

Council of Europe contribution for the 29th UPR session (Jan-Feb 2018) regarding France

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Prevention of torture (CPT)

The 'European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment' organises country visits in order to visit places of detention to assess how persons deprived of their liberty are treated. After each visit, the CPT sends a detailed report to the State concerned. This report includes the CPT's findings, and its recommendations, comments and requests for information.

[Executive summary of the report on the CPT's visit to France from 15 to 27 November 2015](#) (French only)

[Report on the CPT's visit to France from 15 to 27 November 2015](#) (French only)

[Government response](#) (French only)

Council of Europe Commissioner for Human Rights

The Commissioner for Human Rights is an independent and impartial non-judicial institution established by Council of Europe to promote awareness of and respect for human rights in the 47 Council of Europe member States.

In a [letter](#) sent to the Minister of Justice, Ms Christiane Taubira and published on 17 October 2013, the Commissioner expressed concern about respect for the human rights of the migrants required to appear at hearings of the Courts of Meaux and Bobigny held off site in the administrative detention centre of Le Mesnil-Amelot and to be held later in the migrants' holding facility of Paris-Charles de Gaulle airport. The Commissioner stressed that the fact that the above facilities are under the authority of the Ministry of the Interior, which is also a party to the proceedings, could undermine the appearance of independence and impartiality of the courts concerned. He also pointed out that the location of these hearing rooms and the problems of accessing them, particularly by public transport, could make it difficult to safeguard the rights of the defence and to public proceedings.

On 17 February 2015, the Commissioner published the [report](#) following his visit to France, held from 22 to 26 September 2014. The issues examined included intolerance, racism, and respect for the human rights of migrants, Travellers, Roma and people with disabilities. The Commissioner welcomed France's sound legal and institutional framework for combating racism and discrimination and urged the authorities to continue to fight resolutely against these phenomena.

The Commissioner noted with concern that the trend towards more stringent and more complex rules in the asylum and immigration fields raise serious questions of compatibility with France's international commitments, particularly with regard to the human rights of asylum seekers. Lasting solutions need to be found as a matter of urgency to ensure that everyone has effective access to reception centres and social protection. The reception and care of unaccompanied migrant minors highlighted a further shortcoming in the French migration system.

The Commissioner called on the French authorities not only to honour their commitment to take in 500 Syrian refugees, but to take in even more and to remove all barriers, such as the obligation to have an airport transit visa, which undermine their chances of being granted asylum. He also called on the authorities to improve the living conditions of migrants in Calais and to afford them greater protection against violent xenophobic attacks. He urged France not to adopt or implement legislative

or other measures to accelerate asylum procedures still further, until the structural problems in the national asylum authorities have been resolved. 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, including overseas. In addition, he recommended that the authorities improve the legal aid and procedural guarantees offered to immigrants and asylum seekers and cease the practice of holding hearings by the 'liberties and detention judges' in the annexes of regional courts located in the immediate vicinity of administrative detention centres or waiting zones.

High levels of anti-Gypsyism have prevailed in France for a very long time, and the Commissioner called on the authorities to firmly tackle hostile speech and acts directed at migrant Roma and Travellers, including on the Internet. He recommended that the authorities put an end to the discriminatory system applied to Travellers, provide appropriate camping areas and ensure effective access to education for the children of Travellers by promoting solutions more in keeping with their lifestyle. The Commissioner also underlined the urgent need to guarantee Roma access to healthcare, education, housing and employment, and to conduct public awareness-raising activities to combat stereotypes and prejudice against Roma and Travellers.

With regard to the situation of persons with disabilities, the Commissioner noted that despite a well-developed legal framework and the priority given to independence and social inclusion, these are not always guaranteed in practice. The Commissioner was also concerned that thousands of persons with disabilities are obliged to leave France to find more appropriate solutions to their situation abroad, particularly in Belgium. He also condemned difficulties in access to employment and the discriminatory conditions applying to workers with disabilities within certain specialised facilities.

