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## MEMORANDUM

**by Thomas Hammarberg**  
**Council of Europe Commissioner for Human Rights**

following his visit to France  
from 21 to 23 May 2008

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Issues reviewed:  
human rights protection arrangements, prisons, juvenile justice, immigration and asylum,  
and Travellers and Roma

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## Executive summary

Commissioner Thomas Hammarberg travelled to France in May 2008. During his visit, he had meetings with the Minister of Justice, the Minister of Immigration, the Minister of Housing and Urban Affairs, most of the national human rights protection agencies and representatives of civil society. He was able to discuss various human rights issues, including prisoners' rights, asylum and immigration and the protection of Roma and Travellers. He also visited a number of establishments, including Fresnes prison and Meyzieu prison for minors, as well as Roma sites and stopping places for Travellers on the outskirts of Strasbourg.

During the Commissioner's visit, he focused on the following aspects:

1. **Respect for prisoners' human rights:** In the Commissioner's view, the proposed revision of prison legislation must not ignore respect for prisoners' fundamental rights, such as a reduced length of time spent in the disciplinary block, the supervision of solitary confinement, effective voting rights and the maintenance of family ties. He also calls on the authorities to guarantee and apply the principle of single cells for untried prisoners. Above all, he regrets the ongoing unacceptable living conditions faced by many prisoners, who have to cope with overcrowding, lack of privacy, dilapidated facilities and substandard hygiene. He urges the authorities to react immediately to these problems. Lastly, he is concerned about the risk of arbitrary decisions in the context of precautionary detention, and calls for the greatest possible vigilance.
2. **Juvenile justice:** While welcoming the resources allocated to custodial facilities such as prisons for minors and closed educational centres, the Commissioner notes that educational measures should always take precedence over any form of punishment. In particular, he would like to see the age at which criminal penalties may be imposed raised rather than lowered.
3. **Human rights in the context of immigration and asylum:** The Commissioner wishes to alert the French authorities to the dangers of specifying the number of illegal migrants to be removed, and to invite them to assess the impact of such targets on the ways in which arrests are made and on administrative practices. He calls for no further arrests to be made in schools or prefectures. He also invites the authorities to allow those detained at the border or in holding centres enough time to complete asylum applications, in appropriate conditions. Lastly, he asks that regularisation and family reunification procedures (including the "rapprochement familial" procedure for refugees) be made more transparent.
4. **Rights of Travellers and Roma:** The Commissioner invites the French authorities to ensure the effective application of the law requiring municipalities to build sites for Travellers. He is also of the view that the various special rules applicable to Travellers (in relation to voting rights and travel permits, for example) ought to be abolished. The school enrolment rate should also be considered, as should ways of improving it. Both voluntary repatriation of illegal migrants, including Roma, and humanitarian repatriation must be organised with due regard for the rights of those concerned, and they must indeed be "voluntary". More generally, the Commissioner invites the French authorities to secure better access to health care, education and employment for Roma groups. Solutions must be found with a view to guaranteeing respect for the dignity of those living in squalid shanty towns.
5. **Human rights protection arrangements:** The Commissioner, who welcomes the appointment of a General Inspector of Custodial Facilities, invites the French authorities to consult national human rights agencies more systematically and to grant the future Rights Defender complete autonomy and independence in accordance with international standards.

## **I. Introduction**

1. This memorandum is based on the findings of the Commissioner for Human Rights (“the Commissioner”) during his visit to France in May 2008. Through his visit and this memorandum, the Commissioner hopes to develop a constructive, ongoing dialogue with the French authorities in the context of his role as an impartial, independent institution responsible for promoting human rights as enshrined in Council of Europe instruments.
2. The Commissioner had already travelled to France on 17 January 2008 to carry out a special visit to the waiting zone at Roissy-Charles de Gaulle Airport and the administrative holding centre (CRA) at Mesnil-Amelot. His memorandum following that visit focused primarily on the emergency situation in the waiting zone owing to a massive influx of migrants and the measures taken by the French authorities in response.
3. During his visit to Paris from 21 to 23 May 2008<sup>1</sup>, the Commissioner met Rachida Dati, the Minister of Justice, Brice Hortefeux, the Minister of Immigration, Integration, National Identity and Co-development, Christine Boutin, the Minister of Housing and Urban Affairs, and Rama Yade, the State Secretary for Foreign Affairs and Human Rights. He also met the Ombudsman, the President of the Supreme Authority for Equality and the Fight against Discrimination (HALDE), the Children’s Ombudsperson, the President of the National Commission for Police Ethics (CNDS) and the President and several members of the National Consultative Commission on Human Rights (CNCDH). Lastly, both throughout his visit and in drafting this memorandum, he was in regular contact with civil society representatives, whose hard work and conscientiousness are commendable.
4. He visited Fresnes prison, the closed educational centre at Savigny-sur-Orge and Meyzieu prison for minors, along with Roma sites and stopping places for Travellers on the outskirts of Strasbourg. During these visits, the Commissioner noted the professionalism shown by the staff he met, and wishes to thank them for the reception given to him and the clarification they provided, which gave him a better understanding of the actual situation faced by Travellers and Roma in France, and by those in custody.
5. The Commissioner’s latest visit had a broader purpose than his January 2008 trip: his aim was to build on the dialogue opened with the French authorities and to assess the progress already made and that still needed in relation to a number of specific aspects of the human rights situation. To a large extent, the Commissioner’s starting point was the findings set out in his predecessor’s report of February 2006 (“the 2006 report”)<sup>2</sup>. His work was also based on various reports published by national and international human rights protection agencies, civil society groups and the French authorities.
6. The Commissioner regards issues relating to effective respect for the rights of minors and of persons deprived of their liberty as paramount. In his view, the way these groups are treated gives a good indication of states’ commitment to ensuring better protection of all citizens’ rights.
7. This also applies to the Roma and Traveller communities, which suffer widespread discrimination in most Council of Europe member states. European countries, including France, must ensure that their rights are fully respected and that they enjoy equality before the law.
8. Lastly, the Commissioner is concerned about the issue of protection of the human rights of migrants in general. He notes that a growing number of European countries

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<sup>1</sup> The Commissioner was accompanied on this visit by Mr Lauri Sivonen and Mr Julien Attuil-Kayser.

<sup>2</sup> Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on the Effective Respect for Human Rights in France following his visit from 5 to 21 September 2005, 15 February 2006, CommDH(2006)2.

are reviewing their policies in this area. While progress has undoubtedly been made, he is also concerned about a certain tendency to tighten up migration policies.

9. This memorandum sets out the Commissioner's findings in relation to human rights protection arrangements, effective respect for prisoners' human rights, juvenile justice, human rights protection in the context of immigration and asylum and respect for the fundamental rights of Travellers and Roma.

## **II. National human rights agencies and appointment of a Rights Defender**

10. France has numerous independent national agencies responsible for promoting and protecting human rights. During his visit, the Commissioner had the opportunity to engage in discussions with most of them. He also welcomes the appointment of a General Inspector of Custodial Facilities, made shortly after his visit, and invites the French authorities to grant the latter the resources that he needs to discharge his duties properly.
11. Firstly, the Commissioner notes with concern the growing pressure exerted on complainants to independent agencies, particularly the National Commission for Police Ethics (CNDS). The latter has recorded a number of cases in which police officers cited in a complaint before it have commenced, or threatened to commence, criminal proceedings against the victims or witnesses for false accusations. In the Commissioner's view, the authorities should ensure that complainants to national human rights agencies cannot be subjected to intimidation.
12. In his discussions with the French authorities, the Commissioner felt that the necessary dialogue between the executive and independent authorities could be strengthened. The CNCDH is but rarely consulted, for instance, even though its main role is to provide the government with independent expert advice on draft legislation. This also applies to the numerous recent reforms, in which the focus has been on consulting *ad hoc* committees made up of experts appointed by the authorities. In the Commissioner's view, the appointment of specialised committees should not mean that independent national agencies possessing legitimacy and experience in their respective fields are excluded from the consultation process. He therefore invites the French authorities to step up such dialogue and to consult national human rights protection agencies more systematically.
13. During his visit, the Commissioner discussed with numerous people the plan to appoint a Rights Defender as part of the wider proposed constitutional reform of French institutions. He welcomes the French authorities' desire to confer constitutional status on this new institution, with which individuals will be able to lodge complaints directly. Existing mechanisms for dealing with alleged breaches by government bodies, such as the Ombudsman and the National Commission for Police Ethics, cannot receive complaints directly.
14. The Commissioner notes that the procedure for appointing the Rights Defender is still under discussion. The committee chaired by Mr Balladur, set up to put forward a basis for discussion of the constitutional reform, has proposed<sup>3</sup> that the Defender be appointed by a qualified majority of parliament. It is true that this proposal, in line with international standards as set out in the relevant recommendation of the Council of Europe Parliamentary Assembly<sup>4</sup>, would effectively afford a means of appointing a person with high moral values and who enjoys the support of both the majority and the opposition within parliament. Other factors are also important with a view to enhancing the independence and credibility of such an institution: the Defender's term of office, eligibility or non-eligibility for reappointment, and independence in terms of human resources and financial and institutional aspects.

<sup>3</sup> In "Vers une Ve République plus démocratique" (pp.92-93), Comité de réflexion et de proposition sur la modernisation et le rééquilibrage des institutions de la Ve République.

<sup>4</sup> Recommendation of the Parliamentary Assembly of the Council of Europe 1615 (2003) on the institution of ombudsman, 8 September 2003.

15. The area and extent of the Defender's responsibilities also have yet to be decided, raising issues relating, *inter alia*, to the difficulty of balancing mediation and monitoring functions. In this regard, the Commissioner simply notes that various models are found in Europe, reflecting each country's culture and political, legal and historical traditions. The draft text currently under discussion refers to the grouping of several existing independent authorities within a single agency. While the desire to give these different authorities a higher profile and make them more effective is commendable, it is important to ensure that this is not to the detriment of the protection of the rights that they safeguard.
16. As stated in the Recommendation on the institution of the Ombudsman<sup>5</sup>, this new institution should be directly and easily accessible to all, and its powers should extend beyond maladministration alone to cover the broader spectrum of human rights protection, as the Balladur committee did in fact suggest.
17. In this connection, the Commissioner invites the French authorities to take account of international standards such as the Paris Principles<sup>6</sup> and the Council of Europe's ombudsman-related recommendations when they discuss ways of enhancing the Defender's remit.

### **III. Effective respect for prisoners' human rights**

18. In his 2006 report, the Commissioner invited the authorities to increase the resources allocated to prisons so as to improve prisoners' living conditions.
19. It is important to start by highlighting the efforts made by the French authorities to improve living conditions in prisons. The prison authorities have launched a large-scale review of procedures for applying the new European Prison Rules<sup>7</sup>, which have been disseminated widely among staff. At the same time, it has commenced a trial of some of these rules, with the intention of making them generally applicable in all prisons in 2008. The transparency displayed by the prison authorities<sup>8</sup> is commendable. As regards the current trial phase, which is confined to a limited number of recommendations and concerns only some prisons, it is to be hoped that it will soon be extended.
20. In January 2006, a nationwide review of prison conditions ("*états généraux de la condition pénitentiaire*") was launched at the instigation of civil society, with the support of the great majority of French political parties. The review's conclusions<sup>9</sup> called for the recognition and implementation of all the fundamental rights and freedoms of prisoners, emphasised the need to make rehabilitation the main purpose of imprisonment and called for the passing of prison legislation. In May 2007, the CNCDH published an in-depth study of criminal justice and prison issues, with similar conclusions<sup>10</sup>.
21. In 2007, the French government decided to revise prison legislation. On 19 November 2007, a select policy committee (COR) set up by the Minister of Justice adopted a report setting out 120 recommendations<sup>11</sup>. The report advocated promoting alternative punishments, making prisoners the primary focus again by giving them some influence over the path to be followed during their imprisonment, and ensuring respect for their social, family and voting rights.

