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## **The progress of the Assembly's monitoring procedure (September 2015-December 2016) and the periodic review of the honouring of obligations by Austria, the Czech Republic, Denmark, Finland, France and Germany**

### **Periodic review: France**

#### **Report<sup>1</sup>**

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe  
(Monitoring Committee)

Rapporteur: Mr Cezar Florin PREDA, Romania, Group of the European People's Party

#### *Summary*

All member States of the Council of Europe that are not under a monitoring procedure *sensu stricto*, or engaged in a post-monitoring dialogue, are the subject of a regular periodic review by the Monitoring Committee of the honouring of their membership obligations to the Council of Europe. In this report, the committee presents the periodic review on France. The committee concluded that France is globally fulfilling its membership obligations to the Council of Europe and, overall, its democratic institutions function in line with the standards of the Council of Europe. However, a number of concerns were raised, and recommendations made in that respect, that deserve the prompt attention of the authorities.

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1. See also Doc. 14213 [Part 1](#), [Part 2](#), [Part 3](#), [Part 4](#), [Part 5](#) and [Part 7](#).



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## Explanatory memorandum by Mr Cezar Florin Preda, rapporteur

### 1. Introduction

1. France is a founder member of the Council of Europe. It is a parliamentary republic with strong presidential powers. It comprises territory both in Europe (metropolitan France) and overseas (overseas regions and territories of Guadeloupe, Martinique, French Guiana, Réunion and Mayotte<sup>2</sup>). Metropolitan France has a population of 66 318 000 inhabitants.<sup>3</sup>

2. The official language of France is French.<sup>4</sup> The French Constitution recognises regional languages as part of the heritage of the country.<sup>5</sup> France has not ratified the European Charter for Regional and Minority Languages (ETS No. 148, “the Charter”), signed on 7 May 1999, despite the fact that the United Nations Educational, Scientific and Cultural Organization (UNESCO) has recorded 26 spoken languages in the country.<sup>6</sup> Ever since the Charter was signed by France, the issue of its ratification has raised controversy and generated heated debates in the political life of the country (see section 5.4 below).

3. The last presidential election in France was held in May 2012 with a remarkable turnout of 80.35%. The candidate of the Socialist Party (“Parti Socialiste”, hereinafter “PS”), François Hollande, obtained 51.64% of the votes and prevailed over his opponent Nicolas Sarkozy (Union for a Popular Movement, “Union pour un Mouvement Populaire”, hereinafter “UMP”) in the second round of voting, thus becoming the seventh President of the Fifth Republic and the first Socialist candidate to win a French presidential election since François Mitterrand’s re-election in 1988. Capitalising *inter alia* on the dissatisfaction generated by the socio-economic crisis that hit Europe and did not leave France unaffected, and on the unprecedented migratory movements of the last years followed by a growing anti-migrant sentiment of the French population, the candidate of the far-right party “National Front” (“Front National”, hereinafter “FN”), Marine Le Pen, obtained 17.90% of the total votes cast in the first round.<sup>7</sup> This record result, which beat the FN’s previous best in 2002 when Jean-Marie Le Pen won a place in the second round of the presidential election with 17% of votes, made international headlines.

4. The country’s latest legislative elections were also held in June 2012, with a turnout of 55.40% (second round). The PS won the majority of the seats (280) and control of the legislature. The UMP obtained 194 seats, the Greens (“Europe–Ecologie–Les Verts”) 17 and Radical Left (“*Radical de Gauche*”) 12 seats. The remainder of the seats were divided among smaller parties. The FN’s upward trend continued. The party captured 2 seats, a seemingly meagre result, but which signalled its first return to parliament since the mid-1980s.

5. The FN shook France and the whole of Europe at the European Parliament elections of May 2014, by coming out top with 24.86%, thus winning 23 of France’s 74 seats,<sup>8</sup> a stunning increase compared to the three seats they had won in 2009.<sup>9</sup> The UMP was pushed into second place, with 20.81% and 20 seats won, while the PS obtained 13.98% of the total votes cast and 13 seats, recording a historic low at a European election.

6. The last local/regional elections were held on 6 and 13 December 2015. These elections were the first to be held in the redrawn regions that came into effect on 1 January 2016 in accordance with the territorial reform that reduced the number of regions in metropolitan France from 22 to 13 (see section 4.3 below).<sup>10</sup> With a turnout of 58.53%, the Republicans (LR – successor of “UMP”) won 478 seats, the Socialists 339 seats and the FN 358 seats (of a total of 1 722 seats). These results clearly confirmed the trend of a rising popularity of the far-right FN.

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2. The territory of the French Republic also includes the following territories: New Caledonia, French Polynesia, Wallis and Futuna, French Southern and Antarctic Lands, scattered islands of the Indian Ocean and the local authority of St. Pierre and Miquelon. These territories are considered as outside national accounts and they are not part of the European Union ([www.insee.fr/fr/methodes/default.asp?page=definitions/france.htm](http://www.insee.fr/fr/methodes/default.asp?page=definitions/france.htm)).

3. Including Mayotte. [www.insee.fr/fr/themes/tableau.asp?ref\\_id=NATnon02145](http://www.insee.fr/fr/themes/tableau.asp?ref_id=NATnon02145).

4. Article 2 of the Constitution

5. Article 75.1 of the Constitution.

6. See UNESCO Atlas of the World’s Languages in Danger (available at: [www.unesco.org/languages-atlas/index.php](http://www.unesco.org/languages-atlas/index.php)).

7. Marine Le Pen took over from her father, Jean-Marie Le Pen, at the helm of the FN one year ahead of the presidential elections of 2012.

8. [www.europarl.europa.eu/elections2014-results/en/country-results-fr-2014.html](http://www.europarl.europa.eu/elections2014-results/en/country-results-fr-2014.html).

9. [www.europarl.europa.eu/elections2014-results/en/country-results-fr-2009.html](http://www.europarl.europa.eu/elections2014-results/en/country-results-fr-2009.html).

10. [www.gouvernement.fr/action/la-reforme-territoriale](http://www.gouvernement.fr/action/la-reforme-territoriale).

7. France's economy is the fifth largest in the world and represents around one fifth of the euro area gross domestic product (GDP), with over 70% of its GDP stemming from the services sector, but manufacturing remains an important contributor to the country's economy. The French economy endured "relatively well" the global economic crisis which kicked off following the United States banking collapse in 2008,<sup>11</sup> compared to its peers, but the country has been facing several economic challenges. Government tax revenue has shrunk, consumer purchasing power has declined, consumption has slowed down and unemployment, especially among young people, has skyrocketed.<sup>12</sup> French governments had to take unpopular measures to modernise the country's economy with a view to exiting the crisis, which affected political balances.<sup>13</sup>

8. In my report, I will not go back over France's achievements with regard to the construction of a State based on the rule of law, respect for fundamental freedoms, or the French democratic tradition, none of which now needs to be demonstrated. France provides a high degree of protection of human rights, a field in which it possesses comprehensive legislation and plays an important role on the international stage. The country is characterised by sound institutions with a democratic tradition and its system is truly based on the rule of law. This general remark runs through this entire report, the purpose of which is to address the major challenges facing France today.

9. As at 1 August 2016, France had ratified 178 Council of Europe treaties and signed 37 others without having ratified them. It ratified the Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210) on 1 August 2014. On 8 December 2015, it ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198) and, on 21 September 2016, the Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health (CETS No. 211). It signed the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 217) on 22 October 2015 and the Council of Europe Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events (CETS No. 218) on 3 July 2016.

10. This periodic report has been drawn up in application of [Resolution 2018 \(2014\)](#) and the explanatory note approved by the committee on 17 March 2015. It is based, *inter alia*, on the most recent conclusions of the Council of Europe's monitoring mechanisms, reports by the Parliamentary Assembly and the Council of Europe Commissioner for Human Rights and, where appropriate, reports produced by other international organisations and civil society.

11. I wish to thank the French delegation to the Parliamentary Assembly and the country's authorities for their active and constructive co-operation. I also thank them for the detailed information and many comments provided on a number of issues.

## 2. Background information

12. In 2015 and 2016, France suffered some of the worst terrorist attacks in the country's and Europe's history.

13. On 7 January 2015, a massacre at the offices of *Charlie Hebdo* in Paris – a satirical magazine, famous for its "risqué cartoons and daring takedowns of politicians, public figures and religious symbols of all faiths",<sup>14</sup> including cartoons satirising the Prophet Mohammed which outraged part of the Muslim world – was committed by two masked and heavily armed gunmen who shot dead 12 people, including its editor and four cartoonists. The *Charlie Hebdo* attack was claimed by a branch of Al-Qaeda in Yemen (AQAP).<sup>15</sup> On 8 January 2015, another gunman shot dead a policewoman in the Paris suburb of Montrouge, in an attack which later proved to be linked to the *Charlie Hebdo* massacre. One day later, the same gunman took hostages at a Kosher store in the Paris suburb of Porte de Vincennes. Four hostages lost their lives.<sup>16</sup>

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11. [www.oecd.org/eco/surveys/France-2015-overview.pdf](http://www.oecd.org/eco/surveys/France-2015-overview.pdf).

12. A record number of 3.26 million French people were unemployed in 2013, with youth unemployment being as high as 26.5%. Information retrieved at: [www.spiegel.de/international/europe/economic-decline-in-france-the-failed-leadership-of-hollande-a-903732.html](http://www.spiegel.de/international/europe/economic-decline-in-france-the-failed-leadership-of-hollande-a-903732.html).

13. President Sarkozy published belt-tightening budget proposals for 2012, which made his government deeply unpopular.

14. <http://edition.cnn.com/2015/01/07/europe/charlie-hebdo-controversy/index.html>.

15. <http://edition.cnn.com/2015/01/14/europe/charlie-hebdo-france-attacks/>; [www.theguardian.com/world/2015/may/07/yemen-al-qaeda-drove-strike-charlie-hebdo](http://www.theguardian.com/world/2015/may/07/yemen-al-qaeda-drove-strike-charlie-hebdo).

16. See the timeline of the January terrorist attacks at: <http://edition.cnn.com/2015/01/08/europe/charlie-hebdo-attack-timeline/>; [www.bbc.com/news/world-europe-30708237](http://www.bbc.com/news/world-europe-30708237).

14. On the night of 13 November 2015, seven co-ordinated terrorist attacks claimed by the terrorist group “Islamic State” (hereinafter “IS”) were perpetrated simultaneously in different parts of Paris. A first group of three suicide bombers blew themselves up outside the *Stade de France*, where a football match was taking place. A second group of masked and heavily armed gunmen opened fire on people dining in four restaurants and bars in the 10th and 11th districts (*arrondissements*) of Paris. A third group of terrorists invaded the Bataclan concert hall, where a rock concert was underway. The terrorists executed 90 people. The attacks left 130 dead and 368 wounded.

15. “IS” has urged that attacks be carried out in France by all possible means in the form of operations organised from abroad or action by individuals living in France. The response has been individual actions, unsuccessful attacks and terrorist attacks perpetrated in several French towns by various means, as described below in a non-exhaustive manner.

16. On 21 August 2015, an armed terrorist attack on the Thalys train between Amsterdam and Paris was thwarted by passengers. An attack was committed in Yvelines on 13 June 2016 and a police officer and his wife were killed. The Amaq news agency, which has links to “IS”/Daesh claimed responsibility for the double murder. Ten months after the Paris attacks, a new terrorist attack took place in Nice on 14 July 2016 and involved a lorry driving into a crowd on the Promenade des Anglais during celebrations to mark the French national holiday. It left 86 dead and 434 injured, many of them children. Responsibility was claimed by “IS”. On 26 July 2016, a new terrorist attack was perpetrated in a church in Saint-Étienne-du-Rouvray, near Rouen, during which Father Jacques Hamel was assassinated and a parishioner seriously injured. Responsibility was claimed the same day by “IS”.

17. After the co-ordinated attacks that struck Paris on 13 November 2015, a state of emergency was declared by means of Decree No. 2015-1475 of 14 November 2015 and pursuant to the Act of 3 April 1955. In view of the serious nature of the attacks, their simultaneous character and the continuing threat at a level hitherto unseen in the country, extensions were approved by Act No. 2016-162 of 19 February 2016 for a period of three months, followed by Act No. 2016-629 of 20 May 2016 for a period of two months. In response to the Nice attack, Act No. 2016-987 of 21 July 2016 extended the state of emergency by six months. This law modifies some of the measures provided for by the Act of 3 April 1955.<sup>17</sup>

18. A state of emergency has been proclaimed in France on six occasions: in 1955, 1958, 1961, 1984 and 2005.<sup>18</sup> A state of emergency having its basis in Act No 55-385 of 3 April 1955, as amended by Act No. 2015-1501 of 20 November 2015, is applicable either “when there is an imminent danger resulting from serious attacks on public order or when events by their very nature and seriousness are such as to cause a public disaster”. Declared by means of a decree issued by the Council of Ministers, it grants the civil authorities in the geographical area to which it applies exceptional law-enforcement powers relating to the regulation of the movement and residence of persons, the closure of places open to the public and the requisition of firearms. Where expressly provided, it can enable the administrative authorities to carry out administrative searches or impose house arrest. The extension of a state of emergency beyond 12 days can only be authorised by enacting a law.

19. The French authorities have provided detailed information on house arrest, searches and the Act of 20 November 2015,<sup>19</sup> pointing out that the latter Act has clarified the legal framework for measures that can be ordered. For example, the provisions on house arrest have been amended to provide for new measures (keeping the person under house arrest at a specific place for 12 hours, possibility of ordering the surrender of passports and identity documents, ordering the wearing of an electronic tagging device, etc.). In addition, the arrangements for conducting administrative searches have been clarified (protection of protected professions, informing the Public Prosecutor’s Office, presence of a criminal police officer, etc.). According to the authorities, the Act of 20 November 2015 also strengthened the procedures for monitoring the implementation of these measures: it systematically provides for judicial oversight by the administrative court and for parliamentary oversight. In this connection, it created in particular a specialised body within the Ministry of the Interior charged with responding within 48 hours to any request by MPs to provide precise and detailed answers to questions on any individual case. Moreover, the Ministry of the Interior issues every day in real time a detailed statement of the individual measures implemented. I will not set out these elements in detail in the report, since a new law has in the meantime come into force, on 21 July 2016, in response to a decision of

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17. Among the measures that could be taken under the state of emergency, administrative searches (Section 11(l) of the Act of 3 April 1955 on a state of emergency) will again be allowed during this six-month period. Their usefulness will be enhanced as they can be conducted under a reformed system, which will include the use of computer data after this has been authorised by a judge.

18. French authorities’ observations on the preliminary draft report.

19. Ibid.

the Constitutional Council, which strongly criticised some of the provisions of the 2015 law. In particular, this new law establishes new investigation methods and strengthens the monitoring procedures (see below). Human rights organisations<sup>20</sup> are worried about the reinforcement of the antiterrorist arsenal.

20. On 23 December 2015, the Council of Ministers adopted, upon a proposal by the Prime Minister, a draft constitutional law “on the protection of the nation” and submitted it to the National Assembly. The aim was to enshrine in the Constitution both the state of emergency and the withdrawal of citizenship for a person born French but also possessing another nationality if that person is convicted for a crime constituting a serious attack on the life of the nation. At the request of the Parliamentary Assembly,<sup>21</sup> the European Commission for Democracy through Law (Venice Commission) issued an opinion on 12 March 2016<sup>22</sup> in which it pointed out that the constitutional reform in France could be better regulated, noting in particular that “[a]ny decision on deprivation of nationality must respect the principles of fair trial and proportionality”. It welcomed the initiative to put the state of emergency on a constitutional footing, but recommended enshrining in the Constitution not only the possibility of declaring (and prolonging) a state of emergency but also the “formal, material and time limits which must govern such regimes”. The draft law that had been adopted at first reading, with amendments, by the National Assembly on 10 February 2016, as well as by the Senate, with amendments, on 22 March 2016, and which was the subject of heated political debate, was finally withdrawn on 30 March 2016.<sup>23</sup>

21. The Act of 21 July 2016 on extending the application of Act No. 55-385 of 3 April 1955 on a state of emergency and on strengthening counterterrorism measures<sup>24</sup> once again authorises the use of administrative searches, as provided for by section 11 of the 1955 Act. It permits the seizure and use of data contained in any computer system or any communication equipment present at the search location. This adaptation of the 1955 Act is a response to the Constitutional Council’s decision of 19 February 2016 severely criticising this provision owing to the lack of legal safeguards to ensure a balance between the protection of public order and the right to respect for private life. The law provides that if a search enables the existence of another location frequented by the person targeted to be revealed then, under the right of pursuit, the immediate conduct of an interlocutory search at that other location is permitted. The Act permits prefects to authorise, by a reasoned decision sent to the Public Prosecutor’s Office, for a period of 24 hours (renewable for as long as the state of emergency is in force) criminal police officers to carry out identity checks and bag searches at specific public places and searches of vehicles on the public highway. It authorises the National Prison Administration to implement “the processing of personal data relating to video-surveillance systems installed in detention cells in prisons”, the aim being to carry out checks by conducting video-surveillance of cells in which detainees have been placed in solitary confinement because their escape or suicide could have a significant impact on public order given the particular circumstances that have led to their imprisonment and the impact of those circumstances on public opinion. The Act also makes it easier to close places of worship where preachers incite hatred and violence. Furthermore, it permits gatherings of people on a public thoroughfare to be prohibited when security cannot be guaranteed.<sup>25</sup> When they presented the law to the National Assembly, the Prime Minister and the Minister of the Interior said that all the measures implemented in connection with the state of emergency would continue to be subject to dual supervision, by the administrative courts on the one hand and the parliament on the other.<sup>26</sup>

22. The Act of 21 July 2016 has been strongly criticised by human rights organisations,<sup>27</sup> in particular because it extends the already broadened powers of the police with regard to carrying out checks, searches and seizures and detaining suspects. It also tightens several terrorism-related provisions in statutory laws, the French Criminal Code and the Code of Internal Security, which will remain in force once the state of emergency is lifted.

