

France

EXECUTION OF THE EUROPEAN COURT OF HUMAN RIGHTS' JUDGMENTS

MAIN ACHIEVEMENTS IN MEMBER STATES

The present survey presents short summaries¹ of a selection of the main reforms and achievements reported in final resolutions since the Convention system was amended in 1998 by Protocol No. 11, with a clear focus on recent reforms, referring however also to important earlier developments.

In view of the wealth of cases closed, the selection concentrates on those which have led to changes of legislation or government regulations or the adoption of new policies or general guidelines from superior courts. As a rule, the survey does not cover information on measures aiming at providing individual redress to applicants.

The presentation is organised country by country and reforms are in principle presented in the order corresponding to the thematic domains used in the Council of Europe's specialised database HUDOC EXEC and the Committee of Ministers' Annual Reports on the Supervision of the Execution of the European Court of Human Rights' judgments.

Many reforms address issues which appear to be on-going challenges in the member States. The effects of reforms adopted at one point in time may thus need to be monitored and possibly revisited as conditions change.²

¹ The summaries are the sole responsibility of the Department for the execution of the judgments of the European Court of Human Rights.

² The presentation is limited to the information provided at the time of the adoption of the final resolution. It is recalled in this context that the Committee of Ministers has issued [Recommendation \(2004\)5](#) on the verification of the compatibility of draft laws, existing laws and administrative practice with standards laid down in the European Convention on Human Rights.

➤ Risk of ill-treatment in case of expulsion

The 2007 law on the control of immigration, integration and asylum provided that a third country national wishing to apply for asylum while being subject to expulsion by a decision issued by the Minister in charge of Immigration after consulting OFPRA - *Office français de protection des réfugiés et apatrides*, may, within forty-eight hours following notification of that decision, submit a reasoned request for its annulment to the administrative court. Third country nationals held in a waiting zone may seek the assistance of an interpreter and a doctor and communicate with counsel or any person of his choice. The authorities have concluded agreements with specialised associations providing assistance in this context.

As regards overseas territories, the 2012 Code of Entry and Residence of Aliens (along with an administrative instruction and two circulars) provided guarantees for an in-depth examination of the third country nationals' situation before taking any decision as to their deportation.

The 2016 Law on the rights of aliens provided for a special procedure adapted to overseas territories, allowing third country nationals to lodge an urgent request (*référé-liberté*) to suspend their expulsion. The above Law also transferred from the "*juge administrative*" to the "*juge des libertés et de la détention*" the competence of reviewing the lawfulness of third country nationals' arrest and detention in view of their deportation.

New procedural guarantees for asylum applications filed in detention prevent their automatic registration under a summary fast-track procedure and ensure the effectiveness of appeals of detained third country nationals.

Gebremedhin (25389/05)
Final Resolution
CM/ResDH(2013)56

De Souza Ribeiro (22689/07)
Final Resolution
CM/ResDH(2017)135

A.M. (56324/13)
Final Resolution
CM/ResDH(2017)153

I.M. (9152/09)
Final Resolution
CM/ResDH(2017)340

➤ Conditions of detention / medical care

In 2005, measures were taken to ensure that a doctor of the psychiatric clinic is empowered to authorize, at any moment, immediate release when the person's state of health no longer justifies detention. From 2015 onwards, a construction programme adapting all prisons to the needs of persons with disabilities was implemented.

In 2003, the Council of State accepted that an appeal against a solitary confinement measure may be lodged before an administrative judge who may order the measure's annulment in the context of an *ultra vires* appeal taking into account the seriousness of its impact on detention conditions. The regime of solitary confinement was reviewed by two decrees modifying the Code of Criminal Procedure in 2006. The prison staff were provided with detailed information on the new rules by a circular of the Directorate of the Prison Administration and benefited from appropriate trainings. Finally, the 2009 Prison Act also contained specific provisions regulating solitary confinement.

