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REPORT

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COUNCIL OF EUROPE
COMMISSIONER FOR HUMAN RIGHTS

**FOLLOWING HIS VISIT TO FRANCE
FROM 22 TO 26 SEPTEMBER 2014**

This report was written following a visit to France by the Commissioner in September 2014. It was finalised on 18 December 2014. It predates the tragic events which took place in Paris on 7, 8 and 9 January 2015.

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SUMMARY

The Council of Europe Commissioner for Human Rights, Nils Muižnieks, (hereafter “the Commissioner”) and his delegation made a visit to France (Marseille and Paris) from 22 to 26 September 2014. In the course of his visit, the Commissioner held discussions with national authorities, national human rights structures and representatives of civil society. This report is based on the subjects dealt with during the Commissioner’s visit and focuses on the following issues:

1. Intolerance, racism and the resurgence of extremism

The Commissioner is concerned about the decline in tolerance and the high number of verbal assaults and offensive expressions of a hateful or discriminatory nature recorded in France. The Internet and social networks seem to be increasingly favoured vehicles for such hate speech. He notes that while the majority of French politicians reject this rhetoric, there are some who use hate speech and thereby encourage its more widespread use. The Commissioner therefore invites the authorities to make particular efforts to prevent, put a stop to and severely punish the dissemination of hate speech via the Internet and social networks.

The Commissioner also condemns hate acts as well as hate speech, which may be of a racist, xenophobic, antisemitic, anti-Muslim or homophobic nature. He believes that intolerance and racism have ancient and deep roots and cannot be regarded as mere epiphenomena, and that the resurgence of hate acts and hate speech which accompanies certain events in the national or international news reveals a worrying erosion of social cohesion and of the principle of equality. He invites the authorities to react forcefully and systematically, preferably through a national action plan for human rights. He also encourages the authorities to combat all discriminatory conduct, including by the police, particularly in the context of identity checks.

The Commissioner welcomes the criminal law response to hate acts and hate speech in France and encourages the authorities to give full effect to the provisions recognising the use of “discrimination testing” in procedures concerning discrimination. He also points out that the long-term effectiveness of the fight against intolerance and racism requires above all the use of preventive measures and public awareness-raising. In the context of a disturbing resurgence of the extreme right wing, the Commissioner welcomes the announcement of a review of the national anti-racism plan, which he invites the authorities to conduct as soon as possible, devoting all the necessary resources to this task. The Commissioner also encourages representatives of the state and politicians to not only strongly and clearly reject racism, xenophobia and other forms of discrimination, but also to draw attention to the principle of equality and respect for differences.

2. Human rights in the context of asylum and immigration

During his visit, the Commissioner met some homeless asylum seekers. This situation is symptomatic of the serious and chronic inadequacies of the national system for the reception of asylum seekers. The Commissioner invites the authorities to take remedial action and to guarantee access to the national reception system to all asylum seekers.

He also calls on the authorities to honour their commitment to take in 500 Syrian refugees and to show greater generosity and solidarity by also making it easier for Syrians fleeing from violence and persecution to request and obtain visas.

On the subject of the situation which has prevailed in Calais and its region for a number of years, the Commissioner remains very concerned and considers that this cannot be resolved by security measures alone. He therefore invites the French authorities to offer decent long-term reception facilities to the migrants who are in Calais and its region, and to protect them from violent acts of hatred by the extremist groups active in that area.

When he visited Paris, the Commissioner also met some homeless unaccompanied foreign minors (UFM), whose situation reveals another deficiency in the migrant reception system in France. Despite the measures taken by the authorities, the Commissioner remains concerned, in particular, about the procedure for ascertaining the age of these young migrants. He is particularly concerned by the use of bone age tests, about the quality of care young migrants receive and about the deprivation of liberty that these minors may be subjected to upon their irregular arrival at the border. The Commissioner calls on the authorities to make every

effort to protect and receive these vulnerable minors in mainland France and overseas, particularly in Mayotte, and he urges them to put an immediate end to the deprivation of liberty of UFM in waiting zones.

Lastly, the Commissioner is particularly concerned about the absence of a suspensive effect in appeals against decisions to transfer persons to the state responsible for the asylum request in application of the “Dublin Regulation” and against first-instance decisions in the framework of the “fast-track” asylum procedure. He invites the authorities to guarantee the complete effectiveness of all remedies open to asylum seekers and to immigrants, including in overseas departments and territories. To this end, more efforts and practical measures are necessary, including making legal aid available, to enable applicants to prepare their applications properly.

The Commissioner calls on France to ensure that all decisions taken in the context of these procedures are based on a rigorous individual examination and that due reasons are given. The Commissioner invites the authorities not to adopt or implement legislative or other measures intended to make asylum procedures even faster until such time as the structural problems of the national asylum bodies have been resolved.

Finally, the authorities are urged to reintroduce the bringing of persons placed in administrative detention before the liberties and detention judge (JLD) after two days of detention. They are also invited to cease holding hearings of the JLD in annexes of the regional courts (*Tribunaux de grande instance*) located in the immediate vicinity of administrative detention centres or waiting zones.

3. The human rights of Travellers

France numbers amongst its citizens approximately 350,000 Travellers sharing a traditional culture and lifestyle initially based on travel. The Commissioner notes with concern that a strong atmosphere of a specific form of racism, anti-Gypsyism, has been prevalent in the country for a very long time, manifesting itself through deep hostility, which the Travellers consider to be growing. The Commissioner invites the authorities to combat with great firmness hate speech and acts directed at Travellers, including on the Internet.

The Commissioner notes that Travellers encounter some serious impediments, particularly to the enjoyment of their freedom of movement and the exercise of their political rights. Despite a decision issued in 2012 by the Constitutional Council (*Conseil constitutionnel*), French legislation continues to require Travellers to hold a travel permit and to be attached to a municipality in order to be able to enjoy their rights to vote and to stand for election. The Commissioner therefore urges the authorities to repeal all the measures which depart from ordinary law and which create a regime which discriminates against Travellers.

Lastly, notwithstanding an improvement since 2008, the Commissioner notes that the number of stopping places and large temporary camping areas remains inadequate, and that it often proves impossible for Travellers to stay on sites belonging to them. He is also concerned about the problems of children’s access to education. The Commissioner calls on the authorities to ensure that Travellers have parking places available to them which are sufficient in both quality and quantity, and to recognise mobile accommodation as housing. The authorities should also guarantee effective access to education for Travellers’ children by promoting alternatives to conventional schooling and promoting the creation, at local level, of a context conducive to the work of school mediators or assistants.

4. The human rights of migrant Roma

Like Travellers, migrant Roma have, in France, been the object of hostility for many centuries. Although they are currently present on French territory in limited and stable numbers, migrant Roma continue to be targeted and stigmatised by certain hate speech emanating from political players at local and national level. Disproportionate attention from the media, some of it harmful, and which ignores or fails to report cases of successful integration also contributes to this. The Commissioner is very concerned about the violence to which migrant Roma are subjected by individuals, and sometimes even by members of the police, and invites the authorities to do their utmost to put an end to this and bring about the effective punishment of perpetrators.

Furthermore, the Commissioner notes that the conditions in which migrant Roma are removed from French territory raise a number of questions about respect for their rights. Despite the clarification made to the legislation in 2012, the Commissioner is concerned about the information that he received according to which mass orders to leave French territory are issued when migrant Roma are evicted from the sites that they are occupying. He is also concerned about the conditions in which some of these eviction operations take place,

notwithstanding the provisions on preparing and supervising them. He urges the authorities to put an end without delay to compulsory evictions of unlawfully occupied sites which are not accompanied by long-term rehousing solutions for all the occupants of those sites.

In order to remedy the highly precarious conditions in which the majority of migrant Roma live, the Commissioner invites the authorities to take measures to provide them with an effective guarantee of access to health care, education and employment, in accordance with the provisions of the European Social Charter and the decisions of the European Committee of Social Rights.

Lastly, in order to eradicate anti-Gypsyism, which is directed at both Travellers and Roma, the Commissioner calls on France to conduct public awareness-raising activities in order to combat the stereotypes and prejudices which exist about both Roma and Travellers. To this end, the Commissioner invites the French government to promote the Council of Europe's [Fact sheets on Roma history](#), to make use of them and to distribute them as widely as possible, particularly in schools.

5. The human rights of persons with disabilities

The Commissioner found during his visit that despite the progress made in recent years, the disability issue is rarely dealt with from a human rights angle in France. Although the relevant legal framework has been developed and gives priority to independence and social inclusion, the Commissioner finds that these are not always guaranteed in practice, because of mobility and accessibility difficulties and shortcomings in the guidance and support arrangements for persons with disabilities.

He is concerned about the thousands of persons with disabilities obliged to leave France to find appropriate solutions to their situation abroad, particularly in Belgium. He also condemns the difficulties in terms of access to employment and the discriminatory conditions experienced by workers with disabilities within certain specialised structures. He invites the French authorities to step up their efforts to fulfil their obligations, under the European Social Charter in particular, in terms of support for persons with disabilities and access to employment, failing which those persons will remain marginalised and excluded from the community.

The question of the right to education and inclusive schooling of children with disabilities, particularly those suffering from autism spectrum disorder, has been highlighted by some decisions and conclusions of the European Committee of Social Rights. It also garnered the attention of the Commissioner, who is concerned to note that certain children with disabilities still do not benefit from the right to education. He welcomes the measures adopted concerning support for children with disabilities in order to promote their education, at all levels, in mainstream schools. The authorities are invited to step up their efforts in this field, so as to guarantee that no child falls by the wayside for want of appropriate and ongoing support or education.

The report contains the Commissioner's conclusions and recommendations to the authorities. It is published on the Commissioner's Internet site along with the French authorities' comments.

INTRODUCTION

1. This report follows the visit made by the Commissioner to France (Marseille and Paris), which took place from 22 to 26 September 2014¹. The Commissioner's visit focused on the following subjects: intolerance, racism and the resurgence of extremism; human rights in the context of asylum and immigration; and the human rights of Travellers, migrant Roma and persons with disabilities.
2. In the course of his visit, the Commissioner had discussions with the Minister of Justice, Ms Christiane Taubira, the Minister of State for Persons with Disabilities and Combating Exclusion, Ms Ségolène Neuville, the Minister of State for European Affairs, Mr Harlem Désir, the Director of the private office of the Minister of the Interior, Mr Thierry Lataste, the Interministerial Delegate for the Fight against Racism and Antisemitism (DILCRA), Mr Régis Guyot, the Interministerial Delegate for Accommodation and Access to Housing (DIHAL), Mr Alain Régnier, and the Bouches du Rhône Department's Prefect for Equal Opportunities, Ms Marie Lajus. The Commissioner also met the Rights Defender, Mr Jacques Toubon, the Inspector General of Custodial Establishments, Ms Adeline Hazan, and the President and some of the members of the National Consultative Commission on Human Rights (CNCDH). The Commissioner also met the representative in France and Monaco of the United Nations High Commissioner for Refugees, Mr Philippe Leclerc, as well as researchers, representatives of the Jewish and Muslim communities and a large number of representatives of non-governmental organisations (NGOs).
3. During his visit, the Commissioner also made some field visits. In Marseille, he met Roma families living in a camp in the 15th district of the city. He also visited the port of Marseille and met representatives of the border police force. He subsequently met some migrants confined to a waiting zone. In Paris, the Commissioner visited a neighbourhood in the northern part of the city, where he met some unaccompanied foreign minors and some homeless asylum seekers. He also visited the child psychiatry department of the Necker Hospital for sick children.
4. The Commissioner expresses his sincere thanks to the French authorities in Strasbourg and Paris for the assistance that they provided in organising the visit and facilitating its independent and effective execution. He also thanks all of those to whom he spoke for sharing with him their knowledge and analyses.
5. The Commissioner notes that France is particularly attached to the principle of equality, which holds a central place in its legal order, and on which public action to combat the different forms of discrimination is based. That attachment is reflected in the existence of an arsenal of standards developed in order to ensure that this principle is applied, and of numerous mechanisms to contribute to this. The Commissioner welcomes the existence of sound national human rights structures and the great richness and lively activity of civil society, whose many and varied organisations play a decisive role in the observance of human rights.
6. However, the Commissioner notes that the principle of equality is often not reflected on the ground. In particular, intolerance and racism, including anti-Gypsyism, which has deep and ancient roots, persist in France. Their eradication and the prevention of their recurrence require from all the authorities, both national and local, systematic and sustained efforts and effective measures.
7. The resurgence of hate speech and hate acts confirms this need, as do the discrimination and human rights violations suffered by immigrants and asylum seekers, Travellers, Roma and persons with disabilities, as detailed in this report. In this context, the preparation by France of a national action plan for the effective promotion and protection of human rights² would be a highly valuable tool for effective action by the authorities to deal with these major challenges.

¹ The Commissioner was accompanied by Mr Nikolaos Sitaropoulos, Deputy to the Director of his Office, and by Mr Matthieu Birker, Adviser.

² See the Commissioner's [thematic page](#) on systematic human rights work.

8. The Commissioner invites the government to consider the issues studied in this report and step up its efforts to resolve the problems identified. He intends to continue his exchanges with the authorities in order to help them to do so. He would like this report and its recommendations to constitute a new and fruitful phase of the constructive dialogue he has begun with the French authorities.

1 INTOLERANCE, RACISM AND THE RESURGENCE OF EXTREMISM

9. France has for a long time faced intolerance, particularly racism and xenophobia, expressed through hate acts and hate speech. Extremism regularly resurfaces in the country, stirred by activists, small groups and extreme right-wing parties which stoke hatred and tension. The reports published in recent years by international bodies such as the European Commission against Racism and Intolerance (ECRI)³, the United Nations Committee on the Elimination of Racial Discrimination (CERD)⁴ and the Commissioner following his previous visits to France⁵ show the serious and systemic nature of this problem in France and highlight the authorities' difficulties in combating it.
10. The Commissioner notes that statistics show an increase in acts and language of an anti-Muslim or antisemitic nature, the latter having increased sharply during 2014. On the basis of data issued by the Ministry of the Interior, the Department for the protection of the Jewish community estimates that there has been a 91% increase in the antisemitic acts recorded over the first seven months of 2014⁶. Anti-homophobia NGOs have also reported a very large increase in homophobic acts⁷. These acts and language of a hateful and discriminatory nature, accompanied by an increase in the power and political influence of the extreme right wing, are tangible evidence of the tensions within French society⁸, and they reveal a disturbing trend.

1.1 MANIFESTATIONS OF INTOLERANCE AND RACISM

1.1.1 HATE SPEECH AND DISCRIMINATION

11. The Commissioner is concerned about what some of those who spoke to him referred to as the "liberation" and "increasingly widespread use" of hate speech⁹ and discriminatory language, as evidenced by numerous verbal assaults or offensive manifestations of a racist and xenophobic nature which were recorded by the Ministry of the Interior in 2012 and 2013.
12. Some hate speech has a particular resonance, because it targets a public authority or echoes dramatic historical precedents. One example is that of the insults to which the Minister of Justice, Christiane Taubira, was subjected when she was called a "monkey" by demonstrators against the law allowing same-sex marriages, in October 2013. The "Dieudonné affair", involving a comedian who has become an antisemitic activist and has had several performances prohibited by prefects' offices after using antisemitic language and who has popularised the "quenelle" gesture¹⁰, also attracted much attention in

³ ECRI, [Report on France](#), adopted on 29 April 2010.

⁴ CERD, [Concluding observations](#) on France, August 2010.

⁵ Report and memorandum by the Commissioner following the visits made to France in [2005](#) and [2008](#).

⁶ See the statistics produced by the Ministry of the Interior appended to CNCDH, [La lutte contre le racisme, l'antisémitisme et la xénophobie - Année 2013](#) (The fight against racism, antisemitism and xenophobia, 2013) (in French only), March 2014.

⁷ The number of reports of homophobic attacks received by the NGO [SOS homophobie](#), for example, was 78 higher in 2013 than in the previous year.

⁸ It emerged from, inter alia, his discussions with the National Consultative Commission on Human Rights (CNCDH) and with research scientists who have analysed this problem that increasing numbers of people consider that some groups exist which are outside French society because of their origin or religion. According to the CNCDH, Roma, Travellers, Muslims, Maghrebins and Jews are regarded as such groups by a growing portion of the population, while the level of presumed racism is rising. See CNCDH, [La lutte contre le racisme, l'antisémitisme et la xénophobie - Année 2013](#) (The fight against racism, antisemitism and xenophobia, 2013) (in French only), March 2014.

⁹ In pursuance of [Recommendation No. R \(97\) 20](#) of the Committee of Ministers of the Council of Europe on "hate speech", the term "hate speech" is to be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin.

¹⁰ A gesture of stretching one arm downwards, with the other hand at wrist, elbow or shoulder level. Many people consider this to be an inverted Nazi salute.

the winter of 2013-2014. Not only did his performances mock the Holocaust and its victims and give rise to court action, but some of his supporters' reactions were also of an antisemitic nature. Many of the participants in a demonstration organised in Paris in January 2014, for instance, made the "quenelle" gesture, while slogans such as "Jews, France is not for you" and "Jews out" were chanted.

13. The Commissioner notes that the Internet and social networks increasingly seem to be the favoured vehicles for such language of a hateful and discriminatory nature. That tends to be confirmed by the increased reporting to the authorities of xenophobic and discriminatory content on the Internet¹¹. The Commissioner shares the anxiety expressed at the time of his visit by the representative of the French Council for Muslim worship, Slimane Nadour, about the "radical Islamisation" propagated by websites over which the Muslim authorities of France have no influence whatsoever, and which disseminate messages of hatred, particularly against Jews. A very large amount of homophobic language has also been found on social networks by the organisations which defend LGBTI persons. Another illustration of this problem is the multiplication of antisemitic messages on Twitter, in the autumn of 2012, referring to "#unbonjuif", including "#unbonjuif est un juif mort" ("a good Jew is a dead Jew"), which resulted in a prosecution¹².

1.1.2 ACTS OF A HATEFUL AND DISCRIMINATORY NATURE

14. The Commissioner is concerned to note that numerous hate acts of various kinds have been in the news in recent years, including graffiti on public and private buildings, damage to places of worship and burial¹³, many physical assaults, and even murders.
15. During their meeting in Paris with the Commissioner, the Grand Rabbi of France, Haïm Korsia, and the chair of the Representative council of Jewish institutions in France, Roger Cukierman, confirmed that these cases of violence were fuelling the fears of some of France's Jews and were one of the reasons for the higher numbers of people leaving France for Israel. Over 7,000 did so in 2014, whereas in 2012 there had been only 1,900, and the approximate figure in the late 90s had been 1,000 per year¹⁴.
16. The Commissioner's attention was also drawn to the recurrence in the context of anti-Muslim acts of various kinds of assaults and violent acts against women, particularly those wearing veils. The Ministry of the Interior notes that women were the victims of over 80% of the various assaults and violent acts of an anti-Muslim nature reported in 2013¹⁵.
17. There is also homophobic violence which must be condemned. In the year 2013 alone, no fewer than 188 physical assaults were reported to French association *SOS homophobie*¹⁶.
18. During their discussions with the Commissioner, several people emphasised that France regularly experiences rashes of incidents which coincide with current events in the media spotlight. The Commissioner considers that international conflicts and public debate alone are not enough to explain the incidents recorded. In his view, in fact, intolerance, racism and xenophobia have deep and ancient roots and cannot be regarded merely as epiphenomena. The resurgence of hate acts and speech necessitates permanent vigilance and the adoption of reactive and especially preventive measures by the French authorities.

¹¹ In 2013, such content represented 10% of all the reports received by the website set up by the Ministry of the Interior to receive reports of illicit Internet content, compared with 8% in 2012.

¹² Cf. § 33 below.

¹³ Also see the [letter](#) (in French only) of 8 October 2010 from the Commissioner's predecessor to French Minister of the Interior, Brice Hortefeux, about a number of instances of profanation of Jewish and Muslim cemeteries in the Strasbourg urban area.

¹⁴ According to data published by [The Jewish Agency for Israel](#) on 1 January 2015.

¹⁵ See the statistics produced by the Ministry of the Interior appended to the aforementioned CNCDH [report](#) (in French only) on the fight against racism, antisemitism and xenophobia. This tendency is confirmed by the *Collectif contre l'islamophobie en France*, which states in its 2014 [report](#) (in French only) that 78% of the reports received in 2013 concerned women, and which notes that physical assaults have become more frequent and more violent.

¹⁶ Cf. *SOS homophobie*, [Annual report for 2014](#) (in French only), April 2014. The particularly violent assault suffered in Paris in April 2013 by a homosexual couple, one of the victims of which took the initiative of publishing on the Internet a picture of his swollen face, gave rise to great emotion and many expressions of support.