Lastly, while welcoming the measures adopted to promote the education of children with disabilities in mainstream schools, the Commissioner noted with concern that no education solution has yet been found for some 20,000 of these children, and particularly for those with autism spectrum disorder.

On 20 May 2015 the Commissioner has released a [letter](#) addressed to the members of the French Senate Commission which was discussing the surveillance bill. The Commissioner reiterated the importance of adopting a law which is compliant with human rights and thus urged the senators to dispel the concerns raised by the current text, namely by clarifying its scope, counterbalancing the powers of the executive and ensuring an effective remedy to those targeted by surveillance measures.

On 16 February 2016 the Commissioner published the [letter](#) he had addressed to France, along with seven other Council of Europe member states, urging them to stop forced evictions of Roma without due process and without offering adequate alternative accommodation, which are in breach of international and European standards.

Fight against racism and intolerance (ECRI)

The European Commission against Racism and Intolerance (ECRI) is a human rights body of the Council of Europe, composed of independent experts, which monitors problems of racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as “race”, national/ethnic origin, colour, citizenship, religion and language. It prepares reports and issues recommendations to member States, in which its findings, along with recommendations are published. These reports are drawn up after a contact visit to the country in question and a confidential dialogue with the national authorities. The country monitoring takes place in five-year cycles. As part of the fourth round of ECRI’s monitoring work, a new process of interim follow-up has been introduced with respect to a small number of specific recommendations made in each of ECRI’s country reports.

As part of ECRI’s ongoing country monitoring work, ECRI adopted its Fifth report on France on 8 December 2015. It is available here:

<http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/France/FRA-CbC-V-2016-001-ENG.pdf>

Protection of minorities

Framework Convention for the Protection of National Minorities

The monitoring procedure for this convention requires each state party to submit a report within one year following the entry into force of the Framework Convention and additional reports every five subsequent years. State reports are examined by the [Advisory Committee](#), a body composed of 18 independent experts responsible for adopting country-specific opinions. These opinions, on which States Parties have an opportunity to comment, are meant to advise the Committee of Ministers in the preparation of its resolutions, containing conclusions and recommendations to the State concerned.

European Charter for Regional or Minority Languages

The [Charter’s monitoring procedure](#) is based on state reports, as each State Party is required to present its first report within the year following the entry into force of the Charter with respect to the Party concerned. The subsequent reports are presented at three-yearly intervals. A committee of independent experts examines the state’s periodical report and addresses an evaluation report to the Committee of Ministers, including proposals

Action against trafficking in human beings (GRETA)

The Council of Europe Convention on Action against Trafficking in Human Beings was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005, following a series of other initiatives by the Council of Europe in the field of combating trafficking in human beings. The Convention entered into force on 1 February 2008, following its 10th ratification. While building on existing international instruments, the Convention goes beyond the minimum standards agreed upon in them and strengthens the protection afforded to victims.

The Convention has a comprehensive scope of application, encompassing all forms of trafficking (whether national or transnational, linked or not linked to organised crime) and taking in all persons who are victims of trafficking (women, men or children). The forms of exploitation covered by the Convention are, at a minimum,

sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.

The main added value of the Convention is its human rights perspective and focus on victim protection. Its Preamble defines trafficking in human beings as a violation of human rights and an offence to the dignity and integrity of the human being. The Convention provides for a series of rights for victims of trafficking, in particular the right to be identified as a victim, to be protected and assisted, to be given a recovery and reflection period of at least 30 days, to be granted a renewable residence permit, and to receive compensation for the damages suffered.

Another important added value of the Convention is the monitoring system set up to supervise the implementation of the obligations contained in it, which consists of two pillars: the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties.

The Convention is not restricted to Council of Europe member states; non-members states and the European Union also have the possibility of becoming Party to the Convention.

France <http://www.coe.int/en/web/anti-human-trafficking/france>

GRETA's 2nd round evaluation report should be published before the end of June. 2nd round CoP recommendations will follow at the next meeting in October.

