Alternative report by the Conseil national des barreaux

Review of France by the United Nations Human Rights Committee

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I. Presentation of the Conseil national des barreaux

The Conseil national des barreaux (CNB), a non-profit organisation with legal personality created by the law of 31 December 1990 amending the law of 31 December 1971, is the national organisation representing all lawyers registered with one of the 164 French bar associations. As such, the CNB is responsible for representing the legal profession nationally and internationally.

As a privileged interlocutor with the public authorities and the legislator, the CNB contributes to the drafting of texts likely to affect the profession and the conditions in which it is practised. It is also involved in all matters relating to draft legislation in the legal field and the judicial system in general.

Its operation is governed by the provisions of the aforementioned law of 1971 and the decree of 27 November 1991, supplemented by internal regulations.

Responsible for representing and defending the collective interests of the legal profession, the CNB also works to defend human rights and freedoms, the foundations of the rule of law and democracy as defended by the legal profession.

The CNB therefore wishes to inform the United Nations Human Rights Committee of its observations on the human rights situation in France, based on the positions it has already expressed at various general meetings and in several recent reports.

II. General information on the human rights situation in the country

Although France has a number of legal mechanisms and a body of legislation that *a priori* protect fundamental rights and freedoms, the CNB is concerned about the rule of law, respect for fundamental freedoms and the impact of security measures on human rights in France. France is experiencing a gradual erosion of these principles as a result of the adoption of measures restricting public freedoms under the guise of security.

The CNB is therefore calling for increased vigilance to ensure that security responses do not weaken the very foundations of the rule of law.

III. Information relating specifically to the implementation of Articles 1 to 27 of the Covenant

A. Non-discrimination in the exercise of police powers

CNB documentation on the same subject :

Police - Population, the profession's recommendations for restoring the bond of trust, report, 13 Oct. 2023

Resolution on the report on identity checks following the opinion of the CEDPN, resolution, 14 June 2024

1. Discriminatory identity checks

The CNB expresses its concern about discriminatory identity checks carried out by the police in France and their repercussions on fundamental rights and relations between the police and the public. These practices persist despite repeated recommendations from national and international institutions to control and limit them.

Although they cannot be quantified precisely due to a lack of indicators, numerous studies taken up by NGOs, the Défenseur des droits and the CNCDH tend to show that individuals perceived as black or Arab are disproportionately targeted during identity checks and searches.

In its September 2022 report on France, the European Commission against Racism and Intolerance (ECRI) noted that "*relations between law enforcement officers and the general public, in particular persons of immigrant background or belonging to minority groups, continue to be compromised by racist or discriminatory actions or practices, particularly in the context of identity checks*".

The sheer scale of identity checks based on physical characteristics associated with real or supposed origin constitutes systemic discrimination, seriously damaging relations between the police and the public. The Conseil d'Etat was recently seized of an appeal to change the State's policy on discriminatory checks and ruled that "*the investigation shows that this type of check exists and is not confined to isolated cases*".[1]

A similar observation can be made with the fixed fine procedure, the unequal application of which has been denounced by the CNB[2] and the Défenseur des droits[3] , whose research findings *"on identity checks are transposable and show the existence of unfavourable treatment of certain sections of the population*".

So despite the multitude of texts affirming the principle of equality, it has to be said that police practice continues to discriminate against racial and ethnic minorities.

There are at least 4 possible explanations for this situation.

- Training ;
- The drafting of legislation governing identity checks ;
- Lack of control over identity checks ;
- Target figures.

First of all, to the best of the CNB's knowledge, there are currently no training modules in police academies that enable police officers to reflect on their practices through a sociological approach.

With regard to the wording of the texts governing identity checks, article 78-2 of the Code of Criminal Procedure authorises identity checks on "*any person in respect of whom there are one or more plausible grounds for suspecting*" criminal behaviour. This wording places the entire responsibility for assessing the conditions of an identity check on the law enforcement officer. While the pragmatism and efficiency of the justice system would not allow a magistrate to be placed behind every identity check, the inclusion in the law of a criterion for individualising suspicions could help to counter the subjectivity of identity checks. The CNB therefore reiterates its recommendation that only "*objective and individualised conditions*" should allow recourse to identity checks.