19. In addition to hate acts, discriminatory conduct occurs against some people whose ethnic or religious origin or actual or supposed sexual orientation differs from that of the majority of the population. The annual activity report of the *Défenseur des droits* (Rights Defender) for 2013 says that origin is one of the main sources of discrimination, particularly in terms of access to employment, public services and housing¹⁷.
20. Finally, the Commissioner condemns the fact that certain conduct by law enforcement agencies seems to contribute to this discrimination. Several human rights organisations have complained about the persistence of discriminatory police checks on the basis of physical features, often referred to as *contrôles au faciès*¹⁸. The Commissioner notes that the courts will have to issue a ruling on this subject, since thirteen people aged between 18 and 35, described by their lawyer as “French citizens without a criminal record, but who are black or Arab”, and who believe that they were “subject to a police check without reason”, have brought an action against France and the Ministry of the Interior¹⁹.
21. In a 2012 report²⁰, the Rights Defender had recommended that the authorities introduce numbers on uniforms enabling members of the security forces to be identified, and test a system of issuing receipts following checks. While the latter measure has not been implemented, the Commissioner welcomes the fact that the wearing of an individual identification number on the uniforms and armbands of police officers and gendarmes, which he had also recommended²¹, has become compulsory and seems to have been properly applied since the entry into force, on 1 January 2014, of the new *Code de déontologie des forces de l'ordre* (code of ethics for law enforcement agencies), which also contains a reminder of the prohibition of checks on the basis of physical features or distinctive marks.

1.1.3 HATE SPEECH AND ACTS IN THE POLITICAL SPHERE

1.1.3.1. THE ROLE OF POLITICAL LEADERS IN THE PROPAGATION OF HATE SPEECH

22. The Commissioner welcomes the fact that the majority of French politicians reject racist, antisemitic and discriminatory rhetoric. It is nevertheless disturbing to note that, in France, a number of parties and politicians use intolerant or racist language. Indeed, several elected representatives or election candidates have recently been convicted of using racist or discriminatory language. There are, sadly, fairly numerous examples, one being a *Front National* candidate in the March 2014 municipal elections who was convicted in a court of first instance in July 2014 of having published on the Internet a photomontage comparing the Minister of Justice to a monkey, and another being the mayor of Cholet, who was convicted on appeal in August 2014 of defending a crime against humanity because of a remark that he had made about Travellers²². The Commissioner also noted other statements which had not been subject to prosecution, or court convictions, but which were nonetheless damaging.
23. In this respect, the Commissioner shares the concerns expressed by CERD and ECRI in their 2010 [Concluding observations](#) and [report](#) and condemns the use of such rhetoric by members of the political class, and sometimes even by senior representatives of the state.

¹⁷ Rights Defender, [Annual activity report for 2013](#) (in French only), July 2014. 25.5% of the cases dealt with by the Rights Defender in 2013 in the field of anti-discrimination related to discrimination linked to origin.

¹⁸ See inter alia Open Society Justice Initiative, [L'égalité trahie, l'impact des contrôles au faciès](#) (Equality betrayed, the impact of checks based on physical features; in French only), September 2013; Human Rights Watch, ["The Root of Humiliation, Abusive Identity Checks in France"](#), January 2012.

¹⁹ Cf. Rastello, Céline, ["Contrôles au faciès : 'rien n'a changé'"](#) (Checks based on physical features: “nothing has changed”)(in French only), L’Obs, 2 October 2013. While the Paris Regional Court did dismiss the case in October 2013, the applicants have appealed against this decision, so the case is still pending.

²⁰ Rights Defender, [Rapport relatif aux relations police / citoyens et aux contrôles d'identité](#) (Report on relations between police and public and identity checks)(in French only), 2012.

²¹ Commissioner for Human Rights, Human Rights Comment, ["Police abuse – a serious threat to the rule of law"](#), 25 February 2014.

²² It should be stated that these decisions, which may be the subject of an appeal to a court of appeal and/or the Court of Cassation, cannot, at the date of publication of this report, be considered final.

1.1.3.2. THE RESURGENCE OF EXTREME RIGHT-WING MOVEMENTS AND PARTIES

24. The extreme right wing has long played a role in the French political sphere. The Commissioner notes with concern the existence of organisations and small groups which propagate their ideology through language and actions of a sometimes violent nature. One example is the *Génération identitaire* movement, which organised “anti-scum patrols” in the Lille underground railway network early in 2014, supposedly in protest about insecurity. In 2013, a fight in Paris between individuals close to two extremist groups (*Troisième Voie* and *Jeunesses nationalistes révolutionnaires*) and anti-fascist activists resulted in the death of Clément Méric, a young anti-fascist activist. In July 2014, the Council of State (*Conseil d’Etat*) confirmed the dissolution, in accordance with a decree issued by the President of the Republic, of the two aforementioned extreme right-wing groups²³.
25. Where political parties are concerned, the *Front National* (FN), founded by Jean-Marie Le Pen, has asserted itself since the mid-70s as France’s main extreme right-wing party. The main characteristics of the party are its sovereignty-based rhetoric, which rejects immigration and the alleged Islamisation of French society, and its hostility to the European Union. It has made strong gains in all the elections held since 2010, to the extent that it came first in the European elections of June 2014, with 24.86% of the votes and 24 seats. The party, not so many years ago far removed from the corridors of power and regarded as one with which the other political formations could not possibly associate, now has elected representatives at local, regional, national and European levels, and is in a position to bring significant influence to bear on political life.

1.2 THE LEGAL AND INSTITUTIONAL FRAMEWORK OF THE FIGHT AGAINST RACISM AND DISCRIMINATION

26. Article 1 of the Constitution of 1958 states that France “shall ensure the equality of all citizens before the law, without distinction of origin, race or religion, and shall respect all beliefs”. That provision confers a central place on the principle of equality and makes the transcending of differences one of the minimum requirements for the harmonious coexistence of all components of the community, frequently referred to, in France, as *vivre ensemble* (all living together). Furthermore, the Preamble to the Constitution of 27 October 1946, which is an integral part of the French Constitution, states that “the people of France proclaim anew that each human being, without distinction of race, religion or creed, possesses sacred and inalienable rights”²⁴.
27. The Commissioner notes with satisfaction that France has equipped itself with a sound legal and institutional framework against racism and discrimination in order to secure implementation of these constitutional principles. Numerous legislative provisions, adopted mainly between 1972 and 2012, have gradually built up the system now in force. They punish both those racist offences classified as “press offences”²⁵ and racist offences under ordinary law, with racism having been made an aggravating circumstance in certain offences under ordinary law.
28. Furthermore, discrimination on the basis of criteria prohibited by the law is punishable when it leads to certain acts, including refusal to supply goods or services, impeding the normal exercise of any economic activity or impeding access to employment, as well as in the context of labour relations. Finally, the *Code du sport* (codified regulations governing sport) includes criminal law provisions against racist behaviour at sports events.

²³ *Conseil d’État*, 30 July 2014, [Association "Envie de rêver" et autres](#) (In French only), Nos. 370306, 372180. It has been reported that around 10 groups of this kind have been prohibited in France in the past 20 years. Cf. *Le Monde* (in French only), 1 August 2014, p. 6.

²⁴ It is useful to note that it is the constitutional principles of equality between citizens and the uniqueness of the “French people”, which are traditionally interpreted as excluding recognition of the collective rights conferred on a group on a community basis, that are an impediment, inter alia, to the signing by France of the Framework Convention for the Protection of National Minorities.

²⁵ Insults of a racist nature; defamation of a racist nature; incitement to discrimination, hatred or violence of a racist nature; justifying war crimes and crimes against humanity; revisionism.

29. The punishments applicable have been made more severe by successive reforms, resulting in an arsenal of penalties characterised by a severity which seems appropriate to the seriousness of the offences. The Commissioner welcomes the diversification of those punishments, particularly through the introduction in 2004 of citizenship courses. These courses are intended to provide a reminder of the “republican values of tolerance and respect for human dignity on which society is based” and “raise awareness of responsibility in the criminal and civil spheres and of the duties that life in society entails”.
30. The Commissioner notes that the Minister of Justice issued a circular in June 2012 instructing public prosecutors to give all useful instructions to the departments which conduct investigations to enable the perpetrators of offences of a racist nature to be speedily identified and apprehended. The Minister of Justice also drew the Commissioner’s attention to the existence, within each regional court, of *magistrats référents*, “contact prosecutors” on matters of racism and discrimination, and to the introduction at the *École nationale de la magistrature* (national school of judges) of training in this field open to *magistrats référents*, lawyers, police officers and gendarmes.
31. An interministerial committee against racism and antisemitism (CILRA), which reports to the prime minister, was set up in 2003. As recommended by ECRI²⁶, that committee has drafted a “national policy against racism and antisemitism”, comprising a national action plan against racism and antisemitism²⁷, adopted in February 2012, and a supplementary programme, adopted in February 2013. The national policy against racism and antisemitism is based on education, awareness-raising and training, and it encompasses a wide range of measures. The Interministerial Delegation for the Fight against Racism and Anti-Semitism (DILCRA) is responsible for coordinating implementation of these measures²⁸.
32. In addition, a programme of government action on violence and discrimination committed for reasons of sexual orientation and gender identity has been conducted since October 2012 by the Ministry for Women’s Rights²⁹. And finally, the Rights Defender, the successor of the High Authority against Discrimination and for Equality (HALDE), has the power to receive individual complaints about all kinds of discrimination.
33. The effectiveness of this sound legal and institutional framework has to be judged in the light of its operation in practice. The report submitted by France in 2013 to CERD³⁰ says that in “the 10 years from 2001 to 2011, the number of convictions solely or principally for racism-related offences rose by 87%, from 267 to 495”. The Commissioner welcomes the criminal law response effectively given to many instances of acts or language of a hateful or discriminatory nature. This applies also to the sentencing of the aforementioned political leaders for their hate speech³¹. The Commissioner also notes the decisions handed down in the case of the #unbonjuif hashtag by first the Paris *Tribunal de grande instance* (regional court) and subsequently the Court of Appeal of Paris, in January and June 2013, which ordered Twitter to communicate to the five applicant human rights associations “the data in its possession which would enable the identity of anyone who contributed to the creation of manifestly unlawful tweets to be ascertained”.
34. The Commissioner notes that the fight against acts or language of a hateful or discriminatory nature is also waged through administrative measures. Such measures were used to dissolve a number of small extreme right-wing groups, to prevent performances of a show deemed to have antisemitic content, and

²⁶ ECRI, [Report on France](#), adopted on 29 April 2010.

²⁷ [Plan national d’action contre le racisme et l’antisémitisme](#) (in French only), February 2012.

²⁸ The Commissioner notes that DILCRA has, inter alia, provided the impetus for awareness-raising activities aimed at students and has prepared a training programme for government officials, the first phase of which started in autumn 2014.

²⁹ According to the Ministry of Social Affairs, Health and Women’s Rights, which is responsible for implementation thereof, this [programme](#) of coordinated action against homophobia, lesbophobia and transphobia is intended to combat violence, change mentalities with young people’s help, combat day-to-day discrimination and give new impetus to the international fight for the rights of LGBT persons.

³⁰ CERD, [Report](#) submitted by France in application of Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, 23 May 2013.

³¹ Cf. above, § 22.

to prohibit demonstrations which the authorities believed might well give rise to antisemitic language and acts³².

35. The Commissioner emphasises, on the one hand, that coercive measures likely to have the effect of restricting the exercise of fundamental freedoms must, in principle, be provided for by law, be strictly proportionate to the aim pursued and be accompanied by remedies enabling those affected to challenge their lawfulness³³. He also points out that hate speech constituting a denial of the fundamental values of the European Convention on Human Rights is excluded from the scope of the protection of freedom of expression and freedom of assembly and association, in application of Article 17 of the European Convention on Human Rights (Prohibition of abuse of rights)³⁴.
36. The Commissioner was informed that effective punishment of acts or language of a hateful or discriminatory nature is partly impeded by the low rate of reporting of such occurrences. The Ministry of the Interior itself refers in this respect to a “dark figure”, meaning the unknown number of victims who do not make a complaint, particularly about threats and insults³⁵. Furthermore, the difficulties of establishing that racist offences have been committed in the light of the criteria laid down by criminal law lead to decisions being made to take no further action about almost one-third of the complaints made about racist, hateful and discriminatory language and acts³⁶.
37. Several NGOs also told the Commissioner of the difficulties experienced in order to secure a conviction in a criminal court for discriminatory conduct on the basis of what are called “discrimination testing” operations, whereby the existence of racial discrimination is demonstrated at entrances to discotheques, restaurants and other public places, or in the context of employment applications, when alternative candidates of different ethnic origins are deliberately put forward.
38. The Commissioner welcomes the possibility, which has existed since 2006 under Article 225-3-1 of the Criminal Code, of making use of “discrimination testing” to demonstrate the existence of discriminatory conduct. However, according to the information communicated to the Commissioner, there have effectively been few convictions in cases where such testing had been carried out. The Commissioner nevertheless considers that such a method, when rigorously conducted, does constitute a tool able to demonstrate discriminatory conduct that its victims alone have difficulty in proving.
39. The Commissioner’s attention was also drawn to the difficulties of implementing the national policy to combat racism and antisemitism, difficulties which seem linked to the low level of resources allocated to DILCRA, which has only a very small team, and to problems of coordination of the different ministries which are supposed to play a part in the implementation of that policy. The Commissioner notes that the prime minister himself, when making his new year address in September 2014 to the Jewish community, had referred to the inadequacy of the national plan to combat racism and antisemitism and had promised to “review it in order to give it ambition and visibility”.
40. The Commissioner regrets that, notwithstanding the recommendations made by ECRI during its fourth monitoring cycle, in 2010³⁷, France has not yet acceded to Protocol No. 12 to the European Convention on Human Rights, which establishes a general prohibition of discrimination, or to the Council of Europe’s Framework Convention for the Protection of National Minorities. He also strongly regrets that the country

³² Cf. above, § 24, § 11 and § 18 respectively.

³³ See, inter alia, the judgment delivered in the case of [Vona v. Hungary](#), of 9 July 2013, in which the European Court of Human Rights concluded that Article 11 (freedom of assembly and association) of the Convention had not been violated, on the grounds that, as for political parties, the State is entitled to take preventive measures to protect democracy vis-à-vis associations if a sufficiently imminent prejudice to the rights of others threatens to undermine the fundamental values on the basis of which a democratic society exists and functions. Also see the judgment in the case of [Leroy v. France](#), of 2 October 2008.

³⁴ See, inter alia, the decision ruling inadmissible the application in the case of [Hizb Ut-Tahrir and Others v. Germany](#), of 19 June 2012.

³⁵ See the contribution of the Ministry of the Interior appended to the 2013 CNCDDH [report](#) (in French only) on the fight against racism, antisemitism and xenophobia, p. 222.

³⁶ According to Ministry of Justice figures, almost two-thirds of complaints about offences of a racist nature did not result in prosecution, with more than half of the discontinuation decisions being taken because of the impossibility of establishing that an offence classified as racist has been committed. Cf. 2013 CNCDDH [report](#) (in French only) on the fight against racism, antisemitism and xenophobia, p. 116.

³⁷ ECRI, [Report on France](#), adopted on 29 April 2010.

has not withdrawn its declaration in respect of Article 27 of the International Covenant on Civil and Political Rights³⁸. On the other hand, the process intended to make ratification of the European Charter for Regional or Minority Languages possible was being initiated at the time of the Commissioner's visit. He would like to receive more information about the progress of this process from the French authorities.

41. Finally, the Commissioner is concerned to note that the implementation of certain provisions of domestic law has raised serious issues of compatibility with, inter alia, the International Covenant on Civil and Political Rights, particularly where respect for the human rights of persons belonging to certain religious groups is concerned. For example, in three [views](#) adopted between 2011 and 2013, the United Nations Human Rights Committee found violations by France of Article 18 (right to freedom of religion) of the International Covenant on Civil and Political Rights³⁹. The Commissioner would like to receive information from the French authorities about the measures taken to redress those violations of the Covenant.

CONCLUSIONS AND RECOMMENDATIONS

42. Acts or language of a hateful or discriminatory nature constitute a particularly pernicious form of violence. The Commissioner emphasises that, more than other forms of violence, violence of a racist nature has destructive effects on human dignity and social cohesion. Hence the need to tackle it even more seriously.
43. The Commissioner welcomes the efforts made by France over many years to combat intolerance, racism and discrimination. He nevertheless considers that the decline in tolerance and, in particular, the increase in hate speech recorded since 2009 require sustained efforts and a comprehensive approach. The drafting and application by France of a [national action plan for human rights](#) could be a valid means of consolidating the efforts made by some authorities in this field.
44. The Commissioner points out that the Parliamentary Assembly of the Council of Europe, in both [Resolution 1754 \(2010\)](#) and [Resolution 2011 \(2014\)](#), described a wide range of measures to be taken by member states. In the criminal law sphere, the Commissioner encourages the French authorities to continue with determination their action to combat intolerance, racism and discrimination and to fully apply criminal and anti-racist legislation in order to provide redress and protection to the victims of acts or language of a hateful or discriminatory nature. He particularly invites them to step up the fight against hate speech disseminated via the Internet and to clarify the criminal law classifications of racist offences so as to reduce the number of proceedings discontinued as a result of the difficulties of establishing that such offences have been committed, and also to reduce the impunity still enjoyed by too many perpetrators of offences of this nature.
45. The French authorities are also encouraged to give full effect to the provisions recognising "discrimination testing" as a means of proving discriminatory behaviour, and to initiate or take part in such operations, in conjunction with the anti-racism and anti-discrimination organisations and/or with the sworn staff of the Rights Defender who are specifically authorised to do so.
46. In the preventive sphere, the Commissioner calls on the authorities to carry out as soon as possible the announced review of the national plan to combat racism, and to increase the resources allocated to its implementation. The Commissioner invites France to consider the possibility of incorporating this plan into a national action plan for the promotion and systematic protection of human rights⁴⁰. He also encourages the authorities to take the opportunity of this review to include new educational measures,

³⁸ Article 27 states: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language". The French Government has made the following [declaration](#): "In the light of article 2 of the Constitution of the French Republic, the French Government declares that article 27 is not applicable so far as the Republic is concerned".

³⁹ *Ranjit Singh v. France*, 1876/2009, views dated 27 September 2011; *Bikramjit Singh v. France*, 1852/2008, views dated 4 February 2013; *Shingara Mann Singh*, 1928/2010, views dated 26 September 2013. These three cases concerned members of the Sikh faith who were not in a position to have photographs taken in order to renew their French residence permit or passport or to study at an upper secondary school because they wore the Sikh turban, the wearing of which is a religious duty and an integral part of Sikhism.

⁴⁰ See the Commissioner's [Recommendation](#) on systematic work for implementing human rights at the national level, CommDH(2009)3/18 February 2009, and the Commissioner's relevant [thematic page](#).

particularly with a view to teaching young Internet users to reject racist, hateful and discriminatory language. In this context, he invites the authorities to take full account of ECRI's [General Policy Recommendation No. 10](#) entitled "Combating racism and racial discrimination in and through school education".

47. This opportunity should also be taken to improve the training of government officials, particularly members of law enforcement agencies, to combat intolerance, racism and discrimination. In this context, the authorities can draw on the principles set out in ECRI's [General Policy Recommendation No. 11](#) on "Combating racism and racial discrimination in policing" and in [Recommendation Rec \(2001\) 10](#) of the Committee of Ministers of the Council of Europe to member states on the European Code of Police Ethics, the systematic distribution and application of which would be very useful. The Commissioner points to the crucial importance of the training of members of law enforcement agencies, particularly in order to enable better identification of the racist or discriminatory nature of an offence from the very time at which a complaint is lodged. The French authorities are also invited to make efforts in terms of training on the subject of identity checks, so that the conditions are created in which discriminatory checks are eradicated.
48. The Commissioner draws the French authorities' attention to the particular impact of hate speech expressed in the political sphere. It is essential for political leaders not only to firmly condemn such acts and such language, but also to refrain from making use of rhetoric which stigmatises certain social groups, such as migrants or Roma, for that triggers greater intolerance and leads to racism becoming more widespread in society.
49. The Commissioner invites both houses of parliament and the political parties to take severe disciplinary measures against any of their members who use language of a hateful or discriminatory nature. He also encourages representatives of central government and politicians to not only strongly and clearly reject racism, xenophobia and all forms of discrimination, but also to emphasise the value of equality and respect for differences.
50. Finally, in terms of international commitments, the Commissioner welcomes the initiation of the process of ratification of the European Charter for Regional or Minority Languages and invites the authorities to conclude this process in order to enable this convention to come into force. He also calls on the authorities to accede to Protocol No. 12 to the European Convention on Human Rights on the general prohibition of discrimination, as well as to the Council of Europe's Framework Convention for the Protection of National Minorities. He also invites France to withdraw its declaration on Article 27 of the International Covenant on Civil and Political Rights concerning protection of the human rights of "ethnic, religious or linguistic minorities".

2 HUMAN RIGHTS IN THE CONTEXT OF ASYLUM AND IMMIGRATION

51. France is traditionally a country which receives migrants. The Commissioner notes that recent years have been marked by legislative inflation on asylum and immigration. Around ten laws have in fact been passed since 2002, most of them tightening up the rules applicable to asylum seekers and immigrants. The implementation of this legal arsenal raises serious questions of compatibility with France's international commitments concerning human rights, whether these be under treaties of general scope, such as the European Convention on Human Rights and the International Covenant on Civil and Political Rights, or instruments specifically covering refugees, such as the Geneva Convention of 1951.
52. The Commissioner further notes that there is much less standard-setting activity in respect of integration. The creation in 2012 of a Ministry of Immigration, Integration and National Identity marked the linking together of policies on integration and on combating unlawful immigration within a single ministry. The fears expressed, particularly by NGOs, of seeing a security-based approach to migrants prevail in France because of this joint responsibility did not disappear with this ministry, insofar as most of its responsibilities were transferred to the Ministry of the Interior. The Commissioner was indeed informed of the publication by the government in February 2014 of a roadmap intended to give migrant integration policy a new basis centring on the reception of new arrivals and equality of rights, but notes that it does not seem to have been implemented as yet.

