

# ECRI

European Commission against Racism and Intolerance  
Commission européenne contre le racisme et l'intolérance

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## **European Commission against Racism and Intolerance**

### SECOND REPORT ON FRANCE

Adopted on 10 December 1999

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## **Foreword**

*The European Commission against Racism and Intolerance (ECRI) is a body of the Council of Europe, composed of independent members. Its aim is to combat racism, xenophobia, antisemitism and intolerance at a pan-European level and from the angle of the protection of human rights.*

*One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyses the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.*

*At the end of 1998, ECRI finished the first round of its country-by-country reports for all member States. ECRI's first report on France is dated 18 September 1997 (published on 15 June 1998). The second stage of the country-by-country work, initiated in January 1999, involves the preparation of a second report on each member State. The aim of these second reports is to follow-up the proposals made in the first reports, to update the information contained therein, and to provide a more in-depth analysis of certain issues of particular interest in the country in question.*

*An important stage in ECRI's country-by-country work is a process of confidential dialogue with the national authorities of the country in question before the final adoption of the report. A new procedure in the second round of country reports is the organisation of a contact visit for the ECRI rapporteurs prior to the drafting of the second report.*

*The contact visit to France took place on 12-14 October 1999. During this visit, the rapporteurs met with representatives of various ministries and public administrations responsible for issues relating to ECRI's mandate. ECRI warmly thanks the French national authorities for their wholehearted co-operation in the organisation of the contact visit. ECRI would also like to thank all the persons who met its delegation each of whom provided much valuable information on their own field of competence. ECRI would in particular like to thank the National Consultative Human Rights Commission for its efficiency and collaboration in the organisation of the visit.*

*Furthermore, ECRI would like to thank all the representatives of non-governmental organisations with whom its rapporteurs met during the contact visit for the very useful contribution they made to the exercise.*

***The following report was drawn up by ECRI under its own responsibility. It covers the situation as of 10 December 1999 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposals made by ECRI.***

### ***Executive summary***

Over recent years, France has taken steps to combat racial discrimination, *inter alia* through the establishment of an independent public interest group entrusted with the study of discrimination, the setting up of anti-discrimination commissions at the regional level, the fine-tuning of relevant legislation in different areas, and the implementation of a number of action plans and initiatives.

Problems of racism and discrimination persist, however, and are particularly acute *vis à vis* young people of immigrant background. Discrimination and exclusion are matters of concern particularly in employment, education, housing and access to public places. The situation as concerns undocumented immigrants and the behaviour of some law enforcement officials are also matters of concern. Despite its diverse cultural components, French society still has to achieve full recognition of itself as multicultural.

**In the following report, ECRI recommends to the French authorities that further action be taken to combat racism, xenophobia, antisemitism and intolerance in a number of areas. These recommendations cover, *inter alia*, the need for effective implementation of the legislative provisions in force, the need to address priority areas of discrimination against persons of immigrant origin and foreigners, the need to address the situation of exclusion of many young people of immigrant background and the need to raise awareness among the general public of the multicultural and multiracial nature of French society.**

## **SECTION I : OVERVIEW OF THE SITUATION**

### **A. International legal instruments**

1. France has signed and ratified a large number of international legal instruments relevant to the field of combating racism and intolerance. Since the publication of ECRI's first report, France signed, in May 1999, the European Charter on Regional or Minority Languages. However, in June 1999, the Constitutional Council ruled that some of the general provisions contained in the Charter were contrary to certain fundamental principles enshrined in the French Constitution<sup>1</sup>. Ratification of the Charter would therefore require a Constitutional amendment. Upon signing the Charter, however, France indicated a list of paragraphs which it intended to apply to a certain number of minority languages to be specified upon ratification. In its ruling, the Constitutional Council specifically said that these paragraphs were not unconstitutional. The French authorities have therefore confirmed that, even without ratifying the Charter, France will apply, or in some cases already is applying, these paragraphs in practice. ECRI feels, however, that ratification of the Charter would strengthen the recognition of the regional and minority languages as an expression of cultural wealth and therefore reiterates its encouragement for ratification of this instrument by France.
2. ECRI understands that signature and ratification of the Framework Convention for the Protection of National Minorities and the withdrawal of the French reservation to Article 27 of the International Covenant on Civil and Political Rights, as suggested in its first report, are deemed to be in contrast with the same Constitutional principles referred to above. However, ECRI feels that these measures could contribute to promoting greater pluralism and tolerance in French society, and it therefore reiterates its call for signature and ratification of this Convention and for the withdrawal of the reservation.
3. Furthermore, ECRI encourages the authorities to sign and ratify the Convention on the Participation of Foreigners in Public Life at Local Level and the European Convention on Nationality.