The administrative identity check provided for in the same article, which authorises the identity of a person to be checked "*regardless of their behaviour*" in order to prevent a breach of public

[1] Conseil d'Etat, contentious, 11 Oct 2023, 454836
[2] CNB, *Resolution on the draft law for the orientation and programming of the Ministry of the Interior*, Nov. 2022
[3] Défenseur des droits, *Décision-cadre portant recommandations générales relatives à la procédure de l'amende forfaitaire délictuelle, sur le fondement des articles 25 et 32 de la loi n°2011-333 du 29 mars 2011*, mai 2023, n°2023-030

order, seems far too broad and arbitrary. This type of check should be abandoned altogether in order to effectively combat abusive identity checks.

Apart from legislation, there are no official statistics in France to monitor the use of identity checks on the population, even though they are a constraint and an infringement of freedom of movement. Identity checks should therefore be monitored by an independent organisation, or at the very least by a statistical tool.

Moreover, identity checks are never justified or explained to the people subject to them. In his report on discrimination within law enforcement agencies[4] , Councillor Vigouroux recommends that police officers verbally explain the reasons for identity checks in order to improve their acceptability and encourage the security forces to take greater account of the legal reasons for identity checks. The CNB agrees with this proposal, which can only encourage judicial police officers to consider the need for upstream checks and for "*self-monitoring*".

Finally, the shortcomings of the public prosecutor's control over identity checks must also be pointed out, in particular because of the lack of human resources. Although the public prosecutor is supposed to exercise *a priori* and *a posteriori* control over the actions of criminal investigation officers, this is not the case in practice. For example, in a number of public prosecutor's offices, requisitions for identity checks are drawn up by criminal investigation officers and then sent to the public prosecutor's office for validation, like a recording chamber.

The CNB therefore calls on the Committee to ask France to strengthen its commitments to respect human rights in the context of identity checks. It is imperative that France adopts substantial reforms to adapt its police practices in order to restore trust between the public and the police.

The CNB also asks the Committee to encourage France to develop legislation requiring the police to issue the person being checked with a document stating the date and time of the check, the place of the check, the reason for the check, any follow-up to the check, the number of the officer who carried out the check and the comments of the person being checked. Such a document would enable the person being checked to effectively demonstrate that he or she has been subjected to repeated identity checks, a prerequisite for proving discriminatory checks.

2. Setting up an effective and independent complaints mechanism

The CNB is concerned about the lack of effective and independent mechanisms for dealing with complaints of police abuse in France. The investigations currently carried out by internal structures such as the Inspectorate-General of the National Police (IGPN) lack independence and transparency, which compromises their credibility and public confidence in the results of these investigations.

The Inspectorate General of the National Police (IGPN) is responsible for the administrative control of law enforcement agencies under the authority of the Minister of the Interior, and monitors the implementation of disciplinary sanctions. With a team made up mainly of police officers, the IGPN investigates serious matters, although there is no clear definition of its material jurisdiction.

The independence of the IGPN is often called into question because of its close links with the Ministry of the Interior, to which it reports hierarchically. Although the head of the IGPN claims not to receive any instructions from her superiors during administrative investigations, this

[4] La lutte contre les discriminations dans l'action des forces de sécurité, C. Vigouroux, F. Roussel, Nov. 2022

independence is limited by the structure and composition of the IGPN. More than 70% of the IGPN's staff come from the police, which fuels suspicions of bias and compromises the perception of impartiality.

The Council of Europe also criticises the IGPN's lack of independence and stresses the need for reform to diversify its composition and strengthen its autonomy.

The CNB therefore recommends that the hierarchical link between the IGPN and the national police directorate be removed and that the head of the IGPN be appointed from parliament.

The CNB also recommends giving greater weight to the Rights Defender, who can be contacted by anyone who feels they have been a victim or witness of police abuse. Although the Human Rights Defender has sufficient independence to conduct investigations into this type of incident, his financial and human resources and investigative powers are still too limited to be fully effective.