[GRETA's 1st round evaluation report and Government's comments](#)
[Committee of the Parties' recommendations – 1st evaluation round](#)
[Government's reply to Committee of the Parties' 1st round recommendations](#)

Preventing and combating violence against women and domestic violence

The Council of Europe Convention on preventing and Combating violence against women and domestic violence ([Istanbul Convention](#), CETS No. 210) provides for two types of monitoring procedures: a country-by-country evaluation procedure and a special inquiry procedure in exceptional cases where action is required to prevent a serious, massive or persistent pattern of any acts of violence covered by the Convention. [GREVIO](#), the Group of Experts on Action against violence against women and domestic violence, is the independent body responsible for monitoring the implementation of CETS No. 210. GREVIO launched its first evaluation procedure in spring 2016, after adopting a questionnaire on legislative and other measures giving effect to the Istanbul Convention.

France ratified the Istanbul Convention on 4 July 2014 with a [reservation](#): In accordance with Article 78, paragraph 2, of the Convention, France declares that it will apply the provisions laid down in Article 58 to the offences established in accordance with Articles 37, 38 and 39, in all cases where these offences are qualified as crimes by French Law and in specific cases or conditions where these offences are qualified as torts (délits) by French Law. According to GREVIO's provisional timetable, France will be asked to submit its report in reply to GREVIO's questionnaire in the first quarter of 2018, and, following, inter alia, a state dialogue and a country visit, GREVIO is scheduled to finalise its report on France during the second quarter of 2019.

Fight against corruption (GRECO)

The 'Group of States against Corruption' ([GRECO](#)) monitors all its members through a “horizontal” evaluation procedure within thematic evaluation rounds. The evaluation reports contain recommendations aimed at furthering the necessary legislative, institutional and practical reforms. Subsequently, the implementation of those recommendations is examined in the framework of a “compliance procedure”, assessing whether they have been implemented satisfactorily, partly or have not been implemented 18 months after the adoption of the evaluation report.

The 'Group of States against Corruption' ([GRECO](#)) monitors all its members through a country-by-country evaluation procedure within thematic evaluation rounds. The evaluation reports contain country-specific recommendations aimed at furthering the necessary legislative, institutional and practical reforms. Subsequently, the implementation of those recommendations is examined in the framework of a “compliance procedure”, assessing whether they have been implemented satisfactorily, partly or have not been implemented 18 months after the adoption of the evaluation report.

Fourth Evaluation Round: "Corruption prevention in respect of members of parliament, judges and prosecutors".

[GRECO's Fourth Round Compliance Report on France](#) was published in March 2016.

Execution of judgments and decisions of the European Court of Human Rights

Statistical data

At 31 December 2016, there were 58 cases against France pending before the Committee of Ministers for supervision of their execution (69 at 31.12.2015). 28 of these cases were “leading cases” (41 at 31.12.2015), i.e. raising a new structural / general problem and requiring the adoption of general measures, the other cases being “repetitive cases” (including a number of friendly settlements) concerning issues already raised before the European Court of Human Rights.

In 2016, the CM was seized by 17 new cases (22 in 2015) against France of which 2 leading cases (10 in 2015) and the sums awarded in 2016 as just satisfaction amounted to 550 714 euro.

In 2016, 28 cases (7 in 2015) were closed by the adoption of a Final Resolution, of which 16 leading (5 in 2015).

Main cases /groups of cases pending before the Committee of Ministers for supervision of execution under the enhanced and standard procedures

Main cases pending execution before the Committee of Ministers under the enhanced procedure cover issues like unjustified expulsion or extradition ([De Souza Ribeiro and I.M.](#)); filiation ([Menesson group of cases](#)); etc.

Unjustified expulsion or extradition

[De Souza Ribeiro](#), application No. 22689/07, judgment final on 13/12/2012, enhanced supervision

Excessively speedy enforcement of expulsion measure depriving the “juge des référés” of the time necessary to adequately scrutinise the measure.

