

France

Report published on March 2016

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

- **Context information from ECRI**

p.9:

ECRI notes a substantial rise in hate speech and above all violence driven by racism and intolerance, resulting in several incidents involving attempted murder, particularly in connection with antisemitism. This situation is all the more worrying given the high level of under-reporting of racist and homo/transphobic crime, the loopholes which undermine the effectiveness of the criminal provisions covering hate crimes and the commonplace use of political statements to stigmatise vulnerable groups which help to trivialise racist and intolerant attitudes within the population.

- **Transphobia and data on hate crimes in the country**

ECRI is disappointed that it has received no information on reports of homophobic/transphobic acts, but notes that the government plans to produce such statistics with effect from 2016.

To remedy the under-reporting of hate crime, the authorities should step up training for law enforcement agency representatives with regard to dealing with the public, take measures to improve their working methods regarding the registration of complaints and identity checks and implement Ministry of Justice directives on dealing with reports of racist offences and extend these arrangements to cover homo/transphobic offences. They should also propose legislative provisions on the collection of data on equality. Finally, it should be possible to break down data relating to cases of racist and homo/transphobic crime in terms of vulnerable groups and crossreference them with the outcome of subsequent judicial proceedings.

20. The data on hate speech provided by the Ministry of the Interior with regard to threats¹⁹ recorded by the police indicate an overall increase of 6% in the number of instances in the last three years (1,193 in 2012, 1,010 in 2013 and 1,256 in 2014). Racist acts, excluding anti-Muslim and antisemitic acts, have gone down by 5% (606 in 2012, 528 in 2013 and 577 in 2014). Anti-Muslim acts fell by 48% (149 in 2012, 164 in 2013 and 78 in 2014). On the other hand, antisemitic acts rose by 39% (438 reports in 2012, 318 in 2013 and 610 in 2014). ECRI is disappointed that it has received no information on reports of homophobic/transphobic acts, but notes that the government plans to produce such statistics with effect from 2016.

27. In its annual reports, 26 SOS Homophobie provides some details on the number and nature of homophobic/transphobic acts. From 2010 to 2014, the number of reports rose from 1,483 to 2,197. For 2014, the statistics show that 47% of reports concerned insults and 18% defamation, while 40% of all the acts reported occurred online. Homophobic/transphobic hate speech came to a head in France at the time of the passing of Law No. 2013-404 of 17 May 2013 legalising same-sex marriage (also known by the term “marriage for all”). The public debate that took place on that occasion gave rise to a

large number of cases of homophobic/transphobic hate speech, especially by some participants in mass public demonstrations held in January and March 2013.

- **The authorities' response to homophobic/transphobic hate speeches**

30. The many convictions involving Jean-Marie Le Pen and Dieudonné M'BalaM'Bala have prompted ECRI to analyse the effectiveness of the French criminal law provisions. In its 4th report, ECRI recommended that the French authorities continue evaluating the effectiveness of the criminal law provisions to combat racism. ECRI understands that the provisions making hate speech a criminal offence are to be found in two separate bodies of law, namely the Law on Freedom of the Press (which punishes public incitement to violence, hatred or discrimination and public insults or defamation) and the Criminal Code (which punishes threats). However, the limitation period for offences punishable under the Law on Freedom of the Press is less than that provided for by the Criminal Code. Furthermore, legal entities are not covered by that law. Moreover, the applicable judicial procedures are different and, finally, racist and homophobic/transphobic grounds can only be considered aggravating circumstances for a limited number of ordinary offences. ECRI believes the ability to combat hate speech would be improved if the French authorities were to harmonise these different provisions²⁸. If measures were to be taken to this effect, ECRI thinks it would be important to train everyone involved in implementing the new provisions.

35. Apart from their criminal-law and administrative-law responses, the French authorities have taken a series of measures to combat hate speech, for example their action to combat online racist and homophobic/transphobic statements. In its 4th report, 30, ECRI recommended that the authorities pursue and reinforce their efforts to combat forms of racist expression propagated via the Internet. In its interim conclusions, ECRI considered the French authorities' efforts in this area to be satisfactory, especially with the strengthening of the PHAROS platform for reporting cases and its association with the Central Office to Combat Offences Linked to Information and Communication Technologies (OCLCTIC). ECRI notes that this system is now very well known to the public at large: for example, 8,605 content items were reported in 2011, a figure that rose to 13,295 in 2014.

37. The government also informed ECRI of several initiatives to prevent racist and homophobic/transphobic behaviour in sport. These include the drafting and dissemination among all sports federations of a handbook on tools for observing and recording behaviour contrary to the values of sport, including racism and homophobia. The French Football Association has extended its monitoring of behaviour to include all acts of a discriminatory nature and the French Basketball Federation has established a similar monitoring mechanism. Two million euros have been set aside to enable other federations to develop such mechanisms.