B. State of emergency

CNB documentation on the same subject :

Towards a "permanent state of emergency", deliberation, 22 and 23 Jan. 2016

Bill to strengthen internal security and the fight against terrorism, motion, 7 Jul 2017

Prevention of Terrorism and Intelligence Bill, Report, 7 May 2021

The CNB wishes to draw the Committee's attention to the implications of the state of emergency in France and the worrying trend towards a permanent state of emergency.

Following the 2015 attacks, France extended the state of security emergency until 2017. Then, from 2020, the country was twice placed under a state of health emergency, so that between 2015 and the present day, the French population has been subject to a regime of exception half of the time.

The CNB notes that the measures decided during these states of emergency, which were initially temporary, are tending to become permanent, compromising citizens' rights and freedoms. This is particularly true of the state of security emergency that France experienced between 2015 and 2017.

For example, the law strengthening internal security and the fight against terrorism (SILT), which was intended to put an end to the state of emergency decreed in the wake of the November 2015 attacks, introduced into ordinary law the main exceptional measures that undermine fundamental freedoms, as the CNCDH was alarmed to learn:

> *"The bill therefore enshrines a dangerous trivialisation of the state of emergency measures, which were intended to be temporary and which many observers had noted were running out of steam. In the long term, this trend risks dividing society and further weakening the bond of citizenship. The indefinite extension of exceptional and ineffective measures could lead to disengagement among the governed if they no longer enjoy all the fundamental rights and freedoms recognised in the Constitution. The CNCDH strongly reiterates that a state of emergency must remain temporary and must not permanently contaminate ordinary law".*

The Act of 30 July 2021 on the prevention of terrorist acts and intelligence perpetuates several experimental provisions of the SILT Act, such as the closure of places of worship and

surveillance measures. It also adds to the legislative arsenal the possibility of imposing a security measure on terrorists after they have served their sentence.

Taken together, these measures extend the powers of the administrative authorities, particularly with regard to searches, administrative detention and surveillance, which are often carried out outside the judicial framework and without the guarantees of a fair trial. These measures, decided by the Minister of the Interior, illustrate a shift in powers from the magistrates to the executive, thereby compromising effective judicial control and the exercise of the rights of the defence.

The CNB is asking the Committee to remind the French government of the dangers of perpetuating security measures that are announced as temporary.

C. Measures to combat terrorism

CNB documentation on the same subject :

Sentence after sentence, motion, 12 June 2020

Bill on the prevention of terrorist acts and intelligence, report, 7 May. 2021

Bill on criminal liability and internal security, report, 17 Sept. 2021

Resolution denouncing the rise of the criminal law of dangerousness, resolution, Feb. 2, 2024

The situation of children detained in Syria and their care in France, 17 May 2024

The CNB expresses its deep concern about counter-terrorism measures, which encroach on fundamental rights and the principles of the rule of law, in particular security detention and administrative surveillance measures (MICAS). These measures *de facto* introduce additional penalties after the main penalty or outside any judicial procedure.

Since their inception, the CNB has been critical of post-sentence measures that make it possible to restrict or deprive individuals of their liberty after they have served their sentence, on the basis of hypothetical and future behaviour. In particular, the regional security detention court, which imposes security detention, bases its decisions on future, uncertain and unproven facts, in contravention of the principle of the presumption of innocence and the right to a fair trial.

In parallel with secure detention, the executive also has the power to place a person under MICAS. Created by the Act of 30 October 2017 strengthening internal security and the fight against terrorism, MICAS are obligations prescribed by the Ministry of the Interior "*for the sole purpose of preventing the commission of acts of terrorism*" against "*any person in respect of whom there are serious grounds for believing that their behaviour constitutes a particularly serious threat to public security and order and who either habitually enters into relations with persons or organisations inciting, facilitating or participating in acts of terrorism, or supports, disseminates, where such dissemination is accompanied by an expression of support for the ideology expressed, or subscribes to ideas that incite the commission of acts of terrorism or glorify such acts, may be required by the Minister of the Interior to comply with the obligations set out in this chapter.* "[5] In other words, these obligations may apply to persons suspected of being linked to a terrorist undertaking or adhering to a terrorist ideology.

[5] Internal Security Code, art. L228-1

Among the measures that the Minister of the Interior can impose are a ban on "*travelling outside a specific geographical area*" such as the commune, the obligation to "*report periodically to the police or gendarmerie units, not more than once a day*" and to "*declare and justify their place of residence and any change in their place of residence*".