### **B. Constitutional provisions and other basic provisions**

4. ECRI noted in its first report that the Constitutional Council had always firmly abided by the principle that the French constitutional order is based on the equality of citizens before the law, which is construed as contrary to the recognition of minority groups. ECRI reiterates its concern that the rights of individuals connected with the identity of some groups of the population of France are limited as a result of the interpretation of this principle.

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<sup>1</sup> *In particular, the notion of rights conferred to "groups" of regional and minority language speakers exercisable within specific parts of the French territory, and the notion of a right to use a language other than French in public life, were found to be contrary to the principles of the indivisibility of the Republic, equality before the law and unity of the French people enshrined in the French Constitution, as well as to the Article of the Constitution stating that the language of the Republic is French.*

## **C. Criminal law provisions**

5. French criminal legislation contains several provisions aimed at combating racism and intolerance which cover incitement to racial hatred, slander and libel as well as discriminatory practices. An increase in the number of condemnations, as well as harsher sentences for these crimes have been registered in 1998, especially as concerns discriminatory practices. This could be explained in terms of better general implementation of the relevant provisions. However, it is generally acknowledged that the number of cases of this type brought before the courts do not reflect the real extent of the phenomena of discrimination and racist expression in society and that implementation of such provisions is still insufficient. Furthermore, ECRI feels that the relevant legislation in this field could still be "fine-tuned".
6. As concerns incitement to racial hatred, slander and libel, ECRI noted in its first report, that the legislative framework for the repression of racist and xenophobic messages is given by the law on the press, which establishes strict procedural rules for the prosecution of the crimes contained therein. ECRI expressed concern over the very brief prescriptive period to initiate legal proceedings and the binding nature of the indictment used (i.e. victims have to employ the right legal definition of the acts they report, otherwise - in case the indictment is wrong - the court cannot find as to the existence of a different offence, as it may in ordinary criminal cases), which constitutes a problem, since the lines between defamation, abuse and incitement to hatred are often very thin. ECRI also noted the obligation for courts to make reference to a "specific ethnic group or religion" when passing sentence for racist expressions, which implies that expressions concerning, for example, the "inequality of races" cannot be prosecuted, as they do not refer to a specific group. ECRI expressed its wish that a bill (projet de loi Toubon) addressing some of these questions which was to be discussed by Parliament, be rapidly adopted. Unfortunately, however, this item was never discussed before Parliament and appears to have been dropped from the agenda. The French authorities have stated that, in this field, priority is currently being given to improving the implementation of existing legislation rather than changing legislation. In accord with this objective, the Ministry of Justice issued a circular directive in July 1998 aimed at improving the effectiveness of the prosecution of racist offences, as concerns both incitement to racial hatred and discriminatory acts. However, while this circular directive is welcome, ECRI feels that a legislative reform is still necessary.
7. With respect to the provisions prohibiting discrimination, as noted by ECRI in its first report, most of the areas of discrimination in public life, such as refusal to provide goods and services and discrimination in employment, are addressed in the French Penal Code. Article 225-2 of the Criminal Code covers the refusal to supply goods, services or accommodation, hindering the normal exercise of economic activity, refusal to recruit, dismissal, and making the supply of goods, services or jobs subject to a discriminatory condition. These provisions are, however, applied very rarely: in 1997, for example, only four sentences were pronounced on the basis of Article 225-2 (ten in 1996), none

of which concerned discrimination in employment. Despite the above-mentioned recent developments indicating a comparatively more frequent use of these provisions<sup>2</sup>, implementation still needs to be improved. The main difficulties in application, as in most other countries, are related to the proof of the intention to commit a discriminatory act. Experts have suggested that the burden of proof could be partially reversed, especially in employment cases. ECRI notes with interest the recent developments in this field<sup>3</sup> and encourages the authorities to consider possible ways to facilitate the proof of the intention to commit a discriminatory act in other fields as well.