<sup>5</sup> Recommendation No. (85) 13 of the Committee of Ministers to Member States on the institution of the Ombudsman, 23 September 1985.

<sup>6</sup> As set out in Resolution A/RES/48/134 of the United Nations General Assembly of 20 December 1993.

<sup>7</sup> Recommendation (2006)2 on the European Prison Rules, 11 January 2006.

<sup>8</sup> Ministry of Justice, *Application des règles pénitentiaires européennes en France*, August 2006 [www.justice.gouv.fr/art\\_pix/RPE3.pdf](http://www.justice.gouv.fr/art_pix/RPE3.pdf).

<sup>9</sup> [www.etatsgenerauxprisons.org](http://www.etatsgenerauxprisons.org).

<sup>10</sup> CNCDH, *Sanctionner dans le respect des droits de l'Homme*, Volumes I and II, 23-24 October 2007.

<sup>11</sup> *Orientations et Préconisations*, Comité d'orientation restreint de la loi pénitentiaire, November 2007.

22. In June 2008, the Minister of Justice submitted a Prison Bill to the *Conseil d'Etat*. A number of professionals were disappointed that it did not take up more of the suggestions made by the nationwide review, the CNCDH and the COR, but simply rubber-stamped existing practices. The Commissioner does not intend to comment in detail on a text that could be subject to numerous amendments during its passage through parliament. He does, however, wish to make a few general observations.
23. The Commissioner considers that issues such as the maintenance of family ties and contact, access to social benefits under ordinary law, the right to vote in prison, fairly paid work and a significant reduction in the length of time spent in the disciplinary block or in solitary confinement must not be neglected. He wishes to emphasise that the European Prison Rules, a core set of regulations which should be respected and implemented as quickly as possible, are simply a minimum foundation. They should not prevent the authorities from passing legislation that affords prisoners greater protection. The Commissioner will remain vigilant with a view to ensuring that practices such as body searches are strictly supervised and that the introduction of differentiated prison regimes is not legalised.
24. Since 2006, the prison authorities have been holding trials in the following three key areas at 28 "pilot" sites: admissions, processing of applications and prisoner support and guidance. Considerable efforts have been made to provide telephone access for sentenced prisoners in remand prisons, to separate untried and sentenced prisoners, to set up special blocks for new arrivals and to process applications within a reasonable time. It must be hoped that these new arrangements will soon be extended to all prisoners, which is not yet the case. As an indication, only about 70% of sentenced prisoners have telephone access, which was not available at Meyzieu prison for minors during the Commissioner's visit.
25. The Commissioner is also mindful of the wide-ranging reforms undertaken in relation to administrative solitary confinement. The provisions introduced in June 2006 gave judges a greater role in such proceedings, which are now adversarial, and shortened the duration of solitary confinement to two years. In addition, the prisoners in question may qualify for legal aid to cover the services of a lawyer. As a result of these reforms, the number of prisoners placed in solitary confinement dropped by a third between 2005 and 2008. The decree introduces judicial solitary confinement, however; this measure is a source of particular concern, since it is not subject to appeal and may be extended to the length of the maximum sentence incurred. It is disappointing that the authorities did not decide, as part of this reform, to allow the prisoners in question access to ordinary prison activities, or to place stricter limits on the maximum duration of solitary confinement.
26. The prison authorities acknowledge that the European Prison Rules on minimum hygiene requirements are not fully applied owing to the age and dilapidated state of some prisons. During his visit to Fresnes, the Commissioner noted that work had been done to screen toilets in cells. However, 20% of cells – regarded administratively as "single cells" – do not have such a physical barrier allowing a basic degree of privacy. A solution to the problem should be found as soon as possible, for the rising prison population means that in many cases two, three or even four prisoners have to share a cell originally intended for one person. It is unacceptable that prisoners still have to use toilets in full view of their fellow inmates.
1. Separation of untried and sentenced prisoners and requests for single cells
27. In his 2006 report, the Commissioner mentioned the overriding need to separate untried and sentenced prisoners. This principle, reiterated in the European Prison Rules<sup>12</sup>, is based on observation of the presumption of innocence.

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<sup>12</sup> Rule 18.5: "Prisoners shall normally be accommodated during the night in individual cells".

28. The use of single cells for sentenced prisoners is laid down in the Code of Criminal Procedure<sup>13</sup>, but implementation of this provision has twice been postponed. On 12 June 2008, the Minister of Justice promulgated a decree intended to reflect her commitment to improving respect for the rights of untried prisoners. That commitment should be emphasised, even though there are a number of difficulties involved in giving it practical effect.
29. First of all, it is unfortunate that the decree removes the legally enshrined right to a single cell, making it merely an option which, moreover, the untried prisoner has to request. In practice, the decree simply allows untried prisoners to apply for a transfer to another prison with a view to being assigned a single cell. Looking beyond the legal aspect, it is to be feared that the implementation of this right will be to the detriment of other rights.
30. Under the decree, where there are no places available in the short-stay prison currently housing the prisoner, the prison governor has two months to propose a transfer to another prison, having first obtained the examining judge's permission. Given that detention on remand lasts 5.7 months on average<sup>14</sup>, few untried prisoners are likely to make use of this administrative procedure. Moreover, as at 1 May 2008 short-stay prisons had an over-occupancy rate of more than 140%; this means there were more than 14,000 supernumerary prisoners, with only 313 unoccupied cells.
31. Furthermore, owing to the virtually universal overcrowding in short-stay prisons, an untried prisoner requesting a single cell is liable to be offered a place in a prison a long way from his or her usual place of residence. He or she will be forced to choose between decent detention conditions and the ability to maintain family ties and direct contact with his or her lawyer. These aspects must be borne in mind as a possible explanation for the relatively low number of requests under this provision<sup>15</sup>. While welcoming the French authorities' intention to improve untried prisoners' detention conditions, the Commissioner invites them, during the passage through parliament of the new prison legislation, to go back to enshrining the right to a single cell for all untried prisoners, to ensure that this right can be implemented in practice and to arrange for the separation of untried and sentenced prisoners.

## 2. Overcrowding

### a. *Review of the situation*

32. Notwithstanding the considerable efforts made to bring physical detention conditions in France into line with European standards, their positive impact has been significantly lessened by the chronic problem of prison overcrowding. In his 2006 report, the Commissioner found that prisons were congested. His findings were based on national studies, including two parliamentary reports drafted in 2000<sup>16</sup> on prison conditions in France.
33. Other agencies, including European bodies, have alerted the French authorities to the deteriorating living conditions in prisons as a result of overcrowding. In a 2004 report, for instance, the Committee for the Prevention of Torture (CPT) held that *"a whole series of negative features – overcrowding, deplorable material surroundings and hygiene conditions that represented a clear health risk, not to mention the impoverished programmes of activities – [...] could be legitimately described as*

<sup>13</sup> Article 716: "Persons under judicial examination, defendants and accused subjected to pre-trial detention are placed under the rules governing individual imprisonment by day and night. Exceptions to this principle may be made only... if those concerned so request...".

<sup>14</sup> National Monitoring Committee for Detention on Remand, 2007 report.

<sup>15</sup> The prison authorities received 33 requests for single cells between the decree's publication on 12 June and 4 July, 28 of which were refused.

<sup>16</sup> Report of the Commission of Inquiry on Detention Conditions in French Prisons, set up in accordance with a resolution adopted by the Senate on 10 February 2000. Volumes I and II. Paris: Senate, tabled on 29 June 2000; and Report drafted on behalf of the Commission of Inquiry on the Situation in French Prisons. Paris: National Assembly, tabled on 28 June 2000.



*amounting to inhuman and degrading treatment*<sup>17</sup>. It made similar observations in its report published in 2007<sup>18</sup>.

34. At national level, a French court found against the state in March 2008 on the grounds of “degrading” detention conditions. For the first time, an administrative court deemed the state liable for detention conditions that constituted “a breach of health and hygiene requirements” and were contrary to “respect for human dignity”<sup>19</sup>.
35. This overcrowding has various causes. It may be attributed partly to the renovation programmes under way in some prisons; this is the case at Fresnes short-stay prison at present, owing to the work being undertaken at Santé prison. However, the reasons for the growing prison population lie primarily in the harsher sentences handed down by criminal courts and the increasing use of imprisonment. Since 2002, criminal policy has been modified by a series of laws emphasising punitive aspects.
36. This trend is likely to be exacerbated by the new Act of 10 August 2007, which stipulates minimum sentences for repeat offenders. Judges may depart from these minimum sentences, but have to state specific reasons for each such decision. In addition, the Act makes it impossible to hand down a sentence other than imprisonment for the third offence in respect of numerous crimes.
37. The prison population inflation observed since 2000 has continued. On 1 June 2008, there were 63,838 prisoners, or about 3,000 more than on the same date the previous year<sup>20</sup>. There were therefore more than 13,000 too many inmates for the places available, equating to an average occupancy rate of nearly 125%. Most of the prisons which house only prisoners serving custodial sentences – used only for long-term prisoners – rarely exceed their maximum occupancy rate. The opposite is true of short-stay prisons, which have an average occupancy rate of 140%. In 13 short-stay prisons, the rate exceeds 200%; in some cases it even exceeds 220%, for instance at Béthune, Chambéry and La Roche-sur-Yon. It is estimated that seven in 10 inmates are held in overcrowded prisons.
38. Given that the number of staff in each prison depends on its theoretical maximum capacity, every instance of overcrowding automatically means a shortage of warders, social workers and administrative staff. This results in greater loss of privacy, deteriorating hygiene conditions owing to reduced shower access, a longer wait for medical appointments and problems relating to the management of visiting rooms. Tensions and violence both between warders and inmates and among inmates also become more frequent. Such conditions are intolerable for both inmates and prison staff, all of whom are adversely affected by the shortcomings of French prison management.

*b. Action taken to address prison overcrowding*

39. The French authorities state that they intend to resolve this situation by significantly increasing the number of available places. The Ministry of Justice seeks to have 63,000 prison places available in 2012<sup>21</sup>. Recently released projections predict 80,000 inmates in 2017. This solution will not suffice, for the purpose of any sanction must not be solely to punish, but also to prepare the offender for reintegration into society. As stated in a Committee of Ministers’ recommendation, “the extension of the prison estate should rather be an exceptional measure, as it is generally unlikely to offer a lasting solution to the problem of overcrowding”<sup>22</sup>.

<sup>17</sup> Report to the French Government on the visit to France carried out from 11 to 17 June 2003, published on 31 March 2004, CPT/Inf (2004) 6 §12.

<sup>18</sup> Report to the French Government on the visit to France carried out from 27 September to 9 October 2006, published on 10 December 2007, CPT/Inf (2007) 44 §146.

<sup>19</sup> Judgment of Rouen Administrative Court, 27 March 2008, confirmed at appeal on 24 June 2008.

<sup>20</sup> Ministry of Justice, *Statistiques mensuelles de la population écrouée et détenue en France*, 1 June 2008.

<sup>21</sup> “Programme 13 200”, launched in 2002, which aims to create 13,200 places by 2012.

<sup>22</sup> Recommendation No. R (99) 22 of the Committee of Ministers concerning prison overcrowding and prison population inflation, 30 September 1999.