While the CNB condemns the very existence of these measures, its main concerns relate to the application of such measures to minors without any supervision by a specialised court, without specific adaptation to the age of minors and in violation of the freedom of movement, the restrictions on which must be assessed with greater rigour when the person concerned is a minor.

The CNB calls on the Committee to remind France that it is crucial that security and surveillance measures comply with the principles of necessity and to invite it to reassess these measures.

D. Right to life

1. The protection of French children detained in the Al-Hoj and Roj camps

CNB documentation on the same subject :

The situation of children detained in Syria and their care in France, 17 May 2024

The CNB wishes to express its concern about the situation of French children held in detention camps in Syria, particularly in the Roj and Al-Hol camps. These children, taken by their parents to the conflict zone or born there, are living in inhumane and degrading conditions contrary to their interests and France's international commitments.

In its press release of 24 February 2022, the UN Committee on the Rights of the Child (CRC) stated that France had violated the rights of French children detained in Syria by failing to repatriate them:

> "*The Committee considered that France has the responsibility and the power to protect French children in Syrian camps from imminent risk to their lives by taking measures to repatriate them*."

In 2023, a second UN Committee, the Committee against Torture, also considered "*that there is sufficient information to establish that the conditions of detention of A. D. in Roj camp, including in particular the lack of health care, food, water and sanitation, amount to inhuman and degrading treatment, as prohibited by article 16 of the Convention*".

The CNB denounces the government's inaction in the face of detentions whose arbitrary nature is proven and known, and whose inhumane conditions have been documented.

The CNB calls on France, as it had already done in its report of 17 May 2024, to ensure the immediate and unconditional repatriation of all French children detained in Syria in collaboration with the local authorities and the competent international organisations. The CNB therefore calls on the Committee to urge France to act urgently and consistently to protect French children detained in Syrian camps.

Repatriations to date have been limited and sporadic, leaving dozens of children in unbearable conditions of detention. The CNB calls for the adoption of a uniform and systematic approach

to the repatriation of all children and to guarantee their legal and social care in accordance with their best interests.

2. Police action

CNB documentation on the same subject :

Police - Population, recommendations from the profession to restore the bond of trust, report, 13 Oct. 2023

The CNB wishes to draw the Committee's attention to the use of force and weapons by law enforcement officers in France and to the provisions governing "*police self-defence*".

The use of force and weapons by law enforcement officers in France is governed by the principles of necessity and proportionality, recognised by both international standards and French legislation.

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the United Nations, stipulate that the use of firearms should be a last resort, employed only when there is an imminent threat to life or serious injury, and when less extreme measures are insufficient to achieve the desired objectives.

The CNB has reservations about the legal framework for the legitimate defence of law enforcement officers as set out in Article L435-1 of the Internal Security Code (CSI) resulting from the Act of 28 February 2017. Indeed, this provision does not refer to any condition of topicality of the act of aggression suffered by the law enforcement officer in *contrast to* article 122-5 of the Penal Code relating to common law self-defence which requires an act of defence "*at the same time*". Article L435-1 of the Internal Security Code therefore allows law enforcement officers to act, rather than react, against acts of aggression that are only likely to occur, and invites law enforcement officers to use their weapons without the condition of simultaneous self-defence being fully satisfied. This absence of a simultaneity requirement is also confirmed by the 2017 instruction from the National Police Headquarters, which states that "*unlike self-defence, the simultaneity requirement has been relaxed*".

Sociologist Sebastian Roché, who appeared before the CNB, sought to measure the impact of the law of 28 February 2017 on the behaviour of officers. He observed a six-fold increase in the lethal use of weapons and concludes that this law represents a "*tipping point*" in the increase in the lethal use of weapons by law enforcement officers.

The CNB also stresses that the appropriate use of force by law enforcement officers depends largely on the training they receive. It is therefore crucial that this training includes not only the technical aspects of the use of weapons, but also in-depth initial training in conflict management and de-escalation techniques.