23. On 16 September 2016, the Constitutional Council referred to the Council of State an application for a priority preliminary ruling on constitutionality (*question prioritaire de constitutionnalité*) concerning the system for conducting computer searches. The Constitutional Council is required to rule on the compliance with the

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20. [www.amnesty.fr/Nos-campagnes/Liberte-expression/Actualites/France-etat-urgence-perennise-arsenal-antiterroriste-modifie-quel-prix-18858?prehome=0](http://www.amnesty.fr/Nos-campagnes/Liberte-expression/Actualites/France-etat-urgence-perennise-arsenal-antiterroriste-modifie-quel-prix-18858?prehome=0).

21. Resolution 2090 (2016).

22. [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)006-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)006-e).

23. French authorities’ observations on the preliminary draft report.

24. [www.assemblee-nationale.fr/14/dossiers/loi\\_55-385\\_prorogation\\_application.asp](http://www.assemblee-nationale.fr/14/dossiers/loi_55-385_prorogation_application.asp).

25. [www.vie-publique.fr/actualite/panorama/texte-discussion/projet-loi-prorogeant-application-loi-no-55-385-du-3-avril-1955-relative-etat-urgence-3.html](http://www.vie-publique.fr/actualite/panorama/texte-discussion/projet-loi-prorogeant-application-loi-no-55-385-du-3-avril-1955-relative-etat-urgence-3.html).

26. [www.assemblee-nationale.fr/14/dossiers/loi\\_55-385\\_prorogation\\_application.asp](http://www.assemblee-nationale.fr/14/dossiers/loi_55-385_prorogation_application.asp).

27. <https://www.hrw.org/news/2016/07/22/france-prolonged-emergency-state-threatens-rights>.

Constitution of the arrangements for seizing computer data following an administrative search carried out during the state of emergency, as provided for by the Act of 21 July 2016. The Constitutional Council has three months to give its ruling.

24. On 24 November 2015, France informed the Secretary General of the Council of Europe that it intended to have recourse to the derogations permitted by Article 15 of the European Convention on Human Rights (ETS No. 5, “the Convention”). New information was provided on the new extensions to the state of emergency approved by the Act of 19 February 2016, the Act of 20 May 2016 and the Act of 21 July 2016.

25. While recognising that the protection of the population is rightly a priority concern, human rights organisations have warned about the consequences of the emergency powers attributed to the authorities, and of the potential further or indefinite extension of such powers.<sup>28</sup> The media have reported a rising number of incidents where the measures taken against individuals by virtue of the state of emergency raise serious doubts as to their proportionality.<sup>29</sup> France's Human Rights League stated that very few of the raids carried out under the current state of emergency since November have led to terrorism-related probes. Out of the 3 336 searches carried out under the state of emergency, only 28 have led to such probes, the bulk of them for “defending terrorism”.<sup>30</sup> According to human rights organisations, the emotion and fears justifiably aroused by the tragic attack in Nice on 14 July 2016 led to the passing of the Act of 21 July 2016, which, they say, weakens the rule of law without it being possible to demonstrate the effectiveness of the measures adopted.<sup>31</sup>

26. The French authorities stated in their observations<sup>32</sup> that, as at 1 June 2016, 57 individuals had been put under house arrest on the basis of section 6 of the Act of 3 April 1955 and 344 measures had been taken in the first period of the state of emergency and 70 in the second. Since the beginning of the state of emergency, 210 interlocutory applications had been made to the administrative courts against these house arrest orders. Only 16 had been suspended and 12 lifted by the courts following judicial proceedings. The authorities concluded that the oversight exercised by the administrative courts had been strict and that the administration had acted with discernment because it had been confirmed that the vast majority of the measures taken were justified.

27. The rapporteur refers to [Resolution 2090 \(2016\)](#) on combating international terrorism while protecting Council of Europe standards and values, in which the Parliamentary Assembly, while acknowledging the need for member States to have access to sufficient legal instruments to combat terrorism efficiently, pointed to the existence of a risk that “counterterrorism measures may introduce disproportionate restrictions or sap democratic control and thus violate fundamental freedoms and the rule of law, in the name of safeguarding State security”. The rapporteur reiterates that the Assembly has voiced its concerns about the declaration and extension of the state of emergency in France.

28. The rapporteur reiterates the Assembly's recommendations in this regard, especially the need to ensure, when adopting and implementing legislation or other administrative measures, that a fair balance is struck between defending freedom and security on the one hand and avoiding the violation of those very rights on the other. Moreover, it is essential to ensure that law-enforcement bodies do not abuse their powers or circumvent basic legal requirements and do not disproportionately restrict individual freedoms, bearing in mind that any administrative decisions taken in this context should always be subject to judicial review. Finally, it is important to ensure that a state of emergency is limited to the strict minimum in both time and space. The parliamentary oversight established in this connection is essential.

### 3. Institutional framework

29. The functioning of the French institutions is governed by the Constitution of 4 October 1958, which is largely based on the principles of the accountability of the government to the parliament, and the accountability of the President of the Republic to the people.<sup>33</sup>

28. <https://www.amnesty.org/en/latest/news/2015/11/france-emergency-measures-must-protect-public-without-trampling-human-rights/>.

29. [www.lefigaro.fr/flash-actu/2015/12/01/97001-20151201FILWWW00084-prolongation-de-l-etat-d-urgence-la-ldh-inquiete.php](http://www.lefigaro.fr/flash-actu/2015/12/01/97001-20151201FILWWW00084-prolongation-de-l-etat-d-urgence-la-ldh-inquiete.php); <http://delinquance.blog.lemonde.fr/2015/12/16/etat-durgence-malaise-apres-la-perquisition-dun-foyer-pour-femmes-en-difficulte/>; <http://delinquance.blog.lemonde.fr/2015/12/14/etat-durgence-quand-la-perquisition-pousse-au-vote-melenchon/>; <http://delinquance.blog.lemonde.fr/2015/12/11/etat-durgence-trois-semaines-dassignation-a-residence-pour-une-meprise/>.

30. <https://www.yahoo.com/news/french-senate-votes-extend-post-attacks-state-emergency-192053939.html?ref=gs>.

31. [www.amnesty.fr/Presse/Communiqués-de-presse/Etat-urgence-Amnesty-International-France-denonce-les-derives-un-regime-exception-18350](http://www.amnesty.fr/Presse/Communiqués-de-presse/Etat-urgence-Amnesty-International-France-denonce-les-derives-un-regime-exception-18350).

32. French authorities' observations on the preliminary draft report.

30. The President of the Republic is the Head of State. The President is elected for five years by direct universal suffrage.<sup>34</sup> Following the constitutional referendum of 24 September 2000, the presidential term of office was reduced from seven to five years (*quinquennat*). The aim of the *quinquennat* was to have the legislative election immediately succeed the presidential election, thus providing similar electoral results and reducing (although not completely eliminating) the risk of cohabitation.<sup>35</sup>

31. The President of the Republic appoints the Prime Minister and, upon proposal of the latter, the members of the government.<sup>36</sup> However, the President does not have the authority to revoke the Prime Minister and his government, but can only ask for their resignation given that, according to the Constitution, the government is not responsible to the Head of State.<sup>37</sup> This situation arose repeatedly under the 5th Republic.

32. As Head of State, the President chairs the Council of Ministers, promulgates laws and is the Chief of the Army.<sup>38</sup> He may dissolve the National Assembly<sup>39</sup> and, in case of emergency, exercise special powers vested in him by virtue of Article 16 of the Constitution.<sup>40</sup> As Head of Government, the Prime Minister directs its actions,<sup>41</sup> ensures implementation of laws and exercises regulatory power subject to the signature by the Head of State of ordinances and decrees which have been deliberated upon in the Council of Ministers. The nature of the relationship between the President and the Prime Minister, as well as the exact delimitation of their respective powers, depends on whether or not the country experiences a period of cohabitation. At times of cohesion between the presidential and parliamentary majorities, the Prime Minister in principle implements the essential political guidelines set out by the President, who, based on the legitimacy conferred on him by his election by direct universal suffrage, exercises powers over and above those granted by legislation. In a period of cohabitation, however, the President is reduced to exercising the only power conferred on him by the Constitution (an active role solely in the fields of defence and foreign policy) and the Prime Minister recovers all his prerogatives pertaining to his policy-setting role.

33. The parliament is bicameral and is made up of the National Assembly (*Assemblée nationale*, Lower House) and the Senate (*Sénat*, Upper House), which examine and pass laws, monitor the government, and assess public policies.<sup>42</sup> Members of the two Houses are elected through two different electoral systems. The 577 members of the National Assembly are elected by direct universal suffrage for a term of five years. The last election was held in June 2012. The Senate consists of 348 senators. It is elected by indirect universal suffrage for a term of six years (nine years until 2003), and is renewable by half every three years.<sup>43</sup> The last election was held in September 2011 in respect of half of the members of the Senate, and in September 2014 in respect of the other half. The Senate represents the local and regional authorities.

34. Bills are examined successively by the two assemblies of the parliament with a view to passing an identical text, in which case the bill becomes definitive. The procedure which leads to the definitive adoption of a bill consists in a to-and-fro movement between the two assemblies (hence the term “shuttle” (*navette*) is used to characterise it). Each assembly is called upon to examine, and possibly to modify, the bill adopted by the other. At each stage of the procedure, only the articles over which there exists divergence remain in discussion. The shuttle comes to an end when one of the two assemblies passes the bill without modification and with all its articles, as it has been previously passed by the other assembly.<sup>44</sup> Under Article 45 of the Constitution, in case of disagreement between the two assemblies, the prime minister, or the presidents of the two assemblies jointly if it concerns private member’s bills (*propositions de loi*), can refer the matter to a Joint Committee (*Commission Mixte Paritaire*), which is composed of seven National Assembly members and seven senators. The Joint Committee tries to reach a consensus, in the eventual absence of which the final word may be given by the government to the National Assembly.<sup>45</sup> This feature highlights the body’s

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33. [www.gouvernement.fr/en/how-government-works](http://www.gouvernement.fr/en/how-government-works).

34. Article 6 of the Constitution.

35. [www.vie-publique.fr/decouverte-institutions/institutions/veme-republique/transformations/quinquennat.html#rub\\_78](http://www.vie-publique.fr/decouverte-institutions/institutions/veme-republique/transformations/quinquennat.html#rub_78).

36. Article 8 of the Constitution.

37. [www.vie-publique.fr/decouverte-institutions/institutions/fonctionnement/president-republique/rerelations-institutions/quelles-sont-relations-du-president-republique-avec-gouvernement.html](http://www.vie-publique.fr/decouverte-institutions/institutions/fonctionnement/president-republique/rerelations-institutions/quelles-sont-relations-du-president-republique-avec-gouvernement.html).

38. Articles 9, 10 and 15 of the Constitution.

39. Article 12 of the Constitution.

40. [www.elysee.fr/la-presidence/les-institutions-de-la-cinquieme-republique/](http://www.elysee.fr/la-presidence/les-institutions-de-la-cinquieme-republique/).

41. Article 21 of the Constitution.

42. Article 24 of the Constitution.

43. [www.elysee.fr/la-presidence/les-institutions-de-la-cinquieme-republique/](http://www.elysee.fr/la-presidence/les-institutions-de-la-cinquieme-republique/).

44. [www.gouvernement.fr/en/other-key-bodies](http://www.gouvernement.fr/en/other-key-bodies).

predominant role in the legislative procedure. However, a large majority of laws are adopted by agreement between the National Assembly and the Senate at the end of the “shuttle”. Only a minority of laws are the subject of the “last word” procedure in the National Assembly.

35. Apart from the standard legislative procedure, Article 49.3 provides for the possibility to legislate by engaging the responsibility of the government. This constitutional provision stipulates that, after deliberating with the Council of the Ministers, “[t]he Prime Minister may engage the responsibility of the government before the National Assembly on the vote of a finance bill or a bill concerning the financing of social security. In this case, the bill is considered adopted unless a motion of no confidence, tabled within twenty-four hours, is carried ...”. In other words, this extraordinary legislative procedure overrides a scheduled vote in parliament, passing the bill as if it were adopted by the chamber in question. French governments have rarely invoked Article 49.3 of the Constitution.<sup>46</sup> They have usually chosen to have recourse to it in cases when bills of primary importance, touching upon issues considered as a cornerstone of their policies, or issues bringing about fundamental reforms were brought before the parliament. Invoking this provision thus bears a symbolic significance, as it is indicative of the importance the government places on a certain bill. It can also serve the practical purpose of avoiding a direct parliamentary vote in cases where the majority is feared to be slim. During the 2014-15 parliamentary session, the Prime Minister, Manuel Valls, had recourse to Article 49.3 three times for the adoption of the Act of 6 August 2015 aimed at improving economic growth, economic activity and equal economic opportunities (the so-called “Macron Act”). He had already engaged the government's responsibility for the adoption of the draft of the “Labour Act” (*loi travail*) on first reading. On 5 July 2016, the Prime Minister announced that he was engaging the government's responsibility before the National Assembly for the vote, upon a new reading, on the draft Act on work, the modernisation of social dialogue and improvements to the security of professional careers, the so-called “El Khomri Act”.<sup>47</sup>

## 4. Democracy

### 4.1. Parliamentary oversight over the executive

36. France is characterised by a “flexible separation of powers”.<sup>48</sup> The government is politically responsible before the parliament and can, in turn, dissolve the National Assembly. A “rationalised parliamentary regime” (*parlementarisme rationalisé*) was established by the 1958 Constitution, framing the powers of the parliament in favour of the government.<sup>49</sup> However, the constitutional reform of 2008 rebalanced the relationship between the parliament and the government in favour of the former.<sup>50</sup>

37. The parliamentary control over the executive is provided for in Article 24 and regulated in detail under Title V (Articles 34 to 51-2) of the Constitution. It is put into operation by: engagement of the responsibility of the government; information procedures; and investigation procedures.<sup>51</sup>

38. The government is accountable to the parliament under the conditions laid down in Article 49 of the Constitution. The government may itself engage its responsibility before the National Assembly by asking for a vote of confidence on its programme or by making a statement of general policy. The confidence of the National Assembly in the government may also be raised by means of a vote on a censure motion declared by one tenth and adopted by the absolute majority of the members of the Assembly. Article 49.3 specifically regulates the possibility to table a censure motion seeking to object to legislation being adopted without a vote (see above).<sup>52</sup>

45. [www.vie-publique.fr/decouverte-institutions/institutions/fonctionnement/parlement/loi/que-passe-t-il-cas-desaccord-entre-assemblee-nationale-senat-ou-avec-gouvernement.html](http://www.vie-publique.fr/decouverte-institutions/institutions/fonctionnement/parlement/loi/que-passe-t-il-cas-desaccord-entre-assemblee-nationale-senat-ou-avec-gouvernement.html). For this reason, recourse may not be sought to the Joint Committee in case the draft law belongs to the texts that require the Senate's consent.

46. Since 1958, the article has been invoked 84 times with regard to 50 bills. [www.gouvernement.fr/l-article-49-3-comment-ca-marche](http://www.gouvernement.fr/l-article-49-3-comment-ca-marche).

47. [www.vie-publique.fr/focus/cdp/recours-article-49-3-constitution.html](http://www.vie-publique.fr/focus/cdp/recours-article-49-3-constitution.html).

48. [http://cor.europa.eu/en/documentation/studies/Documents/division\\_of\\_powers/division\\_of\\_powers.pdf](http://cor.europa.eu/en/documentation/studies/Documents/division_of_powers/division_of_powers.pdf), p. 276.

49. [www.vie-publique.fr/decouverte-institutions/institutions/veme-republique/transformations/comment-caracteriser-regime-politique-ve-republique.html](http://www.vie-publique.fr/decouverte-institutions/institutions/veme-republique/transformations/comment-caracteriser-regime-politique-ve-republique.html).

50. [www.vie-publique.fr/decouverte-institutions/institutions/veme-republique/transformations/loi-constitutionnelle-du-23-juillet-2008-signe-t-elle-fin-du-parlementarisme-rationalise.html](http://www.vie-publique.fr/decouverte-institutions/institutions/veme-republique/transformations/loi-constitutionnelle-du-23-juillet-2008-signe-t-elle-fin-du-parlementarisme-rationalise.html).

51. [www.vie-publique.fr/decouverte-institutions/institutions/fonctionnement/parlement/controle-gouvernemental/quels-moyens-dispose-parlement-pour-controler-gouvernement.html](http://www.vie-publique.fr/decouverte-institutions/institutions/fonctionnement/parlement/controle-gouvernemental/quels-moyens-dispose-parlement-pour-controler-gouvernement.html).

52. Information retrieved from: [www.ipu.org/parline-e/reports/CtrlParlementaire/2113\\_F.htm](http://www.ipu.org/parline-e/reports/CtrlParlementaire/2113_F.htm), [www.gouvernement.fr/en/how-government-works](http://www.gouvernement.fr/en/how-government-works).

39. The National Assembly and the Senate are provided with the information needed to enable them to carry out their monitoring role over government policy through answers to oral and written questions raised by deputies and senators,<sup>53</sup> and through information reports the government periodically submits to the parliamentary assemblies. A significant aspect of the parliamentary monitoring over the executive consists in the setting up of standing committees (*commissions permanentes*), mandated to examine bills before being discussed in plenary, and to exercise control over particular sectors of governmental work.<sup>54</sup> The National Assembly currently comprises eight standing committees, the maximum number allowed by the Constitution,<sup>55</sup> and the Senate comprises seven. In particular, these committees assess finance and social security laws and generally monitor the implementation of legislation.<sup>56</sup> They have played an increasing role in the control of the executive following the 2008 constitutional reform.<sup>57</sup> The main tools they possess to access necessary information are hearings and fact-finding missions.