53. Among the major subjects raising important questions are the reception of asylum seekers, the protection of the human rights of unaccompanied foreign minors and the quality of the procedures and effectiveness of the remedies open to asylum seekers and immigrants.

2.1 RECEPTION CONDITIONS FOR ASYLUM SEEKERS

54. In the course of his visit, the Commissioner found that France was experiencing major difficulties in terms of the reception of asylum seekers, notwithstanding the significant efforts made to strengthen the national system for receiving asylum seekers (*dispositif national d'accueil des demandeurs d'asile*, DNA)⁴¹. The Commissioner's attention was drawn to the large increase in the number of asylum applications lodged in recent years. 65,894 applications were submitted in 2013, for example, i.e. 7% more than in 2012 and 85.5% more than in 2007. However, the Commissioner notes that France has experienced comparable levels of applications several times in its recent history⁴², showing that the problems of the reception, and specifically the accommodation, of asylum seekers are more structural than cyclical.
55. The DNA, which encompasses the accommodation system and a network of reception, information, guidance and support platforms for asylum seekers submitting their first asylum applications, theoretically makes it possible to offer asylum seekers accommodation at a reception centre for asylum seekers (CADA) during the examination of their request. The Commissioner notes, however, that reception capacities are in practice very clearly inadequate: there is no CADA overseas, while in metropolitan France only 33% of asylum seekers were admitted to a CADA in 2014⁴³.
56. The Commissioner is aware of the existence, since 2000, of a temporary reception system for asylum seekers (*Accueil Temporaire Service de l'Asile*, ATSA) intended to ease the shortage of CADA places, but he notes that its capacities, limited to approximately 2,200 places, are insufficient to meet all the needs. The Commissioner also notes that asylum seekers, despite the fact that they are all entitled to benefit from decent material conditions of reception under Directive 2003/9/EC⁴⁴, are not admitted to a CADA if their asylum request is examined under the "fast-track" procedure. This is also the case for asylum seekers who have to be readmitted to another state in application of the Dublin Regulation, notwithstanding the judgment of 27 September 2012 by the Court of Justice of the European Union in pursuance of which reception conditions should also benefit asylum seekers awaiting readmission⁴⁵.
57. The Commissioner notes that asylum seekers who have not found a place in or been admitted to a CADA have access only to the emergency accommodation system, which is characterised by great uncertainty. In practice, it comprises places at emergency accommodation centres, in hotels and, more rarely, in flats. The saturation of the DNA, which admitted only 14,480 new asylum seekers in 2013, has led to the emergency accommodation system effectively becoming the main accommodation system for asylum seekers, receiving 24,600 of them in 2013.
58. In the course of his visit, the Commissioner was able to meet some Afghan asylum seekers without long-term accommodation in northern Paris. They were obliged to live and sleep in parks or streets, as some had been doing for several months. Several NGOs told the Commissioner that this situation also, even more worryingly, affected families.
59. The draft law on asylum reform⁴⁶, presented to the Cabinet (*Conseil des ministres*) in July 2014, is intended to develop the CADA model and proposes the setting up of a "placement system for asylum seekers" enabling asylum seekers to be directed to a CADA in their region if places are available there, or

⁴¹ According to the [Ministry of the Interior](#), this system had almost 23,400 places in 2013, whereas it had had only around 5,000 in 2000.

⁴² According to the figures of the [Office français des Réfugiés et apatrides](#) (French office for refugees and stateless persons), 61,422 requests for international protection were registered in 1989, and 57,616 in 2004.

⁴³ *France Terre d'Asile, Les migrants et le Calais – Quelle sortie de crise ?* (Migrants and the Calais region – A way out of the crisis?) (in French only), October 2014, p.6.

⁴⁴ Directive 2003/9/EC was revised by [Directive 2013/33/EU](#).

⁴⁵ CJEU, *Cimade, Groupe d'information et de soutien des immigrés (GISTI) v. Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration*, 27 September 2012, case [C-179/11](#).

⁴⁶ Draft law on asylum reform, [INTX1412525L](#) (in French only), 23 July 2014.

to other regions where places are available. It also provides for persons whose asylum requests are to be dealt with under the “accelerated” procedure destined to supersede the “fast-track” procedure to be allowed access to CADAs.

60. The Commissioner considers the priority given to CADAs to be welcome and appreciates their opening to asylum seekers placed under the accelerated procedure. He nevertheless emphasises that care should be taken to allocate sufficient resources to the DNA to enable new places to be created at CADAs and social and legal support to be provided to asylum seekers. Where the “placement system for asylum seekers” is concerned, the Commissioner draws the authorities’ attention to the need to take account of asylum seekers’ personal and family situation and to avoid embarking on a logic of control and, potentially, of excessive restriction of their freedom of movement. The Commissioner is also concerned about the fact that asylum seekers who have rejected accommodation are to be considered to have rejected care as a whole and will no longer be able either to claim a subsistence allowance or to benefit from accommodation under the ordinary law unless they are in distress.
61. Asylum seekers who are not accommodated in a CADA benefit from payment of a temporary waiting allowance (ATA). In a judgment of 27 September 2012, the Court of Justice of the European Union (CJEU) had stated that, within the meaning of [Directive 2003/9/EC](#), all asylum seekers were to be granted decent reception conditions until a final decision on their requests was delivered or they were transferred to the state responsible for examining their request in application of the Dublin Regulation. Nevertheless, the Commissioner notes that France has not extended the benefit of the ATA to those asylum seekers placed under the “fast-track” procedure who have lodged an appeal with the National Asylum Court (*Cour nationale du droit d’asile, CNDA*). He was also informed by NGOs that, notwithstanding a circular from the Minister of the Interior dated April 2013 intended to extend the benefit of the ATA to asylum seekers who were to be readmitted to another state in application of the Dublin Regulation⁴⁷, some of them were reported not to manage to obtain it.
62. The Commissioner noted that the amount of the ATA in 2013 was €11.20 per day per adult. He, like several of the persons and organisations to whom he spoke during his visit, fears that this sum is inadequate to meet, in particular, the CJEU’s demands in this respect⁴⁸.
63. The draft law on asylum reform provides for the ATA to be replaced by a single allowance for all asylum seekers who request accommodation, the amount of which will vary according to the composition of the applicant’s family. The Commissioner points out that it will therefore be important for the authorities to ensure that the amount of the single allowance meets the requirements of Directive 2003/9/EC and those of Article 3 of the European Convention on Human Rights⁴⁹.
64. As regards the reception of Syrian refugees, the Commissioner notes that the President of France pledged, in October 2013, that 500 Syrian refugees would be received for resettlement. At the time of the Commissioner’s visit, fewer than half of them had effectively been resettled. The Commissioner considers that this very modest participation in the resettlement programme should be viewed in the context of the low number of Syrian asylum seekers and refugees – approximately 3,000 – received in France since 2012 under the standard asylum procedure, which seemed to be partly due to the addition since January 2013 of Syrians to the list of nationals needing an airport transit visa (ATV).

⁴⁷ This circular follows the aforementioned judgment of the CJEU, *Cimade, Groupe d’information et de soutien des immigrés (GISTI) v. Ministre de l’Intérieur, de l’Outre-mer, des Collectivités territoriales et de l’Immigration*, 27 September 2012, case [C-179/11](#).

⁴⁸ The CJEU, in fact, ruled in a judgment of 27 February 2014 that, when accommodation is not provided by the state, the amount of the financial allowance for which Directive 2003/9/EC provides must be “sufficient to ensure a dignified standard of living and adequate for the health of applicants and capable of ensuring their subsistence by enabling them to obtain housing, if necessary, on the private rental market”. CJEU, *Federaal agentschap voor de opvang van asielzoekers v. Selver Saciri et al.*, 27 February 2014, case [C-79/13](#).

⁴⁹ See the case of [M.S.S. v. Belgium and Greece](#), GC, judgment of 21 January 2011, in which the Court concluded, inter alia, that there had been a violation of Article 3 of the Convention (prohibition of inhuman or degrading treatment) by Greece, because of the living conditions of the applicant (an asylum seeker) in Greece; also see [Tarakhel v. Switzerland](#), GC, judgment of 4 November 2014, §§ 93-99.

65. The visa requirement restricts Syrians' opportunity to come to France to seek asylum. The Commissioner notes that this requirement was validated by the *Conseil d'État* in a decision of 18 June 2014⁵⁰. However, in view of the unprecedented scale of the humanitarian crisis affecting Syrian refugees⁵¹, the Commissioner considers that the French authorities should remove all the impediments which prevent persons fleeing the conflict in Syria from requesting asylum in France, and should step up their efforts to receive more Syrian refugees on their territory. The Commissioner points out that France should, generally speaking, show solidarity and flexibility in respect of the visa requests lodged at French consulates by Syrian asylum seekers.
66. Furthermore, the Commissioner's attention was drawn to a specific and particularly disturbing situation affecting some potential asylum seekers and immigrants who wish to travel to the United Kingdom. Large numbers of them are staying in Calais and its region, in shanty towns or squats, waiting for an opportunity to cross the Channel. Most of these migrants, whose numbers were estimated at approximately 2,300 in October 2014, are unaccompanied young men, originally from Eritrea, Ethiopia, Sudan, Afghanistan and Pakistan. However, the number of women is reported to have been rising since 2009, with the result that they now represent 14% of the migrant population present in the region⁵².
67. The Commissioner notes that his predecessor's findings, set out in a [letter](#) sent on 3 August 2010 to the Minister of Immigration following a visit to Calais in May 2010, are, unfortunately, still accurate. There are still very large numbers of migrants trying to reach the United Kingdom, and their living conditions remain appalling. He notes that the public authorities have continued their policy of evictions by the police from places and land occupied by these migrants. The evictions which have taken place in Calais since the interministerial circular of 26 August 2012⁵³ came into force and the almost instantaneous setting up of new camps tend to prove that, notwithstanding the provisions of this text intended to secure eviction anticipation and support measures, the evicted migrants are not offered accommodation, or the offers made to them are not viable for the long term.
68. A [decision](#) issued by the Rights Defender in November 2012 noted humiliating police practices, the destruction of humanitarian gifts and personal effects and evictions of migrants from their shelters which took place outside any legal framework. The decision recommended that these practices be brought to an end, but this does not seem to have had any greater effect. The eviction on 2 July 2014 of 610 immigrants from a Calais camp located close to a food distribution site provides a recent illustration of this lack of improvement⁵⁴.
69. The Commissioner is particularly concerned about the fact that the migrants in Calais and its region are also victims of offences committed by small extreme right-wing groups, such as the *Sauvons Calais* ("Save Calais") group. In September 2014 a migrants' squat had Molotov cocktails thrown at it, while the premises provided by *Secours catholique* where migrants can shower have twice been set on fire⁵⁵. The Commissioner urges the authorities to take all necessary measures to provide full protection of migrants' lives and safety and to conduct effective investigations into all such hate acts.
70. The Commissioner deeply regrets the persistence of this situation over a period of years in Calais and its region. He is aware that the French authorities alone cannot resolve this situation, the resolution of which requires a contribution from the UK authorities. In this respect, the Commissioner has noted the conclusion, on 20 September 2014, of an agreement between France and the UK on "managing migratory

⁵⁰ *Conseil d'État*, Anafé et GISTI, 18 June 2014, No. [366307](#) (in French only). In that judgment, the *Conseil d'État* took the view that it was possible because of "the circumstances [...] to establish that an emergency situation existed due to a massive influx of illegal migrants".

⁵¹ See the Commissioner's Human Rights Comment on "[Syrian refugees: a neglected human rights crisis in Europe](#)", 20 December 2013.

⁵² *France Terre d'Asile*, "Les migrants et le Calais – Quelle sortie de crise ?" (Migrants and the Calais region – A way out of the crisis?), October 2014, p. 4.

⁵³ Interministerial [circular](#) NORINTK1233053C (in French only) of 26 August 2012 on the anticipation and support of evictions from unlawful camps. This text provides for a "study of the situation of each of the families or unaccompanied persons" and for support for those persons to be subsequently put in place.

⁵⁴ The Commissioner was told that teargas had been used, personal effects destroyed and immigrants placed in administrative detention centres a long way away from the region.

⁵⁵ *France Terre d'Asile*, *ibid.*, p. 8.

pressure”, intended to reduce the number of irregular migrants in Calais and its region, to prevent them from crossing the Channel and to combat the networks of smugglers.

71. The Commissioner has also been informed since his visit that the Minister of the Interior has announced his intention to create another 500 places in the CADAs in the Calais region in 2015, as well as the opening in Calais of a day centre for migrants. The Commissioner appreciates and welcomes the search for decent reception solutions. He nevertheless draws the authorities’ attention to the risk of rapid saturation of the system, which has been designed to organise the distribution of 1,500 meals per day, whereas the *préfecture* estimates the number of migrants present in the region to be approximately 2,300. He also notes that the announced creation of 500 new places in CADAs will not be enough to meet all the accommodation needs.

CONCLUSIONS AND RECOMMENDATIONS

72. The Commissioner points out that France, in pursuance of the 1951 Convention relating to the status of Refugees, of [Directive 2003/9/EC](#) and of the European Convention on Human Rights, has obligations in terms of the decent reception of refugees and asylum seekers. He calls on the authorities to comply fully with their commitments in this sphere. He invites them to take without delay the necessary measures to guarantee that no family of asylum seekers with minor children and no unaccompanied women lack shelter.
73. The Commissioner considers that accommodating asylum seekers by using the emergency accommodation system is inappropriate and expensive. He welcomes the plan to expand the CADA network and encourages the authorities to strengthen the DNA accordingly and to deploy the financial and human resources necessary to ensure that an adequate number of places are opened and that legal and social support for all asylum seekers is made available. The Commissioner calls on the authorities to make access to CADAs possible for all asylum seekers, including those placed under the “fast-track” procedure or awaiting readmission in application of the Dublin Regulation, without waiting for this reform to be adopted.
74. When accommodation is allocated, the Commissioner invites the authorities to conduct an individual examination of requests taking account of the asylum seekers’ personal and family situation. He calls on the authorities to ensure that reception and accommodation conditions, as well as the legal and social support for asylum seekers, are of the same quality nationwide. Lastly, he invites the authorities to ensure that rejection of accommodation offered under the “placement system” does not deprive the asylum seeker and family of all their rights and services linked to the reception of asylum seekers.
75. The Commissioner encourages the authorities to quickly put in place the single general allowance for all asylum seekers for which the draft law on asylum reform provides, and to deploy the financial resources necessary to ensure that its amount is adequate. He will remain particularly attentive to the conditions for the suspension of that allowance. Pending the introduction of that allowance, the Commissioner calls on the authorities to ensure that all asylum seekers are effectively able to benefit from the ATA.
76. The Commissioner also invites the authorities to show generosity and solidarity, to step up their efforts to receive Syrian refugees and to remove the impediments which prevent persons fleeing the conflict in Syria from requesting asylum in France.
77. Lastly, the Commissioner considers that there is an urgent need for the French authorities to fully implement the circular of 26 August 2012 and the recommendations made by the Rights Defender on the subject of evictions from land, and to offer decent long-term reception and accommodation solutions for the migrants in Calais and its region. All hate acts against migrants should be the subject of effective investigations and be severely punished by the courts.

2.2 HUMAN RIGHTS OF UNACCOMPANIED FOREIGN MINORS

78. The arrival on French territory of unaccompanied foreign minors (UFM)⁵⁶ is a migratory phenomenon which emerged in the latter half of the 1990s. Despite fears regularly expressed in recent years that there would be a “massive influx” and saturation of the system for caring for them, the number of UFM does not seem to have risen significantly. According to the CNCDH, estimates vary from 4,000 to 9,000 UFM due to incomplete figures. There are approximately 3,000 more in the Department of Mayotte alone⁵⁷.
79. The Commissioner points out that, in pursuance of the principle of the best interests of the child enshrined in Article 3 of the Convention on the Rights of the Child (hereafter CRC)⁵⁸, all children should be considered as individuals, and their specific case and own opinion should be taken into account at every stage, from the age assessment procedure to the time when care is provided for them, even if they are deprived of their liberty or expelled. At each of those stages, UFM must, like other minors, be able to enjoy all the rights granted to children, particularly the rights of access to education and to health care⁵⁹.

2.2.1 HUMAN RIGHTS OF UNACCOMPANIED FOREIGN MINORS IN THE CONTEXT OF THE AGE ASSESSMENT PROCEDURE

80. The Commissioner notes that in a [decision](#) of 19 December 2012, the Rights Defender noted some situations in which UFM finding themselves on French territory had not managed to obtain care, and did not therefore benefit from a protection measure as provided for by the CRC. On the basis of this finding, he made a number of recommendations on, inter alia, age assessment of UFM, and these led to the [circular](#) issued on 31 May 2013 by the Minister of Justice on the arrangements for caring for unaccompanied foreign minors. The circular introduced an “assessment protocol” in pursuance of which young migrants claiming to be unaccompanied minors are “placed in safety” for five days in order to be assessed by the child welfare departments (ASE) of the devolved departmental authorities (*Conseils généraux*) so that their minor and unaccompanied status can be established. In accordance with the circular, this is done through an interview followed by verification of civil status documents and finally, in the event of continuing doubt and on the orders of the prosecutor’s office, a medical examination mainly comprising a bone density x-ray.
81. The Commissioner regards this assessment protocol as a positive development. However, he regrets that the scope of the circular does not extend to overseas departments and territories, since the Department of Mayotte is particularly affected by the presence of UFM on its territory. Furthermore, several of the persons to whom he spoke were anxious about the unequal and imperfect application of the circular by *Conseils généraux*, some of which were reported to be still systematically using bone age tests.
82. The Commissioner is concerned about these practices and points to the principles set out in [Resolution 1810 \(2011\)](#) of the Parliamentary Assembly of the Council of Europe (hereafter “PACE”) in relation to the problems associated with the arrival, stay and repatriation of unaccompanied children in Europe. According to these principles, age assessment should be carried out only if there are reasonable doubts about whether a person is a minor. As also stated by the UN Committee on the Rights of the Child in [General Comment No. 6 \(2005\)](#), such assessments should be based on a presumption that the person is a

⁵⁶ A UFM is defined as a “person aged under 18 who is outside his or her country of origin but not accompanied by a person holding or exercising parental authority, i.e. without anyone to protect him or her and to take important decisions concerning him or her”. Cf. I. Debré, *Les mineurs isolés étrangers en France* (Unaccompanied foreign minors in France)(report to the Senate, in French only), *Sénat*, Paris 2010.

⁵⁷ CNCDH, [opinion](#) (in French only) on the UFM present on national territory, 26 June 2014.

⁵⁸ The European Court of Human Rights has referred directly to that convention in its case-law and has established that the requirement of “special protection” of asylum seekers is “particularly important when the persons concerned are children, in view of their specific needs and their extreme vulnerability”. It has noted that “the reception conditions for children seeking asylum must be adapted to their age, to ensure that those conditions do not ‘create ... for them a situation of stress and anxiety, with particularly traumatic consequences’ (...). Otherwise, the conditions in question would attain the threshold of severity required to come within the scope of the prohibition under Article 3 of the Convention.” *Tarakhel v. Switzerland*, GC, judgment of 4 November 2014.

⁵⁹ Also see the position paper on the rights of minor migrants in an irregular situation, [CommDH/PositionPaper\(2010\)6](#), 25 June 2010.

minor, and not based solely on a medical opinion. Furthermore, if a person's minor status is still uncertain, he or she should be given the benefit of the doubt.

83. The Commissioner also condemns the fact that the aforementioned circular, contrary to the recommendations of PACE [Resolution 1810 \(2011\)](#), makes no provision for a remedy to challenge the findings of the assessment of minor and unaccompanied status, and contains no provision which can safeguard the right of UFM to have their views heard and to be informed of their rights⁶⁰. Lastly, he notes that the courts have only in a very few cases allowed challenges to decisions to deny care by the ASE⁶¹, whereas those decisions are likely to infringe minors' right to protection from the state authorities, as set out in the CRC.
84. Furthermore, the Commissioner's attention was drawn by some experts whom he met during his visit to some civil and criminal proceedings initiated against young migrants who had claimed to be minors, but whose majority had been established by the age assessment procedure. Several prosecutors had begun proceedings in the *Tribunal correctionnel* (criminal court) for fraud, obtaining of social benefits without justification, forgery and use of forged documents, proceedings in which the *Conseil général* concerned is sometimes a civil party claiming repayment, as damages and interest, of the costs incurred. In a judgment of 18 July 2014, the Lyon Court of Appeal confirmed a judgment whereby a young migrant had been sentenced to four months' immediate imprisonment, a five-year entry ban and also to pay the *Conseil général du Rhône* the sum of €260,722 as damages and interest for holding a counterfeit administrative document and for using a forged document.
85. The Commissioner recognises the need, in a state governed by the rule of law, to prosecute acts which constitute criminal offences. However, he wonders about the classification of such offences when the determination of the age of the person prosecuted is based primarily on medical examinations, the reliability of which is in scientific dispute⁶². He is particularly concerned about the severity of the penalties imposed in such cases on young migrants who often lack resources and whose isolation makes them vulnerable.