43. ECRI believes in particular that combating the prevalence of both racist and homophobic/transphobic stereotypes and prejudices is a priority area for action and understands that measures 24 to 27 to equip schools with the means of transmitting and giving full effect to the values of the Republic will help make significant progress in this regard. ECRI understands that these measures correspond in particular to the secular teaching of religious beliefs, already featuring in school curricula, and a new moral and civic education curriculum (see paragraph 36). It is, however,

aware that the main aim of these initiatives is the transmission of knowledge based on principles, rules, historical facts or theoretical concepts. ECRI is concerned that both the content of these new educational curricula and the training of education staff will not focus sufficiently on resolving the specific practical issues relating to living together that arise every day, both in private and social life in general and in the school environment in particular. ECRI also believes that these measures should include combating homophobia/transphobia.

44. ECRI recommends that the French authorities fight racial and homophobic/transphobic stereotypes and prejudices effectively to deal better with the concrete challenges that arise due to living together in an intercultural world. To this end, ECRI recommends that school curricula and teacher training programmes are revised in order to enable teachers and pupils to understand better societal issues linked to questions such as religions and beliefs as well as immigration matters.

101. The annual reports of the association SOS Homophobie also contain useful information for assessing the situation. Over the last five years, the association has recorded a significant increase in the number of reported incidents: 1,259 in 2009 compared with 2,197 in 2014, with a peak of 3,517 in 2013. A sudden rise between 2012 and 2013 (+78%) can be largely explained by the explosion of homophobic/transphobic hatred following the debates on and passing of the law to allow same-sex marriage (see the section on hate speech, paragraph 27). In 2014, 20% of reports related to cases of discrimination in various areas, 1% of them concerning cases of dismissal. Above all, however, the number of cases relating to the school environment rose by 25% between 2012 and 2013, justifying an appropriate response (see paragraph 103).

104. After it had been established that the situation had reached alarming proportions among very young people, a study⁷⁴ was carried out in 2013 to assess the discrimination suffered by young LGBT people at school. A pilot project, “Les ABCD de l'égalité” (“ABCD of Equality”), the aim of which was to combat gender stereotypes from a very young age and teach values of equality and respect between girls and boys, women and men was carried out in 2013. It was succeeded in 2014 by the Equality between Girls and Boys at School action plan. ECRI notes that numerous organisations consider these initiatives insufficient when it comes to combating homophobic/transphobic prejudices at and by schools, as evidenced by the adoption and signing of a declaration in May 2015 calling for the implementation of the recommendations in the Teychenné report and for the fight against homophobia/transphobia to be stepped up in the field of education. ECRI reiterates its recommendation on combating stereotypes in the education system (see under hate speech, paragraphs 43-44) and considers that combating homophobic/transphobic stereotypes should be part of general action to counter discrimination.

105. In this report, ECRI has repeatedly noted that there is insufficient data to have a clear picture of the situation with regard to either racist and homophobic/transphobic crime or discrimination. It has also noted the lack of studies and assessments by the authorities in respect of integration and antidiscrimination policies and the effects of these policies on vulnerable groups. This situation is all

the more worrying as ECRI notes an increase in hate speech and violence motivated by racism and intolerance. ECRI consequently believes that much work needs to be done in these areas.

108. With regard to the conduct of identity checks, ECRI notes the efforts being made by the French authorities. It refers to the adoption of a new Code of Ethics for the Police and Gendarmerie, which emphasises the need for exemplary relations with the population, and to sustained efforts to provide initial and in-service training with regard to these new provisions. As far as the issue of ethnic profiling is concerned, it notes that police uniforms now bear an identification number, but there have been many claims that these numbers are too long and too small, making them difficult to read. What is more, they are removable. ECRI notes that the CNCDH (in 2010) and the Defender of Rights (in 2012) proposed various practical solutions to this problem such as the requirement for police officers to provide an identity check receipt bearing their name, but they have not been tested despite the requests from these institutions for this to be done. Finally, as regards the matter of entries in the police daybook, ECRI understands that the Ministry of Justice regularly issues a reminder about the obligation to record offences of a racist nature in the form of a formal complaint and not as a daybook entry, but the Ministry of the Interior apparently does not intend to put an end to this practice. ECRI understands that only formal complaints are sent to the prosecuting authorities and that, accordingly, a significant proportion of racist or homophobic/transphobic acts are not subject to any judicial procedure.

110. ECRI recommends that the French authorities organise a major information campaign to lower the rate of under-reporting of cases of hate speech.

- **Legislative issues**

9. As far as paragraph 21 of GPR No. 7 is concerned, ECRI noted in its 4th report that, subsequent to the Law of 9 March 2004 on adapting the justice system to developments in crime, the Criminal Code provided that racist motivation could be taken into account as an aggravating circumstance for an entire range of offences committed against persons or property (especially in cases of intentional homicide, torture and acts of barbarism, violence leading to death or injury, damage to private property, threats, theft and extortion). ECRI then reiterated its recommendation that the principle of aggravating circumstances constituted by racist motivation be extended to all offences. ECRI has not been informed about any significant developments in this connection but notes the announcement of a legislative initiative (see paragraph 4). As regards homophobic/transphobic motivation, Article 132-77 of the Criminal Code provides for sentences to be increased for some offences⁹ when committed because of the victim's sexual orientation. ECRI further notes that the government wishes to make racism, homophobia/transphobia and antisemitism an aggravating circumstance in all crimes and offences.