40. The investigative powers of the parliament are mainly exercised through the function of inquiry committees (*commissions d'enquête*), whose existence and mission are now laid down in Article 51.2 of the Constitution, following the 2008 constitutional reform. Each house of the parliament may set up an enquiry committee mandated to collect information on issues pertaining to the function of public services and national companies or to sensitive social issues. This means that two separate inquiry committees may well be simultaneously set up by the two houses to investigate the same issue; nevertheless, a period of one year must separate the establishment of two committees investigating the same facts in the same house. To respect the separation of powers, no investigation can be conducted on issues pertaining to cases that are pending before the national courts.<sup>58</sup>

41. Furthermore, standing committees are entitled to exercise investigative powers within the context of specific missions, the duration of which may not exceed six months. This possibility allows standing committees to enjoy the prerogatives of a parliamentary body vested with investigative powers without the heavy constraints inherent to the function of inquiry committees.<sup>59</sup> Finally, the Finance Committee and the Social Affairs Committee enjoy broad powers of investigation on performing control functions over budgetary issues and the financing of social security respectively.<sup>60</sup>

42. Parliamentary control over the executive in France has not always been adequate and effective in conformity with the requirements of democracy. Until the adoption of the Military Programming Act, promulgated on 18 December 2013, the Parliamentary Delegation on Intelligence (*Délégation parlementaire au renseignement*, DPR), set up to facilitate parliamentary access to information on the activity of the intelligence services, was not mandated to exercise oversight over these services, its mission having been to “follow the overall activity and the means of specialised services”. In December 2013, the entry into force of Act No. 2013-1168 of 18 December 2104 on military programming for the years 2014 to 2019 and containing various provisions on defence and national security<sup>61</sup> brought about profound changes in the nature of the DPR, which saw its powers expand considerably since it is now mandated to exercise “parliamentary scrutiny over government action on intelligence matters”,<sup>62</sup> and to evaluate State policy in this area. The DPR has broad powers through the use of meetings, hearings, sight of documents (its members have “defence secrecy” authorisation) and the experience it has gained through its oversight activities. For example, after the 13 November 2015 attacks it interviewed, together, the Director General of External Security and the Director General of Internal Security.<sup>63</sup> According to the DPR’s sixth annual report, for 2014, the first to be published after promulgation of the 2013 Act, “France finally has the legal means to establish a real control over the activity of the government in the field of intelligence”.<sup>64</sup>

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53. *Ibid*, [www.senat.fr/role/fiche/controle\\_gouvernement.html](http://www.senat.fr/role/fiche/controle_gouvernement.html).

54. [www.vie-publique.fr/decouverte-institutions/institutions/fonctionnement/parlement/assemblee-nationale-senat/qu-est-ce-qu-commission-parlementaire.html](http://www.vie-publique.fr/decouverte-institutions/institutions/fonctionnement/parlement/assemblee-nationale-senat/qu-est-ce-qu-commission-parlementaire.html).

55. [www.assemblee-nationale.fr/13/commissions/commissions-index.asp](http://www.assemblee-nationale.fr/13/commissions/commissions-index.asp).

56. [www.vie-publique.fr/decouverte-institutions/institutions/fonctionnement/parlement/assemblee-nationale-senat/qu-est-ce-qu-commission-parlementaire.html](http://www.vie-publique.fr/decouverte-institutions/institutions/fonctionnement/parlement/assemblee-nationale-senat/qu-est-ce-qu-commission-parlementaire.html).

57. [www2.assemblee-nationale.fr/decouvrir-l-assemblee/role-et-pouvoirs-de-l-assemblee-nationale/les-fonctions-de-l-assemblee-nationale/les-fonctions-de-contrôle-et-l-information-des-deputés/le-role-des-commissions-permanentes-en-matière-de-contrôle-du-gouvernement](http://www2.assemblee-nationale.fr/decouvrir-l-assemblee/role-et-pouvoirs-de-l-assemblee-nationale/les-fonctions-de-l-assemblee-nationale/les-fonctions-de-contrôle-et-l-information-des-deputés/le-role-des-commissions-permanentes-en-matière-de-contrôle-du-gouvernement).

58. Information retrieved from: [www.vie-publique.fr/decouverte-institutions/institutions/fonctionnement/parlement/assemblee-nationale-senat/qu-est-ce-qu-commission-enquete-parlementaire.html](http://www.vie-publique.fr/decouverte-institutions/institutions/fonctionnement/parlement/assemblee-nationale-senat/qu-est-ce-qu-commission-enquete-parlementaire.html).

59. [www.senat.fr/role/fiche/controle\\_gouvernement.html](http://www.senat.fr/role/fiche/controle_gouvernement.html).

60. *Ibid*.

61. [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028338825&categorieLien=id](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028338825&categorieLien=id).

62. *Ibid.*, Article 12.

63. French authorities’ observations on the preliminary draft report.

64. [www.assemblee-nationale.fr/14/pdf/rap-off/i2482.pdf](http://www.assemblee-nationale.fr/14/pdf/rap-off/i2482.pdf), p. 13.

## 4.2. Elections

43. The Constitution reserves the right to vote only to French citizens.<sup>65</sup> Nevertheless, EU citizens residing in France may vote in local municipal elections and for the French lists for the European Parliament.<sup>66</sup> According to research published in the end of 2014, the majority of the French people are opposed to the extension of the right to vote in municipal elections to all foreigners.<sup>67</sup>

44. French nationality can be acquired by birth, marriage or naturalisation. *Ius sanguinis* and *ius solis* co-exist, although the latter was recently called into question by members of the opposition. A child born to French parents acquires the French nationality *ipso jure*. A child born in France to foreign parents acquires French nationality upon coming of age as long as he/she possesses a birth certificate in France, resides in France and has lived in France for at least five years since the age of eleven. France also recognises the double *ius soli*. This means that a child born in France to foreign parents who were also born in France acquires French nationality upon birth. This is also the case for a child born in France to unknown or stateless parents or to parents whose nationality cannot be transmitted.<sup>68</sup> Marriage to a French citizen has no automatic effect. Foreigners can acquire French nationality after four years of marriage to a French citizen as long as they are still married to each other, the spouse retains his/her French nationality, and the person in question shows proof of good knowledge of the French language. Finally, French nationality by naturalisation can be granted to foreigners who can prove that they have been residing in France for five consecutive years before lodging the relevant application, and that they have sufficiently integrated into French society.<sup>69</sup>

45. The Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) deployed an Election Assessment Mission for the parliamentary elections of 2012. In their report,<sup>70</sup> they concluded that “the legal framework provides a sound basis for the conduct of democratic elections, although some of its elements are not fully compatible with OSCE commitments and other international standards”. In particular, the report notes that “consideration should be given to abolishing proxy voting and to exploring alternative voting methods for those unable to vote in their precinct on election day”. An important point was the introduction of internet voting, which was available for the first time to French citizens living abroad, in addition to voting by post and at consulates, although several aspects of the procedure are not set out in sufficient detail in the legislation.

## 4.3. Local democracy

46. The rapporteur notes that significant progress has been achieved over the years with regard to the decentralisation process in France. In addition, France has made efforts with regard to co-operation between local and regional authorities (especially transfrontier co-operation), and those authorities have been granted more financial autonomy, even though there continues to be an imbalance between them. The rapporteur nonetheless sets out below some of his concerns about the recent territorial reform process.

47. France is a unitary State organised on a decentralised basis. Nevertheless, local government in France has a long history of centralisation. Until the establishment of regions (*régions*), France used to be a highly centralised country, with two tiers of local government: the departments (*départements*) and the municipalities (*communes*). The decentralisation process was initiated by virtue of the Deferre Acts of 1982 and 1983, which marked the State’s desire to alter the balance of power between the State and local authorities. The decentralisation laws abolished the State’s supervisory powers over the local authorities’ activities. The regions were turned into territorial authorities run by directly elected assemblies. Decentralisation was further developed by virtue of the 2003 constitutional reform by which the status of the regions was constitutionally recognised and local authorities became financially autonomous.

48. Until the end of 2015, there were three sub-levels of local governance in France: the regions (*régions*), the departments (*départements*) and the municipalities (*communes*). These entities had no legislative powers. There were 27 French regions, including the Island of Corsica; 22 of them were located in metropolitan France, whereas the other five constituted the “French overseas departments and territories” (*départements et territoires d’outre-mer*, colloquially referred to as the “DOM-TOM”). There were also 101 departments and

65. Article 3 of the Constitution.

66. [www.vie-publique.fr/decouverte-institutions/citoyen/participation/voter/droit-vote/quelles-sont-conditions-pour-voter.html](http://www.vie-publique.fr/decouverte-institutions/citoyen/participation/voter/droit-vote/quelles-sont-conditions-pour-voter.html), <https://www.service-public.fr/particuliers/vosdroits/F1937>.

67. [www.lexpress.fr/actualite/politique/les-francais-majoritairement-opposes-au-droit-de-vote-des-etrangers\\_1632185.html](http://www.lexpress.fr/actualite/politique/les-francais-majoritairement-opposes-au-droit-de-vote-des-etrangers_1632185.html).

68. <https://www.service-public.fr/particuliers/vosdroits/F3084>.

69. [www.diplomatie.gouv.fr/fr/services-aux-citoyens/etat-civil-et-nationalite-francaise/nationalite-francaise/](http://www.diplomatie.gouv.fr/fr/services-aux-citoyens/etat-civil-et-nationalite-francaise/nationalite-francaise/).

70. [www.osce.org/odihr/elections/93621?download=true](http://www.osce.org/odihr/elections/93621?download=true).

36 744 municipalities in France. The principle of freedom of administration by local authorities, explicitly enshrined in the Constitution, was completed by the principle of financial autonomy of the local, intermediate and regional authorities, which had general competence for the exercise of their functions. As a result, shared competences were the rule. There was no hierarchy between regional, intermediate and local government.

49. Over the years, in view of the new challenges with regard to transparency, layering and democracy, successive governments initiated territorial reforms and decentralisation processes, aimed at rationalising the system. Despite the existing consensus amongst all the stakeholders that the system was inefficient and costly, no agreement could be reached on how the multilayered French local and regional governance should be changed.

50. A major reform of local authorities was initiated by President Hollande, which fundamentally transformed the territorial architecture in France. A first phase of the reform was launched in January 2014 with a law on modernising territorial public action and on the strengthening of metropolitan cities. A law “on new regional boundaries, regional and departmental elections and modifying the electoral calendar” was subsequently adopted in January 2015, which, *inter alia*, reduced the number of regions in mainland France from 22 to 13. The number of municipalities in France decreased on 1 January 2016 in application of Act No. 2015-292 of 16 March 2015 on improving the system of “new municipalities” for strong and vibrant local authorities. On 1 January 2016, 1 090 municipalities merged to form 317 new ones. France, therefore, now has 35 885 municipalities.<sup>71</sup>

51. The issue of the regional boundaries was very controversial and was further aggravated by the government’s decision to follow an accelerated procedure, such as that provided for by Article 45 of the Constitution, to steer the law on the “delimitation of the regions, regional and departmental elections and modifying the electoral calendar” through the upper and lower houses. A Joint Committee was convened due to the absence of a common solution between the two chambers. The National Assembly adopted the text in 17 December 2015 after the Joint Committee had failed to reach agreement.

52. The Act was referred to the Constitutional Council and the Council of State on the basis of Article 5 of the European Charter of Local Self-Government (ETS No. 122), especially owing to the lack of prior consultation of the authorities concerned. Both applications were rejected.<sup>72</sup>

53. In some regions, the territorial reform met with severe opposition at the level of citizens and their associations locally, as many of the merged neighbouring regions have distinct identities and cultural traditions. The opponents of the reform reproached the process for lacking true and concrete democracy, asserting that the government constantly refused to give the population the chance to express their will, refusing the idea and the organisation of local referendums or popular consultations.<sup>73</sup> The opposite examples of Brittany and Alsace can be mentioned in this context. It was decided that Brittany would not be reunited with the department of Loire-Atlantique and its historical capital, Nantes, despite 80% of the Bretons being clearly in favour of such reunification. On the other hand, more than 90% of the Alsatians wished to maintain their political and administrative autonomy and were against the prospect of reuniting with two big neighbouring regions, which reconfigured the area into a huge and artificial region.<sup>74</sup> Following the adoption of the law on regional boundaries in January 2015, heated discussions intensified throughout the year due to the hasty adoption process.

54. On 22 March 2016, the Council of Europe Congress of Local and Regional Authorities adopted a recommendation on the state of local and regional democracy in France. It noted the progress made on the question of the country’s decentralisation process, especially as regards co-operation between local and regional authorities and transfrontier co-operation. It also welcomed the greater autonomy of these authorities as a result of having a growing proportion of their own resources in their budget.

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71. French authorities’ observations on the preliminary draft report.

72. Constitutional Council, decision No. 2014-709 of 15 January 2015; Council of State, judgment of 27 October 2015, *M. H... and others*, Applications Nos. 393026, 393488, 393622, 393659 and 393724.

73. <https://www.opendemocracy.net/can-europe-make-it/hugo-tran/french-territorial-reform-huge-blow-for-democracy-and-regional-identiti>.

74. According to Open Democracy: “Behind the official preoccupation of ‘optimising’ the French territorial entities”, is hidden an unofficial but very strong and motivated aim: prevention of the rise of national minorities and their rightful claims, potentially very disturbing for the central State. Indeed, regarding the recent events in Scotland and Catalonia, the French State, traditionally opposed to national minorities, has grown wary of them. Hidden as a “territorial reform”, the French Government has seized the opportunity and done everything to weaken or erase the regional identities which make up France. In particular, concerning the two most “dangerous” regions, strongly and historically opposed to the spirit of centralisation: Alsace and Brittany.

55. However, in its recommendation, the Congress expressed its concern in particular regarding the procedures employed for passing Act No. 2015-29 of 16 January 2015 on regional boundaries, regional and departmental elections and changes to the election timetable, in that there was no effective prior consultation of the regions. It asked the authorities to review the process of consulting the directly elected representatives of the local and regional authorities on all decisions concerning them, especially those relating to territorial boundaries.

56. It also recommended that France review its equalisation system to render it more equitable, transfer responsibility for deciding local tax rates back to the local level and clarify the sources of local authorities' financial resources. Lastly, the report calls on the French authorities to clarify the division of responsibilities between the different tiers of local government to avoid overlaps and continue to increase the proportion of their own resources in local authorities' budgets.

57. On this last point, the French authorities justify the abolition of the general-competence clause under the Act on the new territorial organisation of the Republic ("NOTRe" Act) by referring to the need to clarify the powers and identify the responsibilities of each tier of local and regional government. According to the authorities, this clause was not conducive to the effective distribution of public measures. They mention the appeals lodged, in particular, by the Association of French Departments and currently pending before the administrative courts against the French Government's instructions of 22 December 2015. These instructions concern, on the one hand, the impact of the abolition, in application of the "NOTRe" Act, of the clause on the general competence of the *départements* and regions in connection with the exercise of the powers of the territorial authorities and, on the other hand, the new division of powers, resulting from the application of the "NOTRe" Act, with respect to the economic activities of the territorial authorities and their consortia.

58. While acknowledging the progress made in the area of local democracy in France in the last few years, the rapporteur calls on the authorities to take all necessary steps to implement the Congress's recommendations.

## 5. Human rights and fundamental freedoms

59. The European Court of Human Rights dealt with 1 189 applications concerning France in 2015, of which 1 156 were declared inadmissible or struck out. It delivered 33 judgments, in 17 of which it found at least one violation of the European Convention on Human Rights.<sup>75</sup>

### **5.1. Freedom of expression, freedom of the media, access to information and protection of privacy**

60. Freedom of expression is a fundamental right of constitutional value enshrined in Article 11 of the 1789 [Declaration of the Rights of Man and of the Citizen](#). A necessary foundation of this freedom is freedom of the press, which is guaranteed by the Act of 29 July 1881 and the Act of 4 January 2010 on the protection of the secrecy of journalists' sources.<sup>76</sup> According to the French authorities, their country's legal framework enables effective action to be taken against the various manifestations of racism and intolerance while guaranteeing freedom of expression.

61. While it may be considered that the media operate freely and represent a broad range of political opinions in France, the events in 2015 had a considerable impact on press freedom. In the last few years, the relationship between freedom of expression and prohibited intolerant discourse generates heated debates. The recent terror attacks and the need to effectively tackle potential new threats to the safety and security of French citizens have reignited the debate over the dividing line between freedom of expression and protection of human rights. In the context of this debate, numerous voices were raised to criticise the new measures as overly restrictive of freedom of expression.

62. The legislative framework supports an open press environment in France. French media are generally free to express a wide variety of views without restrictions. They are subject to the same anti-defamation laws that limit freedom of speech,<sup>77</sup> and restrictions on freedom of information are in place to protect the reputation or rights of a third party.<sup>78</sup> In 2005, Albert Grimaldi, reigning prince of Monaco, brought proceedings against the French magazine *Paris Match* and its editor for having published an interview with a woman who claimed

75. [www.echr.coe.int/Documents/CP\\_France\\_ENG.pdf](http://www.echr.coe.int/Documents/CP_France_ENG.pdf).

76. French authorities' observations on the preliminary draft report.

77. [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper).

78. <https://freedomhouse.org/report/freedom-press/2014/france>.

that Prince Albert was the father of her son. The national courts found that the article and accompanying photos concerned the sphere of Prince Albert's private life and ordered that the publishing company pay compensation for non-pecuniary damages. In its Grand Chamber judgment in the case of *Couderc and Hachette Filipacchi Associés v. France* of 10 November 2015,<sup>79</sup> the European Court of Human Rights ("the Court") unanimously held that Article 10 of the European Convention on Human Rights safeguarding freedom of expression had been violated. The Court found in particular that the domestic courts had not given due consideration to the criteria for balancing the right to respect for private life and the right to freedom of expression as laid down by its case law, and had failed to take into account that the essential element of the information contained in the article went beyond the private sphere, due to the hereditary nature of the Prince's functions as the Monegasque Head of State.

63. The tightening of the provisions on combating the dissemination of messages on the internet in support of and defending terrorism is based on the Act of 13 November 2014 on scaling up counterterrorism provisions. The procedure for blocking and taking down websites is the subject of an action before the administrative courts. The above-mentioned Act of 13 November 2014 – fleshed out by two implementing decrees No. 2015-125 of 5 February 2015 – enables the Ministry of the Interior to request publishers or hosters to withdraw content that incites or defends the commission of terrorist acts. If this content is not withdrawn within 24 hours, internet access providers are compelled by the Ministry of the Interior to prevent access to these addresses without delay. The blocking measure is carried out under the supervision of the National Commission for Information Technology and Freedoms (CNIL), which checks the legality of these applications and can if necessary recommend to the administrative authorities that they put an end to a measure or refer the matter to the administrative courts if the authority fails to comply.