40. In order to remedy the problem of overcrowding, the French authorities also intend to pursue a “determined policy of sentence adjustment”. The increase in adjusted sentences has been facilitated by the introduction of various mechanisms, including the establishment of the Regional Conference on Sentence Adjustment in June 2007. As at 1 May 2008, 5,920 prisoners were serving adjusted sentences, or 11.8% of all sentenced prisoners<sup>23</sup>. This is the highest figure ever, both in absolute terms and as a proportion of the prison population. Most of these prisoners were placed under electronic surveillance, the use of which is growing rapidly. The number of people eligible for semi-custodial arrangements is also increasing, but remains limited<sup>24</sup>.
41. Prison integration services are responsible for arranging adjusted sentences, taking steps to enable inmates to undergo training and helping them find jobs. These social workers play a crucial role in ensuring successful conditional release and preventing reoffending. Although significant efforts have been made in recent years, however, it appears that there is a terrible shortage of such workers and that the resources made available to them are inadequate<sup>25</sup>. The Commissioner calls on the French authorities to provide a high-quality integration service and to allow access to conditional release for as many prisoners as possible.
42. In discussing sentence adjustment, the Commissioner wishes to commend the work done on developing alternative sentences. He invites the authorities to continue their efforts, in particular by increasing the resources available for outside placements and broadening the scope for conditional release. The Prison Bill reducing the use of pre-trial detention is also a step in the right direction. Bearing in mind the serious overcrowding in French prisons, such detention should be used only where it is absolutely essential, and for the shortest possible length of time.
43. It will take some time for these measures to have a real impact on the overcrowding rate, however. Accordingly, the Commissioner urges the French authorities to take immediate action to address the unacceptable detention conditions endured by prisoners placed in overcrowded and often dilapidated cells.

### 3. Medical care for prisoners

#### a. Access to medical care

44. The issue of access to medical care is another area of concern. Under the 1994 Act, hospitals were made responsible for prisoners’ treatment, so as to ensure that they receive the same quality and continuity of medical care as the rest of the population<sup>26</sup>.
45. According to civil society representatives, the Act’s implementation has brought about an overall improvement in medical care for sick prisoners. Nevertheless, further progress is needed, particularly in relation to access to specialists and continuity of care on release from prison. Prisoners’ hospital appointments take place under difficult conditions, mainly because handcuffs have to be worn, and prison staff are present for virtually the whole time. Yet the Commissioner had condemned these practices in his 2006 report. He had also raised the issue of outside appointments and hospitalisations being cancelled because of a lack of staff to transport prisoners. Notwithstanding the improvements resulting from the opening of secure interregional hospital units (UHSIs), these findings still apply; the Commissioner was told that prisoners requiring medical intervention sometimes have to wait several days, or even weeks.

<sup>23</sup> Ministry of Justice, Statistiques mensuelles de la population écrouée et détenue en France, 1 May 2008.

<sup>24</sup> 1,863 people were eligible for such arrangements as at 1 May 2008.

<sup>25</sup> “*Amoindrir les risques de récidive criminelle des condamnés dangereux*”, report by Vincent Lamanda, First President of the Court of Cassation, submitted to the President of the Republic, 30 May 2008.

<sup>26</sup> Under the Act, outpatient consultation and care units (UCSAs) have been set up in prisons, with medical teams provided by public hospitals. Sick prisoners requiring complex medical tests, hospitalisation or surgery are transferred to a public hospital. Those requiring long-term hospitalisation are committed to the prison hospital in Fresnes.

46. Another issue raised was that of continuous medical care at night and weekends. It appears that such care is not necessarily guaranteed, owing to a shortage of available medical staff or to warders' refusal to alert the relevant services, depending on their own assessment of urgency. The Commissioner invites the French authorities to ensure continuity of care and avoid leaving prisoners without appropriate medical care for an extended period.
47. Lastly, the Precautionary Detention Act appears to undermine the non-negotiable nature of medical confidentiality in prison. Under the Act, medical staff are now required to notify the prison governor where patients constitute a serious risk to others' safety. Although part of the Precautionary Detention Act, this provision applies to all prisons. Admittedly, the Act stipulates that such notification must respect medical confidentiality. However, such confidentiality is based on the absolute trust that must be established between patients and medical professionals. Undermining it even partially is likely to weaken its very foundations. The Commissioner invites the French authorities to guarantee the strictest respect for medical confidentiality.

*b. Psychiatric care*

48. In October 2006, the Ethics Committee voiced its concern about the rate of psychiatric illness, which is 20 times higher in prison than within the general population. This may be ascribed partly to the significant reduction in the number of people deemed not responsible for their criminal actions. Other explanations include longer sentences and deteriorating prison conditions, which weaken prisoners psychologically. In 2006, moreover, the European Court of Human Rights found against France for holding a man suffering from a mental disorder in prison without appropriate treatment<sup>27</sup>. It also appears that, rather than being hospitalised, some prisoners suffering from psychiatric illnesses are placed in solitary confinement or the disciplinary block, or subjected to stricter detention regimes (where differentiated regimes exist). The Commissioner invites the authorities to monitor the disciplinary management of people suffering from mental disorders and to develop ways of adjusting their sentences.
49. Alongside the Regional Medico-Psychiatric Units (SMPRs) introduced in 1986, France has opted to set up specially adapted hospital centres (UHSAs)<sup>28</sup> to accommodate prisoners suffering from psychiatric disorders. A number of practitioners reject this solution on the grounds that it perpetuates the confusion between mental illness and criminality. The difficulty of preventing suicides in prison illustrates this deficiency, which needs to be addressed.
50. Lastly, as regards psychiatric care for sex offenders, the legislation appears to focus more on security requirements with a view to preventing reoffending than on the care to be provided to such people during their time in prison. Some prisons, such as the one at Melun, stand out for their development of treatment arrangements for sex offenders; these are exceptions, however, and are not yet available to all those prisoners who need them. The Commissioner invites the French authorities to expand such practices and provide special care to those prisoners requiring it.

4. Precautionary Detention Act

51. In 2007, the French government drafted a bill allowing offenders having served their sentences to be placed in "precautionary detention". The Constitutional Council was asked to verify the constitutionality of the bill as passed by parliament on 8 February 2008. In its decision of 21 February<sup>29</sup>, it held that the Act could not apply retrospectively, as had originally been envisaged. The Act passed is therefore applicable only to serious offences which came to trial after it was promulgated.

<sup>27</sup> ECHR, *Rivière v. France*, 11 July 2006.

<sup>28</sup> Under the 2002 Perben I Act, 440 places are scheduled to be created between 2008 and 2010, and 265 places between 2010 and 2011.

<sup>29</sup> Constitutional Council, Decision No. 2008-562 DC on the Act on Precautionary Detention and Declaration of Absence of Criminal Responsibility by Reason of Mental Disorder, 21 February 2008.

Although precautionary detention is regarded as a measure that cannot be applied retrospectively, the Constitutional Council held that it was not a “punishment” within the meaning of the French Constitution, and could therefore be ordered once a prison sentence had been served. The Act on Precautionary Detention and Absence of Criminal Responsibility by Reason of Mental Disorder was finally passed on 25 February 2008.

52. The original bill restricted this measure to perpetrators of sex offences against minors under the age of 15. When passed by parliament, however, its scope was extended to include all crimes against minors as well as serious crimes against adults<sup>30</sup>.
53. Under the Act, *“precautionary detention shall consist in placing the person in question in a secure socio-medico-judicial facility where he or she shall be offered ongoing medical, social and psychological care with a view to enabling this measure to be brought to an end”*. This possibility must have been explicitly provided for in the sentencing judgment, where the convicted person is *“particularly dangerous and highly likely to reoffend because he or she suffers from a serious personality disorder”*.
54. At least a year before the offender’s scheduled release date, he or she is placed under observation with a view to a medical report. On the basis of that report, a Multi-disciplinary Commission for Preventive Measures<sup>31</sup> assesses the offender’s ongoing dangerousness and may give a reasoned opinion proposing precautionary detention. On the basis of this opinion, the regional precautionary detention tribunal, comprising three judges, may order precautionary detention.
55. Precautionary detention is ordered for an initial period of one year. This may be renewed indefinitely by the three-judge regional commission. It takes place in a closed facility, in which detainees are deprived of their liberty to come and go. Whenever the regional commission terminates precautionary detention, it can order security surveillance, which may include requirements such as wearing an electronic bracelet or reporting to the authorities on a regular basis. The Act also makes treatment orders virtually automatic. In the event that such measures are not complied with, the Committee may order a further period of precautionary detention.
56. During his visit, the Commissioner found that the passing of this Act had generated, and continued to generate, considerable debate within French society. Many legal and medical professional associations, voluntary organisations and leading academics and intellectuals have voiced their opposition to precautionary detention and the associated risks of abuse.
57. In its opinion of 8 February 2008, the CNCDH held that the bill called into question the principles of certainty of the law and the presumption of innocence<sup>32</sup>. It also held that it broke the causal link between an offence and the deprivation of liberty, since precautionary detention was based on a possible future offence rather than one already committed. The Constitutional Council heard some of its arguments, along with similar ones expounded by civil society groups<sup>33</sup>.
58. The Commissioner notes that a growing number of European countries<sup>34</sup> are introducing procedures designed to prevent repeat offences that society regards as particularly intolerable, such as sex offences. While some countries have opted to expand medical facilities and step up regular psychiatric monitoring in the community, others – albeit in smaller numbers – have introduced similar arrangements in prisons.

<sup>30</sup> Premeditated or aggravated murder, torture or aggravated barbaric acts, aggravated rape and aggravated abduction or illegal confinement.

<sup>31</sup> Comprising the regional prefect, the relevant inter-regional director of prison services, a psychiatric expert, a lawyer and a representative of a national victim support organisation.

<sup>32</sup> Opinion on the Bill Strengthening Measures to Combat Reoffending by Adults and Minors of 20 September 2007.

<sup>33</sup> See, in particular, the observations submitted to the Constitutional Council by the Judicial Service Association (*Syndicat de la Magistrature*).

<sup>34</sup> See, in particular, the Commissioner’s reports following his visits to Switzerland (CommDH(2005)7, §§ 134-135) and Germany (CommDH(2007)14, §§ 201-206).

59. In the case of France, the Commissioner notes that there is a range of supervisory mechanisms, with the judiciary assigned a central role. This aspect, emphasised by the Constitutional Council in its decision, is also consistent with the requirements of the European Court of Human Rights<sup>35</sup>. The Commissioner shares some of the concerns raised, however, particularly as regards the risk of arbitrary decisions arising from the assessment of an offender's dangerousness. "Dangerousness", on the basis of which precautionary detention is ordered, is not a clear legal concept. It is also vague in scientific terms, insofar as the assessment of criminological dangerousness and of the risk of reoffending appears to be open to debate and France appears to lack the necessary instruments to make an accurate measurement of dangerousness. Judges will therefore have to order precautionary detention primarily on the basis of a prognosis of "dangerousness" given in a medical report. Although it will be up to them to take the decision, this will be dictated to a large extent by the medical report. As with sentencing, the convicted person must be given the benefit of any doubt as to his or her dangerousness. Moreover, questions arise as to the situation in which judges will be placed in the event that experts hold conflicting views. A zero-risk approach must not become the rule, to the detriment of individual freedoms.
60. According to the Constitutional Court's review, precautionary detention "*may be a necessary measure only where there is no measure involving less restriction of this freedom that can adequately prevent the commission of offences causing serious bodily harm*"<sup>36</sup>. In the Commissioner's view, the other recidivism prevention measures provided for by law (judicial supervision, reporting to the police and the use of electronic bracelets) should be applied in the first instance. Given that precautionary detention should be only the last resort, it is essential to ensure the effective use of non-custodial prevention measures.
61. The Act should not result in an actual life sentence, which will destroy all the prisoner's hope. The Commissioner points out that the European Court of Human Rights has held "*that the imposition of an irreducible life sentence on an adult may raise an issue under Article 3*"<sup>37</sup>. Harsh measures have to be applied in some circumstances in order to protect society, but on no account should their use become routine; they must remain the last resort, or the persons in question will be denied any chance of rehabilitation.
62. In addition, the Commissioner is concerned that the Act does not distinguish among the different offenders subject to precautionary detention, which also applies to minors having committed serious offences. This provision runs counter to the need to take into account the specific responsibility of minors.
63. In the light of these observations, the Commissioner urges extreme care in the use of precautionary detention, which ought to be a measure of last resort. He also encourages the authorities to review the results achieved by other countries in which similar measures are in force and to have recourse to regular independent studies in order to ascertain whether such legislation does in fact help to protect society.