8. As regards racial attacks and harassment, their number and gravity is reported to have decreased in recent years. People of North African origin appear to be the most frequent targets of such acts. The significance of these statistics may be affected by reluctance on the side of the victims to file complaints as well as by the inability of the prosecuting authorities and the police to put forward the racist motivation of such offences since there is no general legislative basis in French criminal law for doing so. In its general policy recommendation N°1 on combating racism, xenophobia, antisemitism and intolerance ECRI recommends that member States ensure that racist and xenophobic acts are stringently punished through methods such as defining common offences but with a racist or xenophobic nature as specific offences or enabling the racist or xenophobic motives of the offender to be specifically taken into account. However, in France racist offences are not defined as specific offences nor is racist motivation expressly mentioned as a specific aggravating circumstance. ECRI feels that consideration should therefore be given to introducing legal provisions of this sort.

#### **D. Civil and administrative law provisions**

9. Although France possesses a relatively wide legal battery against racism and discrimination, the relevant provisions in this field are scattered throughout French law and their implementation has not proven to be as effective as desired. ECRI stresses that the introduction of a single and comprehensive body of anti-discrimination legislation covering discrimination in all fields of life and providing for effective enforcement, has proved a valuable tool in many countries. It therefore encourages the French authorities to give consideration to the possible introduction of such a body of legislation.

#### **E. Specialised bodies and other institutions**

10. In its first report, ECRI noted that, despite the important role played by the National Consultative Commission on Human Rights in the field of combating racism and intolerance, the establishment of a specialised body with specific competence in this field should be considered by the French authorities. In

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<sup>2</sup> See paragraph 5, above.

<sup>3</sup> See *Discrimination in employment*, below.

1998, the report by the High Council for Integration on the fight against discrimination and on respect of the principle of equality included in its proposals for government action the establishment of an institutional body entrusted specifically with the task of combating discrimination in the country. The main functions of such a body would be: gathering knowledge and data on the phenomenon of discrimination, enabling alleged victims of discrimination to exercise their rights more effectively (including through consideration of individual complaints) and promoting public debate. In November 1998, the Ministry of Employment and Solidarity entrusted a senior member of the Council of State, J-M. Belorgey, with the preparation of a report on the possible configuration of an independent authority against discrimination, which was published on 6 April 1999. The report recommends, *inter alia*, that this body be empowered to examine individual complaints transmitted through designated personalities, have recourse to judicial and administrative authorities; give advice and formulate proposals on questions falling within its competence; and negotiate with social partners the adoption of codes of conduct and plans of action.

11. At the same time, the French authorities have been examining the question of the establishment of an independent public interest group with the task of analysing the phenomenon of discrimination on the basis of ethnic origin, formulating recommendations and promoting public debate. This group (GED<sup>4</sup>) came into being in April 1999 and includes representatives from different Ministries, a government-owned institution (the Social Action Fund for immigrant workers and their families), a public enterprise (the National Building Society for Workers) as well as an association of researchers. The establishment of GED as a public interest group will entail close participation of other partners, notably the public employment and training services, the associations, national organisations active in the field of combating racism, antisemitism and discrimination, and the social partners.
12. ECRI welcomes the establishment of GED. However, it regrets that the plans to establish an independent authority of the type envisaged in the Belorgey report appear to have been put aside for the moment and encourages the authorities to continue work towards the establishment of such a body, taking into account ECRI's policy recommendation N° 2 on specialised bodies at national level to combat racism, xenophobia, antisemitism and intolerance, as suggested in the first report.

## **F. Reception and status of non-citizens**

### **- *Immigration***

13. Since the preparation of ECRI's first report, the then newly-elected Government organised a special procedure whereby the regularisation of illegal immigrants was made possible according to certain criteria. In conformity with the circular

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<sup>4</sup> *Groupe d'étude des discriminations.*



directive on reconsideration of the situation of certain categories of illegal immigrants, between June 1997 and the end of 1998, approximately 143,000 illegal aliens requested residence and approximately 80,000 of these requests were granted. In its first report, ECRI noted that new rules on immigration were to be voted in Parliament shortly and hoped that such rules would solve some of the problems noted in connection with previous legislation<sup>5</sup>. An immigration and asylum law passed by Parliament in May 1998 ("Loi Chevènement") establishes *inter alia* new rules applicable to resident illegal aliens. Such aliens who applied for but did not obtain residence papers between June 1997 and the end of 1998 can apply for residence under the rules established by the new law. The new law contains positive elements and provides the possibility for certain categories of persons to obtain a one-year residence and work permit, in order to guarantee their right to private and family life. However, ECRI is concerned that such opportunities for regularisation contained in the law are narrowed by restrictive regulations concerning implementation. ECRI therefore urges the French authorities to ensure that any administrative instructions concerning implementation of the law on regularisation are in line with the spirit of the law and do not contain elements which render regularisation excessively difficult.

