Rights and have not been registered as discrimination cases (they have been registered for example as children’s rights cases or cases of mediation with the public authorities)⁹. In addition, the low number of decisions on discrimination matters is partly explained by the fact that it took some time for the Defender’s Council to become fully operational.

However, ECRI shares the opinion of a number of stakeholders, including the Defender of Rights himself, indicating that the disappearance of HALDE and the absence of a communication policy clearly identifying the Defender of Rights as the new competent authority in matters of discrimination have had a negative impact not only on the number of claims filed by individuals but also on the visibility of the Defender of Rights as the main anti-discrimination interlocutor of the authorities.

In its fourth report, ECRI mentioned a number of decisions taken as well as studies and awareness-raising campaigns conducted by HALDE since its creation, which, in less than 6 years of existence, had made it a key player in combatting racial discrimination in France. Similar efforts, in particular communication efforts aiming at bringing the Defender closer to potential victims, and an increased number of decisions and studies on discrimination matters would probably enhance the anti-discrimination profile of this

⁶ In exceptional and specific situations when the strict application of rules would result in an inequitable situation, an equitable solution (*règlement en équité*) could involve derogating from the strict application of the law.

⁷ Until May 2011.

⁸ 2011 Annual Report of the Defender of Rights, p. 102.

⁹ Ibidem, p.103.

new institution, vis-à-vis stakeholders in the government and civil society. In conclusion, ECRI considers that the second part of its recommendation could be fully achieved if the Defender were to draw more on his enhanced powers and HALDE's institutional expertise, in order to raise the profile of the new institution further, give increased impact to its anti-discrimination activities and achieve real cooperation with the authorities.

ECRI concludes therefore that this part of the recommendation has been only partly implemented.

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

The French authorities have informed ECRI of improvements to PHAROS, a platform for receiving, processing and referring notifications of unlawful content on the Internet (including, since 2009, content concerning racism and antisemitism). PHAROS's website, <https://www.internet-signalement.gouv.fr>, has been made more accessible and user friendly; it is now much easier to report to it about sites and material, including videos, containing incitement to racial hatred; and PHAROS's staff has been increased by eight new investigators (five in 2011 and three in 2012).

ECRI also notes that the Central Office to Combat Offences linked to Information and Communication Technologies (OCLCTIC) has improved its cooperation with the providers' association (AFA). This association has its own on-line contact point, www.pointdecontact.net, to which hate speech on the Internet may be reported. When the contact point considers the content posted by a user as potentially illegal under French law, it systematically transfers the alert received to the OCLCTIC. If the content is located in France, the alert is also transmitted to the host with a request to remove the unlawful content. If the content is hosted abroad, then a notification is sent to the peer contact point within the international network of services reporting (INHOPE), which should arrange to have the content removed in accordance with the law of the country. The OCLCTIC informs regularly AFA of any investigation opened following its alerts of hate speech content on the Internet.

Statistics on cases dealt by the OCLCTIC in 2011 indicates that, out of a total 92,261 cases, 8,605 concerned racist or discriminatory content, representing a 12% increase from 2010. 258 judicial investigations, of which 36 related to racism and racial discrimination, were opened.

In the light of the above, ECRI finds that the authorities' efforts have been satisfactory as concerns the monitoring of racist offences committed on the Internet and the prosecution of those responsible.

Consequently, ECRI considers that the first part of its recommendation has been implemented.

As for the second part of its recommendation, ECRI has been informed of the results of a number of surveys conducted among young Internet users, which indicate a lack of adolescents' awareness of the ban on the use of statements inciting to racial hatred

and the fact that it is possible to report content breaching this ban¹⁰. These findings have prompted the Defender of Rights to recommend, in his 2012 annual report on children's rights¹¹, to conduct a centralised awareness campaign (rather than many campaigns by different actors) for and with children and adolescents, who are too often unaware of their rights on the Internet. Parents and teachers should also be targeted.

Moreover, the French authorities have informed ECRI that the National Action Plan 2012-2014 against racism and antisemitism, has among its objectives to adapt the fight against discrimination and antisemitism to information society and Internet's possibilities¹². To this end, it is planned to strengthen the Government's response to the development of racism and antisemitism on the Internet.

ECRI hopes that the French authorities will allocate adequate means to the prompt implementation of this specific objective, particularly in order to strengthen coordination among the different competent authorities involved in the fight against racism on the Internet and improve the information provided to users, especially young users, in this connection. This can be done with an educational kit on the proper use of the Internet and specific awareness-raising campaigns.

ECRI is aware that it is not easy to prevent the dissemination of racism on line, especially among the youth, and to counter its noxious impact. However, ECRI considers that the French authorities, in order to implement the second part of its recommendation fully, should have enhanced their information efforts to raise awareness among the young public on the ban of hate speech on the Internet and on the use of existing tools to report it.

ECRI therefore considers that the second part of its recommendation has been only partly implemented.

3. *In its report on France (fourth monitoring cycle), ECRI strongly recommended that the authorities find, as a matter of urgency, solutions for the effective, on-going schooling of itinerant or semi-itinerant Traveller children, adapted to their lifestyle in consultation with the Traveller community. In particular, steps should have been taken to prevent any refusal by a municipal authority to enrol such children in school.*

ECRI has been informed by the authorities of the publication on 12 September 2012 of three circulars¹³ on the education of Traveller¹⁴ children, replacing three circulars on the same subject issued in 2002.