#### **IV. Juvenile justice in France**

64. In the Commissioner's view, protection of minors is central to the protection and promotion of human rights. The Commissioner is aware that Europe is seeing a growing trend towards increasingly harsh penalties for acts committed by minors. He is convinced, however, that criminalisation can be avoided to a large extent, as can the use of detention.

<sup>35</sup> See, *mutatis mutandis*, ECHR, *Stafford v. United Kingdom*, 28 May 2002, paras 87-89.

<sup>36</sup> Decision of the Constitutional Council, § 17.

<sup>37</sup> See ECHR, *Kafkaris v. Cyprus*, 12 February 2008, para 97.

1. Legislation in force in respect of juvenile delinquents

65. The justice system for minors is governed by the Order of 2 February 1945, which introduced the principle that education should prevail over punishment, together with the system of specialised courts<sup>38</sup> and the mitigation of sentences on the ground that offenders are under-age. The sentencing of minors, especially to imprisonment, should therefore be an exception. This legislation has undergone a number of significant amendments in recent years.
66. The justification given for these amendments is the sharp increase in juvenile delinquency since the beginning of the 21st century. In less than 10 years, there has been a 150% increase in convictions for violence by minors: 3,374 convictions in 1997, compared with 8,444 in 2006<sup>39</sup>. More than 55% of convicted minors receive a further conviction within five years. Most of them go on to commit several more offences<sup>40</sup>. In the light of these findings, the Interior Ministry has authorised, as of 1 July 2008, the keeping of files containing information about minors from the age of 13 if they are deemed “likely to breach the peace”. Without even having committed an offence, minors can now be the subject of a Central Domestic Intelligence Directorate file, just like adults, on the basis of a suspicion of future offending.
67. According to the French authorities, this growth in juvenile delinquency warrants a revision of the age of criminal responsibility. Under the 1945 Order, penalties vary according to the minor’s age. Only minors capable of understanding may be regarded as criminally responsible<sup>41</sup>. As stated in the 2006 report, the Order introduces three age-levels before full age: 10, 13 and 16 years. The justice system’s response depends on the minor’s age. Minors are subject to educational penalties from the age of 10, and prison sentences may be imposed from the age of 13. In the case of minors over the age of 16, various provisions bring the applicable law and criminal procedure more into line with the adult justice system.
68. The Crime Prevention Act of 5 March 2007 introduces new measures relating to juvenile delinquency. It should be emphasised that the Act makes a wider range of measures available to judges, who can tailor them to individual circumstances. It introduces measures such as placement in an institution where psychological assistance is available and placement in a boarding school, even for minors under the age of 13.
69. For its part, the Act of 10 August 2007 on the Prevention of Reoffending by Adults and Minors provides that, for certain crimes and misdemeanours, a minor over the age of 16 may be tried as an adult. The principle is that mitigation of penalty may be dispensed with where a minor commits a second or subsequent similar offence involving deliberate violence or sexual assault, or accompanied by the aggravating circumstance of violence. Mitigation of penalty must be dispensed with *ipso jure* in the event of a third serious crime or misdemeanour, unless the judge decides to maintain it, in which case he or she must give reasons for this decision.
70. The Commissioner regrets the change in the law that allows application of the ground for mitigation that the offender is under-age to be restricted in the case of minors between the ages of 16 and 18. Although the Act of 10 August 2007 does not introduce automatic penalties, it does limit the judge’s discretion to select the penalty and the procedure for applying it. There is very little scope to depart from the minimum penalties stipulated.

<sup>38</sup> Examining judges for minors, youth court judges, youth courts, assize courts for minors.

<sup>39</sup> Speech made by the Minister of Justice on the inauguration of the committee responsible for reforming the 1945 Order, 15 April 2008.

<sup>40</sup> *Idem*. 70% committed at least two further offences, and 6% more than 10 further offences within five years.

<sup>41</sup> Children who are able to “understand and intend” the acts of which they are accused are regarded as being capable of understanding. The judge is responsible for assessing their level of understanding.

71. Without underestimating the seriousness of some acts of delinquency committed by minors, the Commissioner wishes to voice his concern about the tougher stance taken by the juvenile justice system, reflected *inter alia* in the introduction of minimum penalties in some circumstances. The primary emphasis appears to be on preventing reoffending, to the detriment of preventing first offences. Efforts should instead be made to reduce the length of time it takes for minors to be dealt with by specialised social services and for judgments to be handed down, as excessive delays may give some children a sense of impunity. The Commissioner therefore reiterates the following recommendation made in 2006: *"in all cases, emphasise education rather than punishment"*<sup>42</sup>.

## 2. Proposed revision of the 1945 Order

72. The French authorities intend to revise the 1945 Order. The text has already undergone 31 amendments, whence the need, according to the Ministry of Justice, for comprehensive revision. To this end, a committee appointed on 15 April 2008 has been asked to submit proposals in November 2008. Its task is to review the consistency of the treatment of minors in the criminal justice system and to consider the possibility of introducing an age of criminal responsibility<sup>43</sup> below which no penalties may be imposed, even of an educational nature. These lines of enquiry seem positive, as does the desire to focus on the concept of individual arrangements, so as to tailor the criminal justice system's response to each adolescent's personality and actions.

73. Nevertheless, some of the aims mentioned by the Ministry of Justice raise concerns as to the emphasis of this revision. The possibility of applying criminal sanctions to minors below the age of 13 was referred to a number of times. At present, only educational measures may be imposed on minors below the age of 13, depending on their level of understanding. It is also feared that the revision will further undermine the regime applicable to minors between the ages of 16 and 18, and that children will be tried as adults from the age of 16.

74. In the context of discussion of this revision, the Commissioner wishes to draw attention to the standards in the area of juvenile justice developed by the United Nations Committee on the Rights of the Child. According to these standards, the specialised nature of the criminal justice system for minors and the fact that educational measures should prevail over punishment are essential principles which cannot be undermined. The Commissioner consequently calls on the French authorities to bear in mind, as they work on this revision, General Comment No. 10 of the Committee on the Rights of the Child<sup>44</sup>, and to include in the consultation process an independent authority such as the Children's Ombudsperson.

75. In addition, the Commissioner is of the view that the problem of juvenile delinquency will not be solved by imposing harsher penalties. On the contrary, a successful juvenile delinquency policy should entail measures facilitating prevention, rehabilitation and the social integration of young people in difficulty. As the Committee on the Rights of the Child stipulates, *"States parties should take measures for dealing with children in conflict with the law without resorting to judicial proceedings as an integral part of their juvenile justice system"*<sup>45</sup>. Imprisonment of minors should remain the last resort.

76. Contrary to some of the arguments heard, the Commissioner is also of the view that the age at which criminal penalties may be imposed should be raised to bring it closer to full age. He is convinced that educational and reparation measures can be effective if they are appropriate and applied rapidly. With a view to implementing such a policy, the Commissioner can only reiterate the 2006 report's recommendation of an increase in

<sup>42</sup> "Report of the Commissioner for Human Rights on the Effective Respect for Human Rights in France following his visit from 5 to 21 September 2005", 15 February 2006.

<sup>43</sup> There is no minimum age of criminal responsibility at present. The Criminal Code provides that "Minors able to understand what they are doing are criminally responsible".

<sup>44</sup> General Comment No. 10 (2007) of the Committee on the Rights of the Child on children's rights in juvenile justice, CRC/C/GC/10, 25 April 2007.

<sup>45</sup> *Ibidem*, §26.

the resources allocated to the Judicial Youth Protection Agency (PJJ), with a view to preventing delinquency and improving the monitoring and training of juvenile delinquents.

3. Custodial regime applicable to minors

77. France has three types of facility in which minors' liberty to come and go may be restricted. Specialised prisons for minors (EPMs) were set up in 2007 in addition to juvenile units in prisons and closed educational centres (*centres éducatifs fermés*). While these facilities differ in nature, they all legally or physically restrict the minors placed in them to specific areas.

a. *Closed educational centres*

78. Closed educational centres, set up under the Act of 9 September 2002, accommodate minors placed under judicial supervision who have received a suspended sentence or been granted conditional release, for a period of six months, renewable once. Under the Act of 5 March 2007, young people given a one-year prison sentence can serve it in a closed educational centre instead of a prison. Young people are generally placed in such centres, run by the PJJ, once educational measures have failed.
79. Closed educational centres combine monitoring and supervision by offering a form of placement that includes an educational dimension involving the preparation of a personalised education plan. Although minors may take part in activities outside the centre, their liberty is restricted; should they fail to comply with this legal containment (that is, abscond), they may be sent to prison. Thus, while the French authorities do not regard placement in a closed educational centre as a form of detention, it does share some of the latter's features. This aspect was criticised by some professionals whom the Commissioner met, who expressed concern about the confusion between the centres' educational purpose and their closed nature.
80. Between 10 and 12 minors are placed in each centre, depending on their age. The multi-disciplinary team normally comprises about 20 people. By the end of 2008, 408 places should be available at 38 centres. The Commissioner wishes to commend the material and human resources available in these facilities. Furthermore, the quality of the educators' work appears to be bearing fruit: according to figures quoted to the Commissioner, 61% of young people sent to such centres do not reoffend in the year following the end of their placement, compared with 2/3 of minors who have spent time in prison.
81. Nevertheless, the current shortage of such facilities causes problems in that the minors placed in them may be a long way from their families. There is only one closed educational centre for the entire Ile-de-France region, offering about 10 places, while the Judicial Youth Protection Agency is supervising 30,000 minors in the region. Given the crucial need to maintain family ties, this problem must be rectified as soon as possible.
82. There are 1,268 prison places for minors at present, with plans to create 518 places in closed educational centres. The increased number of places available may indicate that more minors are to be locked up. The Commissioner therefore wishes to point out that, whatever the name it goes by, deprivation of children's liberty must always be a last resort.

b. *Imprisonment of minors*

83. As at 1 June 2008, there were 759 minors in prison, 54.5% of them on remand. The number of minors in prison is stable compared with June 2007. However, there are



about a hundred more minors in prison than there were in June 2006. Detention on remand being brief<sup>46</sup>, in practice about 3,500 minors are imprisoned each year.