Efforts to provide ongoing training for police officers also need to be stepped up. There is only one compulsory training course within the national police force, namely training in security techniques (TSI). This training covers "*the use of weapons as well as professional practices in intervention, which include intervention techniques, defence and questioning techniques as well as first aid in intervention*". This training obligation covers a total of 12 hours, to be divided over the year into three four-hour sessions, although there are no consequences for failure to comply with this obligation. This training is an opportunity for the trainer to identify employees who present a danger and for whom their head of department could withdraw the service weapon.

Despite this, and as the representatives of the national police force themselves admit, continuing training obligations are generally not being met. This finding is in line with that of the Court of Auditors and Parliament, which expressed concern in two separate reports on police training.

The parliamentary report notes that "*DGPN authorities admit that 60 to 65% of officers on duty in the national police force do not meet the obligation, set out in the decree of 27 July 2015 on continuing training in intervention techniques and safety for active national police force personnel and security assistants (newly appointed deputy police officers), to train in intervention techniques and safety for a minimum annual hourly volume of 12 hours, and including in particular three shooting sessions per year*". The authors of the report are therefore quite rightly concerned about whether all officers "*have fully mastered the techniques designed to ensure proportionate and appropriate use of force to carry out their missions*".

At present, there are no automatic penalties for non-compliance with this unique ongoing training course within the national police force.

The CNB is also concerned about the lack of effective mechanisms for monitoring the use of force by law enforcement officers. Investigations into incidents involving the use of firearms are often carried out by internal bodies, such as the General Inspectorate of the National Police (IGPN), whose independence is regularly called into question. The CNB therefore calls for a reform of control structures to ensure impartial and transparent investigations into the use of force.

In order to provide a better framework for the use of force and weapons by law enforcement officers, the CNB recommends :

- Revise article L435-1 of the French Internal Security Code to restrict the conditions of police self-defence, ensuring that the use of firearms is truly a measure of last resort and in clearly defined situations where human life is in immediate danger.
- Strengthen initial and ongoing training for law enforcement officers in de-escalation techniques and the proportionate use of force.
- Introduce external and independent control mechanisms for the evaluation of incidents involving the use of force, in order to guarantee impartial investigations and restore public confidence in the forces of law and order.
- Promote the use of non-lethal means and encourage de-escalation strategies to reduce the need to use firearms in police interventions.

The CNB calls on the Committee to encourage France to review its legislative and practical framework concerning the use of force and weapons by law enforcement officers in line with the above recommendations.

E. Prohibition of torture and cruel, inhuman or degrading treatment or punishment, right to liberty and security of person, and treatment of persons deprived of their liberty

CNB documentation on the same subject :

Le droit de visite du bâtonnier : deux ans de pratique et de constats, report, 17 and 18 Nov. 2023

Report on the bâtonnier's right of access, report, 17 May 2024

The CNB wishes to draw the Committee's attention to a number of concerns regarding respect for the fundamental rights of persons deprived of their liberty in France, and in particular to policies to combat systemic prison overcrowding[6] , the application of Article 803-8 of the Code of Criminal Procedure and the exercise of the right of bâtonniers to visit prisons. The CNB stresses that these elements are essential to guarantee effective protection against torture and cruel, inhuman or degrading treatment, as well as the right to liberty and security of persons deprived of their liberty.

1. Lack of appropriate measures taken by the government

The Justice Programming Act of 23 March 2019 introduced a new approach presented as encouraging *ab initio* sentence adjustment, i.e. a sentence adjustment pronounced at the same time as the prison sentence. The system introduced by this law was intended to force the hand of magistrates by prohibiting sentences of less than one month, which were deemed counterproductive, and by imposing sentence adjustment for sentences of less than six months. Sentences of between six months and one year, on the other hand, may not be adjusted, while sentences of more than one year may no longer be adjusted *ab initio*, contrary to the state of the law prior to the 2019 reform.

This reform has had a "*knock-on effect*", as was noted at the colloquium organised by the CNB on prison overcrowding in December 2022:

> *"The YPA has also led to a "side effect". Since sentences of less than 6 months' imprisonment are subject to mandatory adjustment, some judges have switched to sentences of more than 6 months in order to avoid mandatory adjustment. Since the YPA came into force, sentences of 6 months' imprisonment have fallen by 8%. The shift towards sentences of 6 to 12 months is almost mechanical: they represented 23% of sentences handed down before the YPA and now represent 32%, an increase of 9%. This could partly explain the current prison overcrowding*".