The first circular concerns the organisation of schooling for newly arrived non-francophone pupils. It aims at "encouraging regular attendance at school as from kindergarten and to improve the education of pupils" from Traveller families. It concerns the reception of the pupils and their family; the enrolment of the pupils in regular classes and learning support for them; and the training of teachers.

¹⁰ See for example the results of the survey conducted by AFA on the occasion of the Safer Internet Day 2012 at http://www.afa-france.com/wa_files/CP_sondage_mars_2012.pdf .

¹¹ <http://www.defenseurdesdroits.fr/sites/default/files/upload/rapport-droit-enfants-bd-2012.pdf> .

¹² <http://www.interieur.gouv.fr/Le-ministere/Organisation/Delegation-Interministerielle-a-la-Lutte-contre-le-Racisme-et-l-Antisemitisme/Plan-national-d-action-contre-le-racisme-et-l-antisemitisme-2012-2014> .

¹³ NORMENNE 1234231C, 1234232C and 1234234C.

¹⁴ ¹⁴ The term 'Traveller' is used to refer to the groups of people referred to in French as 'Gens de Voyage'. ECRI's fourth report makes a distinction between Travellers (Gens de Voyage), including French Roma, who are people whose French nationality dates back many generation and Roma from countries from Central and Eastern Europe.

The second circular addresses “schooling and education of children of non-sedentary families and Travellers”. It recalls the local authorities’ obligation to provide schooling for these children. It states in particular that the enrolment in primary schools is the responsibility of the Mayor¹⁵. Even if the family is not in a position to present the required documents for enrollment, the pupil must be temporarily enrolled.

The third circular aims at better defining CASNAV’s¹⁶ responsibilities and organising their structures. These centers should monitor the education component of the departmental plan for reception and housing of Travellers, liaise with the local reception areas, in particular with mayors, and provide support.

These new circulars are not limited to recalling the right to education of children, notwithstanding residential requirements, and the importance of their regular school attendance; they also provide for specific contact points¹⁷ in regional and local offices of the Ministry of Education in charge of reporting cases of non-attendance or refusal of enrolment.

ECRI notes that these circulars take into consideration a number of good practices, recommended by HALDE¹⁸ and the Commission nationale consultative des droits de l’homme (CNCDH)¹⁹ and recently reiterated by the Defender of Rights, concerning practical solutions for the effective on-going schooling of children of Traveller families with an itinerant or semi-itinerant lifestyle.

However, the information received by ECRI from the authorities reproduces only the text of the circulars and does not offer a critical analysis of how the circulars could solve the specific needs of Traveller children in the absence of a coordinated reception policy; in particular, it does not address the issue of how to react systematically to a refusal by a municipal authority to enrol these children in school.

ECRI considers that, given the circulars’ very recent publication, it is difficult to assess their impact in improving the situation. Pending this assessment and despite information received of recent improvements in some departments²⁰, ECRI should stress the persistence of problems concerning the schooling of Traveller children.

For example, the Court of Audit in a report issued in October 2012²¹ found the reception and support of Travelers in France to remain insufficient, with a significant delay in the construction of reception areas and a problematic school enrollment of children. According to the Court, the reception of and enrolment arrangements for these pupils appear on the whole to be different from place to place and still insufficient in some departments.

Moreover, media²² and NGO reports indicate that classes for integration of non-francophone pupils have been weakened by inadequate staffing; in addition, some

¹⁵ The Mayor gives French and foreign children an enrolment certificate which allows the child to be admitted to the local school. The mayor requires several documents in order to give this certificate, including proof of residence and proof that the child received mandatory vaccinations.

¹⁶ Centers for Academic Education of Newcomers and Traveller Children, created in 2002.

¹⁷ Référents d’éducation nationale.

¹⁸ Délibération de la HALDE No 2009-232.

¹⁹ CNCDH - Avis sur le respect des droits des « gens du voyage » et des Roms migrants au regard des réponses récentes de la France aux instances internationales, 22 March 2012 pp. 7-8 and pp. 17-18.

²⁰ For example, in the area of Nantes.

²¹ <http://www.ccomptes.fr/Publications/Publications/L-accueil-et-l-accompagnement-des-gens-du-voyage>.

²² <http://lemonde-educ.blog.lemonde.fr/2012/09/18/scolarisation-des-enfants-roms-un-mieux-dans-les-textes/>.

municipalities continue to refuse to enrol children in school, even temporarily, due to lack of proof of residence, which is contrary to the above-mentioned circulars. The Defender of Rights²³ and NGOs²⁴, have observed that recent evacuations of Traveller camps have also had a negative impact on the schooling of Traveller children. For example, it has been reported that the camps' evacuation of September 2012 has resulted, in more than 50 cases, in Traveller pupils' dropping out of school; this was due to the absence of adequate solutions to ensure their schooling after the evacuation.

ECRI considers therefore that its recommendation has not been implemented yet.

²³ Letter of 4 October 2012 addressed by the Defender of Rights to the Prime Minister.

²⁴ Chassés de toutes parts. Les expulsions de Roms en Ile-de-France, Réf : EUR 21/012/2012 Amnesty International, p.50; <http://www.amnesty.fr/Documents/Chasses-de-toutes-parts-les-expulsions-de-Roms-en-Ile-de-France>.