64. Inciting and defending terrorism have been punishable under French law since the entry into force of the Act of 9 September 1986, which complemented section 24 of the Freedom of the Press Act of 1881. The Act of 13 November 2014 provides that the offences of inciting and defending terrorism are aggravated when committed on the internet. It removes them from the 1881 Act and inserts them into the Criminal Code, thus opening up the possibility of seizing content or initiating the procedure for issuing an immediate summons.

65. According to Amnesty International, the new law singles out these offences by removing their generic character, allowing prosecutions to be fast-tracked by the authorities and rushed through the courts for immediate sentencing.<sup>80</sup> In its 2015-2016 annual report,<sup>81</sup> it states that 87 websites were blocked between January and November and that about 700 individuals were prosecuted for defending terrorism on the basis of the 2014 counterterrorism law. According to Amnesty International, in view of the very vague definition of this offence, the authorities have often prosecuted people for statements that did not constitute incitement to violence and fell within the scope of the legitimate exercise of freedom of expression. According to human rights organisations, internet freedom suffered in 2015 and 2016 from the consequences of the terrorist attacks.<sup>82</sup> This development raises a number of questions with regard to the limits to free speech.

66. At the same time, new mass surveillance legislation, adopted in the wake of the January 2015 attacks, increased the surveillance powers of the relevant French authorities, attracting criticism from international human rights bodies, human rights groups, lawyers, parliamentarians and the international media. For their part, the French authorities<sup>83</sup> consider that this law has, for the first time, defined a genuine public intelligence policy and has given it a clear legal framework that protects not only those working for these services but also all citizens. The authorities argue – and provide detailed explanations to back up their claim – that Act No. 2015-912 of 24 July 2015 on intelligence-gathering provides for increased oversight through the intervention of the National Commission for the Supervision of Intelligence Techniques, which issues a prior opinion on an intelligence technique (except in a case of absolute emergency), can refer a matter to the Council of State (the judicial body with jurisdiction for intelligence-related litigation) and receive applications from anyone wishing to verify that no intelligence technique targeting them is being unlawfully carried out. Although the Constitutional Council<sup>84</sup> has ruled that the key provisions of this law comply with the Constitution, it has criticised the provisions on international surveillance, considering that the legislature did not make full use of its powers since it referred the enactment of certain rules governing this technique to the regulatory

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79. [http://hudoc.echr.coe.int/eng?i=001-158861#"itemid":\["001-158861"\]](http://hudoc.echr.coe.int/eng?i=001-158861#).

80. <https://www.amnesty.org/en/latest/news/2015/01/france-faces-litmus-test-freedom-expression-dozens-arrested-wake-attacks/>.

81. <https://www.amnesty.org/fr/countries/europe-and-central-asia/france/report-france/>.

82. [www.europe1.fr/international/la-liberte-sur-internet-recule-encore-la-france-epinglee-2537821](http://www.europe1.fr/international/la-liberte-sur-internet-recule-encore-la-france-epinglee-2537821).

83. French authorities' observations on the preliminary draft report.

84. [www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2015/2015-722-dc/decision-n-2015-722-dc-du-26-novembre-2015.146546.html](http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2015/2015-722-dc/decision-n-2015-722-dc-du-26-novembre-2015.146546.html).

authorities. Act No. 2015-1556 of 30 November 2015 is a response to this criticism by the Constitutional Council, as it sets out a strict legal framework for international surveillance. The authorities also emphasise the importance of parliamentary oversight.

67. The adoption of this law generated significant controversy. In its concluding observations on the fifth periodic report of France of August 2015,<sup>85</sup> the United Nations Human Rights Committee expressed concerns about the powers granted to the intelligence services for digital surveillance both within and outside France. It was particularly concerned about the fact that the law on intelligence gives the intelligence agencies excessively broad, highly intrusive surveillance powers on the basis of broad and insufficiently defined objectives, without the prior authorisation of a judge and without an adequate and independent oversight mechanism. The committee recommended that measures be taken to guarantee that any interference in a person's private life be in conformity with the principles of legality, proportionality and necessity. It should also ensure the effectiveness and independence of a monitoring system for surveillance activities, in particular by making provision for the judiciary to take part in the authorisation and monitoring of surveillance measures.

68. The Parliamentary Assembly, in its [Resolution 2045 \(2015\)](#) on mass surveillance, stated that mass surveillance practices “endanger fundamental human rights” and called for better judicial and parliamentary control of intelligence services, and for the collection and analysis of personal data (including metadata) without consent to be allowed only following “a court order granted on the basis of reasonable suspicion of the target being involved in criminal activities”.

69. On 26 June 2013, a motion for a resolution on “Serious setbacks in the fields of human rights and the rule of law in France” was tabled.<sup>86</sup> In this motion, the authors asserted that the excess of authority and violence perpetrated by the law-enforcement agencies during the demonstrations against the passing of the Taubira law, and in particular the alleged abuse of police custody, as well as the alleged compulsory teaching of gender theory from the age of six, violated the European Convention on Human Rights and the country's obligations to the Council of Europe in the fields of human rights and the rule of law. The authors therefore requested that the Parliamentary Assembly open a monitoring procedure in respect of France, in line with Article 2.iii of the terms of reference of the Monitoring Committee. On 3 September 2015, the Monitoring Committee adopted an opinion in which it concluded that the use of police custody in general did not violate the strict legal framework that governs police custody in France, although it expressed its concern about the abuse of identity checks by the law-enforcement agencies as a means of crowd control during demonstrations, in clear violation of the legal provisions governing such checks. Moreover, although the committee found that there were sufficient indications that, in the tense context of the “*Manif pour Tous*” demonstrations, a number of police officers acted in a manner that may have exceeded their authority or was disproportionate in relation to the situation on the ground, these shortcomings in police behaviour were not of a structural and systemic nature. It therefore recommended that a monitoring procedure not be opened in respect of France, a position that was confirmed by the Bureau of the Assembly.

## **5.2. Prison overcrowding and conditions of detention**

70. On 1 January 2016, the total prison population represented 66 678 persons, which marks an increase of 0.6% since January 2015 (66 270). There is a surplus of 12 964 prisoners exceeding the capacity of penal institutions (compared to 9 280 in 2010). The occupancy level reaches 115%.

71. France has been condemned by the Council of Europe, non-governmental organisations and human rights watchdogs for the condition of its prisons. The European Court of Human Rights has repeatedly found violations of the European Convention on Human Rights by France for its conditions of detention; and yet the penitentiary system remains far below minimum standards imposed by its jurisprudence.

72. In the judgment [Canali v. France](#),<sup>87</sup> the Court considered that the cumulative effect of the cramped detention conditions amounted to degrading treatment, leading to a violation of Article 3 of the Convention. This judgment follows a number of previous violation judgments against France. This time, the Court notably focused its decision on the “cramped conditions” that are very closely linked to the issue of overcrowding.

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85. United Nations Human Rights Committee, [Concluding observations](#) on the fifth periodic report of France, August 2015.

86. [Doc. 13255](#).

87. Application No. 40119/09, judgment of 25 April 2013.

73. The authorities have informed the rapporteur that conditions of detention are a priority and have provided information on the measures taken,<sup>88</sup> namely an extension to and the renovation of the building stock, the use of alternatives to imprisonment and the rehabilitation of convicted persons. In particular, the intention of the Act of 15 August 2014 on the personalisation of sentences and increasing the effectiveness of criminal penalties was to avoid imprisonment as far as possible and promote rehabilitation.

74. In February 2015,<sup>89</sup> in the case of *Helhal v. France*, the Court found that, although the severely disabled prisoner's continuing detention did not in itself constitute inhuman or degrading treatment, the non-existent or inadequate treatment and the need for him to be assisted by a fellow inmate in order to take a shower had subjected him to a level of suffering exceeding that inherent in detention, and therefore amounted to a violation of Article 3 of the Convention.

75. The authorities state<sup>90</sup> that 2% or 3% of cells in the new facilities built from 2005 onwards are equipped for people with reduced mobility.

76. Numerous cases on conditions of detention have been sent before the Council of State. For example, in July 2015, the Council of State<sup>91</sup> instructed the prison service to take measures in Nîmes prison with regard to its security system, hygiene conditions, and the material installation of inmates for the night in view of the overcrowding. The Council of State noted that the prisons need to accommodate more inmates in cells than capacity allows. This had led to difficulties, especially at night, due to the lack of space, which exposed the inmates to inhuman or degrading treatment. The Council of State acknowledged the gravity of the situation. However, the Council of State considered that the prison administration itself does not have control over committals to prison – which are under the responsibility of the judiciary – and therefore limited itself to calling on the penitentiary authorities to take the necessary measures to improve the situation, pending a sustainable solution. However, it is not clear how this will resolve the problem of overcrowding without explicitly requiring the increase of prison capacity.

77. In the context of the growing threat of radicalisation in France, prisons clearly appear as a potent breeding ground for the proliferation of extremist views, in addition to the sophisticated recruitment techniques on social media platforms. The spread of extreme Islamist ideologies and radicalisation in French prisons are a concern for the French Government. The General Inspector of places of deprivation of liberty (*Contrôleur général des lieux de privation de liberté*) issued an opinion<sup>92</sup> on radicalisation of prisons in which she raised questions with regard to a government initiative aimed at isolating radical Islamist inmates in order to prevent recruitment among prisoners. She underlined that overcrowding is an important factor in prison radicalisation.

78. As far as combating violent radicalisation is concerned, the French authorities have informed the rapporteur<sup>93</sup> that five dedicated units have been established under the counterterrorism plan announced by the Prime Minister on 21 January 2015. These units are operational at the Fleury-Mérogis, Osny and Annœullin prisons. According to the authorities, they provide an appropriate regime for radicalised detainees or inmates on the path to violent radicalisation, but they have been criticised by civil society,<sup>94</sup> which disputes their effectiveness and their justification as a solution to the problem of radicalisation.

79. The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out its twelfth visit to France in November 2015.<sup>95</sup> During the visit, the delegation paid particular attention to the conditions of deprivation of liberty in three remand prisons affected by overcrowding and to the regime of certain categories of convicted prisoners in different establishments, including in a unit holding "radicalised" prisoners. In addition, the delegation carried out a detailed analysis of the situation of involuntary patients in psychiatric establishments. Twelve establishments of the police and gendarmerie were also visited, notably with a view to examining the material conditions provided there for persons deprived of their liberty. The CPT's conclusions have not yet been made public.

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88. French authorities' observations on the preliminary draft report.

89. Application No. 10401/12, judgment of 19 February 2015.

90. French authorities' observations on the preliminary draft report.

91. Council of State, *interim order* 30 July 2015, French section of the International Prisons Observatory and Bar Association of Nîmes.

92. *Contrôleur général des lieux de privation de liberté*, *Opinion* of 30 June 2015 on Islamic radicalisation in prisons.

93. French authorities' observations on the preliminary draft report.

94. [www.ojp.org/images/stories/DD/radicalisation.pdf](http://www.ojp.org/images/stories/DD/radicalisation.pdf).

95. CPT Press release of 1 December 2015.

80. The rapporteur wishes to voice serious concerns regarding the scourge of prison overcrowding, which is not getting any better in France. The authorities need to take action to remedy this situation and must do everything possible to improve conditions of detention. It is essential that all steps be taken to implement the CPT's recommendations without delay.

### 5.3. Intolerance and racism, discrimination and hate speech

81. France is particularly attached to the principle of equality, "which holds a central place in its legal order".<sup>96</sup> In its most recent report, in 2015,<sup>97</sup> the European Commission against Racism and Intolerance (ECRI) considered that France had dealt resolutely with the issue of combating racism and intolerance and welcomed a number of measures taken by the country in the last few years. The authorities have an elaborate legal and institutional framework in their arsenal to combat racism and discrimination. This framework is deemed to be "solid". Reports published in recent years by international bodies and institutions<sup>98</sup> reveal the serious and systemic nature of discrimination and intolerance in France, which is further exacerbated by the adverse economic conditions of recent years, the significant migratory influxes and the recent terror attacks.

82. France has a legal framework that protects equal rights and imposes penalties for demonstrations of racism and intolerance. The Pleven<sup>99</sup> and Gayssot<sup>100</sup> Acts lay down the general legal framework for combating intolerance and hate speech in France, which is complemented by the following list of laws that apply to hate speech and hate crime: Act of 3 February 2003 aimed at increasing the sanctions for offences that have a racist, anti-Semitic or xenophobic dimension (*Loi 2003-88 du 3 février 2003 visant à aggraver les peines punissant les infractions à caractère raciste, antisémite ou xénophobe*),<sup>101</sup> Act of 9 March 2004 aiming at adapting justice to the evolution of criminality (*Loi 2004-204 du 9 Mars 2004 portant adaptation de la justice aux évolutions de la criminalité*),<sup>102</sup> Act of 21 June 2004 on confidence in the digital economy (*Loi 2004-575 du 21 juin 2004 pour la confiance dans l'économie numérique*),<sup>103</sup> the Criminal Code, the Code of Criminal Procedure and the Sports Code. French law also provides for civil<sup>104</sup> and administrative liability in this area. Measures of an administrative nature were recently used "to dissolve a number of small extreme right-wing groups, to prevent performances of shows deemed to have anti-Semitic content and to prohibit demonstrations which the authorities believed might well give rise to anti-Semitic language and acts".<sup>105</sup> France has not acceded to Protocol No. 12 to the European Convention on Human Rights on the general prohibition of discrimination (ETS No. 177), despite ECRI's recommendation of 2010. The rapporteur reiterates the importance for France of ratifying this protocol, which is a key element in the fight against racism and intolerance.

83. In its report of 8 December 2015, adopted on 1 March 2016,<sup>106</sup> ECRI congratulates the French authorities on the progress made in combating racism and intolerance since its previous report in 2010. It welcomes the new institutional framework with the merger of the old institutions into a new single institution, the Defender of Rights. With regard to combating hate crimes, ECRI notes in particular that offenders have been prosecuted and convicted. Regular reminders of the existing provisions and how to apply them effectively have also been given to representatives of the law-enforcement agencies and the courts concerned. However, despite the progress achieved, some issues continue to be a cause for concern, in particular the substantial rise in hate speech and, above all, violence driven by racism and intolerance. This situation is all the more worrying given the high level of underreporting of racist crime, the loopholes in the criminal provisions covering hate crimes and the commonplace use of political statements to stigmatise vulnerable groups that help to trivialise racist and intolerant attitudes within the population.

96. <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2701618&SecMode=1&DocId=2243796&Usage=2>, p. 6.

97. [www.coe.int/t/dghl/monitoring/ecri/Country-by-country/France/FRA-CbC-V-2016-001-FRE.pdf](http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/France/FRA-CbC-V-2016-001-FRE.pdf).

98. Such as: the ECRI 2010 report on France (fourth monitoring cycle); the Council of Europe Commissioner for Human Rights' 2014 report on France; and the United Nations Committee on the Elimination of Racial Discrimination (CERD) 2015 "Concluding observations on the combined twentieth and twenty-first periodic reports of France".

99. Act No. 72-546 on combating racism of 1 July 1972 (so-called "Pleven Act").

100. Act No. 90-615 of 13 July 1990 prohibiting any racist, anti-Semitic, or xenophobic act (so-called "Gayssot Act").

101. [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000781920](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000781920).

102. [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000249995](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000249995).

103. [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000801164&dateTexte=&categorieLien=id](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000801164&dateTexte=&categorieLien=id)

104. See more information at:

[www.europarl.europa.eu/RegData/etudes/STUD/2015/536460/IPOL\\_STU%282015%29536460\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/536460/IPOL_STU%282015%29536460_EN.pdf), p. 234.

105. Report of the Commissioner for Human Rights following his visit to France (22-26 September 2014), February 2015, p. 11.

106. [www.coe.int/t/dghl/monitoring/ecri/Country-by-country/France/FRA-CbC-V-2016-001-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/France/FRA-CbC-V-2016-001-ENG.pdf).

84. The Muslim and Jewish communities in France – some of the largest in Europe, with an estimated four to five million Muslims and around 600 000 Jews – have been the targets of hate speech and violent acts in recent years. Attacks against Muslims in France were recorded well before the terror attacks of January and November 2015. According to figures provided by the French authorities<sup>107</sup> concerning events leading to the filing of a complaint or police intervention followed by a police report, 226 Islamophobic acts were recorded in 2013 compared with 203 in 2012.

85. The terrorist attacks in France led to a significant rise in anti-Muslim sentiment within the French population. The French authorities<sup>108</sup> state that, after the terrorist attack on the weekly magazine *Charlie Hebdo* on 7 January 2015 and the Paris and Saint-Denis attacks of November 2015, the number of acts recorded in January 2015 alone (178) was higher than all those recorded throughout 2014 (133). The authorities point out that the figures declined in the months that followed.

86. The spike in anti-Semitic attacks is equally alarming. Numbers indicate a more than 100% increase in anti-Semitic threats and actions perpetrated in 2014 (851 offences) compared with 2013 (423 offences), followed by a fall of 5.1% in 2015 (808 offences), despite a peak noted in January after the attack at the Hyper Cacher store in Paris.<sup>109</sup> According to Commissioner Muižnieks' recent report on France, "over 7 000 [of France's Jews left the country] in 2014, whereas in 2012 there had been only 1 900, and the approximate figure in the late 90s had been 1 000 per year".<sup>110</sup>

87. In response to these developments, on 31 December 2014 President Hollande declared combating racism and anti-Semitism "a major national cause for 2015". In this context, a new "Action Plan against Racism and Anti-Semitism"<sup>111</sup> 2015-2017 and measures to protect places of worship and sensitive establishments should reinforce the fight against racism and intolerance.

88. The authorities state that a fall of more than 80% was recorded in the first quarter of 2016 both for anti-Muslim acts and acts targeting the Jewish community.

89. Roma populations are regularly victims of hate speech and hate crimes, while encountering systematic discrimination in terms of work, housing, schooling and access to health services and help in seeking employment, according to reports by international organisations and human rights groups (for more information about the specific situation of Roma in France, see section 5.5 below). The authorities<sup>112</sup> have informed the rapporteur that, if cases of discrimination or exclusion occur and are proven, penalties are based on the provisions of ordinary law, which penalises any discrimination between individuals or legal entities pursuant to Articles 225-1, 225-2 and 432-7 of the Criminal Code. They refer to several decisions of French courts delivered recently in cases involving speech stigmatising the Roma community.