This analysis is confirmed by the Court of Auditors in its report on sentence enforcement policy:

> "*The Ministry of Justice told the Court in spring 2023 that the significant drop in sentences of less than six months was accompanied by an increase in sentences of six months to a year and also in sentences of more than a year, which were "rising sharply".*
>
> *These findings suggest that the obligation to adapt sentences of six months or less, introduced by the Law of 23 March 2019 on programming 2018-2022 and reform for the justice system, has had a "ripple effect" in increasing the quantum of sentences handed down*".

At the same time, the automatic release of prisoners at the end of their sentence, announced as one of the solutions to prison overcrowding, is struggling to get off the ground for at least three reasons.

[6] At 1er August 2024, the overall prison population density was 126.4% and the prison population density was 151.6%. 15 prisons were 200% or more overcrowded (Statistiques mensuelles de la population détenue et écrouée, Ministry of Justice, 30 August 2024).

Firstly, a large number of detainees are excluded from this measure, in particular those who have committed an offence against persons holding public authority and against a current or former life partner. In addition, people who have been disciplinarily sanctioned while in detention for certain offences, such as violent resistance to the injunctions of prison staff or participation or attempted participation in any collective action likely to compromise the security of the establishment or disrupt its order, are excluded from the scheme. It may be useful to point out at this stage that although the intervention of a lawyer is provided for in the disciplinary committee, the disciplinary procedure in detention does not comply with any of the standards of fair trial as prescribed by article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Secondly, the prison registries, which are the only ones responsible for hearing cases before the Sentence Enforcement Commission for the purpose of examining the situation of a given convicted offender under compulsory release as of right, are - more often than not - unable to ensure that "short sentences" are heard in good time.

Lastly, the practice of automatic release from prison is not uniform across the country, and some judges resist it. For example, the Contrôleure générale des lieux de privation de liberté noted in her urgent recommendations concerning the Perpignan prison:

> *"(...) from January to March 2023 inclusive, out of 96 cases submitted, only 23 LSCPD measures were granted. For the so-called "classic" LSC, only 4 favourable decisions were handed down, out of 55 cases submitted. This low level of use of a measure that is supposed to have a decisive impact on prison overcrowding was deemed sufficiently worrying by the prison governor and the Director of Penitentiary Integration and Probation Services (DSPIP) for them to attend two successive meetings of the Sentence Enforcement Commission in person. The rate of sentence adjustment is also low, at around 38% after imprisonment. Under these conditions, there is no reason to hope that the application of the provisions relating to the LSC alone will make it possible to curb, even partially, the overcrowding affecting the prison centre*".

It should also be noted that unlike the sentence adjustment measures granted at the request of the convicted offender (at his request) or as part of an ordinary release under constraint (with his agreement), the granting of an adjustment as part of an LSCPD procedure does not require the convicted offender's consent. For example, sentence enforcement magistrates who wish to apply the law to the letter are forced to place convicts on semi-liberty even though they have expressed their refusal to benefit from such an arrangement. The measure, imposed over a period of just a few weeks and unprepared given its brevity, sometimes sets the offender up for failure, unable to comply with the terms of the arrangement that he had refused. Failure to comply with the timetable can result in the offender escaping from prison, an offence for which he will be re-convicted by the criminal court. The system can thus end up creating its own type of delinquency, with no victims, produced solely by the automatic granting of a misunderstood and unprepared measure.

Faced with these failures, France persists in building more prison places. Building new prison places can be essential to ensure the dignity of people detained in deplorable material conditions. It also makes it possible to combat prison overcrowding at a given time and for a short period. However, it is ineffective as a cure, since studies have shown that it creates a draught and encourages overincarceration. As Ivan Zakine, former President of the Committee for the Prevention of Torture, so aptly summed up, *"the more prisons you build, the more prisoners you have in a country. It's a law that no one has been able to break.*

In addition, automatic sentence reductions have been abolished since 1er January 2023, and there has been no reform of criminal procedure to reduce the use of pre-trial detention and emergency criminal procedures such as immediate appearance. In this respect, the CNB points out that as at 31 December 2023, 2,833 of the people in pre-trial detention were in the context of an immediate appearance out of a total of 19,755 people in pre-trial detention (i.e. 14%). The average length of pre-trial detention ordered in this context was approximately 0.4 months in 2019[7] (this data is not available for more recent years). In a context of structural prison overcrowding, the Conseil national des barreaux can only wonder about the relevance of remanding more than 2,500 people in custody for less than two weeks.