14. As stressed by ECRI in its first report, frequent changes in regulations and policies on immigration contribute, as a general rule, to creating a climate of resentment between immigrants and of mistrust among the rest of the population. ECRI therefore encourages, on the one hand, the government to pursue its stated intention to stabilise the situation and clarify the position of those immigrants whose status is unclear, and, on the other, it urges the French authorities to take action in order to improve the general climate of opinion concerning immigrants in French society. In this respect, it is noted that in France, as in most other European countries, immigration constitutes a sensitive area of policy and that in the last decade the debate on immigration has been influenced by the well-established presence of the extreme-right on the French political scene. This has sometimes resulted in mainstream political parties taking restrictive positions on immigration, due to fear of losing electoral support from wide segments of the population supposed to be hostile to foreigners. Given the recent developments in French politics which have witnessed a weakening of the position of the extreme-right, it is hoped that the debate on immigration will be increasingly based on a concept of society founded upon principles of justice and solidarity.
15. As concerns the right of non-EU citizens to vote in local elections, ECRI recalls that certain instruments established within the Council of Europe provide for the granting of voting rights in local elections to non-citizens who are long-term residents<sup>6</sup>. ECRI considers that integration and participation in society of non-citizens who are long-term residents would be improved by granting

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<sup>5</sup> Notably the "Debré law". ECRI noted in its first report that this law, while regularising the situation of certain categories of illegal immigrants, put some immigrants previously residing in a legal fashion in France at risk of finding themselves in an irregular situation.

<sup>6</sup> See *Convention on the Participation of Foreigners in Public Life at Local Level, Article 6; Recommendation 1082 (1988) of the Parliamentary Assembly on the right of permanent residence for migrant workers and the members of their families, para. 9. b. v.*

this category of people the right to vote in local elections. This would also encourage an engagement on the part of political parties to take the interests of non-citizens fully into account. ECRI is aware that a constitutional amendment which would allow this category of people to participate in municipal elections was envisaged in the 1980s, but was later dropped, and encourages the French authorities to resume work in this field.

- ***Refugees and asylum-seekers***

16. The loi Chevènement introduced for the first time the notion of territorial asylum, a status which can be granted by the Ministry of Interior to foreigners whose life, liberty, or freedom from inhuman and degrading treatment would be threatened if sent back to his/her own country. This status grants the right to a one-year residence and work permit. While these developments are welcome, ECRI is concerned that the law also introduces restrictions (such as the extension of the accelerated procedure to cases of asylum seekers coming from supposedly "safe" countries) which might render the exercise of one's right to asylum overly difficult.
17. In its first report, ECRI generally observed that the expulsion of asylum seekers should always be undertaken in the full respect of human rights. However, there have been reports of unreasonable delays in the Government's processing of asylum seekers in airport waiting areas and of reduced access of observers to these areas. There have also been worrying reports of use of excessive force against asylum seekers on the side of border police officials. ECRI stresses that asylum seekers, even if their claims are not considered to be valid by the authorities, should not be treated as criminals and that any measures taken with regard to such persons should reflect this approach.
18. The first report recommended the introduction of measures to counter public misconceptions or prejudices concerning refugees and asylum seekers. ECRI considers that these measures are still necessary today, since public opinion still appears to often associate this category of people with criminality and to over-estimate the financial burden represented by them.