90. According to Commissioner Muižnieks,<sup>113</sup> "the internet and social networks increasingly seem to be the favoured vehicles for [such] language of a hateful and discriminatory nature". In 2013, SOS Homophobia recorded 1 327 homophobic incidents that occurred online, a 162% rise compared to 2012, whereas in 2014, 40% of all reported incidents occurred on the internet. At the same time, social media can also be an invaluable ally in combating discrimination. In 2013, Twitter partnered with SOS Homophobia to allow internet users to quickly and easily report homophobic tweets to the organisation. In April 2015, the French Government announced the launch of a major campaign to counteract the country's steep rise in intolerance. In the context of the campaign, €100 million are expected to be spent on a three-year plan, which foresees *inter alia* the setting up of a new unit to monitor and fight online hate speech.

91. The French authorities have provided details on the legislation punishing racist and antireligious speech and incitement to hatred, and also in respect of the specific nature of the act of publicising content made available on the internet.

92. In its most recent report, published in 2016, ECRI notes an increase in hate speech on the internet and social networks, despite the authorities' efforts to curb this phenomenon. It is also concerned about political discourse and "the commonplace use of political statements to stigmatise vulnerable groups which help to

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107. French authorities' observations on the preliminary draft report.

108. Ibid.

109. Ibid.

110.

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2810149&SecMode=1&DocId=2256624&Usage=2>.

111. [www.gouvernement.fr/sites/default/files/contenu/piece-jointe/2015/05/dilcra\\_mobilizing\\_france\\_against\\_racism\\_and\\_antisemitism.pdf](http://www.gouvernement.fr/sites/default/files/contenu/piece-jointe/2015/05/dilcra_mobilizing_france_against_racism_and_antisemitism.pdf).

112. French authorities' observations on the preliminary draft report.

113. [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CommDH\(2015\)1&Language=lanEnglish&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CommDH(2015)1&Language=lanEnglish&direct=true).

trivialise racist and intolerant attitudes within the population". These conclusions echo the concerns of the Commissioner for Human Rights, who, while welcoming the fact that the majority of French politicians reject intolerant rhetoric, points out that some of them engage in hate speech and thus contribute to its trivialisation.<sup>114</sup>

93. The rapporteur welcomes the progress made by the French authorities on fighting racism and intolerance. He reiterates the importance of ratifying Protocol No. 12, which is a key element in that fight. He expresses serious concerns about the increase in violence motivated by racism and intolerance and urges the authorities to take the additional measures recommended by ECRI.

#### **5.4. Issues related to the protection of national minorities as well as regional and minority languages**

94. France has neither signed nor ratified the Framework Convention for the Protection of National Minorities (ETS No. 157). Furthermore, it has signed but not ratified the European Charter for Regional and Minority Languages.

95. Having been seized by the then President of the Republic, Jacques Chirac, in 1999 the Constitutional Council considered, one month after the Charter had been signed by France, that its ratification would run contrary to the Constitution, stating that "the constitutional principles of indivisibility of the Republic, of equality before the law and of the oneness of the French people ... oppose the recognition of collective rights to any group whatsoever defined by common origin, culture, language or creed". The issue of ratification has been delayed ever since.<sup>115</sup>

96. The debate on the potential ratification of the Charter was reignited in early 2014 when the issue of ratification of the European Charter for Regional and Minority Languages was reintroduced for discussion before the National Assembly, in accordance with President Hollande's campaign commitment No. 56 of 2012.<sup>116</sup> On 22 January 2014, the Assembly agreed, with 361 votes in favour and 146 against,<sup>117</sup> a draft constitutional law ("*proposition de loi constitutionnelle*") envisaging a constitutional amendment which would allow for the ratification of the Charter.<sup>118</sup>

97. Seized by the government on the draft constitutional law that was to be presented to the Council of Ministers by Minister of Justice Christiane Taubira on 31 July 2015, the Council of State rendered an unfavourable opinion on this text,<sup>119</sup> reiterating the same constitutional principles that the Constitutional Council had evoked. It further relied on the interpretative declaration France had made upon signing the Charter, according to which, a) "the use of the term 'groups' [as regards] speakers [of certain languages] does not confer any collective rights upon speakers of regional or minority languages"; and b) the Charter would be "interpreted in a way that would be consistent with the Preamble to the Constitution, which guarantees equality for all citizens without distinction of origin, race or religion". According to the Council of State, this declaration "contradicts the purpose of the Charter, which aims ... to give rights to speakers of regional languages or minority groups, and to allow these speakers to use their language in the public sphere." As a result, the Council of State said, "its potential inclusion in the Constitution would have two consequences: first, the reference to two hardly compatible texts, the Charter and the declaration, would introduce an internal contradiction generating legal uncertainty. Second, it would produce a contradiction between domestic law and the international legal order, exposing both to uncertainties in national litigation and to criticism from the organs of the Council of Europe responsible for monitoring the application of the Charter".

98. Despite this unfavourable opinion, the draft constitutional law was approved by the Council of Ministers. Nevertheless, the same draft law was rejected on 27 November 2015 by the Senate, which adopted a motion to oppose deliberation on the draft constitutional law, thus rendering impossible the convocation of the Congress to discuss the adoption of the constitutional reform.<sup>120</sup>

114. Ibid., p. 9.

115. [www.franceculture.fr/2015-10-27-le-lent-cheminement-de-la-charte-des-langues-europeennes-et-minoritaires](http://www.franceculture.fr/2015-10-27-le-lent-cheminement-de-la-charte-des-langues-europeennes-et-minoritaires).

116. [www.francetvinfo.fr/culture/sept-francais-sur-dix-favorables-a-la-reconnaissance-des-langues-regionales\\_951385.html](http://www.francetvinfo.fr/culture/sept-francais-sur-dix-favorables-a-la-reconnaissance-des-langues-regionales_951385.html).

117. [www.lexpress.fr/region/charte-europeenne-des-langues-regionales-les-vraies-raisons-du-refus-du-senat\\_1730148.html](http://www.lexpress.fr/region/charte-europeenne-des-langues-regionales-les-vraies-raisons-du-refus-du-senat_1730148.html).

118. [www.assemblee-nationale.fr/14/propositions/pion1618.asp](http://www.assemblee-nationale.fr/14/propositions/pion1618.asp).

119. [www.conseil-etat.fr/Decisions-Avis-Publications/Avis/Selection-des-avis-faisant-l-objet-d-une-communication-particuliere/Ratification-de-la-Charte-europeenne-des-langues-regionales-ou-minoritaires](http://www.conseil-etat.fr/Decisions-Avis-Publications/Avis/Selection-des-avis-faisant-l-objet-d-une-communication-particuliere/Ratification-de-la-Charte-europeenne-des-langues-regionales-ou-minoritaires).

120. [www.senat.fr/petite-loi-ameli/2014-2015/662.html](http://www.senat.fr/petite-loi-ameli/2014-2015/662.html).

99. This development perpetuates the discussion on the ratification of the Charter by France and renders its future highly uncertain, despite the fact that, according to ECRI's 2010 report, "the debate in France on these questions, and more generally on diversity, is continuing and intensifying".<sup>121</sup> Indeed, according to a recent survey, more than two thirds of the French people would not oppose the official recognition of regional and minority languages.<sup>122</sup> The fact that the National Assembly was largely in favour of the draft constitutional law that would have allowed for the ratification of the Charter further corroborates these findings.

100. ECRI (second,<sup>123</sup> third<sup>124</sup> and fourth<sup>125</sup> reports on France) and the Commissioner for Human Rights (2015 report<sup>126</sup> on France), have repeatedly encouraged the French authorities to sign and ratify the Framework Convention and to reconsider their position on the official recognition of ethnic, religious and linguistic minorities, and thus ratify the Charter and sign and ratify the Framework Convention. In their response to these recommendations, the French authorities have steadily invoked the constitutional principles of equality ("*égalité*") among French citizens and the oneness ("*indivisibilité*") of the French Republic, which are "traditionally interpreted as excluding recognition of the collective rights conferred on a group on a community basis".<sup>127</sup> In this context, it has been argued that "although France declines to recognise collective rights and to pursue affirmative action policies based on race, culture and religion", it has nevertheless "introduced legislation to ensure genuine equality for persons residing on French territory".<sup>128</sup>

101. The French authorities state<sup>129</sup> that according to the French way of thinking the affirmation of identity is the result of a personal choice and not of criteria that define a particular group from the outset. This is the reason for the refusal to consider the different components of the French people as forming one or more minorities. France endeavours to protect the human rights of all nationals of a State on the basis of equality and non-discrimination and has accordingly adopted measures and policies that, while promoting the principle of equal treatment between people irrespective of their origin, give everyone in practice, whether or not they identify themselves with one or more groups, the right to enjoy their own culture, profess and practise their religion or use their own language in community with the other members of their group.

102. The rapporteur wishes to recall the remark made in the Preamble to the Framework Convention: "The protection of national minorities is essential to stability, democratic security and peace in this continent." Under no circumstances has respect for minority rights compromised a State's unity. Moreover, France's general anti-discrimination legislation is not capable of fully protecting members of minority groups and of addressing all issues that might arise from their situation. Notwithstanding the promulgation of pertinent legislation, the principle of equality is not always efficiently safeguarded in practice, and the existing general legislation does not provide the legal basis for ensuring protection of minorities' rights in all possible scenarios, given that their particular situation and its non-recognition create legal vacuums that prevent their efficient protection.

103. France is therefore encouraged to take all necessary measures, including the possible retraction of the reservations made when signing the Charter, to accede to the Charter and the Framework Convention.

### **5.5. Fighting discrimination against Roma and travellers**

104. In France, the term "traveller" includes several populations, both of Roma (Manush, Gypsies (*Gitans*), Gypsies (*Tsiganes*) or Roma from eastern Europe) and of non-Roma (Yenniches) origin. Their number is estimated at 300 000. Approximately 30% of them are sedentary, 30% are semi-sedentary, and another 30% are nomads. By and large they have French nationality.<sup>130</sup> The number of Roma migrants is estimated at about 15 000. Most of the migrant Roma living in France emigrated from Romania, Bulgaria and, to a lesser

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121. <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/France/FRA-CbC-IV-2010-016-ENG.pdf>, p. 11.

122. [www.francetvinfo.fr/culture/sept-francais-sur-dix-favorables-a-la-reconnaissance-des-langues-regionales\\_951385.html](http://www.francetvinfo.fr/culture/sept-francais-sur-dix-favorables-a-la-reconnaissance-des-langues-regionales_951385.html).

123. [http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle\\_02/02\\_CbC\\_eng/02-cbc-france-eng.pdf](http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_02/02_CbC_eng/02-cbc-france-eng.pdf), p. 5.

124. [http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle\\_03/03\\_CbC\\_eng/FRA-CbC-III-2005-3-ENG.pdf](http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_03/03_CbC_eng/FRA-CbC-III-2005-3-ENG.pdf), p. 7.

125. <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/France/FRA-CbC-IV-2010-016-ENG.pdf>, p. 12.

126. [https://wcd.coe.int/com.instranet.InstraServlet?](https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2810149&SecMode=1&DocId=2256624&Usage=2)

[command=com.instranet.CmdBlobGet&InstranetImage=2810149&SecMode=1&DocId=2256624&Usage=2](https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2810149&SecMode=1&DocId=2256624&Usage=2)

("Commissioner's report"), p. 14.

127. *Ibid.*, p. 10.

128. [Intervention by Mr Schreiner](#) (France) on 4 October 2006 during the debate on the Parliamentary Assembly report on "Ratification of the Framework Convention for the Protection of National Minorities by the member States of the Council of Europe" (Doc. 10961), p. 942.

129. French authorities' observations on the preliminary draft report.

130. Information provided by the Rights Defender, available at:

[www.defenseurdesdroits.fr/sites/default/files/atoms/files/ddd\\_fic\\_gens\\_voyage.pdf](http://www.defenseurdesdroits.fr/sites/default/files/atoms/files/ddd_fic_gens_voyage.pdf).

extent, certain states of the western Balkans in the 1990s.<sup>131</sup> Although present for many years on French territory, they still encounter great difficulties in integrating into French society, despite the lifting, as from 1 January 2014, of the remaining restrictions on the free movement of workers imposed on Romania and Bulgaria – the two countries from which the majority of Roma populations originate – upon their accession to the European Union.<sup>132</sup>

105. The French authorities<sup>133</sup> have provided a detailed description of the measures taken since the early 1990s to give travellers better access to their rights: the Act of 31 May 1990 obliges local authorities with more than 5 000 inhabitants to set aside land for campsites; the Act of 5 July 2000 strengthens these provisions by promoting the establishment of permanent halting sites; and the Circular of 28 August 2010 of the Minister for Ecology, Energy, Sustainable Development and Sea concerns the revision of the departmental schemes for accommodating travellers (*schémas départementaux d'accueil des gens du voyage*). The cost of grants for the management of halting sites for travellers is shared equally between the State budget and the budget of the National Family Insurance Fund (*Caisse nationale des allocations familiales*). The authorities have informed the rapporteur that a private member's bill is currently passing through parliament to reform the Act of 5 July 2000. Its aim is to strengthen the mechanisms for establishing halting sites and make the procedures more flexible, while respecting people's rights, in the event of the unlawful occupation of land in the territory of a local authority that has complied with its obligations or is not subject to an obligation.

106. Worryingly, anti-Gypsyism seems to be well-entrenched into French society. According to recent research conducted by the Pew Research Centre, 66% of French interviewees said that they had a negative opinion of Roma.<sup>134</sup> Commissioner Muižnieks considered this phenomenon not to be “unrelated to statements by political leaders stigmatising migrant Roma”,<sup>135</sup> including anti-Roma language used during election campaigns. Bias in the media, which often ignores or fails to report cases of successful integration, also contributes to this effect. Migrant Roma are not only targeted and stigmatised by hate speech: in recent years, several cases of harassment and violence perpetrated against Roma migrants both by individuals and the police have been reported by the media and civil society organisations.<sup>136</sup>

107. The French authorities point out<sup>137</sup> that the President of the Republic made the fight against racism and antisemitism a “major national cause” in 2015 and that a new interministerial plan has been adopted for the period 2015-2017. They refer to the arsenal of legal instruments providing for the punishment of any racist or antisemitic act and any act or remarks denying the Holocaust, as well as stiffer penalties for certain racially motivated offences. They also provide examples of recent convictions of French politicians for speeches stigmatising the Roma community. Regular letters and circulars on combating discrimination, including against the Roma population, and calling for a firm response to racist, antisemitic and xenophobic acts have been sent to public prosecutor's offices.

108. Lack of access to adequate housing is another problem facing the Roma population in France. Roma families often live in slums or informal settlements, without access to water and electricity, and in appalling conditions of hygiene. In its 2010 report, ECRI deplored their installation in rudimentary camps “with sometimes disastrous consequences for their health”.<sup>138</sup> The risk of eviction from these, usually unlawful, shanty towns is added to the material difficulties Roma families are confronted with. According to a report by the Human Rights League and the European Roma Rights Centre, in 2014, 13 483 Roma were evicted from 138 different places;<sup>139</sup> in other words, four out of five slum dwellers in France were evicted in 2014,<sup>140</sup> without having been offered alternative lawful housing solutions. International monitoring bodies and human rights groups have repeatedly called on the French authorities to remedy the highly precarious conditions in which the majority of migrant Roma live. Importantly, in 2012, the European Committee of Social Rights, in its decision on the case of *Médecins du Monde–International v. France*,<sup>141</sup> found that France had violated the

131. Commissioner's report, p. 34; Amnesty International: [www.amnesty.fr/Nos-campagnes/Lutte-contre-les-discriminations/Presentation/Les-Roms-en-France?prehome=0](http://www.amnesty.fr/Nos-campagnes/Lutte-contre-les-discriminations/Presentation/Les-Roms-en-France?prehome=0).

132. [www.euractiv.fr/sections/europe-sociale-emploi/lintegration-des-roms-se-poursuit-peniblement-en-france-302265](http://www.euractiv.fr/sections/europe-sociale-emploi/lintegration-des-roms-se-poursuit-peniblement-en-france-302265).

133. French authorities' observations on the preliminary draft report.

134. [www.euractiv.fr/sections/europe-sociale-emploi/lintegration-des-roms-se-poursuit-peniblement-en-france-302265](http://www.euractiv.fr/sections/europe-sociale-emploi/lintegration-des-roms-se-poursuit-peniblement-en-france-302265).

135. Commissioner's report, p. 35.

136. <https://www.amnesty.org/fr/documents/EUR01/007/2014/fr/>, pp. 17-22.

137. French authorities' observations on the preliminary draft report.

138. 2010 ECRI report, p. 34.

139. [www.errc.org/cms/upload/file/report%20forced%20evictions%20-%20final%20en.pdf?utm\\_medium=email&utm\\_campaign=Joint+Press+Release%3A+Violent%2C+Unfair%2C+...&utm\\_source=YMLP&utm\\_term=E](http://www.errc.org/cms/upload/file/report%20forced%20evictions%20-%20final%20en.pdf?utm_medium=email&utm_campaign=Joint+Press+Release%3A+Violent%2C+Unfair%2C+...&utm_source=YMLP&utm_term=E).

140. [www.euractiv.com/sections/social-europe-jobs/france-evicts-300-roma-week-311839](http://www.euractiv.com/sections/social-europe-jobs/france-evicts-300-roma-week-311839).

141. <http://hudoc.esc.coe.int/eng/?i=cc-67-2011-dmerits-en>.