In addition, immediate appearances are more likely than other procedures to result in a firm prison sentence. In 2014, a private study showed that an immediate appearance procedure increased the likelihood of a prison sentence by a factor of 8.4 compared with a conventional trial hearing[8] .

2. The absence of a binding prison regulation policy

The CNB also points out that the proactive prison regulation policies promoted by the Ministry of Justice lack a binding character, making regulation efforts ineffective. This lack of a binding mechanism to regulate the prison population, as recommended by bodies such as the Contrôleur général des lieux de privation de liberté, maintains an unacceptable level of overcrowding and indignity in prison conditions.

3. Conditions of detention and article 803-8 of the Code of Criminal Procedure

The CNB also draws the Committee's attention to the shortcomings of Article 803-8 of the Code of Criminal Procedure, introduced following the J.M.B. v. France judgment handed down by the European Court of Human Rights on 30 January 2020. This article aims to guarantee the dignity of detainees in France by allowing prisoners to challenge their conditions of detention before a court of law.

Article 803-8 of the Code of Criminal Procedure establishes a four-stage procedure for challenging the conditions of detention: examination of the admissibility of the request, examination of the merits, attempts by the prison administration to remedy the situation and, if this fails, a judicial decision that may go as far as the release of the detainee.

However, the current system remains largely ineffective and does not fully meet the requirements for protecting prisoners' fundamental rights.

Firstly, the complexity and length of this procedure, which can take up to a month and thirty days to reach a decision at first instance, and three months and ten days for an appeal, compromises the effectiveness of the appeal, particularly for prisoners serving short sentences.

In addition, there are no penalties for magistrates who fail to meet deadlines, which limits the incentive to process applications within the allotted time. This lack of constraints weakens the binding nature of the procedure and reduces its effectiveness.

The remedy provided by Article 803-8 also relies to a large extent on the transfer of prisoners to other establishments in the event of unworthy conditions of detention. The CNB stresses

[7] *Statistiques trimestrielles de milieu fermé*, Sub-Directorate for Statistics and Studies, Ministry of Justice, 31 Dec. 2023
[8] Is criminal justice discriminatory? An empirical study of decision-making practices in five correctional courts, Virginie Gautron, Jean-Noël Retière, 19 Oct 2014

that this mechanism has a major deterrent effect: many prisoners are reluctant to initiate proceedings for fear of being transferred to establishments far from their families, making family visits and the social ties essential to their reintegration more difficult.

The risk of transfer may also lead to equivalent or even worse conditions of detention, which does not solve the initial problem of undignified treatment. This is why the procedure should allow effective judicial control over the new conditions of detention after transfer. At present, the judge does not have sufficient means to check that the new place of detention offers conditions that respect human dignity, which weakens the impact of this remedy.

The adversarial nature of the procedure provided for in article 803-8 is not sufficiently ensured either. The prison administration's observations produced as part of the procedure are not systematically communicated to the detainees or their lawyers, which hinders their ability to prepare an adequate defence. In addition, in the event of a transfer decision, information on the proposed reception facilities is not provided in a transparent manner, which prevents a debate on this issue from taking place.

To guarantee an effective remedy that respects the rights of the defence, the CNB recommends reforming the procedure to ensure that the detainee and his or her lawyer are fully informed of the case file at all stages of the procedure.

Furthermore, although legal aid is available to detainees bringing proceedings under article 803-8 of the Code of Criminal Procedure, the CNB condemns the inadequacy of the compensation provided, particularly for applications rejected at the admissibility stage. This inadequacy hinders access to a lawyer, which is crucial given the complexity of the proceedings.