10. ECRI recommends (1) that the following conduct is expressly criminalised: (i) the public expression of an ideology claiming the superiority of or depreciating or denigrating a group of persons; (ii) the creation or leadership of a group which promotes racism, support for such a group or participation in its activities; (2) that a provision is added to the Criminal Code expressly providing for racist motivation to constitute an aggravating circumstance of every ordinary offence; and (3) that the homophobic and transphobic motivation is also considered an aggravating circumstance of every ordinary offence.

96. As far as the use of the criminal law to combat homophobia and transphobia is concerned, ECRI reiterates that sexual orientation and sexual “identity” are included as grounds in the provisions making incitement to hatred, violence or discrimination a criminal offence and refers to the discussion in paragraphs 5, 9 and 10. Furthermore, Law No. 2008-496 of 27 May 2008 prohibits any discrimination based on sexual orientation or sexual identity in the fields of healthcare, education, access to goods and services, and employment. This ban is repeated in Articles L1132-1 et seq. of the Labour Code, and Article 6 of Law No. 83-634 of 13 July 1983 extends it to the civil service.

97. There is no specific legal or regulatory provision in French law governing a change of a person’s gender designation in the public records. However, the courts have long recognised the possibility of such a change for this category of people. 71 An opinion supporting an application for a change of civil status is issued by a judicial decision, following an opinion given by a psychiatrist, as soon as the hormone treatments that bring about a permanent physical or physiological transformation have led to an irreversible change of gender without there necessarily being a need to remove the genital organs. The CNCDH criticises the considerable lack of legal certainty here and advocates legislative intervention. 72 ECRI understands that bills are currently being drafted on this subject.

98. ECRI recommends that the French authorities quickly carry out the legislative work that will enable the procedure for changing a person’s gender designation in the public records to be regulated. As this is such a sensitive issue, ECRI recommends that the authorities involve the organisations that represent LGBT persons and take into account the opinion of the CNCDH.

99. As far as asylum is concerned, sexual orientation and gender identity are among the grounds taken into account for granting refugee status. ECRI notes that no law makes explicit reference to this possibility but that international protection is granted on the basis of the 1951 Geneva Convention, in particular on the ground of belonging to a social group. The applicability of this concept to sexual orientation was recognised in the 1990s in the decisions of the Refugees Claims Commission (which later became the National Court for the Right of Asylum) and the Conseil d’État. Similarly, LGBT persons can be granted “subsidiary protection”.

- **Education and awareness-raising**

The authorities should fight racial and homophobic/transphobic stereotypes and prejudices effectively to deal better with the concrete challenges that arise due to living together in an intercultural world. To

this end, school curricula and teacher training programmes should be revised in order to enable teachers and pupils to understand better societal issues linked to questions such as religions and beliefs as well as immigration matters.

- **List of recommendations from ECRI**

2. (§ 10) ECRI recommends (1) that the following conduct is expressly criminalised: (i) the public expression of an ideology claiming the superiority of or depreciating or denigrating a group of persons; (ii) the creation or leadership of a group which promotes racism, support for such a group or participation in its activities; (2) that a provision is added to the Criminal Code expressly providing for racist motivation to constitute an aggravating circumstance of every ordinary offence; and (3) that the homophobic and transphobic motivation is also considered an aggravating circumstance of every ordinary offence.

7. (§ 44) ECRI recommends that the French authorities fight racial and homophobic/transphobic stereotypes and prejudices effectively to deal better with the concrete challenges that arise due to living together in an intercultural world. To this end, ECRI recommends that school curricula and teacher training programmes are revised in order to enable teachers and pupils to understand better societal issues linked to questions such as religions and beliefs as well as immigration matters.

18. (§ 95) ECRI recommends that the authorities carry out surveys and collect data on LGBT persons in France and on the discrimination and intolerance of which they may be victims.

19. (§ 98) ECRI recommends that the French authorities quickly carry out the legislative work that will enable the procedure for changing a person's gender designation in the public records to be regulated. As this is such a sensitive issue, ECRI recommends that the authorities involve the organisations that represent LGBT persons and take into account the opinion of the CNCDH.

20. (§ 109) ECRI recommends that the French authorities intensify the training of law enforcement representatives with regard to the contents of the Code of Ethics concerning the need for exemplary relations with the population, that they review the system of numbers affixed to police uniforms in order to facilitate identification, including by testing the solutions proposed by the CNCDH and the Defender of Rights, and that they take steps to implement the Ministry of Justice's instructions on recording racist offences in the form of a formal complaint and not as a record in the police daybook, and to extend this arrangement to homophobic/transphobic offences.

21. (§ 110) ECRI recommends that the French authorities organise a major information campaign to lower the rate of under-reporting of cases of hate speech.