



REPRESENTATION PERMANENTE DE LA FRANCE  
AUPRES DE L'O.S.C.E

## **Tolerance and non-discrimination II Working Session 2**

### **France's Reply**

1) The French Government has fully apprehended the rise in acts of intolerance in France in the context of the current economic and social crisis.

In the fight against intolerance, the French Government gives no precedence to any form of discrimination in particular. Whether they target Jews, Muslims, Christians, Roma people or LGBTI people, all acts of intolerance and discrimination are condemned strongly by the French authorities and are the subject of the necessary legal action.

2) In addition to its solid legal framework, France has taken several steps to strengthen its tools to fight racism:

(1) it adopted an action programme on 26 February 2013 to supplement the 2012-2014 national action plan against racism and anti-semitism, establishing several education and outreach programmes alongside the enforcement aspect, including for police officers, to break down prejudice;

(2) it has refined its statistical tools to measure the effectiveness of penal policies to combat racist acts: the Ministry of the Interior and the judicial institutions have detailed statistics on the origin of these acts. These are tools for internal use, aimed at better targeting the public response to rising intolerance;

(3) it has established a tool to report racist hate speech online, with the aim of better combating the spread of this speech.

(4) it has established close cooperation with the representative bodies of the Muslim and Jewish communities in France in order to create joint monitoring of violence and formulate protective measures concerning educational and religious establishments.

3) An exhaustive list of the steps France has taken to combat racism and anti-semitism is annexed in an attachment.

## **Annex: Measures taken by France to combat racism and anti-Semitism**

### **I – Legal framework**

#### **1. Non-discrimination is a constitutional principle**

Article 1 of the Constitution of 4 October 1958 states: "France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs."

Any difference in treatment on the grounds of origin, race or religion therefore directly breaches the French Constitution. In accordance with these principles, which are of a constitutional nature, the French Republic guarantees free exercise of religious observance without distinction. The principle of secularity is designed to guarantee the neutrality of the state and to ensure that the focus in the public sphere is on shared democratic values: freedom of conscience, opinion and expression, respecting pluralism and tolerance.

In the French view, assertion of identity is the result of a personal choice, not of criteria which a priori define this or that group and engender a different set of legal rules. The French approach protects an individual's right to acknowledge affiliation to a cultural, historical, religious or philosophical tradition or to reject it.

#### **2. Racist, xenophobic or anti-Semitic discrimination is punished as an aggravating circumstance of certain criminal offences**

In the French Penal Code, a racist, xenophobic or anti-Semitic motive is an aggravating circumstance of certain criminal offences. Aggravating circumstances are established "when the offence is preceded, accompanied or followed by written or spoken words, images, objects or actions of whatever nature which damage the honour or reputation of the victim, or a group of persons to which the victim belongs, on account of their actual or supposed membership or non-membership of a given ethnic group, nation, race or religion".

#### **3. Racist remarks and incitement to hatred are criminal offences**

The Press Freedom Act of 29 July 1881 guarantees freedom of expression and opinion while respecting public order. External manifestations of racism and xenophobia are deemed to infringe public order and are hence sanctioned.

##### ***a. The criminal offence of incitement to discrimination, hatred or violence on account of origin or membership of a racial or religious group***

Article 24 of the 1881 Act imposes criminal penalties on "those who, by one of the means set forth at Article 23, incite hatred or violence against a person or group of persons on account of their origin or membership or non-membership of a given ethnic group, nation, race or religion". The purpose of the incitement must be to cause those to whom it is addressed to behave in a discriminatory way against the protected persons.

##### ***b. The criminal offence of defamation and public insult on account of origin or membership of a racial or religious group***

**Defamation** is a criminal offence under Article 32 of the 1881 Act. It results from any allegation or imputation of specific facts which damage the honour or reputation of a given

person or group of persons on account of their race, religion or membership of a nation or ethnic group.

**Public insult** is covered by Article 33 of the 1881 Act. It constitutes the use of any term of contempt or any expression causing outrage. It is distinguished from defamation insofar as defamation supposes the allegation of a specific fact, the truth or falsehood of which may be proved without difficulty.