2.2.2 RECEPTION AND CARE OF UNACCOMPANIED FOREIGN MINORS

86. The Commissioner's attention was drawn to the significant tensions which have appeared between central government and *Conseils généraux* in respect of the reception and care of unaccompanied foreign minors. Indeed, although they are required to care for all minors in danger, several chairs of *Conseils généraux*, arguing that the cost was too high for their authority, announced in 2013 that their departments would no longer care for any UFM. The Commissioner notes that those decisions were rapidly withdrawn. However, he is concerned about the tension felt by *Conseils généraux* and their mistrust of UFM as reflected in those decisions.
87. The chairs of *Conseils généraux* also complained of unequal geographical distribution of such minors across French territory, with some departments being more exposed to the arrival of UFM than others. The Commissioner was informed that, in response to that criticism, a protocol had been concluded between the central government and the Assembly of French departments, and that the aforementioned

⁶⁰ The Commissioner notes, in this respect, that the July 2014 report produced jointly by the General inspectorates of judicial services, social affairs and administration evaluating the arrangements for unaccompanied foreign minors put in place by the circular of 31 May 2013 specifies that the young migrant concerned must be notified in writing of any refusal by a *Conseil général* to accept responsibility for him or her, of any decision to deny educational assistance and of the remedies available.

⁶¹ As pointed out by the CNCDH in its 2014 [opinion](#) (in French only) on UFM, "until recently, the *Conseil d'État* completely curbed the challenging of refusals by the ASE to provide care when it declared inadmissible an application for an interim order to protect fundamental freedoms (*recours en référé liberté fondamentale*) lodged by a person claiming UFM status, on the grounds that the person lacked the capacity to take legal action. Consequently, those persons for whom the ASE refuses to provide care on the grounds that they are allegedly of age are denied the use of the *recours en référé liberté fondamentale* procedure if they claim to be minors and are not represented, as a person lacking legal capacity is required to be...". See *Conseil d'État*, 30 December 2011, *Boiguile*, No. [350458](#) (in French only).

⁶² As the Commissioner's predecessor had noted in a 2011 [article](#) on methods for assessing the age of migrant children, "In 1996, the Royal College of Radiologists in London stated that it is 'unjustified' to undertake a radiograph examination for age estimation purposes. It is not acceptable to expose children to ionising radiation for an examination which has no therapeutic benefit and is purely for administrative purposes".

[circular](#) issued by the Minister of Justice had set up a national UFM support and guidance unit, responsible for distributing UFM fairly between the different departments.

88. The July 2014 report produced jointly by the General inspectorates of judicial services, social affairs and administration on the subject of the application of the 2013 circular states that 70 departments had contributed to the solidarity effort, to the benefit of 25 departments which had, by virtue of the distribution system, been able to entrust to other *Conseils généraux* the reception and care of UFM who had arrived on their territory. During their conversations with the Commissioner, several NGOs nevertheless expressed the view that not all departments were participating equitably in the system, resulting in a still imperfect distribution.
89. The Commissioner notes that, in practice, the resources deployed by the state, which finances care during the five days of “placement in safety”, and by *Conseils généraux*, which shoulder the rest of the care burden, seem inadequate. The result is, according to the information received by the Commissioner, that the assessment phase may be much longer than the five-day period of placement in safety for which the protocol provides, and that it is not unusual for UFM to be accommodated in hotels, with neither socio-educational support nor medical care.
90. The Commissioner was alarmed to note during his visit that some minors are even homeless. In northern Paris, he met several dozen young migrants, mainly of Afghan and Sub-Saharan origin, who were forced to queue each night to try to obtain accommodation. A number of them, some as young as 14, had found themselves on the streets due to the lack of places available for them. The Commissioner also notes that in their July 2014 report the General inspectorates of judicial services, social affairs and administration emphasised the need for legal and financial consolidation of the system.
91. The Commissioner condemns the fact that minors may be accommodated in hotels and deems it completely unacceptable for some to be deprived of any form of accommodation, in violation of Article 31 of the European Social Charter (right to housing), by which France is bound⁶³. He considers that such conditions place these minors in danger, deprive them of their rights and prevent them from constructing a life project and taking steps with a view to being able to remain lawfully on French territory once they have come of age.
92. Lastly, the Commissioner is particularly concerned about the information he received on the reception and care conditions of UFM in Mayotte. He draws the French authorities’ attention to the fact that their decision not to extend to overseas departments and territories the scope of the [circular](#) issued by the Minister of Justice in 2013 does not free them from the obligations to care for unaccompanied foreign minors deriving from their international commitments.

2.2.3 DEPRIVATION OF LIBERTY OF UNACCOMPANIED FOREIGN MINORS

93. Several international bodies, such as PACE⁶⁴, the Committee on the Rights of the Child⁶⁵ and the Commissioner himself⁶⁶, have specified that states should put an end to the detention of children for reasons related to their migrant status, particularly those who are unaccompanied. The Commissioner urges all European states to apply alternatives to administrative or judicial detention which meet the best interests of the child and which enable children to stay with their families or guardians in a non-custodial setting.

⁶³ See European Committee of Social Rights, decisions of 10 November 2014 on the complaints of the *Conference of European Churches (CEC) v. the Netherlands* (No. [90/2013](#)) and *European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands* (No. [86/2012](#)).

⁶⁴ PACE, Detention of asylum seekers and irregular migrants in Europe, [Resolution 1707 \(2010\)](#), 28 January 2010; Undocumented migrant children in an irregular situation: a real cause for concern, [Recommendation 1985\(2011\)](#), 7 October 2011; The alternatives to immigration detention of children, [Resolution 2020 \(2014\)](#).

⁶⁵ Committee on the Rights of the Child, General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin, [CRC/GC/2005/6](#), 1 September 2005.

⁶⁶ See, inter alia, the Commissioner's report on his visit to Denmark, [CommDH\(2014\)4](#), 24 March 2014.

94. However, the Commissioner was informed that the unaccompanied foreign minors who arrive at borders without a visa or valid travel ticket are deprived of their liberty and held in waiting zones. The Commissioner deplors the fact that the UFM held in waiting zones do not benefit from the system set up by the 2013 [circular](#) issued by the Minister of Justice and do not have access to appropriate socio-educational support. He notes that an ad hoc administrator is appointed as the legal representative of the UFM held in waiting zones and to ensure that the procedures to which they are subject are lawful. Nevertheless, several associations told him of repetitive dysfunctions which prevented certain minors from benefiting from assistance. Furthermore, the waiting zones did not all have an area specifically for minors, who were not always separated from adults and were therefore potentially exposed to abuse and exploitation⁶⁷.

CONCLUSIONS AND RECOMMENDATIONS

95. The Commissioner encourages the authorities to take measures to guarantee that the age assessment procedure complies with the principles set out in PACE [Resolution 1810 \(2011\)](#) on “Unaccompanied children in Europe: issues of arrival, stay and return”, in [General Comment No. 6 \(2005\)](#) of the Committee on the Rights of the Child on the treatment of unaccompanied and separated children outside their country of origin, and in the [decision](#) of the Rights Defender dated 19 December 2012.
96. The Commissioner therefore invites the authorities to ensure proper application of the assessment protocol introduced by the 2013 circular issued by the Minister of Justice on the arrangements for taking care of unaccompanied foreign minors, and to extend this system to overseas departments and territories. He calls on them to guarantee in particular that all age assessment procedures are multidisciplinary. The use of bone age tests must cease to be automatic and effectively only be a last resort, within a legal framework. Their results must in no circumstances be the sole factor in age determination. If the minor status of the person concerned remains uncertain, he or she should always be given the benefit of the doubt.
97. The Commissioner encourages the central authorities and *Conseils généraux* to continue and strengthen their joint efforts to provide, in metropolitan and overseas France alike, reception for UFM which guarantees them decent living conditions and the possibility of constructing a life project. He urges them to take without delay measures to guarantee that no UFM is left without an accommodation solution and to avoid placing minors in accommodation without any socio-educational and medical support.
98. Finally, the authorities are invited to put an end to the holding of unaccompanied foreign minors in waiting zones. The Commissioner particularly encourages the French authorities to prepare and implement programmes as alternatives to the holding of migrants in waiting zones and to their placement in detention, particularly for children and their families. These programmes should entail no deprivation of liberty, be within the community and be based on the “Child-sensitive Community Assessment and Placement Model”⁶⁸.

2.3 ACCESSIBILITY OF PROCEDURES AND EFFECTIVENESS OF REMEDIES IN THE ASYLUM AND IMMIGRATION FIELD

2.3.1 ASYLUM PROCEDURES

99. The Commissioner had the opportunity to indicate on several occasions that states should ensure that all asylum seekers on their territory effectively have access to asylum procedures, and that their requests are

⁶⁷ See on this subject the recent report by Human Rights Watch, France: [France: Unaccompanied Children Detained at Borders](#), 8 April 2014.

⁶⁸ Child-sensitive Community Assessment and Placement (CCAP) Model. Cf. [PACE Resolution 2020 \(2014\)](#).

examined on a case by-case basis, rigorously and fairly⁶⁹. However, access to the asylum procedure in France seems to be made difficult by the increasing complexity of the asylum legislation.

100. Before a person may lodge a request for asylum with the French Agency for the Protection of Refugees and Stateless Persons (*Office français de protection des réfugiés et apatrides, OFPRA*), he or she must first go to the *préfecture* to apply for leave to remain for asylum purposes, for which he or she must have an address. The obligations to have an address and to have been given leave to remain seem to be significant factors in slowing down access to the asylum procedure, as a request cannot be lodged directly with OFPRA as soon as a person arrives on French territory.
101. In addition, some NGOs told the Commissioner that certain *préfectures* do not register requests immediately, but issue convocations to attend at a later date, with the result that, according to a 2013 [survey](#), the average time taken to obtain leave to remain was 30 days in 2012. During that period, asylum seekers do not have access to material reception conditions, still have no residence permit and therefore risk placement in administrative detention and being subject to expulsion. The Commissioner nevertheless notes that the draft law on asylum reform⁷⁰ lifts the obligation to have an address first and simplifies the registration procedures which are entrusted to a single office in each region in order to reduce the time taken to access the procedure to three days, which would, in effect, be a considerable improvement.
102. Leave to remain may be refused when France is not the state responsible for examining the asylum request within the meaning of the Dublin Regulation, or when the prefect considers that the request should be placed under the “fast-track” procedure. The Commissioner is concerned by the fact that these persons, during the “Dublin Procedure”, are without a residence permit or access to CADAs, notwithstanding the judgment of the Court of Justice of the European Union of 27 September 2012 according to which the reception conditions should also be afforded to asylum seekers awaiting readmission⁷¹.
103. The Commissioner is also concerned to note that a decision to transfer a person to the responsible state is not accompanied by a remedy with an automatic suspensive effect. This situation does not seem to be in accordance with the requirements of the Grand Chamber of the European Court of Human Rights as specified in the judgment in the case of [M.S.S. v. Belgium and Greece](#), delivered in 2011, nor with the Dublin III Regulation, which came into force on 1 January 2014. The Commissioner nevertheless notes that the draft law on asylum reform provides for an appeal with suspensive effect for annulment of the transfer decision.
104. The Commissioner welcomes the plan to introduce this new remedy, while reminding the authorities that the suspensive nature of a remedy alone does not guarantee its effectiveness: this also requires that remedy to be available both in law and in practice and that it should lead to a rigorous and independent examination of the substance of the complaint. Hence the appellant must be able to prepare his or her appeal properly, something which could prove particularly difficult for persons placed in administrative detention or subject to a compulsory residence order, since they have only 48 hours in which to exercise this remedy, without necessarily having access to legal assistance⁷².
105. The Commissioner also takes the view that some difficulties in terms of the effectiveness of remedies also arise in the context of the placement of an asylum request under the “fast-track” procedure⁷³, which may be decided by the prefect if the asylum seeker has the nationality of a state which appears on the list of “safe countries of origin” drawn up by OFPRA, if the presence of the asylum seeker constitutes a serious

⁶⁹ See, inter alia, the position paper from the Commissioner on the right to seek and enjoy asylum, [CommDH/PositionPaper\(2010\)4](#), 24 June 2010.

⁷⁰ Draft law on asylum reform, [INTX1412525L](#), 23 July 2014.

⁷¹ CJEU, *Cimade, Groupe d'information et de soutien des immigrés (GISTI) v. Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration*, 27 September 2012, case [C-179/11](#).

⁷² Cf. Committee of Ministers of the Council of Europe, [Guidelines](#) on human rights protection in the context of accelerated asylum procedures, 1 July 2009, Guideline X: "Right to effective and suspensive remedies".

⁷³ Also see the [letter](#) of 3 August 2010 from the Commissioner's predecessor to the Minister of Immigration, Eric Besson.

threat to public order or if the asylum request is regarded as fraudulent or improper. Indeed, this procedure is very rapid, with OFPRA issuing its ruling within 15 days, or within 96 hours if the asylum seeker has been placed in an administrative detention centre, which leaves the asylum seeker little time to properly prepare his or her request and to produce supporting evidence. Furthermore, if the request is rejected by OFPRA, an appeal lodged with the National Asylum Court (*Cour nationale du droit d'asile, CNDA*) against that decision does not have a suspensive effect.

106. In his 2008 report, and in his 2010 letter to the Minister of Immigration, the Commissioner's predecessor expressed concern about the non-suspensive nature of this remedy, which has subsequently given rise to a judgment against France by the European Court of Human Rights, issued on 2 February 2012 in the case of *I.M. v. France*⁷⁴.
107. The Commissioner notes that the draft law on asylum reform provides for the "fast-track" procedure to be replaced by what will be called the "accelerated" procedure – which will be used for requests by nationals of states which appear on the list of "safe countries of origin", for requests raising problems of identification of the applicant and for requests regarded by OFPRA as not serious – in the context of which appeals to the CNDA will have a suspensive effect. The Commissioner welcomes the suspensive nature of this remedy, while again pointing out that the effectiveness of a remedy also depends on its availability and accessibility in practice.
108. He remains concerned about the automatic nature of the classification under the accelerated procedure of requests by nationals of states appearing on the list of "safe countries of origin". The Commissioner notes that this list is occasionally challenged⁷⁵ and points out that, even in those countries regarded as safe overall, there are sometimes persons or groups which are not safe. Cases of discrimination may be so serious that they constitute inhuman or degrading treatment within the meaning of Article 3 of the European Convention on Human Rights, particularly when that discrimination is directed against members of minority groups or lesbian, gay, bisexual or transgender communities. He therefore considers that the mere nationality of an asylum seeker should not be a sufficient ground for classification of an asylum request under the accelerated procedure, which should be based on a study of the asylum seeker's personal situation.
109. The Commissioner notes that the specific procedure for requesting asylum at the border has also raised some problems of remedy effectiveness. This procedure applies to asylum seekers presenting themselves at the border in an irregular manner. Such persons are then held in a "waiting zone" where they have to request permission to enter French territory in order to lodge an asylum request. It is the Ministry of the Interior which is responsible for deciding, after obtaining the opinion of OFPRA, whether the asylum seeker may be authorised to enter French territory in order to request asylum there or whether he or she is to be returned to the country of provenance on the grounds that the request is "manifestly unfounded".
110. The remedy whereby a decision to refuse leave to remain can be challenged did not have a suspensive effect until the law of 20 November 2007 came into force. That law was passed following the judgment against France in April 2007 in the case of *Gebremedhin v. France*, in which the European Court of Human Rights took the view that the non-suspensive nature of the appeal lodged by this Eritrean asylum seeker, who had been placed in the waiting zone of Paris-Charles de Gaulle airport in 2005, constituted a violation of Article 13 of the Convention (right to an effective remedy). In the event of refusal of leave to remain,

⁷⁴ The Strasbourg Court pointed out in this judgment that the applicant's deportation had been prevented "only by the application of Rule 39 of the Rules of the European Court", since the applicant, whose asylum request was dealt with under the "fast-track" procedure, had no appeal or cassation remedy with suspensive effect available to him. The Court had also stated that "while the remedies of which the applicant had made use had been available in theory, their accessibility in practice had been limited by the automatic registration of his application under the fast-track procedure, the short deadlines imposed and the practical and procedural difficulties in producing evidence, given that he had been in detention". Also see the finding of a similar violation by the Court in the case of *M.E. v. France* (judgment in French only, see [press release](#) for a description in English), judgment of 6 June 2013.

⁷⁵ In a [decision](#) (in French only) of 10 October 2014, the *Conseil d'État* for example annulled the inclusion of Kosovo* on the list of safe countries of origin.

* All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 (1999) and without prejudice to the status of Kosovo.

asylum seekers now have 48 hours in which to lodge an appeal to the administrative court, which has 72 hours in which to issue its ruling.

111. The Commissioner considers that the possibility opened by the 2007 law for the administrative court to reject appeals for which insufficient reasons are given without a hearing raises the question of the effectiveness of this remedy, in view of the short amount of time – 48 hours – available to the asylum seeker to prepare his or her request, and also of the conditions in which he or she has to draft it. In fact, the need to lodge a request written in French and giving de facto and de jure reasons usually requires legal assistance, which is not always accessible in practice.
112. During his visit, the Commissioner went to Le Canet waiting zone, to which persons notified of refusal of leave to remain after arriving at the port of Marseille are transferred. There he also met some members of NGOs who provide legal support to persons held in the waiting zone, and they told him of occasional difficulties experienced in performing their task. He also noted the absence from the waiting zone of the list of lawyers of the Marseille Bar and the fact that, while the border police responsible for management of this zone told him that lawyers were free to visit their clients there, there was no internal rule expressly guaranteeing that possibility. The Commissioner believes that these facts, bearing in mind the shortness of the time limit for appeals, may constitute serious impediments to the preparation of such appeals in good conditions.
113. The Commissioner notes that, in 2013 and 2014, the Strasbourg Court delivered several judgments finding violations by France of Article 3 ECHR, on the grounds that the reasons given for the decisions taken by national bodies (OFPRA and CNDA) on asylum requests, particularly in the context of “fast-track” asylum procedures, were insufficient⁷⁶.
114. The Commissioner points out that, in 2013, the rate at which various types of international protection were granted in France (approximately 18%) fell well below the average in the 28 EU member states (approximately 35%), although it did issue the second largest number of asylum decisions (almost 62,000), after Germany⁷⁷. In 2014, OFPRA published a quality control report which identified recurrent weaknesses, affecting approximately one-fifth of cases⁷⁸.
115. The Commissioner has noted with interest that the French authorities are aware of the weaknesses of the asylum system and started, in 2013, to take a number of measures to improve the effectiveness and quality of the hearings and decisions of the OFPRA and CNDA⁷⁹. He invites the French authorities to continue those efforts and to take all the necessary measures to solve the serious structural problems relating to the methodology and quality of the examination of asylum requests and appeals. The authorities are invited to refrain from adopting or implementing measures intended to accelerate asylum procedures still further or to extend the application of the accelerated procedures until such time as the aforementioned problems have been fully resolved.

2.3.2 PROCEDURES RELATING TO RESIDENCE PERMIT APPLICATIONS AND CHALLENGES IN THE EVENT OF THEIR REJECTION, AND TO EXPULSION

116. The Commissioner notes that there is a great deal of criticism of migrant reception conditions and the processing of residence permit applications by *préfectures*, criticism which comes from civil society and also the Court of Audit (*Cour des comptes*), which, in its [public report for 2013](#), deplored the long queues outside those *préfectures* where the largest numbers of applications for residence permits are made and the resulting tensions⁸⁰. The Commissioner considers that the inadequacy of the resources and staff of the

⁷⁶ See the judgments in the cases of [K.K.](#), [M.E.](#), [N.K.](#), [R.J.](#), [Z.M.](#) v. France (all in French only).

⁷⁷ European Asylum Support Office (EASO), [Annual Report 2013](#), July 2014, figure 15, p. 23.

⁷⁸ Those weaknesses comprised, inter alia, insufficiently conclusive interviews, incomplete analyses of requests and inadequate taking into account of evidence, and excessively succinct decisions not fully reflecting the substance of the request. OFPRA, [Contrôle qualité, Premier exercice d'évaluation](#) (Quality control, first assessment exercise)(in French only), 17 September 2014.

⁷⁹ *Ibid.* pp. 60 and 94.

⁸⁰ *Cour des comptes*, [public annual report for 2013](#), (in French only; see the [English summary](#) of part I available from the *Cour des comptes* website), 12 February 2013.

departments responsible for examining applications for residence permits and the need to queue from daybreak, or even overnight, sometimes on several occasions, before being able to lodge an application are serious obstacles to access to these procedures.