- ***Non-citizens in overseas départements (DOM)***

19. ECRI is deeply concerned over the situation of non-citizens in some of France's overseas territories (DOM). Immigrants, many of whom are illegal, are reported to be subject to discriminatory and arbitrary identity checks even in private homes, sometimes deported without legal safeguards, denied social protection and in some cases the possibility of education of their children, as well as exploited on the labour market. There are also reports that people fleeing persecution from neighbouring countries have not been granted refugee status. Although ECRI is aware that these territories present special characteristics – such as the traditional freedom of movement in the regions where such territories are located, or the extremely high (i.e. around 50%) foreign population in some of these territories - it considers the situation of

foreigners in these territories to be at present a cause for major concern and urges the French authorities to devote immediate attention to these problems.

## **G. Education and awareness raising**

20. In its general policy recommendation N° 1 on combating racism, xenophobia, antisemitism and intolerance, ECRI recommends member States « to ensure that school-curricula, for example in the field of history teaching, are set up in such a way to enhance the appreciation of cultural diversity». In this respect ECRI encourages the French authorities to ensure that education in tolerance and respect for difference play a primordial role in this subject. In addition, ECRI considers that it would be extremely beneficial to develop, within the current history programme, a section devoted to the input brought by the immigrant population to France.

## **H. Access to public services**

### **- *Access to education***

21. The disproportionate representation of foreign children or children of immigrant background in certain schools is reported to be an increasing phenomenon in France. Such representation often goes beyond the level corresponding to the proportion of foreigners or people of foreign origin in certain school districts. ECRI is aware that the authorities have taken positive steps to remedy the educational situation of disadvantaged segments of the population of France, including an ongoing programme started almost twenty years ago devoting more resources to schools in areas with a high percentage of disadvantaged people (ZEP). Although these initiatives contain several positive aspects and are to be welcome, they do not seem to have had a positive impact on social cohesion. ECRI therefore encourages the French authorities to carry out a review of the measures taken in this field and to give priority to addressing the causes of the phenomenon of separation in schools. ECRI notes that in its 1998 report the High Council for Integration suggested the establishment within the Ministry of Education of a body responsible for addressing exclusively questions of integration in schools and encourages the French authorities to give further consideration to this proposal.
22. ECRI furthermore notes that, in some cases, language deficiencies, if not remedied at the earliest possible stage, can result in the over-representation of foreign pupils or pupils of foreign origins in specialised education courses. The need is therefore stressed for an effective and rapid integration of pupils with insufficient French language skills through an intensification of already existing integration courses as well as mechanisms which guarantee parallel and constant links to mainstream education.

23. There have been reports that municipal authorities sometimes refuse to enroll foreign immigrant children in schools and kindergartens. These refusals are reportedly based on excessively zealous verification of requirements (e.g. proof of place of residence, effective exercise of parental authority) or on failure to produce documents unlawfully requested, typically, residence permits. ECRI urges the authorities to strengthen their interventions recalling laws and regulations applicable in this field.

- ***Access to housing***

24. Disproportionately high numbers of immigrants and people of immigrant origin live in disadvantaged areas and in inadequate private and public accommodations. Although this is partially due to a lack of resources, which are often more modest among this category of persons, racial discrimination also contributes to this situation. ECRI urges the French authorities to strengthen their efforts to combat discrimination in this field. Furthermore, although ECRI realises that housing policies are primarily designed to help those who are economically disadvantaged, it suggests that the need of immigrants could be better met by making provision for the additional obstacles they encounter.

**I. Vulnerable groups**

25. France approaches cultural diversity from within the Republican model, which rejects distinctions on the basis of ethnicity, class and religion and considers the common will to live together as the only foundation of society. This approach results in policies which aim at integration into the host society recognising the existence of cultural differences, but not wishing to promote them. France therefore considers the cultural integration of all individuals based upon a singular notion of citizenship as the ultimate goal. This has resulted in a reluctance to use the categories of "minority group" and "community" as concerns French citizens. However, ECRI considers that, *de facto*, such groups exist and that, as highlighted above<sup>7</sup>, the rights of individuals connected with the identity of these groups of the population of France are limited.

**J. Antisemitism**

26. Although Jews and the Jewish community do not appear to be the sole or even the principal target of intolerant behaviour by the far right and its sympathisers in France, antisemitism is undeniably part of the ideological basis of the French extreme-right. The National Consultative Commission reports that antisemitic violence and harassment have decreased in 1998. However, almost half of the total number of acts of intimidation (threats,

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<sup>7</sup> See Constitutional provisions.

graffiti, tracts etc.) have an antisemitic character. ECRI encourages the authorities to keep the situation under review.