The offence of defamation or insult is established only if the allegations or expressions causing outrage have been made public by one of the means stipulated in the 1881 Act. Non-public defamation or insult is punishable under Decree 2005-284 of 25 March 2005 when committed "against a person or a group of persons on account of their origin or their actual or supposed membership or non-membership of a given ethnic group, nation, race or religion".

#### **4. Racist propaganda is a special category of offence**

**The 1881 Press Freedom Act** defines offences governed by a specific set of procedural rules. Through the application of strict rules of procedure, the aim is to strike a balance between combating racist propaganda and safeguarding freedom of opinion and expression, enshrined in many international instruments.

**Act 49-956 of 16 July 1949 on publications intended for young people** as amended by Act 87-1157 of 31 December 1987 authorises the Interior Ministry to prohibit anyone from offering, giving or selling publications of whatever nature to persons under 18 when they represent a danger for young people, in particular because they provide a platform for discrimination or racial hatred.

**The Act of 10 January 1936 as amended on combat groups and private militia** allows the President of the Republic to dissolve by decree de facto associations or groupings which would either incite discrimination, hatred or violence against a person or group of persons on account of their origin or their membership or non-membership of a given ethnic group, nation, race or religion, or propagate ideas or theories which seek to justify or encourage such discrimination, hatred or violence.

**The French Sports Code** sanctions several forms of behaviour with a racist connotation when they occur in a sporting arena or on the occasion of a sporting event. Under Article L. 332-7 of the Sports Code, it is a criminal offence to introduce, wear or display signs, insignia or symbols which recall a racist or xenophobic ideology in a sporting arena or on the occasion of a sporting event.

**In conclusion, France has a robust legal framework for combating racism and anti-Semitism. The main challenge lies in effective implementation.**

## **II – Implementation**

Mobilisation against racism and anti-Semitism is driven first and foremost by a national policy framed and implemented by the government of the French Republic on the basis of the legal framework described above.

### **1. National oversight**

#### ***a. The Interministerial Committee against Racism and Anti-Semitism (CILRA)***

The Interministerial Committee against Racism and Anti-Semitism (CILRA) was created by a decree of the President of the Republic of 8 December 2003. Comprising the relevant ministers and chaired by the Prime Minister, it defines policy guidelines for combating acts inspired by racism and anti-Semitism. It ensures that actions taken by the various ministries are coherent and effective, both in forestalling such acts and ensuring that exemplary sanctions are imposed when they occur.

On 26 February 2013 the Committee, chaired by the Prime Minister, adopted a complementary action programme to the **national action plan against racism and anti-Semitism 2011-2014 drawn up in February 2012**. The programme's main purpose is to tackle stereotyping and the formation of prejudice. Particular emphasis is placed on education, training and awareness-raising. The main targets are schoolchildren, students, public officials, staff in contact with the public, associations involved in popular education and sport, internet users and internet service providers. Cultural initiatives and the role of remembrance are key elements: France's network of 1,200 national museums is mobilised to roll out local initiatives to combat prejudice.

An **interministerial delegate against racism and anti-Semitism (DILCRA)** is responsible for monitoring implementation of all these actions and for coordinating the various ministries involved. The position was created by a decree of 16 February 2012 in conjunction with adoption of the national action plan.

#### ***b. Training for public officials***

A **Charter for equality in French administration** was signed in December 2008 by the president of the High Authority against Discrimination and for Equality (HALDE, now the Rights Defender) and the ministers responsible for French administration. Its focus is internal, since the aim is to take all steps, especially in procedural terms, to avoid discrimination in recruitment and career paths and hence to ensure equal treatment of public officials. The Charter has five strands:

- to take steps before recruitment to promote equal access to public employment;
- to monitor the conditions of recruitment in order to meet needs without discrimination (membership of selection panels, content of competitive examinations, recognition of professional experience, etc.);
- to overhaul career paths and guarantee equal treatment in all management processes;
- to raise awareness among and train public employees;
- to inform administrative agencies in order to circulate best practice in preventing discrimination.

The complementary action programme adopted on 26 February 2013 calls for awareness-raising and training for **public officials** to be stepped up, especially when they are in contact with the public.