117. The Commissioner was told that such access is even more difficult for migrants held in prison who, notwithstanding a circular issued by the Ministers of Justice and the Interior on 25 March 2013⁸¹, find it very difficult indeed to take the necessary steps during their imprisonment to obtain a residence permit or its renewal. He notes that this situation leads to many detainees finding themselves in an unlawful situation on their release from prison, as a result of which they are immediately placed in administrative detention.
118. The Commissioner also notes that certain decisions to refuse to issue or renew residence permits are accompanied by very short time limits for appeals, making challenges to them all the more difficult because they require legal skills. This is the case when the prefect issues an order to leave French territory (OQTF) in the “without delay” category, whereby the prefect refuses to issue or renew a residence permit, decides that the asylum seeker will be expelled from France and determines the “destination country” to which he or she will be expelled. The person concerned has 48 hours in which to challenge any aspects of that decision, whereas he or she may have been placed in detention immediately after being notified of the OQTF. When OQTF are in the “without delay” category, the imprisoned migrants may, once again, find themselves in a particularly awkward situation in so far as it is still impossible for them to request in time the assistance of the prison’s integration and probation services or to contact the legal advice service, and they may even be unable to reach a fax machine to send their appeal by the set time limit. It seems to him that the conditions for preparing appeals against an OQTF in the “without delay” category in many cases raise the question of the practical accessibility of such appeals, particularly for persons held at administrative detention centres or in prison.
119. The Commissioner notes that the ordinary form of OQTF is in fact accompanied by a 30-day time limit for appeals, but is concerned about the fact that the draft law on aliens in France provides for that time limit to be shorter when the prefect gives no decision on the issuing or renewal of a residence permit. OQTF of that kind, which may be issued to persons whose asylum requests have been rejected and to persons unable to prove that they were lawfully admitted to French territory or who have irregularly remained on French territory, will be accompanied by an appeal time limit of seven days, reduced to 48 hours if the person concerned is in detention or is subject to a compulsory residence order. The Commissioner considers that the complexity of appeals, combined with the shortness of the time limits set, raises genuine concerns about the possibility of exercising a fully effective remedy.
120. The Commissioner is concerned about the system of exemption in use overseas, where appeals against OQTF and against prefectural removal orders lack ipso jure suspensive effect. In 2012, the Grand Chamber of the European Court of Human Rights nevertheless ruled that there had been a violation of Article 13 (right to an effective remedy) in conjunction with Article 8 (right to respect for private and family life) of the European Convention on Human Rights in the case of [de Souza Ribeiro v. France](#) on the grounds that the remedy available to the applicant to challenge the removal order of which he was the subject, which had been issued by the Prefect of French Guiana, did not have suspensive effect.
121. The Commissioner is also concerned to note that the draft law on aliens in France is intended to maintain the exemption to the rule that appeals against OQTF have ipso jure suspensive effect on the grounds of the “migratory pressure” which exists on overseas France, particularly Mayotte and French Guiana⁸². While the draft law does provide for the possibility of a habeas corpus application (*référé-liberté*) to the administrative court, in order to obtain the suspension of removal, such an urgent application may well be

⁸¹ The purpose of the [circular](#) (in French only) of 25 March 2013 is to set down a uniform procedure for the processing of applications for the first issuing and renewal of residence permits made by detained persons of foreign nationality during their imprisonment. The text is intended to inform prison authority and *préfecture* staff about this procedure and to facilitate its implementation.

⁸² See the explanatory memorandum on the [draft law on aliens in France](#) (in French only).

insufficient if the OQTF is enforced before the person concerned has been able to submit it to the urgent applications court (*juge des référés*)⁸³.

2.3.3 PROCEDURES FOR MONITORING ADMINISTRATIVE DETENTION AND HOLDING IN WAITING ZONES

122. The Code regulating the entry and residence of aliens and asylum seekers (Ceseda) provides for migrants irregularly present and placed in administrative detention centres with a view to their expulsion from French territory to be brought before the liberties and detention judge (*juge des libertés et de la détention, JLD*) for verification of the conditions of their apprehension and for a ruling on the extension of their detention or a compulsory residence order. The law of 16 June 2011 postponed the appearance before the JLD from the second to the fifth day of detention, which had the effect of considerably increasing – from 12% in 2011 to 60% in 2012 – the numbers of expulsions from French territory prior to any supervision by an ordinary court. The Commissioner is disturbed by the growing proportion of such expulsions, which are conducted without the JLD having had an opportunity to ascertain and sanction any irregularities likely to have made the deprivation of liberty unlawful.
123. Furthermore, the setting up of an annexe of the Regional Court (*Tribunal de grande instance*) in Meaux located in the immediate vicinity of the Mesnil-Amelot administrative detention centre raises the question of the effectiveness of the supervision provided by the JLD. As the Commissioner had told the Minister of Justice in a [letter](#) of 2 October 2013, any person deprived of his or her liberty is entitled, in pursuance of Article 5 § 4 of the European Convention on Human Rights, to lodge an appeal with a court which must not only be, but also appear to be, independent and impartial. Yet this relocation implies the holding of hearings in the immediate vicinity of the place of deprivation of liberty where the appellant is detained. The Commissioner considers that this, coupled with the fact that the premises concerned are under the authority of the Ministry of the Interior, may well undermine the independence and impartiality of the court concerned, at least in the appellant's eyes.
124. The Commissioner also considers that the location of this court room and the difficulty of reaching it, particularly by public transport, may complicate the exercise of the rights of the defence and be an impediment to the public nature of the proceedings. Lastly, the holding of such hearings in conditions which fall outside ordinary law give credit to the idea that foreigners are not ordinary parties to proceedings, and this conflicts with the principles laid down in [Recommendation \(2001\) 19](#) of the Commissioner for Human Rights concerning the rights of aliens in respect of entry and expulsion.
125. The Commissioner has considered the comments on the workings of these hearings made by *La Cimade*, an association authorised to work at the Mesnil-Amelot detention centre⁸⁴. These comments refer inter alia to the very small numbers of members of the public present at hearings, to the adverse effect on the appearance of independence and impartiality of transfers via internal corridors from the detention centre to the court room without using the public highway, and to the many hours of waiting confined in an uncomfortable holding area adjacent to the court room.
126. The Commissioner notes with satisfaction that the planned opening of an annexe of the Regional Court (*Tribunal de grande instance*) of Bobigny located in the vicinity of No. 3 waiting zone for persons awaiting proceedings at Roissy Charles de Gaulle airport, about which he had also expressed concern to the Minister of Justice, had not yet, at the time of his visit, taken place. He was told that an evaluation of this project ordered by the Minister of Justice had highlighted the need to make alterations in order to bring the premises into line with the requirements of both domestic law and the European Convention on Human Rights. The Ministry of Justice told the Commissioner that the conclusions of this evaluation had

⁸³ The case of [de Souza Ribeiro v. France](#), judgment of 13 December 2012, also provides an illustration of this risk, for in that case the applicant had made an urgent application for the administrative court to suspend the enforcement of the removal order, an application examined by the Cayenne administrative court a few hours after enforcement of the removal measure, with the result that the urgent application was devoid of purpose.

⁸⁴ *La Cimade, Observations* (in French only) on the workings of the off-site hearings of the liberties and detention judge of the Regional Court of Meaux in the Mesnil-Amelot annexe, 14 October 2014.

been passed to the Ministry of the Interior, which would be responsible for having the necessary work done.

CONCLUSIONS AND RECOMMENDATIONS

127. The Commissioner points out that all foreign nationals requesting asylum must have access to asylum procedures and that their requests must be examined on a case-by-case basis in a rigorous and fair manner.
128. The authorities' attention is particularly drawn to the series of recent judgments delivered by the European Court of Human Rights which show serious deficiencies in the examination of asylum requests and appeals by OFRPA and the CNDA. The Commissioner urges France to step up its efforts to improve the effectiveness and quality of those bodies' procedures and decisions.
129. The Commissioner encourages the authorities to put in place as soon as possible the remedies with suspensive effect for which the draft law on asylum reform provides in respect of, on the one hand, decisions to transfer persons to the state responsible for the asylum request in pursuance of the Dublin Regulation and, on the other hand, the decisions taken by OFPRA in the context of the accelerated procedure.
130. The Commissioner draws the authorities' attention to the Guidelines on human rights protection in the context of accelerated asylum procedures⁸⁵ adopted in 2009 by the Committee of Ministers of the Council of Europe, which specify inter alia that due account should be taken of the vulnerability of asylum seekers and the complexity of cases when decisions are taken on whether or not to apply accelerated asylum procedures. He considers that the automatic nature of the classification under the accelerated procedure of asylum requests lodged by nationals of the countries which appear on the list of "safe countries of origin" does not enable due account to be taken thereof, and he therefore invites the authorities to discontinue that automaticity.
131. He invites the French authorities to guarantee the full effectiveness of all the remedies available to asylum seekers and immigrants, taking all the necessary measures to enable asylum seekers and other immigrants to prepare their requests properly. This should include making legal assistance available, particularly to those placed in administrative detention, held in a waiting zone or subject to a compulsory residence order. He also calls on them to ensure that reasons are given for all decisions taken in the context of these procedures.
132. As regards the situation overseas, the Commissioner considers that the migratory pressure to which a territory is subject should not justify exemptions, the effect of which is to restrict procedural safeguards in respect of asylum and immigration. He therefore calls on the authorities without delay to give ipso jure suspensive effect to the remedies which exist overseas, which is one of the conditions for their effectiveness.
133. The Commissioner encourages the authorities to take the opportunity of the discussions about the draft law on aliens in France to reintroduce the bringing of persons placed in detention centres before the liberties and detention judge after two days of detention, and to guarantee that none are expelled from French territory before being brought before that judge.
134. Finally, the Commissioner invites the French authorities to drop the plan to open an annexe of the Regional Court (*Tribunal de grande instance*) of Bobigny in the airport zone of Roissy Charles de Gaulle airport and to close the annexe of the Regional Court (*Tribunal de grande instance*) of Meaux located at Mesnil-Amelot.

⁸⁵ Committee of Ministers of the Council of Europe, [Guidelines](#) on human rights protection in the context of accelerated asylum procedures, 1 July 2009, Guideline III .

3 HUMAN RIGHTS OF TRAVELLERS

135. The Commissioner emphasises first that, while the term “Roma” used by the various bodies and institutions of the Council of Europe encompasses a wide variety of groups, including persons who identify themselves as “Gypsies” and those designated “Travellers”, that is not the case in France. A distinction is made between “Travellers”, most of whom are French citizens, and whose numbers are estimated at approximately 350,000⁸⁶, and Roma, who may be designated by the term “migrant Roma”⁸⁷, of whom between 15,000 and 20,000 are thought to live in France, and who hold the nationality of other European states⁸⁸.
136. Travellers form several groups, also sometimes classed as “Gypsy groups” or “Travellers”, who are distinguished according to origin (“Gitans”, “Manouches”, “Yéniches”, “Sinti”, etc) or occupation (fairground workers, etc), but who share a traditional culture and way of life initially⁸⁹ based on travelling. The Commissioner notes that a corollary of this way of life, which is distinct from that of the majority of the French population and which leads that majority to regard Travellers as a separate group within society⁹⁰, is that Travellers are subject to exceptional legal rules.

3.1 ANTI-GYPSYISM AND HOSTILITY

137. As the Committee of Ministers of the Council of Europe acknowledged in [Recommendation CM/Rec\(2008\)5](#) on policies for Roma and/or Travellers in Europe, Travellers have for centuries faced widespread and permanent rejection and marginalisation in all spheres of their lives⁹¹. The result of this discrimination has been the social marginalisation of Travellers and, for many of them, poverty and uncertainty. In addition to anti-racism standards, which apply inter alia to Travellers, the Council of Europe has produced specific standards so that its member states adopt consistent strategies and action plans with a view to the implementation of their own policies to combat the discrimination suffered by Travellers⁹².
138. The Commissioner is concerned to note that, notwithstanding these standards and successive recommendations by his predecessors, by ECRI – particularly its General Policy Recommendations (hereafter “GPRs”) Nos. [3](#) and [13](#) on combating racism and intolerance against migrant Roma and Travellers – and by numerous national and international bodies, a strong feeling of anti-Gypsyism exists in France⁹³.
139. In the course of his visit, several Travellers’ organisations even told the Commissioner that they felt growing hostility from their fellow citizens, expressed through violent hate speech and hate acts. The Commissioner considers this development to be all the more disturbing for the fact that this behaviour is sometimes that of political leaders, particularly at local level. The Commissioner points out that the effects of political hate speech on public opinion and on a country’s social cohesion are particularly damaging. In order to put an end to intolerance and to acts of a hateful and discriminatory nature, he considers it vital for political leaders not only to firmly condemn such acts and language, but also to refrain from using

⁸⁶ Hubert Derache, [Appui à la définition d’une stratégie interministérielle renouvelée concernant la situation des gens du voyage](#) (Report to the Prime Minister with a view to a new interministerial strategy on the situation of Travellers)(in French only), July 2013, p. 3.

⁸⁷ “More than 90% of them come from Romania, several groups from Bulgaria and a few families from countries of the former Yugoslavia”, ECSR, [Médecins du Monde – International v. France](#) (No. 67/2011), 27 March 2013, §28.

⁸⁸ Cf. CNCDH, [Opinion](#) (in French only) on respect for the rights of “Travellers” and migrant Roma, 2012.

⁸⁹ 60,000 to 70,000 of them travel permanently, while the others are either “semi-sedentary” and travel for only three to four months of the year, or “sedentary” and travel little or not at all; *ibid*.

⁹⁰ See CNCDH, [la lutte contre le racisme, l’antisémitisme et la xénophobie, année 2013](#) (The fight against racism, antisemitism and xenophobia, 2013)(in French only), p. 32.

⁹¹ See in particular the [Council of Europe factsheets on Roma history](#).

⁹² As the Council of Europe does not make a distinction between Roma and Travellers, those standards also concern Roma. They are accessible from a [special page](#) of the Council of Europe website.

⁹³ According to ECRI’s General Policy Recommendation No. [13](#), “anti-Gypsyism is a specific form of racism, an ideology founded on racial superiority, a form of dehumanisation and institutional racism nurtured by historical discrimination, which is expressed, among others, by violence, hate speech, exploitation, stigmatisation and the most blatant kind of discrimination”.

rhetoric which stigmatises Travellers, as this triggers more intolerance and leads to more widespread racism in society⁹⁴.

3.2 IMPEDIMENTS TO THE ENJOYMENT OF FREEDOM OF MOVEMENT

140. The Commissioner considers that the impediments encountered by Travellers in the exercise of their freedom of movement and other civil and political rights are mainly linked to the application of the exceptional legal arrangements introduced by the law of 3 January 1969. In pursuance of that law, persons aged over 16 and of no fixed abode needed to hold a travel permit, either the *carnet de circulation*, if they had no regular income, or the *livret de circulation*, if they were engaged in paid work.
141. The Commissioner notes that these arrangements have been deemed to be discriminatory and disproportionate by numerous bodies, both national⁹⁵ and international⁹⁶. On 6 May 2014, the UN Human Rights Committee published its “views” in a case against France, expressing the position that Travellers’ obligation to have their *carnet de circulation* stamped at frequent intervals and the provision for criminal penalties for failure to comply with that obligation violated their right to free movement on the territory of the state⁹⁷. The arrangements introduced by the 1969 law were partially invalidated by a decision of 5 October 2012⁹⁸ in which the Constitutional Council (*Conseil constitutionnel*) said that the obligation to have the *carnet de circulation* stamped every three months by an administrative authority was a disproportionate infringement of the exercise of the freedom to come and go. On the other hand, the Constitutional Council maintained the *livret de circulation* obligation, which it deemed to be less of a constraint, since it required a single annual stamp.
142. The Commissioner considers that the obligation to hold a *livret de circulation* needing to be stamped annually, with failure to obtain a stamp being punishable by a fine of €1,500, remains discriminatory, since it applies only to Travellers who may not travel holding only their identity card, unlike all other French citizens. More generally, he deplores the maintenance in the French legal system of the exceptional arrangements introduced by the 1969 law, which excludes some citizens from ordinary legislation and the principle of equality.

3.3 IMPEDIMENTS TO THE EXERCISE OF POLITICAL RIGHTS

143. The 1969 law also requires Travellers to be administratively attached to a municipality. While Travellers may choose the municipality to which they wish to be administratively attached, that attachment has to be for a minimum period of two years, and it is granted by prefects’ offices only after a reasoned opinion has been given by the mayor, who is also consulted in the event of an application for a change of municipality of attachment.
144. The Commissioner considers that this requirement for attachment to a municipality, the consultation of the mayor and the statutory restriction of the number of attachments to 3% of the population of the municipality undeniably give Travellers the feeling that they are under constant supervision. They also restrict those persons’ freedom of movement and to choose their residence, which is a fundamental freedom enshrined, inter alia, in Article 2 of Protocol No. 4 to the European Convention on Human Rights.
145. The Commissioner notes that in practice, the administrative attachment requirement also affects the exercise by Travellers of their political rights, including the right to vote and to stand for election. The 1969 law provided for Travellers to have to wait for three years for inclusion on the electoral rolls in their

⁹⁴ Also see the first chapter of this report.

⁹⁵ Particularly by the HALDE in 2007 (in French only) and by the CNCDH in 2008 and 2012 (in French only).

⁹⁶ Particularly by the Commissioner for Human Rights in 2006 and 2008, and by the CERD and ECRJ in 2010.

⁹⁷ *Claude Ory v. France*, Communication No. 1960/2010 (in French only).

⁹⁸ *Conseil constitutionnel* (Constitutional Council), Decision No. 2012-279 QPC of 5 October 2012.

municipality of attachment. While that provision, also widely condemned⁹⁹, was invalidated by the Constitutional Council on 5 October 2012 on the grounds that it unjustifiably restricted the exercise of political rights, the Commissioner considers that the maintenance of the aforementioned 3% limit remains a serious impediment to the exercise of political rights by persons who wish to be attached to, vote or stand as candidates in municipalities which have exceeded this quota, as they are thereby denied attachment.

146. In this context, the Commissioner recalls that, in 2009, in the case of the [European Roma Rights Centre \(ERRC\) v. France](#), the European Committee of Social Rights took the view that limiting the number of persons with the right to vote to 3% has the effect of excluding some potential voters, and that setting this limit at such a low level “leads to discriminatory treatment with regards to Travellers’ access to their right to vote and, thus, is a possible cause of marginalisation and social exclusion”¹⁰⁰.
147. The flagrant inequalities to which these exceptional legal arrangements give rise were, in fact, slightly attenuated by the aforementioned decision of the Constitutional Council. The Commissioner notes that the successive reports of Senator Hérisson¹⁰¹ and Prefect Derache¹⁰² have led the French government to reform Travellers’ status in order to bring it closer to ordinary law. He was informed that a law proposal tabled by an MP, Dominique Raimbourg, with a view to the repeal of the law of 3 January 1969 had been tabled in the National Assembly in 2013¹⁰³. However, the Commissioner regrets that neither that law proposal nor any other text pursuing the same aim had been adopted at the time of his visit. Consequently, this regime of inequality persists, and his predecessor’s appeal to the French authorities in 2008 to put an end to this discriminatory treatment, by drafting a strategy and policies against discrimination as recommended by the Council of Europe¹⁰⁴, is still valid.

3.4 ACCESS TO PARKING SITES AND HOUSING

148. For Travellers who have retained a non-sedentary or semi-sedentary lifestyle and who live for all or part of the year in mobile accommodation, the issue of parking sites and adequate housing is crucial. Their representatives told the Commissioner during his visit that they encountered major difficulties in parking their caravans.
149. The law of 5 July 2000 on the reception and accommodation of Travellers, known as the “loi Besson”, did in fact oblige municipalities with a population of over 5,000 to equip themselves with a site, possessing sanitary facilities and access to water and electricity. However, the Commissioner notes that this law has not been fully implemented. He concedes that an improvement may be noted, insofar as almost 60% of the municipalities with a population of over 5,000 do now have a site, whereas only 42% of them were so equipped at the time of the Commissioner’s previous visit to France, in 2008¹⁰⁵. He nevertheless considers that the situation continues to be cause for concern.

⁹⁹ In particular by the CNCDH in [2008](#) and [2012](#) (in French only), by the Commissioner for Human Rights in [2006](#) and [2008](#), by the [CERD](#) and by [ECRI](#) in 2010, and in a decision delivered on 24 January 2012 by the European Committee of Social Rights on a complaint by the European Roma and Traveller’s Forum against France (No. [64/2011](#)).

¹⁰⁰ §104 of the decision. Consequently, the Committee concluded, inter alia, that this situation constituted a violation of Article E (non-discrimination) taken in conjunction with Article 30 of the Charter. The same finding had been made in 2012 by the ECSR in its decision on the *European Roma and Travellers Forum v. France* complaint. Cf. ECSR, *European Roma and Travellers Forum v. France* (No. [64/2011](#)), 24 January 2012 (§§71-77 of the decision).

¹⁰¹ Pierre Hérisson, [Gens du voyage : pour un statut proche du droit commun](#) (Travellers: for a status close to the ordinary law)(in French only), report to the Prime Minister, July 2011.

¹⁰² Hubert Derache, [Appui à la définition d’une stratégie interministérielle renouvelée concernant la situation des gens du voyage](#) (Report to the Prime Minister with a view to a new interministerial strategy on the situation of Travellers)(in French only), July 2013.

¹⁰³ [Draft law](#) on the status, reception and housing of Travellers, No. 1610 (in French only), tabled on 5 December 2013.

¹⁰⁴ Recommendation [CM/Rec\(2008\)5](#) of the Committee of Ministers of the Council of Europe to member states on policies for Roma and/or Travellers in Europe, 20 February 2008.

¹⁰⁵ According to figures provided by the *Association nationale des Gens du voyage catholiques* (<http://www.angvc.fr>) (in French only).