I.M. application No. 9152/09, judgment final on 02/05/2012, enhanced supervision

Ineffectiveness of the remedies to challenge expulsion available to asylum seekers held in detention as detention implied the application of accelerated procedures leading to a lack of time and of necessary facilities for the preparation of asylum requests and/or appeals to the administrative courts.

Reception and detention of foreign accompanied minors

Popov, application No. 39472/07, judgment final on 19/04/2012, standard supervision

Placement of minors in administrative detention with their parents in inadequate conditions, without any possibility to lodge an appeal; violation of the right to respect of family life on account of the length of the detention and the absence of search of alternatives to detention.

Enforcement of domestic judicial decisions

Tchokontio Happi, application No. 65829/12, judgment final on 09/07/2015, standard supervision

Non-enforcement by the State of domestic judicial decisions ordering urgent rehousing of families due to indecent and insalubrious life conditions (Law on the enforceable right to housing).

Right to home

Winterstein and Others, application No. 27013/07, judgment final on 17/01/2014, standard supervision

Eviction of travellers from land on which they had been settled for many years, without any assessment of the proportionality of the interference with their right to private and family life.

Filiation

Menesson group of cases, application No. 65192/11, judgment final on 26/09/2014, enhanced supervision

Refusal to recognise, with reference to the situation in French law, filiation resulting from surrogacy motherhood legally established abroad between children and their French parents found disproportionate given the consequences for the child.

Social and Economic Rights (ECSR)

The European Committee of Social Rights (ECSR) monitors compliance with the [European Social Charter](#) under two procedures: the national periodic reporting system and the collective complaints procedure. Following a decision taken by the Committee of Ministers in 2006, the provisions of the Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.

Venice Commission

The European Commission for Democracy through Law (Venice Commission) is the Council of Europe's advisory body on constitutional matters. It provides States and international organisations working with it (EU, OSCE/ODIHR) with legal advice in the form of opinions.

In 2016 the Venice Commission issued the Opinion on the draft constitutional law on "Protection of the Nation" of France, upon the request of the PACE [\(CDL-AD\(2016\)006\)](#).

The draft law contained two articles, which introduced the state of emergency regime as well as provisions on the deprivation of French nationality into the Constitution.

In the Venice Commission's opinion, regulating the state of emergency regime at the constitutional level is a welcome proposal. [The French Constitution already has two provisions on exceptional regimes – one which governs the extraordinary powers of the President (Article 16), and the other describes the state of siege (Article 36). However, the regime of the state of emergency – which was introduced in France following the two murderous terrorist attacks of 13 November 2015 – is only regulated by the law of 1955, recently revised by Parliament together with the first extension of the state of emergency in November 2015.] Constitutionalising the state of emergency regime opened an opportunity for reviewing the constitutional framework for such a regime and creating safeguards against possible abuse. It is important to inscribe into the Constitution not only the norms regulating the declaration and the extension of the emergency regime, but also formal, temporal and substantive limits for the realisation of this regime. The proposed new Article 36-1 of the Constitution was not, by itself, contrary to international law; the Commission nevertheless stressed how important it was for its text to also stipulate that the crisis, which gave rise to a declaration of a state of emergency, was of such a scale that it endangered "the life of the Nation", and that the authorities could not take measures which were not strictly justified by the exigencies of the situation. In addition, the second prolongation of the state of emergency may require a qualified majority vote in Parliament.

As regards deprivation of the French nationality, international law prohibits arbitrary deprivation of nationality and incites the State to avoid statelessness, even if there is no absolute prohibition in the latter regard. Introduction of a single legal regime for all French citizens - be they naturally-born French, naturalised, dual-nationals, etc. - was not contrary to those norms of international law provided that deprivation of nationality was decided following fair examination of the case by the courts and in compliance with the proportionality principle. The opinion, thus, called for transformation of this measure into an accessory penal sanction, which may be imposed by a competent penal judge.