European Social Charter in respect of Roma migrants' right to adequate housing. The committee noted in particular that concrete governmental action in this area was "too limited in nature to alter the unworthy living conditions of a large number of the Roma".<sup>142</sup> Therefore, it concluded that migrant Roma had been subjected to discriminatory treatment. The committee also found a violation of the Charter in respect of the eviction procedure of Roma migrants from the sites where they were installed.<sup>143</sup>

109. The French authorities have provided detailed information on the long-term work carried out by the State to address the precarious living conditions of Roma populations, especially the support given for access to accommodation, the policy of support for specific measures aimed at clearing illegal camps, and the assistance programmes provided by the large urban centres. In addition, France is endeavouring to develop partnerships with the countries of origin of these groups. As far as the clearance of illegal camps is concerned, the authorities point out that these measures are carried out, on a case-by-case basis, within a legal framework involving decisions by judicial or administrative authorities under the supervision of the administrative courts. When the relevant conditions are met, long-term solutions are found to permit in-depth integration. On the other hand, the solutions may be more short term in areas that have limited resources or in cases of emergency and imminent danger. Basing their remarks on figures provided by the Human Rights League, the authorities point out that these efforts have enabled the number of clearances to be reduced in the last three years (11 500 persons removed in 2015 compared with 20 000 in 2013).

110. In a letter dated 20 January 2016,<sup>144</sup> the Commissioner for Human Rights expressed his concern about the continuing high number of forced clearances in 2015. Out of 111 forced clearances of 11 128 migrant Roma, only 29 had led to rehousing proposals. In its report published in March 2016, ECRI welcomed the adoption of the 2012 interministerial circular aimed at ensuring that clearances of illegal camps are accompanied by measures to provide social assistance and recommended that the French authorities ensure that the arrangements for assessing people and for identifying and taking measures to provide social assistance, including in particular rehousing individuals and monitoring children's schooling, are effectively applied nationwide before any illegal camps are cleared.

111. Obstacles encountered by Roma families in terms of housing and living conditions renders schooling of migrant Roma children problematic. The situation is exacerbated by the refusal of a number of municipalities to enrol them in schools. In its most recent report, ECRI recommended to the French authorities that they take immediate and proactive measures to ensure that no legitimate "residence" application submitted by persons belonging to vulnerable groups such as Roma is turned down and that the periods for processing these applications are reduced to the absolute minimum. In its decision in the case of *Médecins du Monde-International v. France*, the European Committee of Social Rights underlined that the French authorities had failed to adopt special measures "which should be taken for the benefit of members of a vulnerable group, in order to ensure equal access to education for Roma children of Romanian and Bulgarian origin".<sup>145</sup> It therefore concluded, logically, that "the French education system is not sufficiently accessible to these children", thus finding a violation of the Charter in this respect.

112. The French authorities<sup>146</sup> have provided details on measures taken, in particular the establishment of a national co-ordinated network of academic centres for the schooling of newly arrived children with a foreign language as their mother tongue as well as traveller children and children from itinerant families. In 2014, 1 255 children attended school as a result of projects funded by specific grants provided under the multiannual plan to combat poverty. 1 262 children (out of 1 930 minors involved in these projects) were enrolled in schools under local integration schemes.

113. The rapporteur is concerned about the anti-Gypsy climate in France. Noting the measures taken by the authorities to improve the living conditions of the Roma population, he invites the authorities to redouble their efforts to guarantee their access to rights, in particular when it comes to access to housing and schooling.

## **5.6. Migrants and asylum seekers**

114. According to data provided by the United Nations High Commissioner for Refugees, France receives the second biggest number of asylum requests among European Union member States. As the Asylum Information Database's report shows, between January and September 2015 France received 50 840 asylum

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142. Paragraph 65.

143. Paragraphs 73-82.

144. [https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CommDH\(2016\)10&Language=lanFrench&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CommDH(2016)10&Language=lanFrench&direct=true).

145. *Ibid.*, paragraph 132.

146. French authorities' observations on the preliminary draft report.

applications, 41 595 of which were rejected (rejection rate: 74.1%). 11 945 asylum seekers were granted refugee status (recognition rate: 21.2%), while 2 640 of them were granted subsidiary protection (subsidiary protection rate: 4.7%).<sup>147</sup>

115. While recognising the adverse conditions set by the unprecedented migratory movements of recent years, and the efforts made by the French authorities to keep the financial and social balances on the one hand, and to safeguard the rights of the people on the move on the other, until recently the French asylum system presented serious deficiencies, which had long been criticised. In his latest report on France, Commissioner Muižnieks highlighted the chronic inadequacies in the reception of asylum seekers, which force many of them to live in extremely vulnerable and degrading conditions. The Commissioner urged the authorities to find lasting solutions as a matter of urgency in order to ensure that everyone has effective access to reception centres and social protection. He underlined the need to improve the effectiveness of remedies in the asylum and immigration field, by expediting the introduction of suspensive appeals against all decisions taken in these matters.

116. Another source of concern was the reception and care of unaccompanied migrant minors. There are between 7 000 and 12 000 such children living in France, many of whom are left without any social or educational support or medical care, while some are even homeless. Their age is often determined following questionable procedures, especially when these involve bone age tests. The Commissioner called on the French authorities to put an end to these practices. With regard to the detention of minors in reception centres, it is important that the jurisprudence of the European Court of Human Rights in the area of the administrative detention of children is fully respected. In the case *Popov v. France* that is still pending execution before the Committee of Ministers,<sup>148</sup> the Court found a violation of Articles 3, 5.1 and 5.4 of the European Convention on Human Rights with regard to the children, as well as Article 8 of the Convention. The Court considered that the child's best interests called not only for families to be kept together but also for the authorities to do everything in their power to limit the detention of families with young children and effectively protect their right to respect for family life.

117. Act No. 2015-925<sup>149</sup>, adopted on 29 July 2015 and entered into force on 2 November 2015, brings about a substantial and ambitious reform of the French asylum system, mainly seeking to take into account the recast Asylum Procedures Directive and Reception Conditions Directive. The French authorities have provided a detailed description of the asylum reform.<sup>150</sup> The reform aspires to address the deficiencies of the previous legal regime governing the granting of international protection along two axes: strengthening guarantees for asylum seekers; and ruling quickly on asylum requests.<sup>151</sup> The new law has introduced the "single desk" (*guichet unique*) where the Prefecture and the French Office on Immigration and Integration (OFII) both have offices, its aim being to register the asylum claim, and to conduct, on the same day and in the same location, a vulnerability assessment that allows tailored material reception conditions to be proposed. The assessment of vulnerabilities and their consideration throughout the asylum procedure is a completely new element that has been brought in by the asylum reform. A claim can be channelled under accelerated procedures on 10 different grounds, among which three are applicable to unaccompanied minors. Appeals before the National Court on the Right to Asylum (CNDA) under the accelerated procedure now also have a suspensive effect. The CNDA must give a decision on the case within five months under regular procedures and within five weeks under accelerated procedures.<sup>152</sup> The authorities point out that measures have been taken to improve the housing and care of asylum seekers.<sup>153</sup>

118. As far as minors are concerned, the authorities state that the principles laid down in the *Popov v. France* judgment have been adopted in the Act of 7 March 2016 on the rights of foreign nationals in France, which provides that the detention of a foreign national accompanied by a minor is not possible except in specifically enumerated cases and on certain conditions.<sup>154</sup>

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147. [www.asylumineurope.org/sites/default/files/report-download/aida\\_fr\\_update\\_iv.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_fr_update_iv.pdf).

148. Applications Nos. 39472/07 and 39474/07, judgment of 19 January 2012.

149. [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000030949483&dateTexte=&categorieLien=id](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000030949483&dateTexte=&categorieLien=id).

150. French authorities' observations on the preliminary draft report.

151. [www.vie-publique.fr/actualite/panorama/texte-discussion/projet-loi-relatif-reforme-asile.html](http://www.vie-publique.fr/actualite/panorama/texte-discussion/projet-loi-relatif-reforme-asile.html).

152. [www.asylumineurope.org/sites/default/files/report-download/aida\\_fr\\_update\\_iv.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_fr_update_iv.pdf).

153. French authorities' observations on the preliminary draft report.

154. "1° If he/she has failed to comply with one of the requirements laid down by a previous house arrest order;

2° If during the implementation of a removal order he/she has fled or refused to comply;

3° If, in consideration of the interests of the minor, the foreign national's detention in the forty-eight hours preceding the scheduled departure relieves him/her and the minor accompanying him/her from the strain associated with the transfer requirements.

119. The rapporteur reiterates that the child's best interests call not only for families to be kept together but also for the authorities to do everything in their power to limit the detention of families with young children and effectively protect their right to respect for family life.

120. France, like the United Kingdom, faces a specific problem resulting from the situation of irregular migrants and asylum seekers residing in temporary camps in the Calais area, who regularly attempt to cross the Channel from France to England. In 1999, the controversial Sangatte refugee camp was opened in Calais, attracting thousands of would-be asylum seekers. Its closure in 2001 and 2002 on the orders of France's then Minister of the Interior, Nicolas Sarkozy, led to riots.<sup>155</sup> Migrants' efforts to cross the Channel continue unabated, causing delays and disruption to train services. According to the United Kingdom Home Office, the UK Border Force and the French authorities together prevented more than 39 000 attempts to cross the Channel illegally in 2014/15 – more than double the number prevented the previous year. Eurotunnel, which operates the Channel Tunnel, reported in October 2015 that it had blocked 37 000 attempts since the beginning of the year<sup>156</sup>, while 13 people have died trying to reach the United Kingdom since late June 2015. According to a count carried out by government services in October 2016, the number of persons present in the "Jungle" (the nickname given to the area because of the deplorable living conditions of migrants and asylum seekers) was 5 684, a reduction compared with the number in August (6 901 migrants).<sup>157</sup>

121. International monitoring bodies and non-governmental organisations have said they are highly concerned at the dire living and reception conditions in the makeshift sites around Calais. In August 2015, the Office of the United Nations High Commissioner for Refugees (UNHCR) encouraged the French authorities to gradually relocate people from the current informal settlements and provide them with adequate reception conditions in the Nord-Pas-de-Calais region.<sup>158</sup> Commissioner Muižnieks considered that the situation cannot be resolved by security measures alone. He therefore invited the authorities to offer long-term reception facilities to the migrants who are in Calais and its region and to protect them from violent acts by the extremist groups who are active in that area.

122. The operation to dismantle the "Jungle" began on 24 October 2016. At the time of writing, the first busloads of migrants were on their way to centres located throughout France.<sup>159</sup>

### **5.7. Trafficking in human beings**

123. France ratified the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) on 9 January 2008. Following its visit to France in March 2012, the Group of Experts on Action against Trafficking in Human Beings (GRETA) published its evaluation report<sup>160</sup> and the government's comments in January 2013. *Inter alia*, the experts urged the French authorities to launch, as a matter of priority, a national action plan against trafficking in human beings, and to set up a data-collecting statistical system on trafficking victims, which would give the authorities an overview of the national situation with regard to trafficking. They also called on the authorities to clarify the process of detection and identification of victims through a national referral framework, and to take all the steps needed for the effective implementation of assistance support measures, irrespective of the victims' nationality. Following a fact-finding mission on prostitution organised by the National Assembly in 2011, which concluded that the vast majority of prostitutes on French territory were supplied by trafficking networks,<sup>161</sup> GRETA urged the authorities "to step up their efforts to discourage the demand for services provided by persons subjected to trafficking". Furthermore, GRETA observed that the definition of the offence of "trafficking in human beings" as incorporated in the French Criminal Code was lacking several important elements, which created obstacles to the characterisation of certain acts as trafficking and the recognition of trafficking in human beings cases as such, thus negatively impacting the rights of its victims, the severity of punishment of traffickers, and the number of

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In cases 1 to 3, the duration of the detention shall be as brief as possible in view of the time strictly necessary for the organisation of the departure. In all cases, the detention of a foreign national accompanied by a minor shall be only possible at an administrative detention centre with appropriate separate bedrooms specifically designed for accommodating families.

The overriding interests of the child shall be a prime consideration with regard to the application of these provisions."

155. [www.defenseurdesdroits.fr/sites/default/files/atoms/files/20151006-rapport\\_calais.pdf](http://www.defenseurdesdroits.fr/sites/default/files/atoms/files/20151006-rapport_calais.pdf).

156. [www.bbc.com/news/uk-29074736](http://www.bbc.com/news/uk-29074736).

157. [www.francetvinfo.fr/france/nord-pas-de-calais/migrants-a-calais/moins-de-5-700-migrants-vivent-desormais-dans-la-jungle-de-calais\\_1868663.html](http://www.francetvinfo.fr/france/nord-pas-de-calais/migrants-a-calais/moins-de-5-700-migrants-vivent-desormais-dans-la-jungle-de-calais_1868663.html).

158. [www.unhcr.org/55c49b639.html](http://www.unhcr.org/55c49b639.html).

159. [www.lemonde.fr/societe/live/2016/10/24/en-direct-jour-j-pour-le-demantelement-de-la-jungle-de-calais\\_5019019\\_3224.html#quGoH1mvAmQuiuYa.99](http://www.lemonde.fr/societe/live/2016/10/24/en-direct-jour-j-pour-le-demantelement-de-la-jungle-de-calais_5019019_3224.html#quGoH1mvAmQuiuYa.99).

160. [www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA\\_2012\\_16\\_FGR\\_FRA\\_publication\\_en.pdf](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2012_16_FGR_FRA_publication_en.pdf).

161. [www.assemblee-nationale.fr/13/rap-info/i3334.asp](http://www.assemblee-nationale.fr/13/rap-info/i3334.asp).

sentences imposed. Nevertheless, the experts noted that the French authorities were at the time revising the offence of trafficking in connection with the transposition of Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings.

124. In February 2013, the Committee of the Parties to the convention recommended<sup>162</sup> that the French authorities implement the proposals made by GRETA in its report, and that they inform the committee of the measures taken to comply with this recommendation. In its reply<sup>163</sup> of February 2015, the French Government *inter alia* informed the Committee of the Parties that, through Act No. 2013-711 of 5 August 2013,<sup>164</sup> France had transposed Directive 2011/36. This law extended the forms of exploitation covered in Article 225-4-1 of the French Criminal Code to include enslavement, subjecting a person to forced labour or services, servitude and removal of organs. It also introduced new alternative constituent elements to the definition of the crime of trafficking to include the notions of coercion, abuse of position of vulnerability and abuse of authority, in conformity with Article 4 of the Council of Europe Convention on Action against Trafficking in Human Beings.

125. The authorities<sup>165</sup> mention that the French government presented a national action plan on 14 May 2014 to combat all forms of human exploitation, laying the foundations of a public policy against all kinds of human trafficking. The plan is based on a three-pronged strategy: identifying and assisting victims of trafficking, pursuing and dismantling trafficking networks, and making the combating of trafficking a fully-fledged public policy. One of the priorities is the protection of minor victims of human trafficking. An agreement on the introduction of experimental arrangements to protect these minors has been drawn up and is in the process of being signed by the various parties (Paris City Hall, the Paris Chief of Police, the Public Prosecutor's Office, the President of the Paris Regional Court, the Director of the Youth Judicial Protection Service, the Paris Bar Association and the *Hors la Rue* association). In addition, the Interministerial Mission for the Protection of Women against Violence and the Fight against Human Trafficking (MIPROF) is working in association with the Ministry of Justice on a project to set up a European platform with the aim of improving information-sharing between the relevant services involved in each member State in order to make it easier to identify minor victims at European level.

126. The rapporteur takes due note of these important measures taken by the authorities, which will be assessed in connection with the next GRETA report.

## 6. Rule of law

### 6.1. Fight against corruption

127. France has been a member of the Group of States against Corruption (GRECO) since 1999, having also ratified the Civil Law Convention on Corruption (ETS No. 174) as well as the Criminal Law Convention on Corruption (ETS No. 173) and the Additional Protocol (ETS No. 191) thereto in April 2008. It was among the first States to sign the 2000 Convention of the Organisation for Economic Co-operation and Development (OECD) on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention) and the 2004 United Nations Convention against Corruption (UNCAC). It actively contributed to the establishment of the G20 Anti-Corruption Working Group in 2010.

128. France receives a score well above average in the fight against corruption, which is nevertheless deemed to be below its potential<sup>166</sup> if account is taken of the performance of other European countries. In the 2014 report by Transparency International, which evaluates the performance of 175 States in the field of corruption, France went up three places since the previous year and obtained a score of 70 out of 100, ranking it 23rd in the world, quite distant from the countries making the podium (Denmark, Finland and Sweden), but also from neighbouring Germany (10th) and Belgium (15th).<sup>167</sup> The crackdown on corruption seems to have lost ground in France, given that the country was ranking 18th in 2004.<sup>168</sup> This development

162. [www.coe.int/t/dghl/monitoring/trafficking/Docs/CommitteeParties/Recommendations/CP\\_2013\\_1\\_FRA\\_en.pdf](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/CommitteeParties/Recommendations/CP_2013_1_FRA_en.pdf).

163. [www.coe.int/t/dghl/monitoring/trafficking/Docs/CommitteeParties/Reply\\_REC/CP\\_2015\\_6\\_RR\\_FRA\\_en.pdf](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/CommitteeParties/Reply_REC/CP_2015_6_RR_FRA_en.pdf).

164. [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027805521&categorieLien=id](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027805521&categorieLien=id).

165. French authorities' observations on the preliminary draft report.

166. "We expect more from the country of Montesquieu". Comment retrieved from: <http://leplus.nouvelobs.com/contribution/1365376-lutte-contre-la-corruption-la-france-est-touchee-le-peuple-defiant-hollande-doit-agir.html>.

167. [www.lemonde.fr/international/article/2014/12/03/corruption-vertu-le-20e-rapport-de-transparency-international\\_4533141\\_3210.html](http://www.lemonde.fr/international/article/2014/12/03/corruption-vertu-le-20e-rapport-de-transparency-international_4533141_3210.html).