150. The Commissioner points out that these deficiencies were the subject of several decisions by the European Committee of Social Rights (ECSR) adopted in 2007¹⁰⁶, 2009¹⁰⁷ and 2012¹⁰⁸, in which the Committee found several violations of the European Social Charter by France, inter alia because of the persisting lack of access to adequate housing for Travellers. The ECSR notably took the view that inadequate application of the legislation on sites for Travellers constituted a violation of the right to affordable housing and was discriminatory.
151. Furthermore, as emphasised by the CNCDH in an [opinion](#) of 2012, the issue of the exercise by Travellers of their right to park their caravans temporarily is not confined to the creation of an adequate number of sites. Travellers' organisations told the Commissioner that great geographical disparities persisted. They noted that the number of what are termed "large-scale transit areas" where large groups can stay remains very much inadequate, giving rise to tensions every year, especially at the time of religious gatherings. The application at reception sites of internal regulations restricting freedom of admission and departure or giving site managers policing powers was also condemned by Travellers' associations. Similarly, those associations deplored the high level of some of the rates charged for staying at sites, which was said to deprive some families of access to those sites, and the charging of an electricity tariff higher than that charged to other individuals.
152. The Commissioner is particularly concerned at the existence of impediments connected with the legal status of caravans, in addition to the practical difficulties. Indeed, while caravans are recognised as homes and therefore enjoy protection under the right to private and family life, they do not, in the eyes of French law, constitute housing. The Commissioner notes that this has the effect of depriving Travellers of the enjoyment of social benefits based on housing.
153. The Commissioner also notes that semi-sedentary Travellers and those in the process of becoming sedentary also encounter major difficulties. Indeed, most sites are unsuitable to receive families which have several caravans and wish to stay for a long period. This often results in those families parking on land which they themselves own, where they usually come up against the rules of local land-use plans which, in many cases, prohibit the setting up of mobile accommodation. Access to water and electricity is thus jeopardised, and those families are exposed to the risk of eviction from their own land.
154. These major issues were considered by the European Court of Human Rights in its judgment of 17 October 2013 in the case of [Winterstein and Others v. France](#), which concerned an administrative decision to evict 25 applicants belonging to the Traveller community and the members of their families who had for many years – in some cases since their birth – been living on land in the municipality of Herblay, in the Val d'Oise Department. The Court expressed the view that "the vulnerable position of Gypsies and Travellers as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in reaching decisions in particular cases". It considered that the eviction decision, which did not take due account of the long duration of the settlement, the municipality's tolerance, the risk of loss of housing and the vulnerability of Travellers, constituted a disproportionate interference in the right of respect for private and family life and was a violation of Article 8 ECHR¹⁰⁹.
155. The Commissioner notes, in this context, that an interministerial circular of 26 August 2012 intended to anticipate and support evictions from land unlawfully occupied¹¹⁰ provided for, prior to eviction, the making of a "study of the situation of each of the families or unaccompanied persons" present. He nevertheless draws the authorities' attention to the need to apply with the greatest rigour the criteria set down by the Strasbourg Court in its *Winterstein* judgment, and to do so at an early stage, when the decision is taken on whether or not to evict people from land.

¹⁰⁶ ECSR, *International Movement ATD Fourth World v. France* (No. [33/2006](#)), 5 December 2007; *European Federation of National Organisations working with the Homeless (FEANTSA) v. France* (No. [39/2006](#)), 5 December 2007.

¹⁰⁷ ECSR, *European Roma Rights Centre (ERRC) v. France* (No. [51/2008](#)), 19 October 2009.

¹⁰⁸ ECSR, *European Roma and Travellers Forum v. France* (No. [64/2011](#)), 24 January 2012.

¹⁰⁹ Execution of this judgment by France is still subject to supervision by the Committee of Ministers of the Council of Europe.

¹¹⁰ Interministerial [circular](#) NORINTK1233053C (in French only) of 26 August 2012 on the anticipation and support of evictions from unlawful camps. On the subject of this circular and its implementation, see, below, the section on the human rights of migrant Roma.

3.5 ACCESS TO EDUCATION

156. [Recommendation \(2009\)4](#) of the Committee of Ministers to member states on the education of Roma and Travellers in Europe invites member states to elaborate, disseminate and implement education policies focusing on ensuring non-discriminatory access to quality education for Roma and Traveller children. However, the Commissioner notes that the schooling of Traveller children in France is still to an extent hindered by the problems of caravan parking, frequent moves and the remoteness of reception sites from schools. Furthermore, certain municipalities continue to reject applications for enrolment in primary schools on the grounds of the temporary and unlawful nature of families' parking place in the municipality, their allegedly unlawful camping on land owned by them or a lack of school places. The Commissioner considers such practices unacceptable, since they impede the child's right, irrespective of his or her legal status, to education, a right which is enshrined in Article 28 of the UN Convention on the Rights of the Child, by which France is bound.
157. The Commissioner nevertheless notes that an improvement seems to have occurred subsequent to the adoption in 2009 of a [decision \(délibération\)](#) of the High Authority against Discrimination and for Equality (HALDE) on refusals to enrol Traveller children¹¹¹. The fundamental nature of the right to education was pointed out in that decision, which recommended that the ministers concerned issue orders for the district's prefect, local education authority and national education inspector to intervene in the event of any enrolment refusal, so that the children are placed in schools. Furthermore, the Commissioner was informed that three circulars on the education of Travellers published by the minister responsible for educational attainment in September 2012 contain reminders of municipalities' obligation to provide schooling for children and provide for specific officials to be appointed within local education authorities and departmental authorities to report cases of non-enrolment and refusals to enrol.
158. The Commissioner notes that schooling remains a complex matter for families who are not sedentary or are semi-sedentary, either by choice or as a result of the inadequate numbers of places at sites. Some alternatives to conventional schooling do exist, such as dual enrolment from primary school onwards both at school and with the national distance-learning centre, the "mobile schools" which travel to the places where itinerant families live, at the initiative of the national education service or of associations, or the field schools belonging to the national education service and located at or near to reception sites. However, all of these alternatives are as yet insufficiently developed.

CONCLUSIONS AND RECOMMENDATIONS

159. The Commissioner encourages the authorities to continue to fight resolutely, including via the Internet, against hate speech and hate acts directed at Travellers, and to punish such language and acts. He also invites elected representatives and political leaders, particularly at local level, not to make use of hate speech stigmatising Travellers, and to condemn with the utmost firmness any language of that kind.
160. Such efforts should be part of a strategy to eradicate anti-Gypsyism which includes the raising of awareness amongst the population as a whole, in order to combat stereotypes and prejudices against Travellers. To this end, the teaching of the history of Travellers and Roma in Europe is strongly recommended. The Commissioner invites the French government to promote the [Council of Europe factsheets on Roma history](#), and to use and disseminate them as widely as possible, particularly in schools.
161. The Commissioner calls on the authorities to revoke all the measures which constitute exceptions to ordinary law whereby a regime exists which discriminates against Travellers, in order to enable them to fully enjoy their freedom of movement and their political rights.
162. The Commissioner calls on the authorities to act fully in accordance with the decisions of the European Committee of Social Rights relating to Travellers, ensuring, if necessary by obliging them to do so, that all municipalities effectively comply with their obligations in terms of the making available of reception sites,

¹¹¹ HALDE, Decision (*Délibération*) No. [2009-232](#) (in French only) of 8 June 2009.

albeit without excluding all possibilities of parking on private land. He also invites the authorities to ensure that large-scale transit sites exist in sufficient numbers throughout French territory.

163. The Commissioner invites the authorities to take measures to guarantee that Travellers are never evicted from sites occupied by them without account first having been taken of the vulnerability of the sites' occupants, particularly the children attending schools. Such operations should also be preceded by a rigorous examination of the Travellers' specific lifestyle, of the duration of the occupation and of the risk of loss of housing, in accordance with the criteria set down by the European Court of Human Rights.
164. The Commissioner considers it necessary to facilitate the temporary or permanent settlement of the Travellers who so wish on sites owned by them. He calls on the authorities to grant the status of housing to mobile accommodation, and to extend the benefit of the law on the enforceable right to housing to those Travellers who wish to become sedentary. In this context, the authorities are invited to allow them to benefit from the development of their family-owned land, and to clarify the conditions for settling and for parking caravans on private land.
165. Lastly, in order to facilitate the effective access of Traveller children to education, the Commissioner invites the French authorities to act against enrolment refusals and to develop the existing alternatives to conventional schooling for non-sedentary or semi-sedentary families, and also to employ school mediators or assistants¹¹².
166. In this context, the Commissioner draws attention to Recommendation [CM/Rec\(2012\)9](#) of the Committee of Ministers of the Council of Europe to member states on mediation as an effective tool for promoting respect for human rights and the social inclusion of Roma. He notes that the work of mediators between Traveller communities and public institutions presents many advantages and makes it possible to improve school attendance and access to quality education. The Commissioner therefore encourages the local authorities to promote the work of mediators and to strengthen their capacity to draft and implement effective policies with a view to Travellers' full integration and effective enjoyment of all their rights and freedoms.

4 HUMAN RIGHTS OF MIGRANT ROMA

167. Estimates of the numbers of migrant Roma present in France range according to their source, but all lie between 15,000 and 20,000¹¹³. When he met the Commissioner in Marseille, the Bouches du Rhône Department's Prefect for Equal Opportunities, Marie Lajus, noted the existence within her department of a population of approximately 1,700 Roma (1,300 of them in Marseille), a number which has been fairly stable for the past three years. Other people to whom the Commissioner spoke noted the relative stability of the Roma population in France, whose numbers had not changed much since the first arrivals in the early 2000s. The Commissioner also noted that the concepts of "massive influxes" and "suction effects" found in the media and political discourse were not accurate in practice and bore no relationship to the actual number of migrant Roma, who represented only around 0.03% of the population¹¹⁴.
168. Most of the migrant Roma living in France emigrated from Romania, Bulgaria and, to a lesser extent, certain states of the Western Balkans in order to get away from living conditions made difficult by discrimination and the economic situation¹¹⁵. The Commissioner notes that their situation is, however, scarcely better in France, where most of them live in great legal, economic and social uncertainty. They are also subjected to growing hostility from the majority population. Nevertheless, the Commissioner was informed, both in Marseille by Prefect Lajus and in Paris by the Interministerial Delegate for

¹¹² See Recommendation [CM/Rec\(2009\)4](#) of the Committee of Ministers of the Council of Europe on the education of Roma and Travellers in Europe, 17 June 2009.

¹¹³ Cf. CNCDH, [Opinion](#) (in French only) on respect for the rights of "Travellers" and migrant Roma, 2012.

¹¹⁴ According to INSEE, the population of France at 1 January 2014 was 66 million.

¹¹⁵ See the study published in 2010 by the Commissioner and the OSCE High Commissioner for National Minorities entitled [Recent Migration of Roma in Europe](#) and PACE [Recommendation 2003 \(2012\)](#) on Roma migrants in Europe.

Accommodation and Access to Housing, Alain Régnier, that there are a good number of examples of Roma who are fully integrated in France, but are hardly ever spotlighted by politicians or the media.

169. The summer of 2012, in particular, was marked by a number of forced evictions, some of them violent, by law enforcement agencies from land occupied by migrant Roma. Among the numerous difficulties faced by migrant Roma, the hostility to which they are subjected, the problems connected with their right to remain and with expulsions from France, and the impediments to their access to housing, health, education and employment will be dealt with in this section.

4.1 ANTI-GYPSYISM AND HOSTILITY

170. The Roma share with Travellers the sad privilege of very frequently falling victim to a particular form of racism, namely anti-Gypsyism, so most of the findings reported and conclusions drawn about this phenomenon in the chapter of this report devoted to Travellers also apply to migrant Roma.
171. The Commissioner notes with concern that this deep-seated hostility to Roma has pervaded society and persists in France. He has also noted a more widespread use of discriminatory or hateful language against Roma. He considers this phenomenon to be not unrelated to statements by political leaders stigmatising migrant Roma. The various elections which have taken place over the past two years gave rise to numerous written and oral associations of Roma with crime and insecurity. Several persons to whom the Commissioner spoke also said that anti-Gypsyism and hostility to migrant Roma occurred in a broader context in which the poor and vulnerable are treated as criminals, as reflected in municipal orders prohibiting begging, as in Marseille, and prohibiting tents, as in Nice.
172. As he has already had occasion to say, the Commissioner considers that anti-Roma language, particularly during election campaigns, should always be strongly condemned by the country's political leaders and severely punished by the courts. He also takes the view that political parties should adopt self-regulation measures in order to exclude any language of this kind¹¹⁶.
173. The Commissioner notes that the media have a particular responsibility in this field which needs to be closely examined by the authorities and by journalists' organisations¹¹⁷. The frequent use made of "invasion" terminology, for instance, is not without effect on the way in which the public may perceive the situation. Similarly, the tendency to take an ethnically-based approach to news, noted by both the Commissioner and a number of the persons to whom he spoke, is likely to lead to the continuing identification of Roma with crime. He points out that this may have far-reaching consequences and fuel violent movements against Roma.
174. In addition to these numerous instances of language use, violent attacks have taken place, such as the lynching at Pierrefitte-sur-Seine in June 2014 of a young Roma who was found unconscious and seriously injured. The Commissioner notes that most such cases do result in prosecution, but it is important that the authorities should not relax their efforts to combat all forms of anti-Gypsyism, strengthening their punitive and preventive policies and placing the emphasis on educational measures and public awareness-raising.
175. The Commissioner is also concerned about several cases of police violence reported to him during his visit. In Marseille, several of the persons to whom he spoke referred to the "chasing" by the police of migrant Roma, who were pursued from one site to another, and then from one pavement to another, over a period of several days in the summer of 2014. In that same city, Amnesty International also referred in 2014¹¹⁸ to intimidation, incessant identity checks, destruction of property and, finally, the violent expulsion by the police, in November 2011, of a dozen families in the Arenc district. Other similar

¹¹⁶ See chapter 1 of this report.

¹¹⁷ See the Commissioner's issue discussion paper, [Ethical journalism and human rights](#), 8 November 2011.

¹¹⁸ Amnesty International, [Nous réclamons justice](#), "We want justice: Europe must do more to protect the Roma from racist violence" (in French only), April 2014.

episodes have been recorded, especially in the Paris region, as in Massy in March 2010 and Saint-Denis in August 2011¹¹⁹.

176. The Commissioner is also concerned about the passivity which law enforcement agencies seem to have shown in a number of cases. NGOs drew his attention to an incident which had occurred in the Les Créneaux district of Marseille, where around 40 residents attacked some Roma in September 2012, without the police intervening to prevent the Roma families from being driven away.
177. The Commissioner considers that such conduct, whether it be violence committed by law enforcement agencies or violence made possible by their passivity, is unacceptable. It gives rise to, or fails to prevent, violations of the human rights of migrant Roma, and at the same time undermines the trust which every component part of the population should be able to have in law enforcement agencies in a state governed by the rule of law. It also gives rise to a feeling of impunity amongst those who attack migrant Roma.
178. The Commissioner nevertheless notes with satisfaction that investigations were opened into several of these incidents. He also notes that the *Commission nationale de déontologie de la sécurité* (National commission on ethics in the security sector) and the Rights Defender, who took over from it, have had several such cases of police violence referred to them, and that the Rights Defender has noted “that evictions frequently lead to the destruction of the occupants’ property, particularly their administrative documents, something that is in contravention of the law”. This finding led him to recommend “that the necessary measures be taken to make provision for property still in place to be returned to the evicted person, and for that which cannot be transported to be stored at an appropriate place, in compliance with the arrangements for which the rules provide in such circumstances”¹²⁰.

4.2 RESIDENCE AND DEPORTATION OF MIGRANT ROMA

179. Romanian and Bulgarian Roma have, since 1 January 2007, been citizens of the European Union and, as such, are supposed to enjoy freedom of movement and to be able to remain in France without a visa for three months, provided that they constitute neither a threat to public order nor an unreasonable burden on the social welfare system. NGOs, such as *La Cimade* and the *Romeurope Collective*, consider that this freedom of movement is being infringed by *préfectures*, which often adopt an extensive interpretation of the concept of a threat to public order, or act on the basis of the poverty of those Roma whom they intend to expel from France, even when the persons concerned have not requested any welfare assistance.
180. The Commissioner notes that the events of the summer of 2010 highlighted the large number of human rights protection challenges in this sphere. In July 2010, President Sarkozy announced a new policy of evictions from Roma camps and the deportation of their occupants. That policy was put into practice through numerous evictions of migrant Roma from their homes, followed by collective deportations which took place during the summer of 2010.
181. The Commissioner points out that these measures gave rise to the lodging with the European Committee of Social Rights of a collective complaint against France¹²¹. In that case, the Committee took the view that “these evictions took place against a background of ethnic discrimination, involving the stigmatisation of Roma, and of duress” (§47). It concluded that the conditions in which the evictions from Roma camps had taken place in the summer of 2010 had been incompatible with human dignity and had constituted a violation of Article E (non-discrimination) taken in conjunction with Article 31§2 (right to housing) of the European Social Charter. The Committee also concluded that the collective expulsions of migrant Roma to

¹¹⁹ See, in particular, CNDH Romeurope, “Harcèlement et stigmatisation : politiques et paroles publiques aggravant la précarité des habitants des bidonvilles” (Harassment and stigmatisation: public policies and discourse aggravating the uncertainties for shanty town dwellers), [report for 2012/2013](#) (in French only).

¹²⁰ Cf. Rights Defender, [Review](#) of the application of the interministerial circular NORINTK1233053C of 26 August 2012 on the anticipation and support of evictions from unlawful camps (in French only), June 2013.

¹²¹ ECSR, *Centre on Housing Rights and Evictions (COHRE) v. France* (No. [63/2010](#)), 9 November 2011.

Romania and Bulgaria carried out by France during the summer of 2010 had constituted a violation of Article E taken in conjunction with Article 19§8 (right of migrant workers and their families to protection and assistance).

182. France has removed all specific references to Roma from its texts relating to evictions from illegally occupied land and to expulsions. The Code on the admission and residence of aliens and the right of asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*) was also amended in June 2011 in order to introduce criteria for the individual evaluation of situations relating to expulsion: length of stay in France, age, state of health, family and economic situation, social and cultural integration in France and strength of links with the country of origin.
183. It nevertheless emerges from the information received by the Commissioner during his visit that these criteria are not always applied and that several evictions have given rise to collective orders to leave French territory. The human rights organisations indicated that the orders (OQTF) notified in such circumstances were frequently annulled when challenged in administrative courts. However, those who were the subjects of such decisions did not always have the knowledge, resources or adequate assistance to challenge them.
184. The Commissioner notes the difficulty of staying in France for more than three months for the most disadvantaged EU citizens, such as Roma, who cannot easily meet the employment and resource requirements and cannot benefit from other possible ways of regularising their stay which are accessible to nationals of non-member states. Indeed, the Council of State (*Conseil d'État*), in a judgment of 22 June 2012, stated that EU nationals may not avail themselves of the provisions of ordinary law in the Code on the admission and residence of foreigners and the right of asylum, in particular those relating to residence for reasons connected with their private and family life¹²². As a result, according to information received by the Commissioner during his visit, few residence permits are issued to them.
185. As regards nationals of states which are not members of the EU, the removal of the visa requirement for short stays by nationals of Western Balkan states has made it easier for them to gain admission to the Schengen area. However, for them too, it is difficult to remain on French territory for more than three months, especially as most of the Western Balkan states are considered by the OFPRA to be "safe countries of origin", as a result of which their nationals have access only to the "fast-track" asylum procedure. Consequently, only a small proportion – approximately 5% – of those who make an asylum application in France are granted refugee status or subsidiary protection¹²³.
186. The Commissioner notes that the number of migrant Roma expelled from French territory each year is difficult to establish accurately, because the official data show only the nationality of the persons expelled, and not their stated or assumed membership of a Roma group. *La Cimade*, an association which defends the rights of migrants and asylum seekers, nevertheless told the Commissioner that it estimated that 12,000 Romanian and Bulgarian Roma had been expelled from France in 2012.
187. The Commissioner notes that the policy of assistance for voluntary repatriation introduced in 2007 has shown its limitations. According to the associations active at administrative detention centres and facilities, 60% of the assistance for repatriation provided in 2012 went to Romanians and Bulgarians, a high proportion of whom declared themselves to be Roma¹²⁴. What is more, their repatriation was allegedly often strongly encouraged by the authorities in the context of intimidating, or even improper, police operations. More generally, the large proportion of EU nationals amongst the persons expelled from French territory suggests that these repatriations might have been carried out in order to meet quantified targets.

¹²² *Conseil d'État, Valentin A* (in French only), 22 June 2012, No. 347545.

¹²³ The *Conseil d'État* decided to remove Kosovo from the list of safe countries of origin in a [decision](#) (in French only) of 10 October 2014. The rate at which the various kinds of international protection were granted to nationals of the countries of the Western Balkans by 15 European countries during the period 2008-2013 fluctuated between just above 0% and 30%; see EASO, [Asylum applicants from the Western Balkans](#), 2013, p. 31, figure 19.

¹²⁴ ASSFAM, *Forum Réfugiés, France Terre d'Asile, La Cimade, Ordre de Malte*, "Centres et locaux de rétention administrative" (Administrative detention centres and facilities), [report for 2012](#) (in French only), October 2013.