84. Significant improvements have been made since 2007 in the area of disciplinary punishments. Placement in the disciplinary block, which is restricted to those over the age of 16, has been limited to between three and seven days depending on the nature of the offence, although this is still excessive in relation to European standards<sup>47</sup>. The disciplinary regime applicable to minors was also modified in 2007 in order to take account of the Judicial Youth Protection Agency's role. As the Commissioner noted during his visit to Meyzieu prison for minors, those appearing before the disciplinary committee are usually assisted by a lawyer. Such adversarial proceedings allow the minor both to explain him or herself and to gain a better understanding of the punishment imposed.
85. In addition to juvenile units in adult prisons, the Act of 9 September 2002 introduced prisons for minors. The first of these came into operation in June 2007. Six establishments are now operational, with the last one scheduled to open in early 2009, when there will be a total of 420 places. The opening of these prisons has coincided with the closure of 20-odd juvenile units in adult prisons.
86. According to the Ministry of Justice, such establishments provide a means of rehabilitating juvenile delinquents. They offer a multi-disciplinary approach under the auspices of both the prison authorities and the Judicial Youth Protection Agency, with support from the Education Ministry and hospitals. Prisons for minors are designed to make education the central focus, with the aim of preparing young people for release and reintegration into society. On average, prisons for minors employ educators and warders in a ratio of two to three.
87. As in the case of closed educational centres, many professionals told the Commissioner of their fear of confusion between security and educational objectives. Nevertheless, by and large they were of the view that prisons for minors represented genuine progress compared with juvenile units within prisons.
88. On the whole, the Commissioner's impression of these establishments is positive. Nevertheless, he wishes to highlight a number of further improvements that could be made. For example, there are no buildings outside the prisons to provide shelter for families waiting to make visits. At the same time, the fact that prisons for minors may be a long way from families' places of residence makes visits problematic.
89. Although considerable resources have been deployed<sup>48</sup>, it appears that they are still insufficient. During his visit to Meyzieu, for example, the Commissioner found that extracurricular activities had been cut because of a lack of resources, even though they had the backing of both staff and children. The Commissioner also invites the French authorities to consider ways of allowing prisoners who come of age during their sentence to remain in prisons for minors if the end of their sentence is less than a year away.
90. The Commissioner is therefore of the view that prisons for minors are notably better facilities for the imprisonment of minors. The prison authorities should give priority to such facilities. As at 1 June 2008, just 180 of the 759 minors in prison were held in prisons for minors.
91. While the introduction of prisons for minors has allowed some juvenile units within prisons to be closed, the continued detention of minors in conventional prisons raises significant issues. Under the decrees of May 2007<sup>49</sup>, 61 adult prisons can still

<sup>46</sup> One month, renewable once, for minors over the age of 16.

<sup>47</sup> The CPT has indicated that it supports a three-day maximum: see the 18th General Report, 18 September 2008, CPT/Inf (2008) 25, §26.

<sup>48</sup> It costs €205 per day to detain a minor.

<sup>49</sup> Decrees Nos. 2007-748,749 and 814.

accommodate minors. Not all prisons have separate buildings for adults and minors, or separate yards. The 2006 report was critical of the potential for minors to come into contact with convicted adult prisoners and the lack of suitable facilities and activities for girls, and these are problems that the Commissioner invites the French authorities to resolve without delay.

## **V. Human rights protection in the context of immigration and asylum**

92. The Commissioner commented in a previous memorandum on the specific situation that arose from late 2007 to February 2008 owing to the arrival of large numbers of migrants without entry documents at Roissy-Charles de Gaulle Airport, and on detention conditions at the administrative holding centre (CRA) at Mesnil-Amelot. His intention here is to address other issues connected with the implementation of the migration policy adopted by France in recent years and its possible impact on effective respect for human rights.

### **1. Administrative detention**

93. Administrative holding centres have been enlarged, and their numbers increased, as the drive to combat illegal immigration was stepped up; there were 1,700 places available at the end of 2007, up from 786 in 2003. Major material changes have also been made with a view to improving reception and accommodation conditions for detained foreigners. Three new holding centres became operational in 2007, at Nîmes, Rennes and Metz. These efforts were welcomed by a number of associations met by the Commissioner.
94. Living conditions in some holding centres are still difficult, however. The Vincennes centre appeared to be the subject of numerous complaints. Indeed, petitions, suicide attempts, self-mutilation and hunger strikes unfortunately appear to have been common occurrences there. In part, they may have been a form of protest against being taken into custody. However, it also appears that the foreigners in question objected to their accommodation conditions and the dehumanised nature of the centre, which had a total capacity<sup>50</sup> of 280 places. Lastly, the Commissioner was informed of tensions between detained foreigners and police officers responsible for running the centre; he was told that foreigners had filed at least 13 criminal complaints concerning the use of inappropriate methods and even violence. These tensions culminated in the arson attack that burnt down the holding centre in June 2008. The Commissioner can only hope that such incidents will encourage the French authorities to undertake a thorough critical review of the conditions prevailing in holding centres and to humanise them in consultation with the new General Inspector of Custodial Facilities.
95. The Commissioner was also alerted<sup>51</sup> by various associations and by the CNDS<sup>51</sup> to the unacceptable conditions at the holding centre in Mayotte, which has been described as "shameful [for] the Republic". Several reports<sup>52</sup> have described extreme overcrowding<sup>53</sup>, accommodation conditions contrary to human dignity, a lack of hygiene, makeshift facilities, failure to separate children, and meals served on the floor. Lastly, separated under-age foreigners are sometimes deported, in contravention of French and international law. The Commissioner calls on the French authorities to ensure that human rights and dignity are respected in all administrative holding centres and that the living conditions afforded to foreigners held in Mayotte are improved immediately.
96. Notwithstanding the recommendation made in the 2006 report, an increasing number of children are placed in administrative holding centres with their parents. Eleven

<sup>50</sup> Combined capacity of the two adjoining centres.

<sup>51</sup> Opinion of the National Commission for Police Ethics (CNDS) of 14 April 2008 concerning the circumstances in which a boatload of immigrants sank off the coast of Mayotte on the night of 4 to 5 December 2007.

<sup>52</sup> See, in particular, the CIMADE's 2007 annual report.

<sup>53</sup> With a theoretical capacity of 60 places, the centre has accommodated up to 220 foreigners.

administrative holding centres have been specially fitted out to accommodate families. In 2007, the CIMADE counted 154 families placed in holding centres, including 242 children of all ages. It is regrettable that administrative holding centres and waiting zones at the border are the only places in France where minors under the age of 13 are deprived of their liberty. According to statistics compiled by the CIMADE, nearly 80% of the children held in 2007 were under the age of 10<sup>54</sup>, with 15-month-old infants and even babies – at the age of three weeks – placed in holding centres with their parents. While such deprivation of liberty normally lasts less than two days, in 28% of cases it continues for more than 10 days<sup>55</sup>. Furthermore, owing to the insufficient number of places for families, in some cases they are held in ordinary CRAs, where children mix with adults.

97. In his 2006 report, the Commissioner emphasised his concerns about the conditions in which children were “taken into custody” and the fact that *“the French authorities [...] appear to completely underestimate the legal and humanitarian problems posed by the presence of children in holding centres”*. Unfortunately these comments are still applicable, and the authorities still do not count the number of children who have been held in CRAs or been deported. Above all, the Commissioner invites the authorities to place families in administrative holding centres only in cases of extreme necessity, so as to avoid causing children irreparable trauma.

## 2. Impact of the setting of targets for removals of foreigners

### a. *Relations between foreigners and the authorities*

98. In 2005, the French authorities decided henceforth to specify, at the beginning of each year, the number of foreigners illegally present who were to be removed, voluntarily or not, by 31 December. This target was increased from 20,000 in 2005 to 26,000 in 2008. The authorities acknowledge, however, that this will not enable them to put an end to the presence of an estimated 400,000 to 600,000 foreigners unlawfully present on French soil. The target number thus appears to be calculated on the basis of the authorities’ presumed capacity, rather than a desire to eliminate the problem.
99. As stated in the Commissioner’s memorandum following his visit to the waiting zones at Roissy Airport and the administrative holding centre at Mesnil-Amelot, he fears that the pressure generated by quantitative removal targets will prompt the police to take into custody growing numbers of people, sometimes using dubious methods. Several associations told the Commissioner of an increase in the number of checks based on facial appearance, and the carrying out of identity checks without the necessary instructions having been given. For instance, four French citizens had allegedly been detained in 2007, before subsequently being released. In its opinion on the situation in Mayotte, the CNDS condemns the removal of French citizens to the Comoros Islands. These illegal practices are fortunately rare, but they demonstrate the potential impact of a policy focused on achieving targets, in which numbers may take precedence over the crucial need to respect individual rights.
100. When the issue of the taking into custody of under-age foreigners was raised, the Commissioner was told by the Minister of Immigration that he had given clear instructions that no-one was to be taken into custody while in a school or its immediate vicinity. The Commissioner welcomes this statement of intent. However, it appears that these instructions are not fully obeyed, for a number of recent cases have been reported – one of them verified by the Children’s Ombudsperson – in which police officers have taken children into custody actually on the premises of primary schools. Such a practice is unacceptable, given the trauma that it causes to children. Schools must remain places of instruction and education, rather than zones for taking children

<sup>54</sup> Ages 0-2, 30.58% / 3-5, 21.90% / 6-10, 23.14% / 11-17, 21.07% / unknown, 3.31%.

<sup>55</sup> CIMADE’s 2007 annual report: 0-2 days, 46.10% / 3-10 days, 22.08% / 11-17 days, 15.58% / 18-32 days, 12.99% / unknown, 3.25%.

into custody. The Commissioner calls on the French authorities to ensure that children and their parents are not arrested<sup>56</sup> inside or around schools.

101. People have also been taken into custody while inside prefectures. It appears that some administrative authorities had developed strategies to encourage foreigners who are unlawfully present to attend the prefecture, where they were arrested on the spot. While false notifications to attend a prefecture have since been prohibited by the French courts, prefectures continue to refuse to provide information by telephone, requiring foreigners to attend in person. Accordingly, foreigners continue to come to the counters of the prefecture in good faith to lodge regularisation applications or enquire about the progress of their asylum applications. Nearly 600 foreigners were arrested in this way and placed in detention in 2007<sup>57</sup>. The prefecture is becoming the focus of all hopes, with the possibility of regularisation, and all fears, because of the risk of arrest. The Commissioner is of the view that prefectures, like schools, should be protected places where foreigners cannot be taken into custody.
102. It is to be feared that administrative authorities, faced with a requirement to meet repatriation targets, will apply the law in increasingly mechanical fashion and adopt a more repressive approach, often leaving them incapable of assessing the actual human situations underlying each case.
103. The Commissioner calls on the French authorities to take these repercussions into account and to cease setting targets for the numbers of unlawful migrants to be removed.
104. Lastly, in cases of forced repatriation on commercial flights of foreigners unlawfully present, passengers sometimes protest to the flight crew about such deportations. Once on board, the captain can still decide to refuse a deportation if he or she considers that it will disrupt the smooth operation of the flight. Where the captain takes such a decision, the police sometimes retaliate by arresting a few of the passengers who may have protested peacefully or filmed the scene. They are then charged with "interference with air traffic", "insulting a police officer" or "incitement to resistance", held in police custody for several hours and prosecuted for the offences in question. Some passengers have even suffered the humiliation of intrusive body searches. In addition, they generally lose the use of their air ticket and are sometimes blacklisted by the airline, which bans them from its flights for six months. This practice is of particular concern given that, during the Commissioner's 2005 visit, the Minister of the Interior had *"proposed that each deportation should be filmed to reduce any risk of disproportionate use of force and any false allegations of ill-treatment"*<sup>58</sup>.
105. During his visit, the Commissioner was unable to obtain specific data relating to the extent of such practices, but their existence cannot be denied<sup>59</sup>. The Commissioner invites the French authorities to put a stop to them immediately.

*b. Access to regularisation for illegal immigrants*

106. In July 2006, "exceptional admission for residence" replaced the procedure for regularising undocumented immigrants able to produce evidence of 10 years' residence in France. Introduced in 1997, this procedure had allowed foreigners unlawfully present and able to prove that they had been in France for 10 years to obtain a residence permit. The government, which took the view that this arrangement rewarded illegality, decided to replace it with a less automatic regularisation process. "Exceptional admission for residence" provides scope for regularisation on humanitarian grounds, in exceptional cases or where the person concerned works in a sector affected by labour shortages. The reform has significantly reduced the number

<sup>56</sup> Other than in the context of what are termed "ordinary" offences.