## **K. Roma/Gypsies**

27. A considerable part of the Roma/ Gypsy population of France is not permanently sedentary. Although a 1990 law imposes on municipalities with a population of over 5,000 that they provide a place where travellers can stop, implementation of this law is reported to be unsatisfactory, *inter alia* because many municipalities have not provided such spaces or because the spaces provided are not suitable. This results in Roma/Gypsies settling in areas from which they are often expelled. The denial of travellers' right to stop also has important repercussions on their employment and education opportunities. ECRI urges the French authorities to address these questions. In this respect, the National Consultative Commission on Travellers established in August 1999 could play an important role.

## **L. Monitoring the situation in the country**

28. As noted in ECRI's first report, due to the French Republican egalitarian approach, there is officially no categorisation of ethnic or racial groups in statistics. The main categories used are therefore "foreigners" and "citizens", while ethnic monitoring is contrary to the Constitution and expressly prohibited by the Criminal Code. ECRI emphasises that, given the consequent difficulties to the collection of accurate data on the incidence of racial discrimination as well as on social indicators concerning parts of the French population, a reconsideration of this approach would be beneficial.

## **M. Conduct of certain institutions**

### **- Law enforcement officials**

29. There have been reports of use of excessive force by law enforcement officials against detainees and other persons who come in conflictive contact with them, a considerable part of which concerned immigrants. Some episodes involved the unnecessary use of firearms sometimes resulting in deaths. Mistreatment and poor conditions of detainees in police stations are also reported and persons of North African or African origin appear to be particularly affected by such malpractice. Foreigners and people of immigrant background also complain that they are subject to discriminatory checks.
30. The French authorities are aware of these problems and have taken some initiatives in order to address them. However, ECRI feels that it should be ensured that any policy drawn up at central level is filtered down through police ranks. ECRI notes that the code of ethics of the French national police provides for the absolute respect of all persons, irrespective of their origin, social status, political, religious or philosophical convictions. However, in

most cases there is little, if any, investigation of complaints of ill-treatment by the internal administration of the police and the *gendarmerie nationale*. In its first report, ECRI recommended the setting-up of a non-judicial independent body to consider cases of ill-treatment by law enforcement officials. ECRI is pleased to learn that the French Parliament is currently discussing a bill which would introduce an independent non-judicial authority competent to examine breaches of the codes of ethics of all types of security personnel. ECRI hopes that this authority will be competent to examine complaints of prisoners as well and encourages the French authorities to adopt the bill as soon as possible.

31. Part of each training session of national police officers is devoted to the respect of the code of ethics. In addition, training courses providing information on the foreign communities present in France have recently been introduced. ECRI encourages the French authorities to continue and further expand its efforts in these fields. ECRI also stresses the urgent need for further and effective training of prison personnel in human rights and non-discrimination.
32. ECRI is aware of current initiatives which may favour a better representation of persons of immigrant background in the police. For example, young people coming from disadvantaged backgrounds are being recruited on "youth jobs" as assistant security officers. However, ECRI notes that people of immigrant background are still underrepresented in the police and therefore encourages the authorities to strengthen their efforts in this field. This might also prove an effective way to defuse tension in areas where the relations between law enforcement officials and members of the local communities -- in particular young people of immigrant background -- are difficult.

## **N. Media**

33. ECRI considers that one of the challenges facing French society today is the full recognition and perception of itself as multicultural. In this context, audio-visual media can play a primordial role, as - in France as in most European countries - they represent one of the most powerful means through which society builds the perception of itself. At present, there appears to be a remarkable distance between the references given by French media to the national community and the reality of French society. This is reflected in the sometimes simplistic and stereotypical representation of the minority communities as well as in the lack of works showing the real input made by these communities to the national cultural wealth. ECRI is aware that the Higher Council on Audio-Visual Affairs is currently addressing these questions and hopes for the swift adoption of measures aimed at increasing the visibility in French media of the real role of minority communities in French society.

34. ECRI feels that attention should also be devoted to the responsible reporting of news items in the printed and electronic media; for example, mention of nationality, country of origin, ethnic affiliation, religion, etc. should be avoided unless this information is relevant. ECRI emphasizes that this is one area in which codes of conduct could prove helpful.