188. The Commissioner notes that quantified targets officially disappeared in May 2012 and that the amount of the assistance given for repatriation has been drastically reduced. The figures for 2013 also show progress, albeit more in terms of the arrangements than the number of expulsions. It does seem that the number of persons removed through the assisted repatriation system was 58% lower than in 2012, and that the number of Romanian nationals amongst those persons fell by 84%. However, the total number of European nationals removed from French territory in 2013 – under any of the arrangements – remains high, at 10,800 persons. The Commissioner considers that this high number indicates that it should not be concluded that the rate of expulsion of migrant Roma has significantly slowed¹²⁵, but that they have been forcibly removed in increasing numbers.

4.3 ACCESS TO ADEQUATE HOUSING

189. At the time of his visit in 2008, the Commissioner's predecessor had noted that most of the Roma populations in France were living in squalid shanty towns, often without access to water and electricity, and where the conditions of hygiene were appalling. Sadly, this remains very much still the case in 2014, as the Commissioner witnessed when he visited a site in the 15th district of Marseille where around 20 Roma families live. According to the associations with which the Commissioner met, the majority of the 17,500 people living in France's almost 500 shanty towns recorded in autumn 2014 by the Interministerial Delegate for Accommodation and Access to Housing (DIHAL) are migrant Roma.
190. The Commissioner is concerned to note that these living conditions, particularly the lack of access to electricity which leads families to use candles as light sources and wood or portable gas systems for heating, expose shanty town dwellers to significant risks of fire and gas poisoning. He was told that, in the year 2013 alone, 22 fires had been recorded in shanty towns and that, in February 2014, an eight-year-old Bulgarian girl had died in a fire which had swept through part of a shanty town in Bobigny where 200 people lived. In Marseille, the Commissioner noted that the very restricted access to water and absence of refuse collection by the municipality forced the residents of the site which he visited to live in conditions extremely dangerous for their health.
191. The risk of eviction from these usually unlawful camps is added to the material difficulties and keeps their residents living in fear. In principle, such evictions take place following a court decision delivered at the request of the landowner, mayor or prefect. In exceptional cases, however, eviction may be carried out without a court decision, during the first 48 hours of illegal occupation, in the event that a person's home is violated or in an emergency if necessitated by the infringement of order, salubrity, tranquillity and public safety found to have occurred or which may be expected to occur. In that latter case, the mayor may issue a "dangerous situation decree" (*arrêté de péril*) and use the assistance of law enforcement agencies to carry out an eviction.
192. Several persons to whom the Commissioner spoke drew his attention to the frequency with which such decrees (*arrêtés de péril*) are issued, decrees on the basis of which approximately 20% of evictions in the Île-de-France Region take place, and to the practices of certain municipalities said to allow the health situation to deteriorate deliberately, notably by refusing to have household refuse collected and to connect sites to water and electricity supplies, in order to create the requisite conditions for the issuing of such a decree. The Commissioner considers such practices to be likely to endanger the occupants, and therefore to be irresponsible and intolerable.
193. The Commissioner points out that, since 2008, the European Committee of Social Rights has delivered a number of decisions against France in which it found several violations of the European Social Charter relating to the social rights of Roma¹²⁶. In those decisions, the Committee concluded inter alia that France

¹²⁵ ASSFAM, *Forum Réfugiés, France Terre d'Asile, La Cimade, Ordre de Malte*, "Centres et locaux de rétention administrative", [report for 2013](#) (in French only), October 2014.

¹²⁶ ECSR, *International Movement ATD Fourth World v. France* (No. [33/2006](#)), 5 December 2007; *European Federation of National Organisations working with the Homeless (FEANTSA) v. France* (No. [39/2006](#)), 5 December 2007; *European Roma Rights Centre (ERRC) v. France* (No. [51/2008](#)), 19 October 2009; *Centre on Housing Rights and Evictions (COHRE) v. France* (No. [63/2010](#)), 28 June 2011; *European Roma and Travellers v. France* (No. [64/2011](#)), 24 January 2012.

had violated the right to adequate housing enshrined in Article 31 of the European Social Charter on account of poor housing conditions, the unsatisfactory application of the legislation on the prevention of evictions, the inadequacy of measures to reduce the number of homeless persons and, in general, the discrimination suffered by Roma where housing is concerned.

194. The Commissioner notes that, following the decision by the European Committee of Social Rights that the evictions of shanty towns where migrant Roma live were carried out in a climate of ethnic discrimination and duress inconsistent with the requirements of the European Social Charter¹²⁷, an interministerial circular had been issued on 26 August 2012 with a view to anticipation and support of eviction operations¹²⁸. That circular did not exclude emergency evictions of irregular camps, particularly as decided by the courts or for health reasons. However, it introduced a three-stage procedure: i) improvement of living conditions in irregular settlements, which may take the form of the organisation of refuse collection, connection to water and electricity supplies and the provision of sanitary facilities; ii) preparation of evictions through a “study of the situation of each of the families or unaccompanied persons”; iii) accommodation and integration once the eviction has been carried out.
195. According to the information supplied by the Interministerial Delegation for Accommodation and Access to Housing, the sum of €4 million was spent in each of the years 2013 and 2014 on the implementation of this circular, entailing studies of overall and individual situations, as well as on support measures and urban and social projects¹²⁹.
196. It nevertheless emerges from the discussions which the Commissioner had during his visit that these positive measures seem to be inadequately implemented. The Rights Defender, for instance, noted that the application of the aforementioned circular remains “rare, disparate and generally superficial [and] resembles a population census more than genuine and long-term social work with a view to integration”¹³⁰. The same finding is made by many civil society organisations, including the *Ligue des droits de l’homme* and the European Roma Rights Centre (ERRC), which, in a report of January 2014, noted almost 165 evictions affecting 19,380 persons in 2013¹³¹. The Commissioner is also concerned to note that the number of persons evicted in 2013 is higher than the number of persons living on irregular sites¹³², meaning that some of those persons had been evicted more than once in the course of a single year.
197. The NGOs which the Commissioner met emphasised the need first and foremost to make sites safe, especially in terms of sanitary facilities, so as to ensure the dignity of the persons who live there before work could start on social integration. They take the view that the frequency of evictions reduces a shanty town’s average lifespan to 3 months in the Île-de-France Region, which is insufficient time for any health and social support work to be put in place. Hence their regret that numerous evictions take place without the necessary time and resources having been given to the first two stages for which the circular provides, consequently jeopardising the success of the third stage.
198. The Commissioner notes that the wish to put an end to shanty towns is common to all parties, but that the provision of long-term rehousing alternatives requires both political will, particularly at local level, and time. He notes that this time often seems to be lacking, particularly as a result of the pressure brought to bear by landowners on the representatives of the state who are responsible for implementing the 2012 circular.

¹²⁷ ECSR, *Centre on Housing Rights and Evictions (COHRE) v. France* (No. 63/2010), 28 June 2011.

¹²⁸ Interministerial [circular](#) NORINTK1233053C (in French only) of 26 August 2012 on the anticipation and support of evictions from unlawful camps.

¹²⁹ According to DIHAL's figures for 2013, 394 persons obtained housing, 682 persons obtained accommodation, 908 children obtained school places, 303 persons obtained or held a job during the year and 511 persons benefited from support with a view to employment.

¹³⁰ Rights Defender, [Review](#) of the application of the interministerial circular NORINTK1233053C of 26 August 2012 on the anticipation and support of evictions from unlawful camps (in French only), June 2013.

¹³¹ *Ligue des droits de l’homme*, ERRC, [Recensement](#) des évacuations forcées de lieux de vie occupés par des Roms étrangers en France (Année 2013) (Report on evictions of foreign Roma in France for the year 2013) (in French only), January 2014. An update published on 7 April 2014 states that there were 27 evictions affecting over 3,000 persons in the first quarter of 2014 alone.

¹³² Estimated at 17,500 by the Interministerial Delegate for Accommodation and Access to Housing. Cf. above, § 189.

199. Those to whom the Commissioner spoke also reported difficulties associated with the conditions in which the situation study to which the 2012 circular refers is carried out. The quality of this study is said to vary, sometimes considerably, depending on the place where it is carried out and the party responsible for it. When the Commissioner visited Marseille, NGOs told him that they were satisfied with the quality of the dialogue with central government departments on these matters. However, they also drew his attention to their unease about being involved in the conduct of this study, insofar as this places them in a situation where they have to divide the persons under study into those who can be rehoused and those who cannot. That situation, which the associations deeply regret, stems from the fact that, in most cases, the central government departments are unable to offer housing solutions or accommodation places in sufficient numbers. The Commissioner applauds the quality of the dialogue which takes place and the co-operation between civil society stakeholders and central government departments in the Bouches-du-Rhône Department, as well as the achievements to which these have given rise¹³³. He nevertheless understands the unease to which the associations referred and considers that the central government departments should do everything they can to dissipate it by offering rehousing solutions in sufficient numbers and quality whenever an eviction is planned.

4.4 ACCESS TO HEALTH CARE, EDUCATION AND EMPLOYMENT

200. France has ratified the European Social Charter, which secures for migrant Roma, as for all persons living in France, the right to protection of health, the right to social and medical assistance and the right of children and young persons to access to education. In pursuance of that same Charter, France is required to take measures to ensure effective access to employment. These commitments notwithstanding, migrant Roma experience significant difficulties in terms of access to health care, education and employment as a result of their legal status and the living conditions which they have to face in shanty towns.

201. The Commissioner notes that migrant Roma may benefit from state medical assistance (*Aide médicale de l'État, AME*) which offers health cover to persons in an irregular situation who do not benefit from any social protection and have been living in France on an uninterrupted basis for more than three months. However, the associations which work with migrant Roma note that their access to health care is limited and note some health problems with significant public health implications: frequent pregnancies and pregnancies at an early age with little medical care; little medical care for children; low levels of vaccination; high prevalence of chronic infectious diseases and pathologies linked to unsafe living conditions, such as lead poisoning¹³⁴. The Commissioner considers that these are highly alarming health indicators.

202. The Commissioner points out that, in 2012, the European Committee of Social Rights, in its decision in the case of [Médecins du Monde – International v. France](#), found that France had violated the right of migrant Roma to health protection. The Committee also found that France had violated the Charter by failing to provide information and awareness-raising for migrant Roma and a lack of health care and screening, as well as a lack of action to prevent diseases and accidents within this social group. In the light of what he saw for himself on the ground and the information conveyed to him by the various persons to whom he spoke, the Commissioner can only concur with the analysis made by the European Committee of Social Rights in the aforementioned decision. He is concerned about the persistence of these difficulties of access to health care, which constitute both an infringement of the human rights of those persons subject to them and a danger to those persons.

203. Where access to education is concerned, since schooling is compulsory for all children between the ages of six and 16, Roma children are supposed to have access to schools. In practice, however, living conditions in shanty towns make schooling difficult: Roma families are sometimes deterred from sending

¹³³ In Marseille and the Bouches-du-Rhône Department, according to information received from the prefect's office by the Commissioner during his visit, 90 families had benefited from social support arrangements since 2012, and the numbers of persons evicted had fallen from approximately 3,000 in 2012 to a few dozen in 2014.

¹³⁴ See, inter alia, *Médecins du monde, Observatoire de l'accès aux droits et de l'accès aux soins de la mission France*, [report](#) for 2013 on access to rights and to care (in French only).

their children to school by their poor conditions of hygiene, their remoteness from schools and the prices charged for school meals. NGOs also report that certain town halls refuse to enrol Roma children.

204. During his visit to Marseille, the Commissioner noted that none of the 30 or so children who had been living on the site which he visited in the 15th district for over a year and half were attending school, despite the wish for them to do so expressed by their parents. This was, apparently because of a lack of places in the nearby schools.
205. The Commissioner points out that, in 2012, in the aforementioned case of [Médécins du Monde – International v. France](#), the European Committee of Social Rights considered that France was not taking special measures, as it should be doing, for the benefit of the members of a vulnerable group to ensure equal access to education for Roma children of Romanian and Bulgarian origin. It considered that the French education system was not sufficiently accessible to those children, and it concluded that there had been a violation of Articles 17§2 and E of the European Social Charter.
206. Where access to employment is concerned, the Commissioner notes that access to the labour market is a crucial factor in integrating everyone, and migrants in particular, into society. Until 1 January 2014, Romanian and Bulgarian nationals living in France were subject to transitional measures in respect of paid work, which used to complicate recruitment formalities and restrict recruitment opportunities to a limited number of jobs, initially set at 150, but subsequently increased to 292 in August 2012. The ending of these measures enables them henceforth to work under same conditions as other EU citizens.
207. However, access for migrant Roma who are nationals of states which are not members of the EU remains highly complex, conditional on their obtaining a valid residence permit accompanied by a work permit, which are issued only on presentation of a job offer. What is more, the Commissioner is concerned about some practices reported to him during his visit which raise additional impediments to access to the labour market, such as unjustified refusals by job centres to enrol some persons, or the undue requirement as a condition for enrolment of a command of the French language. These difficulties usually confine migrant Roma to jobs within the informal economy.
208. In this context, the Commissioner points out that, in 2012, in the aforementioned case of *Médécins du Monde – International v. France*, the European Committee of Social Rights also found a violation by France of Article E in conjunction with Article 30 of the Charter, which requires France, inter alia, to “take measures [...] to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, [...]”.

CONCLUSIONS AND RECOMMENDATIONS

209. The Commissioner encourages the authorities to continue their efforts to combat hate acts and hate speech against Roma¹³⁵. He invites political leaders and elected representatives to refrain from using anti-Roma rhetoric and to condemn all such language. He also calls on journalists and the media to systematically promote [ethical journalism](#) and the raising of awareness amongst all journalists in the sphere of human rights and anti-discrimination. He urges the media not to encourage the identification of Roma with crime or insecurity and to avoid taking any ethnically-based approach in news reports. The Commissioner also encourages the authorities and media to highlight the large number of examples of Roma integration in France which exist, but which are almost always ignored in public debate.
210. The Commissioner invites the authorities to take particular care to combat violence committed or allowed by law enforcement agencies. He points out that the recruitment of police officers from minority groups would also help to reduce the risk of racist violence and would help to achieve a better reflection of the

¹³⁵ Also see the conclusions and recommendations of chapter 1.

diversity of society within the police force. He also invites them to systematically provide members of law enforcement agencies with in-service training in human rights¹³⁶.

211. The Commissioner urges the authorities to bring to an end without delay to evictions from illegally occupied land which are not accompanied by long-term rehousing solutions for all occupants of such sites. He in fact considers such evictions to be not only damaging, because they interrupt Roma children's schooling, jeopardise medical care and undermine the continuation of employment, but also ineffective, since they are not accompanied by an integration and social protection project. He encourages the authorities to make those sites which so require safe, particularly in terms of sanitary facilities, so as to ensure the dignity of the persons who live there, not with a view to making these situations endure, but in order to allow time for a study of each individual situation and a search for appropriate and lasting alternative solutions.
212. The Commissioner encourages the authorities to make particular efforts to ensure access to health care for all migrant Roma, notably ensuring that they are guaranteed effective access to state medical assistance.
213. The authorities are also invited, in accordance with their obligations under the European Social Charter, to take special measures to ensure equal access to education for Roma children.
214. The Commissioner calls on the authorities to remove undue impediments to enrolment at job centres and to fulfil their obligations under the European Social Charter by taking measures to promote effective access to employment, housing and training for persons who are, or might well find themselves and their families in a situation of social exclusion or poverty.
215. The Commissioner points to Recommendation [CM/Rec\(2012\)9](#) of the Committee of Ministers to member states on mediation as an effective tool for promoting respect for human rights and the social inclusion of Roma. The Commissioner therefore encourages local and regional authorities to promote the work of school mediators and assistants and to increase their capacity to draw up and implement effective policies for full integration and for the effective enjoyment by Roma of all their rights and freedoms.
216. Lastly, the Commissioner endorses the principles and recommendations contained in the [Declaration](#) of 1 February 2012 by the Committee of Ministers of the Council of Europe on the Rise of Anti-Gypsyism and Racist Violence against Roma in Europe. He wishes to emphasise that any action intended to improve the integration and situation of Roma should be accompanied by measures relating to the fight against anti-Gypsyism. This is particularly necessary in some European countries, including France, which bear a heavy historical burden of centuries of persecution and violence against Travellers and Roma.
217. Such measures should include research into the phenomenon of anti-Gypsyism and activities to raise awareness among the population as a whole, so as to combat stereotypes and prejudices against Roma. For this purpose, and in order to put an end to the widespread ignorance of the history of Roma populations in Europe, the teaching of that history is strongly recommended. The Commissioner invites the French government to promote the [Council of Europe factsheets on Roma history](#), and to use and disseminate them as widely as possible, particularly in schools.

5 HUMAN RIGHTS OF PERSONS WITH DISABILITIES

218. The rights of persons with disabilities to equality and to social and political inclusion are internationally recognised, notably thanks to the European Social Charter and United Nations Convention on the Rights of Persons with Disabilities. Before it ratified the latter and its Optional Protocol in 2010, France had adopted its disability law (the *loi handicap*, No. 2005-102) on equality of rights and opportunities, participation and citizenship for persons with disabilities, which defines disability as "any limitation of

¹³⁶ Also see ECRI's [General Policy Recommendation No. 13](#) (2011) on combating anti-Gypsyism and discrimination against Roma, particularly paragraphs 8 and 9.

activity or restriction of participation in life in the community suffered in his or her environment by a person by reason of a substantial, long-term or definitive alteration of one or more physical, sensory, mental, cognitive and psychological functions, multiple disabilities or a debilitating health disorder”.

219. This is a very broad definition, and the Commissioner notes that it is difficult to obtain accurate recent figures reflecting the current situation in France. According to [INSEE](#) (the national institute for statistics and economic research), 1.8 million persons of working age were administratively recognised as having a disability in 2007. If we add those stating that they have had a health problem for at least six months and experience significant difficulties in their day-to-day activities or that they have had an occupational accident within the previous year, it is sometimes argued that the figure is 9.6 million persons, of whom 2.3 million suffer from motor deficiencies, 5.2 million from hearing deficiencies, 1.7 million from visual deficiencies and 700,000 from intellectual deficiencies¹³⁷.
220. Whatever the exact number may be, all persons with disabilities are entitled to run their own lives and to be an integral part of the community. The Commissioner notes that public policies have changed in recent years. In fact, they are no longer based solely on institutionalisation and include medical rehabilitation and social benefits, and since 2009 they have been coordinated and evaluated by an interministerial committee on disability which reports to the Prime Minister. Civil society organisations nevertheless highlighted a number of problems concerning the slow speed of reform and the lack of resources allocated to implementing reform. There are still numerous impediments to independence and social inclusion which need to be removed.

5.1 THE RIGHT TO INDEPENDENT LIVING AND TO INCLUSION IN THE COMMUNITY

221. The Commissioner points out that Article 15 of the European Social Charter explicitly sets out the right of persons with disabilities to independence, social integration and participation in the life of the community. The Commissioner also points out that the right to live in the community is also a full right enshrined in the United Nations Convention on the Rights of Persons with Disabilities. Article 19 of that Convention sets as its first aim the full inclusion and participation in the community of persons with disabilities. The conditions for this are: freedom of choice, personalised assistance which supports inclusion and prevents isolation, and the availability to persons with disabilities of general community services. As the Commissioner emphasised in a [thematic document](#) on the right of people with disabilities to live independently and be included in the community, published in 2012, compliance with these conditions varies greatly, depending on whether the persons with disabilities are living in an institution or not¹³⁸.

5.1.1 THE SITUATION OF PERSONS WITH DISABILITIES LIVING IN AN INSTITUTION

222. The Commissioner notes that while France certainly used to have large institutions housing many persons with disabilities, who were thus excluded from society, in recent years the country has experienced a gradual challenging of confinement and exclusion systems. Because of the large numbers of persons disabled during World War I, a law was passed on 26 April 1924 requiring firms to recruit workers who had been disabled during the war. Subsequently, further texts supplemented this law, such as the law of 2 August 1949. A major turning point came more specifically with the disability (general principles) law of 30 June 1975, which provides for persons with disabilities to have access to the institutions open to the population as a whole and, whenever possible, for them to stay in an ordinary working and living environment.
223. The Commissioner notes that, from that date onwards, the official priority of public policies has been the inclusion of persons with disabilities in the community, through a wide range of measures adopted in succession, relating to such matters as access to employment, participation in elections, accessibility of

¹³⁷ Seton, [Infographie sur le handicap en France](#), (in French only), 2014.

¹³⁸ Also see the Commissioner's [thematic page](#) on the human rights of persons with disabilities.

public transport, housing and places of employment. The current benchmark in this respect is the 2005 law already mentioned, which reaffirms the general principles of non-discrimination and equality of rights and opportunities for persons with disabilities, and the aim of which is to ensure that every person has the opportunity to choose his or her own life project.