168. [www.lefigaro.fr/conjoncture/2014/12/03/20002-20141203ARTFIG00231-la-france-regresse-dans-la-lutte-contre-la-corruption.php](http://www.lefigaro.fr/conjoncture/2014/12/03/20002-20141203ARTFIG00231-la-france-regresse-dans-la-lutte-contre-la-corruption.php).

comes about as a result of several corruption scandals that have made the news in recent years, involving important French companies or high-ranking politicians. In the wake of these scandals, the French authorities have taken several initiatives aimed at making the country's institutions more transparent. Positive developments include promulgation or amendment of legislation that prohibits accumulation of mandates, regulates the publication of declarations of interests and assets of ministers and elected officials, and offers better protection for whistle-blowers.<sup>169</sup>

129. The French authorities have been reproached for their slow reaction when it comes to convicting companies for corruption abroad. In its phase 3 report on implementing the OECD Anti-Bribery Convention in France, published in 2012, the OECD Working Group on Bribery in International Transactions was "seriously concerned that, despite the very significant role of French companies in the international economy, only 33 foreign bribery proceedings [had] been initiated and five convictions – of which only one, not yet final, concern[ed] a legal entity– [had] been handed down since France became a party to the convention in 2000". The Working Group was particularly concerned by the "lacklustre response of the French authorities in relation to companies sanctioned by other Parties to the Convention",<sup>170</sup> and recommended that France review its overall approach towards enforcement in order to effectively combat international bribery of foreign public officials. In its 2014 follow-up to the phase 3 report and recommendations, the Working Group concluded that enforcement of the foreign bribery offence continued to fall "far short"<sup>171</sup> of its recommendations, given that no legislative action had been taken to ensure conviction of companies for corruption abroad.

130. Similarly, the French authorities have been reproached for their slow reaction in the framework of the implementation of GRECO recommendations in the framework of the third evaluation round with regard to criminalisation of corruption and transparency of party funding. In its evaluation report of 2009,<sup>172</sup> GRECO had deplored that France had severely restricted its jurisdiction and its ability to prosecute cases with an international dimension which, given the country's importance in the international economy and the scale of many of its companies, was regrettable. It had also highlighted a number of shortcomings with regard to party financing.

131. More than six years after the adoption of the GRECO evaluation report, France has achieved mixed results. GRECO concluded in its third interim compliance report published in February 2016 that the current level of implementation of the recommendations is no longer "globally unsatisfactory". While noting some progress in a number of areas, as a result of legislation being drafted, GRECO regretted the lack of any progress in other areas, including in areas which would enable France to extend its ability to prosecute corruption-related offences committed in a transnational context. It also deplored the absence of any other relevant new plans for legislation or any other measures on the outstanding recommendations.<sup>173</sup>

132. With regard to transparency of political funding, GRECO noted modest progress in respect of the possibility to introduce the disclosure of donors above a certain amount of donations. GRECO regretted the lack of progress concerning the other reforms recommended. GRECO welcomed the extensive consultations held recently at the National Assembly on the assessment of the adequacy of laws and regulations governing the financing of election campaigns and political parties and encouraged the French authorities to redouble their efforts in this regard.

133. France has drawn criticism for its reportedly inadequate answers to the problem of domestic corruption. In its first 2014 report on the fight against corruption within European Union member States, the European Commission was surprised at the paucity of convictions for corruption in France, despite the abundance of relevant cases. According to the report, the crime of favouritism, a breach of regulations on public procurement, resulted in no jail sentences between 2007 and 2010, having only given rise to very modest fines. Furthermore, according to the Commission, potential conflicts of interest resulting in illicit enrichment were not sanctioned by the courts, taking into account that, since 1988, only 12 relevant cases were forwarded to the prosecutor, which were all dismissed.<sup>174</sup>

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169. [www.franceinfo.fr/actu/justice/article/transparence-de-la-vie-publique-du-mieux-pour-la-france-mais-303231](http://www.franceinfo.fr/actu/justice/article/transparence-de-la-vie-publique-du-mieux-pour-la-france-mais-303231).

170. [www.oecd.org/daf/anti-bribery/Francephase3reportEN.pdf](http://www.oecd.org/daf/anti-bribery/Francephase3reportEN.pdf).

171. [www.oecd.org/daf/anti-bribery/France-Phase-3-Written-Follow-up-ENG.pdf](http://www.oecd.org/daf/anti-bribery/France-Phase-3-Written-Follow-up-ENG.pdf).

172. [https://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2008\)5\\_France\\_One\\_EN.pdf](https://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)5_France_One_EN.pdf).

173. GRECO's Third Evaluation Round "Incriminations (ETS 173 and 191, GPC 2)" "Transparency of party funding"; *Third Interim Compliance Report* on France, adopted on 4 December 2015 and published on 3 February 2016.

174. Information retrieved from: [www.euractiv.fr/justice/le-premier-rapport-anticorruptio-news-533246](http://www.euractiv.fr/justice/le-premier-rapport-anticorruptio-news-533246).

134. In this context, the 2013 Act on transparency in public life (*Loi n° 2013-907 du 11 octobre 2013 relative à la transparence de la vie publique*)<sup>175</sup> has been welcomed as a promising development. In its evaluation report on France prepared in the context of the fourth evaluation round dedicated to corruption prevention in respect of members of parliament, judges and prosecutors,<sup>176</sup> published in January 2014, GRECO concluded that the reforms implemented by the 2013 law represented positive developments concerning the management of conflicts of interest and the system for the declaration of assets and interests of MPs, among other categories of public officials. GRECO acknowledged that, little by little, France is developing a system for preventing and managing conflicts of interest, including for members of parliament. In its Compliance Report published on 3 June 2016,<sup>177</sup> it welcomed the system for managing conflicts of interest put in place for the National Assembly and the Senate, even though it expects further progress to be made. As far as the National Assembly is concerned, GRECO welcomed the incentive system, consisting in particular of Article 5 of the Code of Ethics. It also noted with interest the draft of a new article, which will cover both reporting and withdrawal in the event of a conflict of interest. As regards the Senate, GRECO took note of the new definition of conflict of interest and the embryonic good practice guide appended to the General Instruction of the Bureau.

135. As regards incompatibilities, the 2014 GRECO report observed that some elected representatives hold between 20 and 30 positions of responsibility by combining local and national mandates. The rapporteur recalls that in the meantime a new law was adopted in 2014 that prohibits cumulating local executive functions with a national parliamentary mandate (deputy or senator) or a mandate at the European Parliament, starting from 2017. The GRECO also noted that, despite the legislature's desire to prevent the plurality of contrasting types of functions in accordance with the separation of powers principle, the phenomenon of proliferation of "extra-parliamentary bodies" has recently emerged, in the context of which seats are reserved on an *ex officio*, statutory basis, for parliamentarians as appointed by their assemblies or assembly presidents. The GRECO said that greater attention should be paid to this phenomenon in France and called for the initiation of wide-ranging consultations on this subject. Nevertheless, GRECO welcomed the fact that the October 2013 reform prohibited plural remunerations by banning parliamentarians from receiving, in addition to their parliamentary allowances, remunerations or allowances for functions in an extra-parliamentary body.<sup>178</sup>

136. As regards declaration of assets, income, liabilities and financial interests, the 2013 law amended the previous, fairly complex, system that used to govern such declarations. From February 2014 onwards, parliamentarians have to submit: a declaration of assets covering 10 separate sections to the Supreme Authority for Transparency in Public Life (HATVP); and a declaration of interests and professional (or unpaid) activities which the parliamentarian would like to retain, to the HATVP and the Speaker of their Assembly. This declaration must include paid activities currently exercised or exercised during the previous five years, including functions held on the managing boards of private or public bodies, consultancy activities, direct investment in corporate capital, voluntary or unpaid activities, and current activities exercised by the spouse or partner. Income must also be notified. The question of the public nature of future declarations has been extensively discussed, setting persons advocating general publication (particularly the Senate) against those recommending partial publication (mostly the Assembly). Since the Assembly was responsible for the final adoption of the reform, the latter solution was adopted. Accordingly, declarations of assets remain semi-confidential and can be consulted *in situ* exclusively by voters from the elected representative's constituency, whereby disclosure of the relevant information is subject to a €45 000 fine. GRECO regretted that the legislature finally opted for such a limited mechanism, and called for a reform that would ensure broad transparency including – as a logical consequence – the abolition of sanctions applicable in case of illicit disclosure.<sup>179</sup> In its 2016 Compliance Report, GRECO regretted that no measures had been taken by the two Houses to give effect to the recommendation.

137. On the issue of resources made available to parliamentarians, in three areas that seemed problematic in practice, the GRECO recommendations have been taken into account by the National Assembly and the Senate: the modalities for the hiring of parliamentary assistants and collaborators (due to risks of disguised lobbying, of fictitious jobs and the use of funds for unrelated purposes); the operational expenses allowance (IRFM), paid to each member of parliament to cover the gross pay of employees over and above the staffing budget (*crédit collaborateur*) and all the expenses relating to the exercise of the parliamentary mandate that are not directly paid by the National Assembly, the amount of which is fixed by the Bureau up to a statutory

175. [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028056315](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028056315).

176. [www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4%282013%293\\_France\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4%282013%293_France_EN.pdf).

177. Compliance Report of the Fourth Evaluation Round on France on corruption prevention in respect of members of parliament, judges and prosecutors, adopted by GRECO on 6 December 2013.

178. GRECO, fourth evaluation round report, p. 20.

179. *Ibid.*, p. 25.

limit (currently €5 770 gross per month); and, lastly, what it has been agreed to call the “parliamentary reserve facility” (*réserve parlementaire*), i.e. funds that are managed by the ministries but the use of which is left to the discretion of the deputies and senators (who allocate them in practice to activities or acquisitions within their municipality or to associations/foundations they support, etc.). In 2014, GRECO recommended that the conditions relating to the use of parliamentary assistants and collaborators, the operational expenses allowance and the parliamentary reserve be thoroughly reformed in order to ensure the transparency, accountability and supervision of the resources concerned.<sup>180</sup>

138. In its 2016 Compliance Report, GRECO welcomed the fact that the French authorities had taken the various elements of the recommendation into account. As far as the operational expenses allowance is concerned, GRECO approved the measures taken by the Bureau of each of the Houses. It reiterated that the recommendation called for more transparency concerning that allowance. Concerning the operational expenses allowance, the authorities<sup>181</sup> pointed out that the Senate adopted a regulation on 15 April 2015 regulating its use, that senators return the unused part of the allowance at the end of their mandate and that the allowance cannot be used to pay a contribution to a political party or fund an election campaign. With regard to the parliamentary reserve facility, GRECO noted that no further measures had been taken by the National Assembly. The authorities mentioned that as far as the parliamentary action grant is concerned, grants are made to fund investments undertaken by local and regional authorities and that the list of attributions is published by the Senate based on a decision of 15 April 2015. The measures taken by the Senate are positive in that they regulate to some extent the use of the parliamentary action grant, but they do not fully satisfy the requirements of the recommendation. The criteria for the allocation of subsidies, in particular, remain fairly vague and do not seem sufficient to limit the risks of bias, cronyism and conflicts of interest. The distribution of funds within the political groups remains free and therefore potentially inequitable between senators and there is currently no provision for auditing the use of funds. According to the French authorities,<sup>182</sup> transparency was reinforced regarding the recruitment of staff (“collaborateurs”, in French). With regard to staff (“les collaborateurs”),<sup>183</sup> the explicit recognition of their role and the legal framework governing their employment in the regulations of each House was welcomed by GRECO in its 2016 Compliance Report. The same applies, where the National Assembly is concerned, to the upper limit set on the remuneration of some assistants (inner circle or family members) – even though GRECO takes the general view that it is preferable not to employ such persons – and the initial thought being given to a fully-fledged status for the profession. GRECO encourages the National Assembly to continue and further develop that thinking.

139. France receives a score well above average in the fight against corruption, which is nevertheless deemed to be below its potential. The rapporteur welcomes the various recent reforms with regard to the prevention of corruption in France but notes that there are still some significant shortcomings. He urges the authorities to implement GRECO’s recommendations without delay.

## **6.2. Independence and efficiency of the judiciary**

140. France has an independent judicial system and the rule of law generally prevails in court proceedings.<sup>184</sup> The organisation of French justice present three features: a) a dual system of courts. The administrative courts and the ordinary courts are separate. Where jurisdiction is difficult to determine, the *Tribunal des conflits* – which sits in the chambers of the *Conseil d’Etat* – considers the case; b) the principle of two levels of jurisdiction; c) the principle of separation of the authorities responsible for prosecution (performed by the prosecution service) and trial (carried out by the judiciary proper), which is reiterated by the preliminary article of the penal procedure code. France also uses the institution of investigating judge.

141. In its fourth evaluation round report,<sup>185</sup> GRECO observed that there are very many French courts which vary both in nature and their *modus operandi* and the rules and conditions applicable to their members. As things stand, it is therefore difficult to paint an exhaustive and concise picture of the situation, which would go

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180. Ibid., pp. 10-14.

181. French authorities’ observations on the preliminary draft report.

182. Ibid.

183. The organic law of 14 October 2013 foresees that members of parliament must state in their declaration of interest and activities the names of their parliamentary collaborators as well as other professional activities declared by them. Since April 2015, the lists of senators’ collaborators are published on the Senate’s webpage.

184. <https://freedomhouse.org/report/freedom-world/2016/france>.

185. GRECO, fourth evaluation round, Corruption prevention in respect of members of parliament, judges and prosecutors, evaluation report France, adopted on 6 December 2013 and published on 27 January 2014.

beyond the inevitably limited scope of this report. A comprehensive reform of the judiciary is currently ongoing in France.<sup>186</sup> We will look into some core aspects of the judicial function and address issues that have raised concern.

142. The principle of independence is constitutionally guaranteed (Article 64). It also appears in the amended order of 22 December 1958 on the status of the judiciary. Furthermore, it is reflected in the principle of secure tenure and the rules on promotion and discipline. As a result, a judge cannot be the subject of an individual measure (dismissal, suspension, transfer) except in the cases and under the conditions prescribed by law (Article 64 of the Constitution, paragraph 4, and Article 4 of the amended order of 22 December 1958). This also applies to administrative judges even though the irremovable nature of their tenure is not specifically cited (Article L 231-3 of the Code of Administrative Justice). Members of the *Conseil d'Etat* are *de facto* irremovable by virtue of an age-old custom albeit not specified by any statute; other judicial officers also benefit explicitly from security of tenure, such as State Audit Board members (Article L 120-1 of the Code of Financial Courts). The principle of independence gives rise to the prohibition of instructions being issued to judges by anyone whatsoever (in contrast to the traditional situation of prosecutors, which has nevertheless undergone amendments recently, as explained below).

143. France has a long-standing and effective tradition in the area of recruitment and training of the vast majority of categories of career judicial officers, the relevant schools being often cited as examples internationally. The *Ecole nationale de la magistrature (ENM)* offers initial and continuous training for judges and prosecutors, which are both compulsory since 2007.

144. Judicial service members are recruited by competition or on the basis of qualifications (Article 18-1 of the amended order of 1958). On specifically regulated occasions, they may also fill a post directly, either permanently or temporarily. Judicial officers are appointed by decree of the President of the Republic, and belong to the State civil service, but are subject to a specific statute. In virtually all cases of appointment, including appointment of principal State prosecutors since 2008, the Judicial Service Commission (*Conseil supérieur de la magistrature, CSM*)<sup>187</sup> makes proposals or delivers opinions, either binding or advisory. Integrity and requisite qualifications are verified on recruitment. Vetting is conducted prior to recruitment of judicial officers and of community judges. Administrative judges, recruited in particular from among graduates of the National College of Administration, are civil servants by nature and therefore subject to strict conditions of integrity on entering the civil service. Members of the *Conseil d'Etat* constitute a separate group from that of the other administrative judges, but their recruitment is also carried out via the National College of Administration (ENA) as well as “externally”, thereby enabling personalities with varied experience to enter the *Conseil d'Etat*.<sup>188</sup>

145. A compendium of the judiciary’s ethical obligations was produced and published in June 2010. The text lays down a series of basic rules more specifically embodying, *inter alia*, the principles of independence, impartiality, integrity, and compliance with the law. Furthermore, the Council of State produced and published in 2011 an ethics charter for members of the administrative courts, which deals with the same principles in a detailed way. In the opinion of GRECO, this effort over the last few years to adopt and publish rules of professional conduct for the judiciary deserves to be emphasised. In general, these meet the concerns of GRECO.<sup>189</sup>

146. The rules governing incompatibility are set out in the amended order of 22 December 1958 and, amongst other things, prohibit: a) all members of the national legal service from holding another public office (including membership of various elected bodies) and from any other professional or remunerated activity other than scientific, literary or artistic work; b) all members or former members of the national legal service from working as a lawyer, notary, bailiff, commercial court registrar, court-appointed administrator or liquidator in the area of a court where they have practised in the last five years. None of the regulations examined by GRECO deal with the subject of gifts and other advantages enjoyed by judicial officers. In some cases, only the ethical rules recently introduced deal with the subject. In this respect, GRECO recommends that the criteria for the awarding of official honorary decorations and distinctions to judges be reviewed in order to

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186. [www.gouvernement.fr/action/la-justice-du-21e-siecle](http://www.gouvernement.fr/action/la-justice-du-21e-siecle).

187. The CSM was created just after the Second World War and has been radically reformed since then. Since 2008, the CSM has been divided into three bodies: a body competent in respect of judges on matters concerning their appointment and discipline; a body competent in respect of prosecutors, also as concerns their appointment and discipline; and a plenary presided over by the first president of the Court of Cassation, competent to deal with requests made by the President of the Republic (when acting as guarantor of judicial independence) or by the Minister of Justice.

188. GRECO report, p. 38.

189. *Ibid.*, p. 40.

reduce any perceived risks to their independence and impartiality.<sup>190</sup> In its 2016 Compliance Report, GRECO noted the discussions underway in France on the possibility of amending the statutory order to make the award of honorary decorations and distinctions subject to the approval of the CSM.

147. According to GRECO, the justice system has a reputation of integrity when considered globally. It nevertheless found that there are risks of the executive interfering in disciplinary proceedings and the career of judges and, even more, of prosecutors. Disciplinary proceedings may be initiated by the Minister of Justice, or by the first president of the court of appeal in the jurisdiction in which the magistrate in question is assigned. Following the constitutional amendment of 2008, individuals can bring the matter directly to the body in charge of disciplinary proceedings (applicable since January 2011). Despite this possibility for individuals to directly address a complaint against a judge to the High Council of the Judiciary, the number of disciplinary procedures did not increase and even decreased. In its 2014 report, GRECO recommended that disciplinary authority over judges be concentrated in the hands of the section of the Judicial Service Commission that has jurisdiction over judges. In its 2016 Compliance Report, GRECO noted that no measure had been taken in this connection.