- An **awareness-raising module** for all new public officials is being devised, focusing on the values of the Republic, human rights and the fight against prejudice, as well as on the behaviour expected from public officials in the exercise of their duties.
- **Continuous training reference guides** are being devised to help officials in daily contact with vulnerable sections of the population (staff in prefectures, public finance centres, social security offices, employment agencies, etc.).

## 2. Independent bodies

Government action is backed up by the joint intervention of independent bodies which bring high-level expertise and have their own prerogatives that enable them to participate directly in the protection of people who are the subject of discrimination.

### *a. The Rights Defender*

The constitutional reform of 23 July 2008 created the Rights Defender, an independent authority with constitutional roots. Like the HALDE before it, the Rights Defender has the dual mission of dealing with cases of discrimination and promoting equality.

The Rights Defender has particularly wide powers. In particular, it may:

- make all recommendation such as to guarantee the respect of rights and freedoms;
- carry out inspections and spot-checks under the oversight of the judge of liberties and detention (criminal penalties apply if its action is hindered);
- order the administrative agency or organisation in question to take the necessary steps, including reversing a decision;
- submit observations on cases pending before the courts.

### *b. The National Consultative Commission on Human Rights*

The National Consultative Commission on Human Rights (CNCDH), created in 1947, is a national body to promote and protect human rights. It advises the government and makes proposals in the sphere of human rights, the law and humanitarian action and respect of the fundamental guarantees extended to citizens for the exercise of public freedoms.

Under Act 90-615 of 13 July 1990 providing for the punishment of all racist, anti-Semitic or xenophobic acts, the CNCDH is tasked with publishing an annual report on the fight against racism, anti-Semitism and xenophobia en France. These reports include recommendations to the government.

### *c. The Conseil Supérieur de l'Audiovisuel (broadcasting regulatory authority)*

The *Conseil Supérieur de l'Audiovisuel* (CSA) is an independent administrative authority responsible for regulating audiovisual communication under Act 86-1067 of 30 September 1986 on the freedom of communication.

Act 2006-396 of 31 March 2006 on equal opportunity endorsed the CSA's powers in the fight against discrimination and for diversity since "the *Conseil Supérieur de l'Audiovisuel* contributes to measures in favour of social cohesion and the fight against discrimination in the sphere of audiovisual communication".

In a letter of 26 January 2009, the Prime Minister asked the CSA to report on its action with regard to the fight against racism and anti-Semitism in the audiovisual media. The conclusion was reached, on the basis of the prevailing laws and regulations, the CSA's action and the

sense of responsibility among TV channels and radio stations, that the conditions for fighting racism and anti-Semitism in the broadcast media in France were generally satisfactory.

### 3. Civil society

#### *a. NGOs*

Anti-racism NGOs make an important contribution to national mobilisation on the issue. This contribution justifies the financial support they receive from central and local government under agreements.

To give one example, the purpose of the agreement concluded between the Interior Ministry and LICRA (the International League against Racism and Anti-Semitism) on 1 December 2010 is "to pool efforts to more effectively combat racism and anti-Semitism, which are a breach of the Republican pact and a danger for democracy" and to increase help for victims. It calls for:

- concerted action to raise awareness among staff;
- action to provide the public with information;
- exchanges of information on offences, especially those committed on the internet;
- closer relations to improve the treatment of victims and the processing of complaints by the police;
- concerted action to combat racism in sport.

#### *b. Economic and social players*

Businesses and business organisations are stakeholders in the fight against racism, anti-Semitism and discrimination, and in actions to promote equal opportunity and diversity. Some companies have taken initiatives along these lines; examples include the creation of the association *IMS Entreprendre pour la Cité*, campaigns focusing on youth employment such as *Nos quartiers ont des talents* (Our Neighbourhoods Have Talent), and the conclusion of agreements between certain industries and HALDE (now the Rights Defender).

More generally, trade unions hold internal discussions on the issue, work with employees and managers on the ground, and in some cases originate local partnerships. They also display their commitment constructively in the many public bodies on which they are represented, at national, regional and local level.

The fight against **discrimination in the workplace** and the guarantee of **equal access to employment** for any person, whatever their national, racial, ethnic or religious origin, remains a priority for the French government. The definition of discrimination was extended by Act 2008-496 of 27 May 2008, which defines indirect discrimination, treats harassment as a form of discrimination, extends the list of prohibited forms of behaviour and explicitly treats an order to discriminate as discrimination.