<sup>57</sup> See observation report, *"Devant la loi" Enquête sur les conditions d'accueil des étrangers dans les préfectures, l'information du public et l'instruction des dossiers*, CIMADE, June 2008.

<sup>58</sup> CommDH(2006)2, § 261.

<sup>59</sup> As an indication, see the press release issued by Agir Ensemble pour les Droits de l'Homme on 17 April 2008.

of regularisations. There is no text setting out the specific criteria applied or the evidence that must be produced in order to secure such regularisation. This further adds to the individualised and potentially arbitrary nature of the process.

107. There have been two instances of “collective” regularisation since 2006: in June 2006 for the families of children enrolled at school, and more recently for catering staff. In both cases, regularisation was based on documents submitted by the applicants. Firstly, the government must be commended for its willingness to take into account the specific circumstances of some categories of undocumented foreigners. According to many observers and the media, however, the responsible ministerial authorities had decided the number of regularisations in advance, before individual applications had even been examined; in both cases, this figure fell well short of the number of foreigners likely to meet all the requirements. The fact that the number of regularisations had been decided in advance meant that the regularisation criteria were applied subjectively and unequally, or even arbitrarily.
108. Moreover, these collective regularisations showed that many foreigners unlawfully present were fully integrated into French society; although undocumented, most had homes and jobs, and were contributing to the country’s growth by paying taxes. During the Commissioner’s visit to the administrative holding centre at Mesnil-Amelot, this impression was confirmed by his discussions with detainees, many of whom had been arrested on their way to work.
109. The Commissioner calls on the French authorities to make the criteria for granting regularisation more transparent, and to report periodically on the number of persons regularised.

*c. Right to family reunification*

110. As regards family reunification applications by members of the family of a French citizen or of a foreigner lawfully resident in France, the Act of 20 November 2007 required, as well as laying down criteria such as accommodation size and family income, requires the persons’ knowledge of the French language and understanding of the Republic’s values to be assessed before a visa can be issued. On their arrival in France, those concerned have to sign and abide by an “admission and integration contract”. The contract requires them to attend a citizenship course and, if necessary, a language course. Should they fail to fulfil its terms, the law provides that the authorities can suspend family benefits or even withdraw their residence permit. The HALDE has deemed this provision discriminatory<sup>60</sup>.
111. Foreigners applying for family reunification appear to be treated unequally, depending on whether they are married to a French citizen or an EU national. In the former case, although the foreigner wishing to settle in France is married to a French citizen, he or she has to complete the steps outlined above. In the latter case, provided that the EU citizen in question is lawfully resident in France, his or her spouse – a third-country national – is automatically allowed to reside in France, without being subject to the requirement for a long-stay visa or the prerequisite of understanding French values and knowing the French language, and without having to sign an integration contract.
112. The Commissioner invites the French authorities to clarify family reunification arrangements, to refrain from imposing disproportionate requirements – so that persons resident in France may exercise their right to private and family life – and to refrain from creating discriminatory situations.
113. Foreigners granted refugee status in France can apply for family reunification via a special “rapprochement familial” procedure enabling their spouses and under-age children to obtain a “carte de résident” entitling them to live in France.

<sup>60</sup> HALDE, Deliberation No. 2007-370 of 17 December 2007.

114. Permits entitling a refugee's family members to come to France are supposed to be issued very speedily. In practice, however, the procedure takes an average of 468 days to complete<sup>61</sup>. This excessive length of time is due to the involvement of numerous agencies in the processing of such applications. While the French Office for the Protection of Refugees and Stateless Person (OFPRA) has considerably reduced the time taken to verify family composition, it appears that French consulates continue to regard families with a suspicion often impossible to overcome. In some cases, the length of this procedure and the danger of staying in the country in question where they are beset by risks of persecution prompt the people concerned to join their family member in France by illegal means.
115. The Commissioner invites the French authorities to authorise family reunification for refugees much more rapidly, so as to avoid putting refugees' families in physical and psychological danger.

### 3. Asylum procedures

#### a. *Developments relating to the right of asylum in France*

116. The OFPRA registered 35,520 asylum applications in 2007, including 23,807 initial applications; it granted protection to 3,401 people, giving an approval rate of 11.6%, compared with 7.8% in 2006. The appeal board, for its part, granted protection to 5,413 applicants. In total, France issued almost 9,000 protection documents in 2007, compared with 7,354 in 2006. We must therefore commend this significant increase, while wondering why more protection documents were granted on appeal than by the OFPRA.
117. Under the Act of 20 November 2007, the Refugees' Appeal Board (CRR) became the National Right of Asylum Court (CNDA). The name change also foreshadows a change in the authority to which this body is attached. On 1 January 2009, the CNDA is to be attached to the *Conseil d'Etat* instead of the OFPRA. The government is also considering the granting of permanent status to the members of CNDA's sections, who are employed only on a short-term basis at present. These efforts to secure the CNDA's administrative and financial independence are in line with the Commissioner's 2006 recommendations, bearing in mind the importance of providing asylum seekers with an effective avenue of appeal.
118. The Act of 24 July 2006 incorporates into French law the provisions of EU Directive 2005/85/EC, which concerns asylum procedures, and which allows the compilation of national lists of safe countries of origin. The right of asylum has been subject to many changes in recent years. The Act of 10 December 2003 introduced the concept of "*safe countries of origin*", giving rise to a "*priority*" procedure whereby the French Office for the Protection of Refugees and Stateless Persons examines applications within 15 days, or within 96 hours where the foreigner in question is detained at an administrative holding centre<sup>62</sup>.
119. As at February 2008, the list compiled by the OFPRA's governing board featured 15 states<sup>63</sup> deemed safe. Prefectures often refuse to grant temporary residence permits on the basis of the list, and make asylum seekers from "safe" countries of origin subject to the priority procedure even when it is not mandatory. In 2007, prefectures applied the priority procedure to 85.2% of asylum seekers from safe countries of origin. In the case of asylum seekers from Mali, 99% of first-time arrivals are subject to this procedure, even though 78.4% of them were granted protection by the OFPRA in 2007<sup>64</sup>. Such figures demonstrate the inadequacy of this list of countries, some of which are far from

<sup>61</sup> Memorandum from the French Section of Amnesty International, "Procédure de regroupement familial des réfugiés", 27 February 2006.

<sup>62</sup> 1,519 asylum applications from people from safe countries of origin were examined in 2007, 1,290 of which were processed under the "priority" procedure.

<sup>63</sup> Benin, Bosnia and Herzegovina, Cape Verde, Croatia, Georgia, Ghana, India, Madagascar, Mali, Macedonia, Mauritius, Mongolia, Senegal, Tanzania and Ukraine, list as at 1 February 2008.

<sup>64</sup> Forum Réfugiés 2008 report.

safe. Moreover, removal of a country from the list involves a complicated and potentially lengthy process, as shown by an application which was made to the *Conseil d'Etat*, and the latter's decision of 13 February 2008 to remove two countries. Another example is that of the difficulties currently faced by Greece in relation to the processing of asylum applications. Lastly, as the Commissioner has already indicated, "*even in countries that are considered generally safe, there might be instances of discrimination of such severity as to amount to degrading treatment within the meaning of Article 3*"<sup>65</sup>, particularly towards members of minority groups or of the lesbian, gay, bisexual and transgender communities. These considerations show the need for equal treatment of asylum seekers irrespective of their country of origin. Accordingly, the Commissioner invites the French authorities to be as cautious as possible in their use of this list, and to ensure that it does not have an automatic effect on the processing of asylum applications, which should always be examined individually.

120. The Act of 24 July 2006 also regulates arrangements for the reception of asylum seekers, providing for systematic placement in accommodation at an asylum seekers' reception centre (CADA) and centralising the management of such centres. The overall aim of the reform is to increase the number of asylum seekers housed in CADAs and to facilitate the removal of rejected asylum seekers and the rehousing of those refugees granted asylum in more suitable accommodation (social housing for the most part). Lastly, the Act provides for universal legal aid from 1 December 2008. For the time being, legal aid is restricted to those asylum seekers who entered the country legally. The Commissioner welcomes these major breakthroughs in terms of strengthening asylum seekers' rights.
121. Finally, the Act of 20 November 2007 introduced appeals having suspensive effect in respect of the procedure for applying for asylum at the border, following the judgment of the European Court of Human Rights of 26 April 2007<sup>66</sup>. While commending the rapid incorporation of this decision into domestic law, the Commissioner noted a number of reservations about the changes. The CNCDH argues *inter alia* that the new legislation "*introduces appeals having suspensive effect solely in respect of the procedure for applying for asylum at the border, such that the reform is confined to the procedure involved in the specific case in which the Court found against France. Yet there are other procedures in the area of the right of asylum and the law relating to aliens in respect of which no provision is made for appeals having suspensive effect*"<sup>67</sup>. Furthermore, many observers<sup>68</sup> question the effectiveness of such appeals, particularly given the extremely tight deadline – 48 hours – for lodging them. This short deadline also applies at weekends and on public holidays, and it is not unusual for rejection decisions to be notified on a Friday night or even a Saturday or Sunday. In waiting zones, legal aid is generally provided by activist members of associations, who are not present in every zone and cannot offer a continuous service owing to the unpaid nature of their work. Lastly, asylum seekers are not offered any means of communicating with the outside world with a view to submitting an appeal, other than any that may be provided by associations.
122. Accordingly, the Commissioner invites the authorities to consider, in consultation with independent national agencies, the legal and practical obstacles that may restrict effective access to appeals against the rejection of asylum applications lodged at the border.

*b. Asylum procedure at holding centres*

123. Priority is given to processing asylum applications from foreigners detained in administrative holding centres. In 2007, 1,436 people applied for asylum while in

<sup>65</sup> Opinion of the Commissioner for Human Rights on certain aspects of the proposal by the Government of Finland for a new Aliens Act, CommDH(2003)13, 17 October 2003, §21.

<sup>66</sup> ECHR, *Gebremedhin [Gaberamadhien] v. France* judgment, 26 April 2007, application no. 25389/05.

<sup>67</sup> Opinion of 20 September 2007 on the Bill on Immigration Control, Integration and Asylum § 20.

<sup>68</sup> See, in particular, the ANAFE's memorandum, "*Conséquences en France de l'arrêt CEDH Gebremedhim*", 16 June 2008.

detention, accounting for more than 20% of “priority” applications. The legislation requires detainees to submit their asylum applications within five days. Applications must be completed entirely in French, and the detainee is not entitled to the services of a translator free of charge. In addition to the extremely short deadline for completing their applications and gathering the necessary documents, foreigners sometimes face insurmountable practical difficulties, depending on the CRA in which they are held: interpretation services may be virtually impossible to obtain, even for those who could afford them; some centres prohibit the possession of pens (regarded as dangerous objects); there may not be a suitable room in which to complete asylum applications. In its report published on 10 December 2007, the CPT recommends extending the deadline to 10 days. The United Nations Committee against Torture, for its part, stated that it was “concerned about the summary nature of the so-called priority procedure for consideration of applications filed in administrative holding centres or at borders, which does not enable the risks covered by Article 3 of the Convention to be assessed.”<sup>69</sup>

124. As well as imposing an extremely tight deadline for submitting asylum applications, the procedure requires the OFPRA to examine and rule on such applications within 96 hours. Thus the entire asylum procedure at holding centres is clearly so summary that the implicit presumption is that applications are unjustified. Nor do applicants have an effective remedy available if their applications are rejected, since an appeal to the CNDA does not have suspensive effect. They may, however, challenge administrative removal measures in the administrative courts. The 2006 report having already raised these issues, the Commissioner reiterates his concerns and invites the French authorities to review as soon as possible the procedures and deadlines for the submission of asylum applications by persons in administrative detention.
125. Lastly, several organisations drew the Commissioner’s attention to a number of cases in which detained asylum seekers had been taken to their consulates to obtain a “consular pass” while their asylum applications were under examination by the OFPRA. This endangers not only the detainees, who are requesting France’s protection precisely because of threats hanging over them in their own country, but also their relatives or friends who are still living there. The Commissioner urges the French authorities to ensure that such practices are prohibited immediately.