148. The competence for initiating disciplinary procedures against prosecutors belongs to the executive. Members of the public can also initiate procedures against prosecutors. The Minister of Justice is the only authority that can apply sanctions, but shall act upon a reasoned opinion delivered by the Superior Council of Magistracy. Disciplinary decisions can be challenged in court (respectively before the Council of State and the High Court of Cassation and Justice).<sup>191</sup>

149. Prosecutors and the prosecution service form part of the national legal service (Article 1 of the Order of 22 December 1958), but they do not enjoy guarantees of independence and security of tenure. The possibility for the Minister of Justice to give instructions to the prosecution service, which derived from Article 30 of the Criminal Procedure Code, has been the subject of much comment over many years. Withdrawal of this possibility was advocated for several years, and was the subject of recommendations by *inter alia* GRECO and the OECD. The lack of independence of the prosecution service also underlay a decision of the European Court of Human Rights (*Moulin v. France*<sup>192</sup>). Although this possibility of giving instructions had not been regularly used, its very existence compromised the credibility of the prosecution service and the French justice system. Criticism has also been voiced about the lack of promptness shown by the prosecution service in respect of the opening of politically sensitive cases, and about its lack of interest in demanding that they be referred or in conducting prosecutions, reportedly a consequence of the hierarchical link between the prosecution service and the Minister of Justice. While, in recent years, there have been some convictions in sensitive cases, that was due to the intervention of “civil parties”, who had referred the matter to an investigating judge (although GRECO was told that complaints in which “civil parties” took part were few and far between in the corruption sphere).

150. It was with satisfaction, therefore, that the international legal community welcomed Act No. 2013-669 of 25 July 2013 on the powers of the Minister of Justice and members of the prosecution service in respect of crime policy and the taking of public action, by virtue of which the power of the Minister of Justice to issue instructions was completely withdrawn. Since the enactment of the law of 2013, the Minister of Justice sends to the Public Prosecutor general circulars of criminal policy but he cannot give any specific instructions concerning individual cases.<sup>193</sup> A separate reform of the CSM in terms of harmonisation of the appointment method and disciplinary arrangements for prosecutors with those of judges figured among the legislative and constitutional amendments intended to strengthen the role and status of the prosecution service. However, this reform was deferred after its examination by the Senate.

151. According to GRECO’s fourth evaluation round report, notwithstanding the aforementioned reform, the prosecution service could still be suspected of subordination to the executive, as manifested in many other ways: sensitive cases are monitored by the executive, “confidentiality” is at times given as the reason for not providing information to investigators, and pressure is exerted (whether or not deliberately) by the capacity to appoint prosecutors (even against the wishes of the CSM) and to sanction them in the event of any failure in their duties. In its evaluation report, GRECO recommended bringing the procedure for appointing members of the prosecution service, and the disciplinary procedure applicable in their case, into line with the procedure applicable to judges, but noted no development in this connection in its 2016 Compliance Report. The concentration of these different powers gives the Minister of Justice an ascendancy over the prosecution

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190. *Ibid.*, pp. 42-44.

191. [www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport\\_2014\\_en.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf).

192. Application No. 37104/06, judgment of 23 November 2010.

193. [www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport\\_2014\\_en.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf).

service which is difficult to reconcile with the autonomy required by the sometimes exclusive or monopolistic task entrusted to prosecutors by the Code of Criminal Procedure. In order to avoid suspicions of disguised orders, GRECO calls for a better regulation of the ability of the Ministry of Justice to solicit information from prosecutors in real time in sensitive cases. It also calls for stricter limits to be established on national security confidentiality, so it cannot be misused in inquiries regarding sensitive cases or major corruption. In its 2016 Compliance Report, GRECO took note of the Circular of 31 January 2014 regulating the provision of information to the Minister of Justice by prosecutors acting on their own initiative. However, noting that the circular did not explicitly cover requests for information from the Minister of Justice, it called on the authorities to clarify this aspect. With regard to the question of referring to national security confidentiality, GRECO considered that no measures had been taken to implement the recommendation.

152. The European Court of Human Rights has on several occasions held that one of the ways of guaranteeing the effectiveness and credibility of judicial systems is to ensure that a case is dealt with in a reasonable time (*H. v. France*<sup>194</sup>). In terms of efficiency of the judiciary, depending on subject matter, the principle of reasonable length of proceedings is embodied in various texts or secured by various means. For instance, the preliminary article of the Penal Procedure Code provides that in respect of persons prosecuted a final judgment shall be rendered within a reasonable amount of time. In case of non-compliance with this principle, the person concerned may lodge a complaint against the State on the basis of Article L 141-1 of the Code on Judicial Organisation. The State is required to redress the damage caused by the malfunctioning of the justice system in the event of gross negligence or a denial of justice. In 2012, 100 referrals for malfunctioning of the judicial system were made to the Ministry of Justice.<sup>195</sup>

153. As far as administrative justice is concerned, litigation in France has increased on average by 6% per year for the last 40 years. In 2014, there was an increase of 12% with regard to the caseload of administrative tribunals.<sup>196</sup> A recent report<sup>197</sup> by A. Lacabarats, President of Chamber at the Court of Cassation stressed that delays are observed in the proceedings before labour tribunals (*justice prud'homale*). Thus, an average procedure before a labour tribunal is concluded within 12 months whereas proceedings before a first instance tribunal take 5.8 months. Finally, with regard to criminal justice, the European Court of Human Rights has condemned France in a number of cases<sup>198</sup> that are still pending execution before the Committee of Ministers. These judgements found a violation of Article 5.3 of the Convention due to the excessive length of detention on remand: a recurring problem which has indirectly put into question the efficiency of criminal justice, due to the overloading of the Paris *Cour d'Assises*.

## 7. Conclusions and recommendations

154. France is characterised by sound institutions with a democratic tradition based on the rule of law and has an excellent record with regard to fundamental freedoms. Overall, the operation of France's democratic institutions complies with the standards of the Council of Europe. France generally meets its obligations as a Council of Europe member State and has managed to maintain a high level of human rights protection and respect for the rule of law despite the troubled context of recent years.

155. France is indeed beset with serious challenges today. The unprecedented terrorist attacks it has faced in recent months have led it to declare a state of emergency and it has tightened its counterterrorism legislation. The rapporteur emphasises the need to ensure that a fair balance is struck in order, on the one hand, to defend freedom and security and, on the other hand, to avoid infringing these same rights when adopting and applying legislative provisions or other administrative measures. This situation must remain exceptional, as a state of emergency poses real dangers for fundamental rights when the measures it entails are used in a discriminatory and disproportionate way. The rapporteur urges the greatest vigilance to ensure that the law-enforcement authorities do not abuse their powers and do not disproportionately restrict individual freedoms. He reminds the authorities that any administrative decision taken in this context must always be subject to judicial supervision. In this connection, parliamentary oversight is more important than ever. The rapporteur reiterates the importance of ensuring that the state of emergency is kept to an absolute minimum in terms of time.

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194. Application No. 10073/82, judgment of 24 October 1989.

195. *Ibid.*

196. [www.conseil-etat.fr/Actualites/Discours-Interventions/Perspectives-sur-la-justice-administrative](http://www.conseil-etat.fr/Actualites/Discours-Interventions/Perspectives-sur-la-justice-administrative).

197. <http://facta.media/loi-macron-les-dysfonctionnements-des-prudhommes-et-la-reforme-a-venir/>.

198. See, in particular, *Berasategi v. France*, Application No. 29095/09, judgment of 26 January 2012.

156. While recognising the progress made in France in the area of local democracy in the last few years, the rapporteur urges the authorities to take all necessary measures to implement the recommendations of the Congress of Local and Regional Authorities. In particular, he invites the authorities to review the process of consulting the directly elected representatives of the local and regional authorities on all decisions concerning them.

157. The rapporteur is extremely concerned about prison overcrowding in France, which shows no sign of abating. The public authorities need to act to deal with this. They should take all appropriate measures to improve prison conditions, and it is essential for them to do their utmost to implement the CPT's recommendations.

158. The rapporteur welcomes the progress on combating intolerance and racism made by the French authorities in the last few years. He reiterates the importance of ratifying Protocol No. 12, which is a key element in this regard. However, he is concerned about the significant increase in hate speech and, above all, violence motivated by racism and intolerance. He urges public figures to refrain from any political discourse based on statements that stigmatise vulnerable groups and contribute to trivialising racist and intolerant attitudes, and he encourages the authorities to adopt a zero-tolerance policy in this regard and to take the measures recommended by ECRI in this area.

159. The rapporteur is concerned about the anti-Gypsy climate in France and invites the authorities to redouble their efforts to improve the living conditions of Roma people and guarantee their access to rights.

160. The rapporteur encourages the authorities to take all necessary measures to permit the ratification of the European Charter for Regional or Minority Languages and to sign and ratify the Framework Convention for the Protection of National Minorities.

161. With regard to migrants and asylum seekers, the rapporteur reiterates that the overriding interests of the child dictate not only that he/she is not separated from his/her parents but also that the authorities do their utmost to limit the detention of families with young children.

162. France ranks above average as far as its efforts to combat corruption are concerned, even though its results still fall short of its potential. The rapporteur welcomes the various recent reforms with regard to the prevention of corruption in France, but notes that significant shortcomings remain. He urges the authorities to implement GRECO's recommendations without delay.

163. France has an independent justice system that has a reputation for integrity when considered globally. Notwithstanding the reforms carried out so far, the prosecution service could still be suspected of subordination to the executive, which, in the view of the rapporteur, is difficult to reconcile with the autonomy required by the sometimes exclusive or monopolistic task entrusted to prosecutors. The rapporteur invites the authorities to implement GRECO's recommendations in this regard. In addition, the excessive length of detention on remand is a recurring problem which has indirectly put into question the efficiency of the criminal justice system and against which measures should be taken without delay.

164. In addition, the rapporteur reiterates the concerns expressed in the opinion adopted by the Monitoring Committee on 3 September 2015<sup>199</sup> regarding the abuse of identity checks by the law-enforcement agencies as a means of crowd control during demonstrations, in clear violation of the legal provisions governing such checks. The rapporteur invites the authorities to look into this matter without delay.

165. The committee will assess the implementation of these recommendations in its next cycle of periodical reviews of countries that are not subject to monitoring *sensu stricto* or engaged in a post-monitoring dialogue.

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199. and confirmed by the Bureau of the Assembly, which decided not to open a monitoring procedure with regard to France.

## Appendix

## Council of Europe conventions signed and/or ratified between 1 October 2013 and 9 November 2016 by France

No.	Title
184	Protocol to the European Convention for the Protection of the Audiovisual Heritage, on the Protection of Television Productions
	Signature: 14/03/2002      Ratification: 09/04/2010      Entry into force: 01/04/2014
198	Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism
	Signature: 23/03/2011      Ratification: 08/12/2015      Entry into force: 01/04/2016
210	Council of Europe Convention on preventing and combating violence against women and domestic violence
	Signature: 11/05/2011      Ratification: 04/07/2014      Entry into force: 01/11/2014
211	Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health
	Signature: 28/10/2011      Ratification: 21/09/2016      Entry into force: 01/01/2017
213	Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms
	Signature: 24/06/2013      Ratification: 03/02/2016
214	Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms
	Signature: 02/10/2013
215	Council of Europe Convention on the Manipulation of Sports Competitions
	Signature: 02/10/2014
217	Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism
	Signature: 22/10/2015
218	Council of Europe Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events
	Signature: 03/07/2016

## Recent findings of Council of Europe monitoring mechanisms and other bodies as at 9 November 2016

<b>European Court of Human Rights</b>	<p>European Convention on Human Rights (ETS No. 5) ratified in 1949</p> <p>Protocol No. 1 (ETS No. 009) ratified in 1974</p> <p>Protocol No. 2 (ETS No. 044) ratified in 1981</p> <p>Protocol No. 6 (ETS No. 114) ratified in 1986</p> <p>Protocol No. 12 (ETS No. 177) <b>neither signed nor ratified</b></p> <p>Protocol No. 13 (ETS No. 187) ratified in 2007</p> <p>Protocol No. 14 (CETS No. 194) ratified in 2006</p> <p>Out of a total of 64 850 applications pending before a judicial formation on 31 December 2015, 388 concerned France.</p> <p>Resolutions adopted by the Committee of Ministers: 28 in 2013, 13 in 2014, 7 in 2015 and 16 in 2016.</p> <p>See <a href="#">Press country profile France</a></p>
<b>Congress of Local and Regional Authorities</b>	<p>European Charter on Local Self-Government (ETS No. 122) ratified in 2007</p> <p>Last report and Recommendation on local and regional democracy in France adopted in March 2016: <a href="#">CG30(2016)06-final</a> and <a href="#">Recommendation 384 (2016)</a></p>

<b>Group of States against Corruption (GRECO)</b>	<p>Civil Law Convention on Corruption (ETS No. 174) ratified in 2008 Criminal Law Convention on Corruption (ETS No. 173) and Additional Protocol (ETS No. 191) ratified in 2008</p> <p><i>Third evaluation round: second compliance report on France: "Incriminations (ETS 173 and 191, GPC 2)", "Transparency of party funding", adopted by GRECO at its 59<sup>th</sup> plenary meeting, Strasbourg, 18-22 March 2013, published in November 2013, <a href="#">Greco RC-III(2013)3E</a></i></p> <p><i>Third evaluation round: interim compliance report on France: "Incriminations (ETS 173 and 191, GPC 2)", "Transparency of party funding", adopted by GRECO at its 62<sup>nd</sup> plenary meeting, Strasbourg, 2-6 December 2013, published in February 2014, <a href="#">Greco RC-III(2013)25E interim report</a></i></p> <p><i>Third evaluation round: second interim compliance report on France: "Incriminations (ETS 173 and 191, GPC 2)", "Transparency of party funding", adopted by GRECO at its 66<sup>th</sup> plenary meeting, Strasbourg, 8-12 December 2014, published in March 2015, <a href="#">Greco RC-III(2014)29E second interim report</a></i></p> <p><i>Third evaluation round: third interim compliance report on France: "Incriminations (ETS 173 and 191, GPC 2)", "Transparency of party funding", adopted by GRECO at its 70<sup>th</sup> plenary meeting, Strasbourg, 30 November-4 December 2015, published in February 2016, <a href="#">Greco RC-III(2015)19E revised</a></i></p> <p><i>Fourth evaluation round: corruption prevention in respect of members of parliament, judges and prosecutors: evaluation report: France, adopted by GRECO at its 62<sup>nd</sup> Plenary Meeting, Strasbourg, 2-6 December 2013, published in January 2014, <a href="#">Greco Eval IV Rep(2013)3E</a></i></p> <p><i>Fourth evaluation round: corruption prevention in respect of members of parliament, judges and prosecutors: compliance report: France, adopted by GRECO at its 71<sup>st</sup> Plenary Meeting, Strasbourg, 14-18 March 2016, published in June 2016, <a href="#">Greco RC4(2016)2</a></i></p>
<b>Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)</b>	<p>Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 (ETS No. 141) ratified in 1996 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised) (CETS No. 198) ratified in 2015 France is not a member of MONEYVAL.</p>
<b>Commissioner for Human Rights</b>	<p><i>Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to France, from 22 to 26 September 2014, <a href="#">CommDH(2015)1</a> / 17 February 2015</i></p> <p><i>Lettre du Commissaire aux droits de l'homme du Conseil de l'Europe, Nils Muižnieks, aux membres de la Commission des lois du Sénat français sur le projet de loi relatif au renseignement, <a href="#">CommDH(2015)13</a> / 20 mai 2015 (in French only)</i></p> <p><i>Lettre du Commissaire aux droits de l'homme du Conseil de l'Europe, Nils Muižnieks, à M. Bernard Cazeneuve, Ministre de l'Intérieur de la France, sur les expulsions de Roms, <a href="#">CommDH(2016)10</a> / 16 février 2016 (in French only)</i></p> <p><i>Réponse des autorités françaises à la lettre du Commissaire aux droits de l'homme du Conseil de l'Europe, Nils Muižnieks, sur les expulsions de Roms en France, <a href="#">CommDH/GovRep(2016)5</a> / 16 février 2016 (in French only)</i></p>
<b>European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)</b>	<p>Convention (ETS No. 126) ratified in 1989, Protocol No. 1 (ETS No. 151) ratified in 1998, Protocol No. 2 (ETS No. 152) ratified in 1996 Publication of the last report: April 2012, <a href="#">CPT/Inf(2012)13</a> (in French only) Last country visit: November 2015</p>

<b>Group of Experts on Action against Trafficking in Human Beings (GRETA) and Committee of the Parties</b>	Convention (CETS No. 197) ratified in 2008 1st Evaluation Round: . Evaluation visit in March 2012 . GRETA's Evaluation Report and Government's Comments published in January 2013, <a href="#">GRETA(2012)16</a> . <a href="#">Recommendation CP(2013)1</a> of the Committee of the Parties adopted in February 2013 . Government Reply to Recommendation received in February 2015, <a href="#">CP(2015)6</a>
<b>Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) and Committee of the Parties</b>	Convention on preventing and combating violence against women and domestic violence (CETS No. 210) ratified in 2014
<b>European Commission against Racism and Intolerance (ECRI)</b>	The 5th report on France was adopted in December 2015 and made public in March 2016, <a href="#">CRI(2016)1</a>
<b>Venice Commission</b>	<i>Opinion on the Draft Constitutional Law on "Protection of the Nation" of France</i> adopted by the Venice Commission at its 106 <sup>th</sup> Plenary Session, Venice, 11-12 March 2016, <a href="#">CDL-AD(2016)006</a>

**Other Treaties:**

<b>Framework Convention for the Protection of National Minorities</b>	Convention (ETS No. 157) <b>neither signed nor ratified</b> .
<b>European Charter for Regional or Minority Languages</b>	Convention (ETS No. 148) signed in 1999 but <b>not ratified</b>
<b>European Social Charter</b>	European Social Charter of 1961 (ETS No. 35) ratified in 1973 European Social Charter (revised) (ETS No. 163) ratified in 1999 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158) ratified in 1999 See <a href="#">Country factsheet France</a>