A Diversity Charter was launched on 22 October 2004. It represents a commitment that any company can sign up to, whatever its size, if it wishes to combat discrimination in employment by reflecting the diversity of the population as accurately as possible in its workforce. At its meeting on 26 February 2013, the interministerial committee called for racism and anti-Semitism to be explicitly included in the Charter. The mobilisation generated by the Charter was given a boost by the introduction in 2008 of a Diversity label, which represents official recognition of the introduction of anti-discrimination measures, not just in private companies but also in public services, local authorities and associations.

## 4. Measurement and analysis

In order to combat a phenomenon, it is essential to know it. It must be possible to measure its development in quantitative terms and to assess it in qualitative terms, i.e. to identify the new forms it may take and the new vectors it uses in order to show itself.

### *a. Interior Ministry*

For the last twenty years or so, the intelligence service has collected data in each *département* on racist and anti-Semitic offences that come to its attention. It draws up a monthly report which is submitted to the central directorate.

On 17 June 2010, the minister of the Interior and the president of the *Conseil Français du Culte Musulman* (French Muslim Council, CFCM) concluded a framework agreement for the statistical and operational monitoring of hostile acts against Muslims in France. Its primary aim is to provide a framework for joint and shared monitoring of violent incidents, but its ultimate purpose, set out in the preamble, is to find ways and means for effectively combating the scourge they represent. On the minister's instruction, regional prefects must organise quarterly meetings with representatives of regional Muslim councils. Regular dialogue is also established between the CFCM and the General Directorate of the National Police (DGPN), who meet inter alia to discuss protection issues, especially for places of worship and schools.

Likewise, close consultation has taken place since 2008 with the Jewish community protection service (SPCJ), which runs a hotline that victims of an offence can call directly. Several agreements have also been concluded since 2005 with the *Fonds Social Juif Unifié* (Unified Jewish Social Fund, FSJU) for programmes of works to secure buildings belonging to the Jewish community. Anti-Semitic acts are monitored by the French authorities with the utmost vigilance, as the President of the Republic recalled in a speech on 20 March 2013.

The Central Office to Combat Offences linked to Information and Communication Technologies (OCLCTIC) has a brief to combat all offences generated by the fraudulent use of ICTs. It operates PHAROS, a platform which has been online since 6 January 2009 and whose function is to collect and process reports of illegal content on the internet from members of the public and ISPs. Reports relating to offences of a racist or anti-Semitic nature are given priority in PHAROS. The resources available to the platform were increased in 2010 and will continue to be stepped up over the period 2012-2014.

### *b. Justice Ministry*

The Justice Ministry has two statistical resources that enable it to measure and evaluate the effects of its criminal justice policy with regard to racial discrimination. The first is court statistics relating to convictions for racial discrimination offences recorded in the national criminal records database, whether misdemeanours or summary offences. Since 2005, there has also been a database to monitor judicial responses to racist and anti-Semitic offences brought to the attention of prosecuting authorities. In 2007, the database was refined to make it possible to isolate action taken with regard to offences committed on account of the victim's actual or supposed membership of the Christian, Muslim, Jewish or other religion.

### *c. Education Ministry*

In September 2007, the Education Ministry introduced a database of violent incidents in schools, called SIVIS. Racism or anti-Semitism are included as aggravating circumstances in the description of the incidents (physical violence, insults, threats).

## **7. International**

The fight against racism, anti-Semitism and xenophobia is one of the priorities of France's international human rights policy. France carries out many actions in this sphere across a wide range of international forums, including the United Nations, the Council of Europe, the Organisation for Security and Cooperation in Europe and the European Union.

The observations, recommendations and judgments of the competent international courts in relation to racism, anti-Semitism and xenophobia are monitored and reported at regular intervals, in the annual reports submitted to the ODIHR (OSCE) in the context of the fight against hate crimes, in the reports submitted to the Human Rights Council in the context of the Universal Periodic Review and to the UN Committee on the Elimination of Racial Discrimination (CERD), and by means of the observations annexed at the government's request to the reports of the European Commission against Racism and Intolerance (ECRI).