A law of 2009 and its implementing decree of 2010 regulated the conduct of body searches in detention facilities and the modalities for such controls governed by the

R.L. and M.-J.D. (44568/98)
Final Resolution
CM/ResDH(2014)113
Vincent (6253/03)
Final Resolution
CM/ResDH(2009)79

Ramirez Sanchez (59450/00)
Final Resolution
CM/ResDH(2010)162

El Shennawy (51246/08)
Final Resolution
CM/ResDH(2015)77

principles of necessity and proportionality. The law requires adapting the nature and frequency of searches to the circumstances of prison life and personality of detainees. Furthermore, a circular of 2009 clearly prohibited the video recording of such searches.

In terms of remedies, the Council of State has accepted that body search measures may be challenged through an urgent request under the Code of Administrative Justice). In 2007, the Council of State extended the right of prisoners to apply to the administrative court, in particular in connection with security rotations among prisons, and acknowledged that a decision subjecting a detainee to a security regime did not constitute an internal regulatory measure, but an administrative decision amenable to judicial review.

In 2007, Parliament adopted a law creating the institution of the General Controller of Places of Detention to ensure the respect of detainees' fundamental rights and to continue improving the conditions of treatment of prisoners, not least in co-operation with the CPT.

Alboreo (51019/08)
Final Resolution
CM/ResDH(2014)47

Rivière (33834/03)
Final Resolution
CM/ResDH(2009)2

► Protection against domestic servitude

The protection of vulnerable persons, in particular victims of trafficking in human beings, was enhanced through amendments to the Criminal Code in 2003 and, in addition, a new criminal offence of "trafficking in human beings" was created in 2007, punishable by ten years' imprisonment if committed against a minor.

A law adopted in 2013 amended the Criminal Code in order to better define and combat trafficking in human beings.

Siliadin (73316/01)
Final Resolution
CM/ResDH(2011)210

C.N. and V. (67724/09)
Final Resolution
CM/ResDH(2014)39

► Right to liberty and security

▢ Lawfulness of detention

In 2000, a Law reinforcing the presumption of innocence inserted a preliminary article at the beginning of the Penal Code establishing the guiding principles for criminal proceedings, including a large number of the principles listed in Articles 5 and 6 ECHR. A law of 2002 added that a person under examination cannot be remanded in custody for more than two years where the penalty incurred is less than twenty years' imprisonment, and more than three years in all other cases.

The 2011 Law on the fight against piracy and the exercise of police powers of the State at sea, introduced into the Defence Code a new section on the "Exercise by the State of its supervisory powers at sea" providing for a *sui generis* regime of deprivation of liberty on ships arrested by French soldiers. A specific regime for the deprivation of liberty was set up allowing the arrest and detention of persons on suspicion of acts of piracy, whilst ensuring compliance with the procedural requirements of the Convention.

Muller (21802/93)
Final Resolution
CM/ResDH(2003)50

Medvedyev and Others (3394/03)
Final Resolution
CM/ResDH(2014)78

Functioning of justice

Fairness of proceedings

A wide scope of measures was adopted concerning different types of proceedings including the following:

- extension of the legal aid system concerning non-contentious proceedings;
- measures adopted concerning criminal proceedings comprised improved reasoning in Assize courts judgments, protection of the presumption of innocence and the rights of victims, enhanced protection against self-incrimination (as persons arrested or in detention are no longer compelled to testify under oath as witnesses with ensuing risks of perjury), extended guarantees when persons accused do not surrender to justice, including the right to be represented by a counsel and to lodge appeals;
- the legal protection of adults subject to legal protection (wards) according to the Civil Code was reinforced in 2007 in the Code of Criminal Procedure with regard to the conduct of pre-trial investigations and trial;
- important changes of the proceedings before the financial courts and the Court of Audit were introduced in 2009, in particular, by introducing public hearings before financial courts as a rule and by reinforcing the adversarial nature of the relevant proceedings;
- changes were introduced to the organisation of the supervisory authorities of the banking and insurance licensing, preventing problems caused by the absence of clear separations between the functions of prosecution, investigation and sanction in the exercise of the judicial power of the Banking Commission;
- enhancement of equality of arms in proceedings concerning the evaluation of the value of expropriated lands between those expropriated and the Government Commissioner;
- possibility to complain against fines for driving offences was improved by a 2013 Minister of Justice decree completing the Criminal Procedure Code, following a relevant Constitutional Council's decision of 2010, specifying the manner in which the public prosecutor must notify the offender of the reasons for the inadmissibility of his/her appeal as well as of the modalities to challenge this decision of inadmissibility. These new provisions have been in application by the Court of Cassation since 2014;