## **VI. Protection of the fundamental rights of Travellers and Roma**

### **1. Travellers**

126. There are some 300,000 Travellers in France<sup>70</sup>. This community has preserved a traditional culture and lifestyle based on itinerancy. Owing to these distinctive characteristics, the rest of the population generally regards Travellers as a separate group within society. Although the French authorities and French law acknowledge Travellers’ specific needs, special legislation also tends to be applied to them. In his 2006 report, the Commissioner recommended that the French authorities combat discrimination against Travellers and put an end to the special rules applicable to them.

#### **a. *Sites for Travellers***

127. The main problem faced by Travellers is the lack of recognition of their nomadic lifestyle. In order to address the difficulty of parking their caravans, the Act of 5 July 2000 on the Reception and Accommodation of Travellers, known as the Besson Act, requires municipalities with a population of more than 5,000 to provide a site with facilities and access to water and electricity. Local authorities show continued reluctance to implement the Besson Act, resulting in a shortage of available places. Eight years after this legislation was passed, only 32% of the requisite 41,865 places had been created by 31 December 2007. The approaching deadline for a substantial government grant for the construction of sites for Travellers has encouraged local

<sup>69</sup> CAT/C/FRA/CO/3, Conclusions and recommendations dated 25 November 2005.

<sup>70</sup> In the absence of any official figures, estimates range from 300,000 to 500,000.



elected representatives to comply with the law over the last two years. This may make it possible to reach a total of 21,165 places in 2008<sup>71</sup>.

128. In order to meet itinerant Travellers' needs for sites, families are not allowed to stay at a single site for more than a specified length of time. In winter, the maximum stay is usually five or six months. In summer, the authorised duration is often reduced to one month, and may or may not be renewable, depending on the individual site. The maximum stay is stipulated in the various sites' own regulations<sup>72</sup>. Forced to move on, families do not have any means of finding out which other sites have places available. The Commissioner invites the French authorities to introduce a system, initially at the local level and subsequently nationwide, for informing families about available places.
129. This requirement to move on causes obvious difficulties insofar as there is a shortage of available places. Given the lack of alternatives, many Travellers are forced to live in caravans that are parked illegally. This failure to comply with the Besson Act exacerbates tensions, since Travellers are not allowed to park at camp sites. Moreover, the penalties for camping on unauthorised sites are particularly harsh<sup>73</sup>.
130. In exchange for building sites for Travellers, mayors are allowed to prohibit the parking of caravans elsewhere in the municipality, and to have Travellers evicted if they park their caravans outside the designated areas. The Crime Prevention Act of 5 March 2007 makes it even easier to evict Travellers, as it abolishes the requirement for judicial proceedings prior to eviction. Where caravans are parked unlawfully, the prefect, at the request of the mayor, the landowner or the person entitled to use the land, can serve the occupants with notice to leave within 48 hours. An appeal with suspensive effect may be made to the administrative court against this administrative decision.
131. The Commissioner had the opportunity to meet some mayors who were eager to comply with the Besson Act and provide decent reception conditions. It is disappointing, however, that other local elected representatives are hostile to application of the Act.
132. In some cases, for instance, sites are created outside urban areas or near to facilities which are major sources of nuisance (such as electrical transformers or very busy roads), making them difficult – if not dangerous – to use, particularly for families with young children<sup>74</sup>.
133. These shortcomings prompted the European Committee of Social Rights to find against France in February 2008<sup>75</sup>. The Committee holds that the deficient implementation of the legislation on stopping places for Travellers is discriminatory and violates the right to affordable housing.
134. The Commissioner invites the French authorities to ensure the effective application of the Besson Act, reminding them that the problem is not a new one, and that these deficiencies were already pointed out in the 2006 report.

*b. Exercise of certain civil and political rights by Travellers*

135. It should be noted that Travellers of French nationality are subject to special legislation that does not apply to other French citizens. Under the Act of 3 January 1969, people

<sup>71</sup> Parliamentary research report on sites for Travellers, submitted to the Prime Minister by Senator Pierre Hérisson, May 2008.

<sup>72</sup> Under the circular of 3 August 2006, the maximum continuous stay is set at five months in principle. Within this constraint, the various sites' own regulations stipulate the maximum length of stay applicable at each, depending on needs.

<sup>73</sup> Possible penalties for parking caravans other than on official sites are six months' imprisonment and a € 3,750 fine, suspension of driving licence and requisitioning of the vehicles used for towing.

<sup>74</sup> CNCDH, "Etude et propositions sur la situation des Roms et des gens du voyage en France", 7 February 2008.

<sup>75</sup> Collective Complaint No. 33/2006 by the International Movement ATD Fourth World against France, 4 February 2008.

over the age of 16 and of no fixed abode must hold a travel permit, of which there are two types, the *carnet de circulation* for those with no regular income, and the *livret de circulation* for those engaged in paid work. For those without a regular income, the travel permit has to be stamped by an administrative authority every three months; the permit for those in paid work has to be stamped every year. If this formality is not completed on time, the Traveller is subject to heavy fines (€ 750 per day overdue). Failure to hold the relevant document carries a penalty of up to one year in prison.

136. Even if they hold an identity card, Travellers who fail to keep their permit with them at all times risk being fined. Given that most Travellers are of French nationality, they should be subject only to the same requirements as their fellow citizens, so an identity card should be sufficient. Moreover, this legislation was already criticised in the 2006 report, but no action has been taken on the latter's recommendations.
137. Another provision of the 1969 Act makes Travellers feel that they are under constant surveillance. They are required to be administratively attached to a municipality. Once this has taken effect, two years must elapse before any change can be made. Reasons have to be given for such an application, which has to be accepted by the prefect. Such requirements are at odds with the very concept of travelling. These provisions consequently restrict the freedom to settle in the municipality of one's choice.
138. Travellers are not entitled to vote until they have been administratively attached to a municipality for three years, whereas the qualifying period for other citizens is just six months.
139. Travellers' homes are also subject to special legislation. Their caravans are not considered to be housing units, and they are consequently not entitled to any housing assistance. Travellers also find it difficult to obtain social assistance in general. Nevertheless, the French authorities have decided to make them subject to a special tax. The 2006 Budget Act provided for the introduction of an annual accommodation tax on land-based mobile homes from 1 January 2007. Owing to implementation difficulties, application of this measure has been postponed to 1 January 2010. It is disappointing that the new legislation is not coupled with housing-related social assistance. A caravan is now legally recognised as accommodation, but still not as a housing unit, meaning that it does not confer access to the same rights.
140. The disqualification of mobile homes makes it very difficult for Travellers to gain access to some administrative services. Government agencies and private bodies hesitate, or even refuse, to offer their services to people unable to provide a permanent, fixed address. This is the case, for example, when it comes to opening a bank account, securing a bank loan or concluding an insurance contract.
141. It is difficult not to consider this a situation of inequality. The Commissioner considers that the various special measures described give rise to a system that discriminates against Travellers. Most of these recommendations having already been made in the 2006 report, he calls on the French authorities to put a stop to this special treatment immediately, by developing appropriate policies as recommended by the Council of Europe<sup>76</sup>.

#### c. *Schooling difficulties*

142. In many cases, the difficulties with regard to schooling for Traveller children seem bound up with the caravan parking issue. Frequent moves and the positioning of sites for Travellers a long way from schools are not conducive to adequate access for children to education. Notwithstanding the fact that schooling is compulsory and the growing demand from Traveller parents, some municipalities continue to refuse to enrol Traveller children in primary schools, on the grounds that they will not be there long enough, that an eviction procedure is under way or that classes are full. The HALDE

<sup>76</sup> Recommendation CM/Rec(2008)5 on policies for Roma and/or Travellers in Europe, 20 February 2008.

was notified, for instance, of one mayor's refusal to enrol a group of 14 Roma children<sup>77</sup>.

143. Similar problems persist at secondary level, and distance learning is still preferred. The National Centre for Distance Education (CNED) has introduced some special courses and set up a support network used by 6,000 Traveller children. Schooling for Traveller children is thus a crucial issue which needs to be addressed as a matter of urgency. The Commissioner recommends that the Education Ministry calculate the school enrolment rate of the children concerned.
144. During the Commissioner's visits, families told him that time limits on stays at sites for Travellers (a maximum of six months in winter and one or two months in summer) could hinder school attendance. While acknowledging that such time limits are designed to enable Travellers to continue their itinerant lifestyle, the Commissioner is of the view that greater flexibility should more frequently be offered to those families who so desire. Travellers have long harboured a degree of mistrust towards schools, and parents do bear some of the responsibility for their children's failure to attend, but the efforts made by families should not be discouraged.
145. Alternatives to conventional schooling may be envisaged for those Traveller families who so desire because of their high degree of mobility. At present, some 40 "school lorries" travel around the sites where itinerant families live, organised by the Education Ministry or by associations; the Education Ministry also has around 15 field schools located at or near to sites for Travellers. The Commissioner commends these initiatives, while expressing disappointment that there are still far too few of them. Such arrangements should be made generally available: as well as affording a means of providing schooling for these children, they serve as a springboard into conventional schooling and foster a more open attitude to the education system. Similarly, the reception agreements with schools introduced by the CNED in order to enable children enrolled on distance learning courses to receive help from conventional schools, should be encouraged and developed. Thirty-three lower secondary schools have signed such agreements to date.

## 2. Migrant Roma

146. In addition to the Traveller community, a Roma community mainly from Romania, Bulgaria, Hungary and the Balkans has recently settled in France. Its members are in different situations. They may or may not have a residence permit, be asylum seekers or have entered the country without any documentation. There are an estimated 10,000 such people living in France in extremely uncertain conditions. Many Roma camps are comparable to shanty towns.

### a. *Rules governing residence and voluntary repatriation*

147. The migrant Roma groups living in France are subject to differing rules depending on their country of origin. In the case of Roma who are EU nationals<sup>78</sup>, the principle of freedom of movement is applicable if they just present an identity card, provided that they are not in paid employment<sup>79</sup>. In the case of non-EU nationals, entry to the Schengen area for a short period is subject to more extensive formalities (a valid passport and "Schengen visa"<sup>80</sup> and sufficient financial resources are required, in particular).

<sup>77</sup> Deliberation No. 2007-30 of 12/02/2007 concerning the refusal to enrol children from Roma families at school.

<sup>78</sup> That is, of Czech, Hungarian, Slovakian or Slovenian origin (since 2004), or of Romanian or Bulgarian origin (since 2007).

<sup>79</sup> Students, researchers, service providers or senior citizens. There are no specific formalities for stays of less than three months. Those wishing to stay for more than three months must first register with the town council at their place of residence. In addition, Romanians and Bulgarians not in paid employment must have health insurance and adequate resources of their own in order to obtain a residence permit for more than three months.

<sup>80</sup> Single visa valid for the entire Schengen area, issued by one of the member states.