## **SECTION II: ISSUES OF PARTICULAR CONCERN**

35. In this section of its country-by-country reports, ECRI wishes to draw attention to a limited number of issues which in its opinion merit particular and urgent attention in the country in question. In the case of France, ECRI would like to draw attention to the question of discrimination in employment and to the situation of young people of immigrant background.

### **O. Discrimination in employment**

36. Although the lack of statistics broken down by ethnicity is an obstacle to obtaining a precise picture of the incidence of racial and ethnic discrimination in all fields in France, it is generally acknowledged that employment is one of the areas in which the incidence of racial and ethnic discrimination is more widespread. The unemployment rate of non-European Union citizens is almost three times as high as that of French citizens; this category of people has also been more vigorously affected by the increase of unemployment in the last twenty-five years than the rest of the population, while security of employment is comparatively less widespread amongst them. Possession of French nationality does not seem to prevent discriminatory practices, as unemployment appears to strike the French population of immigrant origin in a way which is comparable to foreign residents. Some studies also seem to show that these imbalances cannot be ascribed solely to differences in levels of education.
37. Public debate on issues of racial and ethnic discrimination in France in recent years has to a large extent focused on employment. In this respect, ECRI welcomes the new approach of the Government aimed at bringing the fight against racial and ethnic discrimination in all fields within the general integration policy of France. The Minister of Employment and Solidarity has stated her intention to make the fight against racial and ethnic discrimination in the workplace one of her priorities. ECRI hopes that this will be reflected in the swift adoption of concrete and effective measures aimed at addressing the problems which arise at present in certain areas as regards employment.
38. One such area is implementation of existing anti-discrimination provisions, which, as noted above<sup>8</sup>, are at present virtually unused. This situation is partly due to the difficulties encountered in proving the alleged discriminatory motivation of the employer. In this respect, ECRI notes with interest the current proposals of reform of the Labour Code which would facilitate proof in cases of

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<sup>8</sup> See *Criminal law provisions and Civil and administrative law provisions*.

breach of the principle of non-discrimination. These changes would put the employee in a better position in order to prove the discriminatory motivation of the employer. ECRI supports the proposal to apply these changes to all stages of the career of the employee and not only to recruitment, sanctions and dismissals. The breach of the general principle of non-discrimination of the Labour Code (Article 122-45) entails exclusively civil sanctions (i.e. the nullity of the discriminatory measure). However, another reform proposal may also increase the effectiveness of Article 225-2 of the Penal Code (which penalises refusal to recruit, dismissal, and making the supply of goods, services or jobs subject to a discriminatory condition<sup>9</sup>) by clarifying the ability of factory inspectors to report on breaches of this article when they encounter discriminatory acts. Another proposal for reform includes the possibility for trade unions to initiate judicial proceedings in cases of racial or ethnic discrimination *vis à vis* an employee or an applicant, as long as the individual concerned does not oppose the union's action. It is also proposed that safeguards be established to prevent exponents of racist and xenophobic groups to run for elections to *Conseils de prud'hommes*, elective jurisdictions competent for labour disputes. ECRI encourages the authorities to proceed to the swift adoption of these proposals for reform.

39. While these measures are welcome, ECRI feels that they are not sufficient. Additional efforts should be devoted to raising the awareness of key private and public actors of the issues pertaining to racial discrimination in the workplace and of the urgent need to effectively combat it. Training measures in this field should target various groups including public employment and training agencies, and decentralised employment services. Ways should also be found to promote this type of training and awareness-raising within trade unions, and human resources departments of different enterprises. More generally, ECRI strongly encourages the French authorities to promote dialogue, especially at the local level, between the different social, political and economic actors involved, in order to stimulate the adoption of new initiatives and strategies in the fight against discrimination on the labour market.
40. ECRI also stresses that any strategy, whether national or local, to combat racial discrimination in employment would benefit from a clearer picture of the concrete ways in which discrimination manifests itself on the French labour market. ECRI understands that GED is expected to play a pivotal role in this respect. However, ECRI stresses that ethnic monitoring covering French and non-French citizens would be an invaluable tool in order to provide a better insight of these problems.
41. ECRI is also concerned that it may be difficult to effectively tackle discrimination in employment faced by non-citizens under the general French approach to the fight against discrimination. ECRI appreciates the French concern that racial discrimination threatens one of the fundamental principles on which the Republic is founded, namely the principle of equality of all citizens. However, ECRI emphasises that this approach should not result in less attention being