Pham Hoang (13191/87)
Final Resolution
CM/ResDH(93)31

Agnelet (61198/08+)
Final Resolution
CM/ResDH(2014)9
Brusco (1466/07)
Final Resolution
CM/ResDH(2011)209
Poitrimol (14032/88+)
Final Resolution
CM/ResDH(2007)154

Vaudelle (35683/97)
Final Resolution
CM/ResDH(2008)14

Martinie, Richard-Dubarry and Siffre (58675/00+)
Final Resolution
CM/ResDH(2010)124

Daoudi and Dubus (5242/04)
Final Resolution
CM/ResDH(2011)102

Yvon (44962/98)
Final Resolution
CM/ResDH(2007)79

Cadène (12039/08+)
Final Resolution
CM/ResDH(2016)283

- the Code of Criminal Procedure amendments introduced in 2014, 2016 and 2019 ensured that persons placed in police custody are immediately informed of their right to answer questions or to remain silent and of their right to the assistance of a lawyer right from the outset of police custody;
- the Court of Cassation's drafting rules were reformed, in particular concerning the reasoning of judgments and other decisions, including preliminary referral rulings and referrals to the Court of Justice of the European Union on account of different interpretations in member States or of clarifications needed.

Reforms and remedies against excessive length of proceedings

A series of reforms were implemented over time to ensure trials within a reasonable time in:

- civil,
- criminal courts (including reforms to limit the duration of pre-trial detention),
- administrative courts,
- labour courts, and
- land consolidation proceedings.

To alleviate the case-load in the Court of Cassation, changes have been made in 2002 in the processing and the hearing of appeals and staff have been increased. Applications are now filtered so that some appeals which are clearly unfounded can be heard by a reduced bench of only three judges. Secondly, the 2002 amendments of the Code on Organisation of the Courts, extended the possibility for trial and appeal courts to seek the Court of Cassation's opinion on a question of law arising in a significant number of cases, which has not yet been settled, thereby preventing the emergence of causes for dispute.

The "five-years orientation and programming law for Justice" of 2002 resulted in a large increase in courts' staff and of financial resources. The possibility to obtain compensation for unreasonably lengthy proceedings, earlier recognized with respect to civil and criminal proceedings, was recognized also with regard to administrative proceedings in 2001 and was codified in 2005.

Olivieri (62313/12)
Final Resolution
CM/ResDH(2020)145

Sanofi Pasteur (25137/16)
Final Resolution
CM/ResDH(2021)7

C.R. (42407/98+)
Final Resolution
CM/ResDH(2008)39

Sapl (37565/97+)
Final Resolution
CM/ResDH(2005)63

Durrand (36153/97)
Final Resolution
CM/ResDH(2002)62

Beaumartin (15287/89)
Final Resolution
CM/ResDH(1995)254

Piron and Époux Machard (36436/97)
Final Resolution
CM/ResDH(2009)3

Hermant (31603/96)
Final Resolution
CM/ResDH(2003)88

Lutz (48215/99)
Final Resolution
CM/ResDH(2008)10

Since 2017, proceedings before the special Assize Court dealing with terrorist offences were accelerated by amendment of the Law on public security to reduce the number of professional assessors necessary to conduct hearings in first instance and on appeal.