148. The circular of 7 December 2006 on assistance for voluntary or humanitarian repatriation introduces a so-called “humanitarian” repatriation procedure. It allows foreigners in a situation of destitution or extreme uncertainty, including EU nationals, to be offered repatriation to their country of origin. Where they are repatriated by the ANAEM<sup>81</sup>, transport costs are paid, and families receive 300 euros per adult and 100 euros per child. According to the Ministry of Immigration, 8,349 people left voluntarily between June 2007 and May 2008, an increase of 374%.
149. The desire shown by the French authorities to introduce a policy of assistance for genuinely voluntary repatriation is commendable, as is that policy's effectiveness. Nevertheless, civil society representatives alerted the Commissioner to the possibility that some instances of voluntary repatriation of Roma from European Union member states may be exploited for statistical purposes. As EU nationals, these people are free to return to France once they have received their grant. Moreover, it appears that such repatriation is not always genuinely “voluntary”, as repatriation operations are sometimes co-ordinated with intimidating, or even improper, police operations.
150. The Commissioner was informed that in some instances of organised repatriation, “volunteers” had had their identity papers confiscated until they reached their country of origin, so that they could not change their mind. The Commissioner would like such repatriation to be organised with due regard for the rights of those concerned, and a full guarantee of its “voluntary” nature to be given. These groups should also receive genuine assistance on their arrival in their country of origin.

*b. Economic and social discrimination*

151. The introduction of State Medical Aid (AME) was designed to provide access to health cover for illegal residents not entitled to any social protection who have been living in France continuously for more than three months. Notwithstanding this cover, for which children qualify immediately, the Commissioner found that Roma in France have little access to medical care in practice. According to Médecins du Monde, the situation of women is of particular concern. It appears that the average age at which they first become pregnant is 17, with only 8.3% of women monitored during pregnancy. The situation of children is also very disturbing. Very few are up to date with their vaccinations, and tuberculosis cases continue to be reported.
152. As regards non-EU nationals, their status as asylum seekers, undocumented immigrants or holders of tourist visas means they are not allowed to engage in paid employment. This prohibition was eased, however, by the 2007 Integration, Immigration and Asylum Act, under which prefectures can issue a “worker’s card” to illegal residents who wish to be regularised and have secured a job offer. This provision is difficult to implement in practice, owing in particular to the lengthy administrative procedure. Accordingly, the CNCDH, among others, regards this improvement as largely theoretical.
153. In theory, the situation is different for those Roma who are EU nationals, since the principle of free movement of workers applies. Nevertheless, nationals of the 12 new member states enjoy only restricted access to the labour market in the 15 “old” member states of the European Union. The Commissioner wishes to point out that the French authorities decided to put an end to restrictions under the transitional arrangements, as of 1 July 2008, for those countries which joined the EU on 1 May 2004<sup>82</sup>. Romanian and Bulgarian nationals will still need residence and work permits in order to secure employment in France, however. Since 2007, a list of 150 occupations in seven economic sectors has specified the jobs accessible to nationals of the new member states<sup>83</sup>. Employers taking on a worker from a new member country have to pay a tax

<sup>81</sup> National Agency for the Reception of Foreigners and Migration.

<sup>82</sup> Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia. Cyprus and Malta had not been subject to the same restrictions.

<sup>83</sup> Building and public works; hospitality, restaurant work and food services; agriculture; engineering and metalwork; process industries; trade and sales; waste management.

of 893 euros, however. Scope for working in France consequently remains extremely limited for the new entrants, which is one reason why some Roma resort to undeclared work.

154. On the whole, Roma families are keen for their children to attend school. Under the 1998 Act, however, primary school enrolments take place at municipal level and require proof of address or an accommodation certificate, few of which are issued. It is possible to find a way round this problem; school heads can enrol a child even if the municipality is opposed. This option is rarely used, however. In addition, the financial insecurity of Roma families and the regular evictions to which they are subjected are an impediment to school attendance.
155. The Commissioner wishes to commend the citizens' initiatives taken in this area, in particular by teachers and associations, to enable such children to have access to education. During his visit to a "Roma site" in Strasbourg, he noted that children's schooling did not raise any particular difficulties. Many mayors have understood the importance of school attendance, although some continue to show reluctance. For instance, the Commissioner was informed of numerous cases in which local authorities had refused children's admission to schools.
156. The Commissioner would like the French authorities to ensure better access to education, employment and medical care and assistance for Roma groups. A successful integration policy has to involve a role in the economy for adults and education for children.

*c. Living conditions*

157. Most Roma groups in France live in squalid shanty towns, often without access to water or electricity, as the Commissioner found during his visits. Rubbish is collected only sporadically. Hygiene conditions are often deplorable. Some camps do not even have toilets. According to a survey conducted by Médecins du Monde<sup>84</sup>, about 53% of Roma live in caravans, many of which are not mobile, 21% in converted squats and 20% in huts. In his 2006 report, the Commissioner had already voiced alarm about such conditions. The general situation does not appear to have improved. These appalling living conditions must therefore be brought to an end.
158. Evictions are a particularly problematic issue, plunging families into a climate of fear. Generally speaking, relations between these groups and the police are not always satisfactory. In addition, the Internal Security Act of March 2003 allows the police to intervene within 48 hours, without any need for a ruling by the administrative court or for the landowner's explicit agreement, where such intervention is warranted by "interference with law and order, hygiene or public peace and safety"<sup>85</sup>. Such expulsions often involve brutal methods, tear gas and the destruction of personal property. Following some evictions, the National Commission for Police Ethics (CNDS) has found that unjustified and disproportionate acts of violence were committed<sup>86</sup>. Evictions are not usually subject to any prior negotiation, and Roma do not receive any warning. The Commissioner wishes to voice his disapproval of such practices.
159. The action taken by some local authorities determined to rectify this situation of extreme uncertainty by providing such groups with health, social and educational assistance is nevertheless to be commended. Integration-through-housing projects have also been set up, *inter alia* in the Ile-de-France and Nantes areas. Such initiatives are all too rare, however. Accordingly, the Commissioner invites local authorities to follow the example set by these good practices with a view to providing decent living conditions for the groups concerned.

<sup>84</sup> Médecins du Monde, "Les Roms que l'Europe laisse à la porte", October 2007.

<sup>85</sup> Amendment to Article L 2215-1 of the Territorial Authorities General Code.

<sup>86</sup> CNDS 2005 and 2006 annual reports.

## **VII. Conclusions and recommendations**

### *- Human rights protection arrangements in France*

1. The Commissioner invites the French authorities to consult national human rights protection agencies more systematically. He also emphasises that it is up to the authorities to ensure that complainants to such agencies cannot be subjected to intimidation.
2. The Commissioner invites the French authorities to take the most appropriate steps, guided by international standards, to ensure that the Rights Defender enjoys legal, political and financial independence.

### *- Effective respect of prisoners' human rights*

3. In the Commissioner's view, the revision of prison legislation currently in progress must not neglect the questions of the maintenance of family ties and contact, access to social benefits under ordinary law, the right to vote in prison, fairly paid work and a significant reduction in the length of disciplinary block placements. He also calls for body searches to be strictly supervised, and for differentiated regimes not to be legalised. He recommends that prisoners placed in solitary confinement be allowed to participate in activities and that the maximum duration of such confinement be shortened.
4. The Commissioner invites the French authorities again to recognise every untried prisoner's right to a single cell, to ensure the implementation of this right and to keep apart untried and convicted prisoners.
5. The Commissioner calls on the French authorities to take immediate action to address the unacceptable detention conditions of prisoners forced to live in overcrowded, often dilapidated cells and unacceptable hygiene conditions. Given the severe overcrowding in French prisons, prison sentences should be imposed only where they are absolutely essential, and the number of adjusted sentences should be substantially increased. The new measures introduced at 28 pilot sites should also be applied to all prisoners.
6. The Commissioner invites the French authorities to provide continuity of care in prison, to respect absolute medical confidentiality, to place strict limits on the use of handcuffs during medical consultations and to enable prisoners to receive specific care when this is needed.
7. Concerned about the risk of arbitrary decisions in assessments of dangerousness in relation to precautionary detention, the Commissioner urges extreme care in the use of this measure. He recommends that measures be taken to prevent reoffending, so that the placement of prisoners in precautionary detention is avoided. He encourages the authorities to consider the results achieved by other countries where similar measures are in force and to have regular independent studies carried out.

### *- Juvenile justice in France*

8. The Commissioner points out that educational measures should take precedence over any form of punishment. He regrets changes in the law making it more difficult to apply the ground for mitigation that the offender is under-age, and calls on the French authorities to bear in mind General Comment No. 10 of the Committee on the Rights of the Child when they draft their revision of the 1945 Order, and to include the Children's Ombudsperson in the consultation process.
9. The Commissioner is of the view that the age at which criminal penalties may be imposed should be raised to bring it closer to full age, and that educational and reparation measures can be effective if they are appropriate and applied rapidly.

10. The Commissioner calls on the French authorities to improve detention conditions in juvenile units of prisons so that they are more like those found in prisons for minors, and to ensure that minors do not come into contact with adult prisoners. He also recommends that the problem of the lack of suitable facilities and activities for minor female prisoners be rapidly solved.

*- Human rights protection in the context of immigration and asylum*

11. The Commissioner invites the French authorities to undertake a thorough critical review of the conditions prevailing in holding centres and to humanise them in consultation with the new General Inspector of Custodial Facilities. He urges that the living conditions of foreigners held in Mayotte be improved immediately.
12. The Commissioner recommends that administrative holding centres and waiting zones at the border should not be treated as exceptions in respect of the detention of minors under the age of 13, and invites the authorities to place families in administrative holding centres only in cases of extreme necessity.
13. The Commissioner wishes to alert the French authorities to the dangers of specifying the number of illegal migrants to be removed, and to invite them to assess the impact of such targets on the ways in which arrests are made and on administrative practices.
14. The Commissioner calls on the French authorities to ensure that foreigners are not arrested inside or around schools or prefectures. He recommends that passengers should not be arrested and prosecuted for peacefully protesting against forced repatriation on commercial flights.
15. The Commissioner calls for regularisation procedures to be made more transparent. He invites the French authorities to clarify family reunification arrangements and to refrain from imposing disproportionate requirements or creating discriminatory situations. He calls for much speedier authorisation of family reunification for refugees.
16. The Commissioner urges equal treatment of asylum seekers irrespective of their country of origin, and invites the French authorities to be as cautious as possible in their use of the list of countries deemed "safe".
17. The Commissioner invites the authorities to consider, in consultation with independent national agencies, the legal and practical obstacles that may restrict effective access to appeals against the rejection of asylum applications lodged at the border, and to review as soon as possible the procedures and deadlines for the submission of asylum applications by persons in administrative detention.

*- Protection of the fundamental rights of Travellers and Roma*

18. The Commissioner invites the French authorities to ensure the effective application of the Besson Act, and to introduce a system for informing Travellers about available places at official sites.
19. The Commissioner considers that the various special measures give rise to a system that discriminates against Travellers, and calls on the French authorities to put a stop to this special treatment immediately.
20. The Commissioner recommends calculating the school enrolment rate, developing measures to facilitate access to education and setting more flexible site time limits for families with children at school.
21. The Commissioner would like to see both voluntary repatriation of illegal migrants and humanitarian repatriation organised with due regard for the rights of those concerned, and they must indeed be "voluntary".

22. The Commissioner invites the French authorities to secure better access to health care and assistance, education and employment for Roma groups. Solutions must be found with a view to guaranteeing respect for the dignity of those living in squalid shanty towns. Evictions from Roma sites should be subject to prior negotiation, and should not give rise to acts of brutality or to the destruction of property.