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<sup>9</sup> See *Criminal law provisions, above*.



devoted to racial discrimination faced by non-citizens in the labour market. For example, a considerable number of professions are currently not accessible to non-European Union citizens. However, at least for some of these professions, there are no grounds to justify limiting access exclusively to French or European Union citizens. ECRI therefore encourages the authorities in their efforts to undertake a review of all professions which are at present not accessible to non-European Union citizens in order to assess whether these limitations are justified and to remove any unjustified limitations. Furthermore, given reports of unequal financial treatment between French (or European Union) citizens and non-European Union citizens in certain professions, it is felt that attention should be devoted to this aspect as well.

## **P. Young people of immigrant background**

42. ECRI is particularly concerned over the situation of social exclusion of many young people of immigrant background, most of whom are French citizens. Employment, once again, is one of the fields in which exclusion of this part of the population of France is most evident. However, access to leisure, housing, education as well as relations with the police are also areas in which problems arise.
43. In a context of relatively widespread unemployment, young people of immigrant background are in a particularly precarious position facing multiple barriers. They suffer prejudices about young people in general, coupled with particular prejudices towards people of foreign origin. Further reinforcing these barriers is their lack of connections (notably, family connections) which can favour entry in the labour market. The unemployment rate for young men both of whose parents were born in Algeria, for example, is estimated to be almost four times higher than that of people of the same age but of French origin. This cannot be explained exclusively in terms of different performance in education, since, where qualifications are the same, the unemployment rate of the first category of people is still double the one concerning the second category.
44. As concerns access to leisure activities, there have been several disturbing reports of young people of immigrant background, notably of North-African origin, being denied access to night clubs. At the same time, as noted above, instances of separation of children of immigrant background from the other children occur in schools throughout France. Relations between young people of immigrant background and the police, notably in certain disadvantaged areas, are also often tense.
45. To address the problems of exclusion of this part of the French population, the Ministry of Interior established in March of 1999 the Departmental Commissions for Access to Citizenship (CODAC). These Commissions, established under the direct responsibility of the Prefect in each "*département*", are composed of representatives of the decentralised public services (including the police, decentralised employment services and housing institutions), local authorities, trade unions and local associations (including anti-racist associations). The main objective pursued with the establishment

of these Commissions is to help young people of immigrant background to find a place in society, to find employment and to improve their relations with the administration and employers as well as their access to housing and leisure activities. The representatives of the State as well as every individual can submit complaints of discriminatory practices to the CODAC. A permanent Secretariat ensures the reception of complaints by individuals, including non-nationals. Following the study of the complaints, these are submitted to the Commission, chaired by the Prefect, every three months and may subsequently be transmitted to the prosecuting authorities. Apart from receiving complaints, the functions carried out by the CODAC include: awareness-raising of employers, recruitment agencies and the general public as well as of members of the target groups themselves; evaluation of the incidence of discriminatory practices in all fields of life; dissemination of information about public employment and professional training opportunities; evaluation of the difficulties concerning recruitment of young people of immigrant background and formulation of proposals.

46. ECRI welcomes the establishment of the CODAC. It has been informed that the operation of these commissions has already resulted in a considerable number of complaints being lodged. In addition, these commissions have provided the forum for the launching of interesting local initiatives regarding, for example, recruitment in the police and access to night clubs. ECRI feels, however, that these commissions should be further publicised to facilitate their access by potential victims of discrimination and stresses the need for a thorough involvement of anti-racist associations.
47. ECRI also notes the existence of programmes of the Ministry of Employment and Solidarity aimed at helping young people at risk of exclusion. These include sponsorship programmes (*parrainage*) whereby volunteers accompany young people at risk of exclusion - either because of their level of education, provenance from marginal areas or backgrounds or due to racial and ethnic discrimination - in order to favour their entry and permanence in the labour market; over one third of the young people so sponsored are of immigrant background. Other programmes entailing periods of work and training as well as sessions of assessment of difficulties have recently been launched. ECRI welcomes these initiatives and calls for their strengthening following an accurate monitoring of their effectiveness. In particular, ECRI hopes that the additional disadvantage borne by people of immigrant background for reason of possible racial discrimination will be duly taken into account in the implementation of these programmes.

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