Berasategi (29095/09+)
Final Resolution
CM/ResDH(2017)232

► Protection of private and family life

▢ Family reunification:

Special protection against expulsion measures for certain categories of third country nationals, especially minors, was introduced in the Aliens Act in 1993.

Beldjoudi (12083/86)
Final Resolution
CM/ResDH(96)85

As regards family reunification for the beneficiaries of international protection, formalities to be accomplished in France were suppressed in 2009 while proof of the family relationship was simplified in 2015. General awareness measures were also adopted concerning all types of family reunification.

Senigo Longue (19113/09)
Final Resolution
CM/ResDH(2019)297

▢ Acquisition, use, disclosure or retention of personal data:

Limitations on the retention of fingerprints in police records were introduced in 2015, notably where persons were eventually not prosecuted or were acquitted.

M.K. (19522)
Final Resolution
CM/ResDH(2016)310

In 2021, the Code of Criminal Procedure and the provisions concerning the National automated file of genetic fingerprints (FNAEG) have been amended to set their retention periods according to the seriousness of the offence on which they were recorded and the status of the person concerned as an adult or a minor, and their early deletion procedures, which are now also possible for convicted persons.

Aycaguer (8806/12)
Final Resolution
CM/ResDH(2022)84

▢ Filiation / paternity actions

In 2015, the Court of Cassation acknowledged the possibility to obtain the transcription of foreign birth certificates of children born as a result of surrogacy into the national civil status register. The biological paternity of the father is presumed when he is designated on the foreign birth certificate.

Mennesson (965192/11+)
Final Resolution
CM/ResDH(2017)286

▢ Gender identity

The previous conditions for transgender people to obtain recognition of their new identity and procedures for the change of their first name and sex in the acts of civil status were changed by a law in 2016. Thus, no medical intervention is any longer required for this purpose.

A.P., Garçon et Nicot (79885/12+)
Final Resolution
CM/ResDH(2018)179

▢ Secret surveillance

The conditions governing recourse by the police to secret audio and video surveillance in criminal cases were more clearly set out in 2004 legislation. The law notably excluded from such surveillance offices of press and broadcasting companies, doctors, notaries, bailiffs and also the offices, homes and vehicles of lawyers, magistrates and parliamentarians.

Vetter (59842/00)
Final Resolution
CM/ResDH(2010)5

► Freedom of expression

Large dissemination of the European Court's judgments enabled a better consideration by courts and tribunals of the criteria to be followed for any restriction to the freedom of expression when judging cases concerning defamation and the publication of

Jean-Jacques Morel (25689/10+)
Final Resolution
CM/ResDH(2019)88

information on one's private life. Since 2015, the civil and criminal case-law of the Court of Cassation has been aligned with the European Court's case-law on freedom of expression and the assessment of the proportionality of the penalties imposed. It has referred notably to the fundamental distinction between statements of fact and value-judgments as well as to the notion of public interest debate.

In October 2020, the Ministry of Justice issued a communication "relating to the repression of discriminatory calls to boycott Israeli products" to public prosecutors' offices, recalling the European Court's case law on freedom of expression and inviting prosecutors to prosecute only those acts that constitute a genuine call to hatred or discrimination and not mere political speeches and actions

Baldassi and Others
(15271/16)
Final Resolution
CM/ResDH(2023)78

➤ *Freedom of assembly and association*

By a 2015 amendment to the Defence Code, military personnel were enabled to create, join and exercise functions in a national professional association.

The Act on hunting was amended in 2000, giving those opposed to hunting the right to object to it on grounds of conscience.

Matelly (10609/10+)
Final Resolution
CM/ResDH(2017)117

Chassagnou and Others (25088/94+)
Final Resolution
CM/ResDH(2005)26

➤ *Protection against discrimination with regard to inheritance rights*

In 2001, the discriminatory difference in treatment concerning succession rights between legitimate children and children born out of wedlock was abolished.

Mazurek (34406/97)
Final Resolution
CM/ResDH(2005)25