224. According to the information received by the Commissioner, it nevertheless seems that this priority given to inclusion in the community is not synonymous with deinstitutionalisation. In practice, preference often seems to be given to intermediate solutions whereby persons with disabilities are dealt with both in an institution and at home, although it remains the stated objective that they should stay in the ordinary environment as far as possible. The Commissioner notes that the 2005 law introduced a “right to compensation for the consequences of disability”, which is to be implemented through an individualised response, worked out with each of the individuals concerned.
225. Departmental centres for persons with disabilities (*Maisons départementales des personnes handicapées, MDPH*) have been set up to prepare those individualised responses. Their task is to provide information to persons with disabilities, assess their needs and offer them solutions appropriate to their situation and life project. In practical terms, MDPH guide their users to the various medical/social establishments and services (ESMS) which receive or support persons with disabilities. The Commissioner notes that there are around 15 different types of ESMS in France, including home support services, as well as places where persons with disabilities live on a full-time, part-time or temporary basis, or which they visit. According to the national independence support fund (*Caisse nationale de solidarité pour l'autonomie*), in 2013, France had approximately 150,000 ESMS places for children with disabilities and approximately 320,000 ESMS places for adults with disabilities¹³⁹.
226. The Commissioner considers that the setting up of the MDPH does constitute progress, for it has helped to publicise the variety of solutions on offer, including support for independent living in an ordinary environment. However, the Commissioner notes that their setting up has not made it possible to prevent a number of persons with disabilities from being left without an appropriate response to their situation, nor to bring placements in inappropriate institutions to an end.
227. Amongst the matters for which the NGOs criticised the functioning of MDPH were the unsuitability of the assessment tools to the needs of persons with disabilities and the significant delays which occurred in the processing of cases. These resulted in a number of both disturbing and paradoxical situations, with some people being placed in institutions when they could have benefited from staying in the ordinary environment had they received the requisite personalised support, either because no appropriate assessment of their needs had been made, or because the appropriate medical/social services were not available. The freedom of choice said to be guaranteed by Article 19 of the Convention on the Rights of Persons with Disabilities was thus very much impeded.
228. The Commissioner notes that the inadequacies of the system of care for persons with disabilities in France has led, in particular, to the removal of a not negligible number of persons with disabilities to Belgium¹⁴⁰. In the spring of 2014, the press reported that several thousand French persons with disabilities had been placed in Belgian institutions, sometimes in conditions that were not decent, because of the French authorities’ inability to offer them individualised and appropriate responses¹⁴¹.
229. The Commissioner points out that these removals from France raise a problem not only in terms of France’s compliance with its commitments under the European Social Charter, but also, in the more

¹³⁹ *Caisse nationale de solidarité pour l'autonomie*, [2014 les chiffres clés de l'aide à l'autonomie](#) (Independence support, key figures for 2014)(in French only).

¹⁴⁰ This, moreover, led the European Committee of Social Rights to say in 2014 in the case of *European Action of the Disabled (AEH) v. France* that “France subsidises travel to Belgium by children and adolescents with autism of French nationality, who are then accommodated and educated in specialised institutions functioning according to appropriate educational standards, rather than financing the implementation of these standards within specialised institutions active in French territory”. ECSR, *European Action of the Disabled (AEH) v. France* (No. [81/2012](#)), 5 February 2014, §§99 and 135.

¹⁴¹ Marie Piquemal, [Le scandale des handicapés français exilés en Belgique](#), (Scandal of the French persons with disabilities sent to Belgium)(in French only), *Libération*, 25 April 2014.

practical sphere, the consequences thereof for those persons with disabilities forced to move abroad, particularly where their family and personal life is concerned. According to the information given to the Commissioner by the authorities at the time of his visit, 6,000 French persons with disabilities are living in Belgium, a figure said to be stable notwithstanding an increase of 4,000 places per year in the capacity of French establishments.

230. Given what is happening, the authorities told the Commissioner of their wish to collect data about the different types of disability so as to make a better assessment of needs and offer more suitable solutions. After his visit, the Commissioner was also told of the conclusion of an outline agreement between the French and Walloon authorities intended to harmonise standards in terms of quality of reception at those institutions and to enable French inspectors to visit the establishments in Wallonia.
231. The issue of living conditions in institutions arises, of course, not only for those persons with disabilities forced to move to Belgian institutions, but also for those living in establishments in mainland France. Several NGOs condemned the continued existence of large general facilities not really suited to caring for people with different kinds of disabilities, which still operate mainly for financial reasons.
232. The Commissioner also considers that psychiatric establishments present a number of difficulties. In its [report](#) on the visit made to France in 2010, during which several psychiatric establishments were visited, the European Committee for the Prevention of Torture (CPT) said that it had received very few allegations of ill-treatment and referred to appropriate living conditions. On the other hand, it pointed to the need to develop a range of therapeutic activities both varied and appropriate to patients' needs, and it expressed concern about the conditions in which seclusion and mechanical restraint were used. The Commissioner shares the CPT's concerns, which he was able to discuss with the Inspector General of Custodial Establishments (*Contrôleure générale des lieux de privation de liberté*) during his visit. He considers inter alia that the measures taken at psychiatric hospitals, especially when they entail a constraint imposed on the patient, should be chosen by care staff and guided by considerations which are exclusively therapeutic, and in no circumstances disciplinary.
233. Notwithstanding law No. 2011-803 of 2011, which is intended to guarantee better protection of patients' freedom, placement against a person's will remains possible in the event of a mental disorder coupled with a risk of harm and a need for treatment. The law makes it compulsory in such cases for the person concerned to be asked to give his or her opinion on the treatment programme. A court can bring a compulsory placement to an end at any time. Should this not be the case, the placement measure has to be reviewed every six months.
234. Although their merits and the infringement of individual freedoms which they entail have on many occasions been called into question, there are still large numbers of compulsory hospital placements, which concerned over 80,000 people in 2011. A [report](#) published by the European Union Agency for Fundamental Rights in 2012 also contained evidence that the opinion of the patients concerned by such involuntary placement and treatment was seldom obtained and insufficiently taken into account in France. The Commissioner considers that the opinion of the person whom it is intended to place in a closed facility should always be obtained, and that placement in such an institution without the consent of the person concerned must be regarded as a deprivation of liberty and be accompanied by the safeguards set out in Article 5 of the European Convention on Human Rights¹⁴².
235. The Commissioner believes that the specific situation of persons affected by autism disorders or pervasive developmental disorders (PDD) requires particular attention. The European Committee of Social Rights found a violation by France of Articles 15 (right of persons with disabilities to independence, social integration and participation in the life of the community), 17 (right of children and young persons to social, legal and economic protection) and E (non-discrimination) of the European Social Charter in two major cases in 2004¹⁴³ and 2013¹⁴⁴ which concerned children and young persons with autism. In the latter

¹⁴² See, in particular, European Court of Human Rights, [Stanev v. Bulgaria](#), GC, judgment of 17 January 2012. Also see the Court's factsheet on [Persons with disabilities and the European Convention on Human Rights](#), November 2014.

¹⁴³ ECSR, *Autism-Europe v. France* (No. [13/2002](#)), 8 March 2004.

¹⁴⁴ ECSR, *European Action of the Disabled (AEH) v. France* (No. [81/2012](#)), 5 February 2014.

case, the Committee condemned France for not having “taken sufficient measures capable of ensuring that the work done by institutions caring for children and adolescents suffering from autism and the working methods they utilise are predominantly educational in nature” (§ 119). According to the NGOs with which the Commissioner had discussions, the methods of support in use in numerous establishments constitute an impediment to deinstitutionalisation and to the right to inclusion.

236. The Commissioner notes that, notwithstanding three “autism plans” providing for support measures and resources to implement these¹⁴⁵, associations and national and international bodies have regularly expressed concern about the lack of appropriate support for persons with autism.
237. The Commissioner notes that there is a long-standing and marked opposition in France between the essentially psychoanalytic approach to autism syndromes and PDD taken by some psychiatrists and the aspirations of family associations for access to the educational, behavioural and developmental methods recommended by the national health authority (*Haute Autorité de Santé, HAS*). Several points of agreement nevertheless emerged from the conversations which the Commissioner had with not only NGOs and families’ representatives but also the medical teams he met during a visit to the Necker hospital for sick children in Paris. These include the need to both develop a mixture of support allowing plenty of scope for those educational, behavioural and developmental methods, and to promote the placement of children with autism in ordinary schools.

5.1.2 ISOLATION OF PERSONS WITH DISABILITIES WITHIN THE COMMUNITY

238. The United Nations Convention on the Rights of Persons with Disabilities, for its part, specifies that states parties are to take all appropriate steps to ensure that “reasonable accommodation” is provided in order to promote equality and eliminate discrimination. That “reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise of all human rights and fundamental freedoms on the basis of equality with others.
239. Despite the commitments entered into by France under the European Social Charter and the United Nations Convention on the Rights of Persons with Disabilities, the Commissioner notes that many persons with disabilities remain isolated within their own social environment because of the inaccessibility of health facilities and means of transport, and the difficulty of accessing employment, which perpetuate those persons’ social exclusion and marginalisation.
240. The Commissioner considers that France is lagging significantly behind in terms of accessibility of public places and means of transport. In order to catch up, the aforementioned law of 2005 laid down the principle of “universal accessibility”, implying the removal of all the barriers which may restrict a person going about his or her day-to-day activities. In order to achieve this, that law set specific accessibility targets for the built environment, transport and highways by 2015, subject to monitoring and penalties. In pursuance of that law, new and existing publicly and privately owned establishments open to the public were all to be accessible by the year 2015 to persons with disabilities, whatever their disability might be. In addition, the authorities responsible for organising transport had to draw up a service accessibility master plan, and each municipality had to prepare a plan for making its highways accessible and adapting public areas.
241. In 2012, the Senate’s information [report](#) on the application of the 2005 law noted that this huge undertaking had fallen well behind schedule. The Commissioner notes that the associations had, however, expressed regular criticism of the insufficient rate at which establishments open to the public were being made accessible, and had warned the public authorities. In view of those delays, and notwithstanding opposition from the associations, the National Assembly passed a law in June 2014 empowering the government to legislate by issuing orders setting new time limits of between three and nine years for making public places and transport accessible to persons with disabilities.

¹⁴⁵ The [troisième plan autism](#) (third autism plan)(in French only) now being implemented covers the period 2013-2017.

242. The Commissioner notes that an order presented to the Cabinet on 25 September 2014 introduced a “programmatic accessibility agenda” to accompany the making accessible of all establishments and facilities open to the public by 1 January 2015. While the 2015 objective officially remains unchanged, an exceptional arrangement known as “Ad’AP” enables parties not yet complying with the accessibility rules laid down by the 2005 law to undertake to make the necessary adjustments according to a precise timetable, failing which financial penalties will be applied.
243. The Commissioner considers that combating the social isolation of persons with disabilities also entails their access to the labour and employment market. He notes with regret that the current employment access arrangements for persons with disabilities only partly achieve their targets, for according to the [Rights Defender](#), the unemployment rate of persons with disabilities, irrespective of their level of qualifications, remains very high at around 20%, which is twice the overall unemployment rate in France.
244. In pursuance of Article 15§2 of the European Social Charter and the case-law of the European Committee of Social Rights, states enjoy a degree of discretion as to the measures to take in this field. France has introduced several types of measures, including those contained in law No. 87-517, of 1987, promoting the employment of workers with disabilities, which obliges all private and public enterprises with 20 or more staff to employ persons with disabilities comprising at least 6% of their workforce. That law also provides for the payment of a levy by private enterprises which do not meet this quota. The Commissioner regrets that, according to statistics published by [AGEFIPH](#), the association responsible for managing the development fund for the occupational integration of persons with disabilities, into which those levies are paid, only 52% of enterprises have a quota of workers with disabilities equal to or higher than 6% or have signed an approved agreement relating to their employment.
245. Furthermore, in France there are specific employment support measures for persons with disabilities, namely assisted employment establishments and services and “adapted” enterprises, which employ 10% of the persons with disabilities who work. At the time of his visit, several of the persons to whom he spoke drew the Commissioner’s attention to the remuneration conditions in force at assisted employment establishments and services, the staff of which received a remuneration of between 55 and 110% of the minimum hourly wage.
246. The Commissioner is concerned about these conditions and points out that, in accordance with Article 15§2 of the European Social Charter and the [case-law](#) of the European Committee of Social Rights, those persons who work in sheltered employment facilities and whose activity is mainly centred on production must benefit from the usual provisions of labour law, particularly in respect of the right to fair remuneration and the honouring of trade union rights. The Commissioner also notes that the European Committee of Social Rights, in its [conclusions by state for 2008 and 2013](#), was, inter alia, not in a position to assess the conformity of French practice with Article 15§2 of the Charter because it had not received sufficient information from the government.

5.2 THE RIGHT TO EDUCATION AND TO INCLUSIVE SCHOOLING

247. The Commissioner points out that Article 15§1 of the European Social Charter, as interpreted by the European Committee of Social Rights, provides that all persons with disabilities have a right to education and training¹⁴⁶. The right of children with disabilities to education and to inclusive schooling is also guaranteed by the United Nations Convention on the Rights of Persons with Disabilities and enshrined in the aforementioned law of 2005, which states that all children in a situation of disability should be able to benefit from schooling in the ordinary environment and to have a continuous and appropriate course of schooling. The Commissioner notes that, by virtue of the said law, schooling in the ordinary environment thus constitutes the ordinary law. According to the information which he received, it seems that this schooling may take two forms: schooling termed “individual” in mainstream classes with the support of a school life auxiliary or schooling termed “collective” in adapted classes. “Collective” schooling takes the

¹⁴⁶ Persons with disabilities should be integrated into mainstream facilities; education and training should be made available within the framework of ordinary schemes and only where this is not possible through special facilities. Education in special schools or adapted education in mainstream schools should be of a sufficient quality. See the [fact sheet](#) on Article 15 of the Revised European Social Charter.

form, in primary schools, of inclusive education classes (*classes pour l'inclusion scolaire, CLIS*) for children with disabilities, who receive adapted teaching within their CLIS and share certain activities with the other pupils. In secondary schools, children with disabilities may be placed in a local inclusive education unit (*unité localisée pour l'inclusion scolaire, ULIS*). Under the supervision of a specialist teacher, they receive an adapted education pursuing the objectives set out in their personalised school project, including periods of time spent in the school's ordinary class (*classe de référence*).

248. The Commissioner notes that, according to the Senate's [report](#) on the application of the 2005 law, that law has enabled the number of children with disabilities placed in mainstream schools to be increased by one third since 2006. Figures produced by the Ministry of Education show an average increase of 11% per year in the number of pupils in a situation of disability attending mainstream schools. In 2012-2013, this figure was around 225,560: 136,421 in primary education and 89,142 in secondary. The Commissioner considers that these results, while certainly encouraging, need to be viewed with caution, for that same Senate report puts forward the figure of 20,000 children with disabilities for whom there is no schooling solution.
249. It emerges from the information received by the Commissioner during his visit that children with autism – although their integration into mainstream schools is advocated by the authorities – are particularly concerned by non-placement in mainstream schools. What is more, the European Committee of Social Rights has received several complaints on this issue. In 2004, in the case of [Autism-Europe v. France](#), it stated that the guarantee of the right to education of children and other persons affected by a disability constituted a precondition for the “independence, social integration and participation in the life of the community” covered by Article 15 of the European Social Charter. The Committee concluded that France had violated the Charter because “the proportion of children with autism being educated in either general or specialist schools is much lower than in the case of other children, whether or not disabled”.
250. The Commissioner notes that, in its conclusions for [2008](#) and [2012](#), the European Committee of Social Rights went on to note that the situation in France continued to fail to comply with the Charter, since there was no effective guarantee to persons affected by autism of equality of access to education and vocational training. The Commissioner notes that schooling outside the mainstream environment was not acceptable either to the European Committee of Social Rights. It ruled in its 2013 decision in the case of [European Action of the Disabled \(AEH\) v. France](#) that Article 15§1 of the Charter had been violated because of the inadequate priority given to general schools for the education of children and adolescents with autism, the lack of adequate measures concerning vocational training for autistic young persons in the context of general or specialised institutions, and the fact that the work done in specialised institutions caring for children and adolescents with autism was not predominantly educational in nature.
251. In addition to the fact that a significant number of children still remain excluded from schooling, the quality of the schooling provided in the mainstream environment is in question. According to a [survey](#) carried out by the Rights Defender in 2013, 37% of the children with disabilities placed in schools only attend on a part-time basis, and 65% of them have no access to extracurricular activities. A lack of support and supervisory staff is reported to be the main reason for this. This is confirmed by a Senate report on the application of the 2005 law and by the 2011 [report](#) by Senator Paul Blanc on the schooling of children with disabilities, both of which point to the inadequate training given to teachers on disability and to the insufficient numbers of school life assistants, who had not received much training and were recruited on the basis of contracts offering insufficient job security. Those reports also highlight the interruptions which occur in schooling as a result of the difficulty of pursuing secondary education in mainstream schools and the still very limited access to higher education.
252. During his visit, the Commissioner discussed these difficulties with the Minister of State for Persons with Disabilities and Combating Exclusion, Ségolène Neuville, who acknowledged the significant amount of progress still to be made, especially in terms of teacher training, but also informed him of a number of measures intended to promote the schooling of children with autism. Those measures included the opening of 30 education units for children with autism at the start of the 2014-2015 school year and a reform of the status of school life auxiliaries.
253. This reform entails a new post, that of support staff for pupils in a situation of disability (*Accompagnant des Élèves en Situation de Handicap, AESH*), which will be a specialised job carried out under an indefinite contract by either holders of a vocational qualification in personal assistance or former school life

auxiliaries whose experience has been validated. According to the authorities, this new status potentially concerns approximately 28,000 people. At the start of the 2014-2015 school year, 350 new posts were created and 2,800 existing posts extended on the basis of indefinite contracts.

CONCLUSIONS AND RECOMMENDATIONS

254. The Commissioner applauds the efforts being made by France to modernise the national system protecting the rights of persons with disabilities, particularly those intended to make it possible for those persons to run their own lives and effectively participate actively in community life. He notes the progress represented by the setting up of MDPH, but remains concerned by the shortcomings reported and noted in this report, particularly those concerning the assessment of the needs of persons with disabilities and the delay in processing cases. He therefore invites the authorities to make a rigorous examination of the effectiveness of these entities and their conformity with the relevant international standards in this sphere.
255. The Commissioner emphasises that segregating persons with disabilities in institutions perpetuates their stigmatisation and marginalisation. France is required, by virtue of its international commitments, to take measures to ensure that persons with disabilities have effective access to a number of services, particularly the personal assistance necessary to independent living and inclusion in the community. In this respect, some useful indications were given in [Recommendation \(2006\)5](#) of the Committee of Ministers of the Council of Europe and in the Council of Europe Action Plan to promote the rights and full participation of people with disabilities into society, 2006-2015.
256. The Commissioner urges the authorities to draw up, with the active participation of persons with disabilities, a comprehensive plan to replace institutions by local services. He calls on the French authorities to demonstrate their commitment to reforming the system of medical/social support for persons with disabilities by closing large general facilities and to step up their efforts to ensure that the priority given to the inclusion of persons with disabilities is translated into action through a search for individualised alternatives to placement in an institution, based on local services. To this end, the Commissioner encourages the authorities to improve the functioning of the departmental centres for persons with disabilities, enabling those persons to effectively have access to appropriate support.
257. The Commissioner takes note of the outline agreement concluded between France and the Walloon authorities with a view to enabling the living conditions of French persons with disabilities living in Walloon establishments to be monitored. He notes that, while such an agreement may help to improve living conditions in those establishments, this does not exempt the French authorities from meeting their obligations under the European Social Charter in terms of support for persons with disabilities.
258. The Commissioner emphasises the need to ensure that disability does not constitute a reason for arbitrary deprivation of liberty. He invites the authorities to take scrupulous care to effectively obtain on every occasion the opinion of those persons with disabilities who are on the verge of being placed in a closed facility, and to regard placement in such a facility without the consent of the person concerned as a deprivation of liberty, accompanied by the safeguards set out inter alia in Article 5 of the European Convention on Human Rights. He also urges the authorities to guarantee that the use of any form of constraint against persons with disabilities does not contravene the prohibition of torture and inhuman or degrading treatment.
259. The situation of persons affected by autism syndromes and PDD requires particular attention and sustained efforts by France. The Commissioner notes the existence of insufficient screening for autism syndromes and PDD and of a lack of appropriate support for persons with autism, the result of which is the psychiatric institutionalisation of those persons, without support. The authorities need to invest more resources in appropriate support and in providing education for children with autism in mainstream schools.
260. The Commissioner calls on the authorities to pay particular attention to the effective implementation of the commitments entered into on accessibility, and to tolerate no further delays in the arrangements that need to be made to combat the isolation of persons with disabilities and enable them to enjoy their right

to independence and social inclusion, in accordance with the requirements of Article 9 of the United Nations Convention on the Rights of Persons with Disabilities.

261. The authorities are invited to step up their efforts to guarantee that persons with disabilities have access to employment in the ordinary environment. They should also put an end to the discrimination in terms of pay to which persons with disabilities employed in assisted employment establishments and services are subjected. In this context, the Commissioner invites France to take all the necessary measures to comply fully and effectively with the decisions of the European Committee of Social Rights concerning persons with disabilities, and to include in its national reports all the information needed for the examination of those reports and the drafting of the Committee's conclusions.
262. The Commissioner encourages the French authorities to continue their efforts in respect of the schooling of all children and adolescents with disabilities, particularly those who have autism. He welcomes the creation of the status of support staff for pupils in a situation of disability (*Accompagnant des Élèves en Situation de Handicap, AESH*), and invites the authorities to bring those support staff into service as soon as possible and to fill sufficient numbers of those posts to meet the support needs of pupils with disabilities placed in mainstream schools. He also urges the authorities to invest in training teachers on the subject of disability.
263. Finally, as regards children who have autism or who suffer from PDD, the Commissioner invites the authorities to enable them to be provided with support in ways which offer plenty of scope for educational, behavioural and developmental methods, and to promote the education of children with autism in mainstream schools.