In addition, the remedy provided by article 803-8, which is individual in nature, does not make it possible to remedy the systemic problems of detention conditions in prisons. The CNB stresses that this limitation prevents the judicial judge from acting on the structural failings of French prisons, leaving the overall conditions of detention unchanged despite favourable decisions on individual cases. The administrative judge, who refuses to take decisions on structural measures, is unable to compensate for the lack of systematic appeal.

Finally, the lack of reliable statistical data on the number of applications filed and processed under article 803-8 prevents a rigorous assessment of the effectiveness of this remedy. The introduction of a statistical monitoring system by the Ministry of Justice to measure the real impact of the procedure and identify any malfunctions must be rapidly considered and put in place.

The Conseil national des barreaux calls on the Committee to recommend that France adopt measures to make the appeal under article 803-8 of the Code of Criminal Procedure truly effective and accessible. It is imperative to simplify the procedure, to ensure full judicial control over the conditions of transfer, to guarantee the adversarial nature of the appeal, to strengthen legal aid and to introduce tools for monitoring and evaluating appeals.

4. Visiting rights of the President of the Bar

The CNB would also like to emphasise the importance of the right of the President of the Bar to visit places of deprivation of liberty in order to guarantee respect for the fundamental rights of detainees. This right, introduced by the Act of 22 December 2021 on confidence in the judiciary, is still too restricted, in particular because of the limit on the number of lawyers who can carry out inspections, the ban on photographing and interviewing people in police custody,

and an inspection perimeter that does not explicitly include court gaols and health establishments where non-consensual care is provided.

Although this right of access is clearly useful and effective in that it can be used to provide evidence of undignified conditions of detention in support of appeals to the courts, it is now being progressively challenged by the administrative authorities through various notes and circulars.

For example, in an e-mail dated 11 December 2023, the Bobigny public prosecutor endorsed the interpretation of the Criminal Affairs Directorate, prohibiting bar presidents from accessing custody registers and capturing images or sound in custody facilities.

Similarly, the memorandum of 13 February 2024 issued by the Local Security Directorate for the Greater Paris area prohibited barristers from having access to police custody registers, from taking any images, and from interviewing people in police custody about their conditions of detention.

Lastly, the new memorandum from the Prison Administration Directorate dated 16 July 2024 further restricts the visiting rights of bâtonniers by removing the possibility of individual interviews with prisoners without a prison officer being present, as well as the possibility of joint visits with members of parliament, who also have visiting rights.

The CNB calls on the Committee to encourage France to strengthen this right in order to better protect the rights of persons deprived of their liberty.

F. Treatment of foreign nationals, in particular migrants, refugees and asylum seekers

1. The Act of 26 January 2024 to control immigration and improve integration

CNB documentation on the same subject :

Report on the bill to control immigration and improve integration, report, 3 Feb 2023

Resolution concerning delocalized hearings and the use of videoconferencing in immigration litigation, resolution, Sept. 5, 2024

The CNB has serious concerns about the law adopted by Parliament on 19 December 2023, aimed at controlling immigration and improving integration, which has been partially censured by the Constitutional Council. This law restricts in an unprecedented way the guarantees granted to foreigners in France and introduces several problematic measures.

Article 4 of the law authorises asylum seekers from countries with a high level of international protection to apply for a work permit as soon as they submit their application. Although this measure facilitates integration by offering access to the labour market, it discriminates on the basis of protection rates set unilaterally by decree, without examining individual situations. The CNB condemns this confusion between economic imperatives and humanitarian obligations, believing that asylum seekers should not be treated as an economic adjustment variable.

The CNB also criticises the law's obsession with "deporting more people more quickly", by weakening the protection afforded to foreign nationals, including those protected by article L631-2 of the Code on the Entry and Residence of Foreigners and the Right of Asylum, such as parents of French children, spouses of French nationals or long-term residents. The bill broadens the criteria for expulsion for behaviour deemed a threat to public order and increases

the possibility of deportation for minor offences. These measures, which were initially designed to deal with serious threats to public order, represent a serious attack on individual rights and a worrying paradigm shift.

The law also introduces the possibility of fingerprinting foreign nationals by coercion at the border, a measure that violates the principle of the indisponibility of the human body and personal integrity. The CNB believes that this provision is grossly disproportionate to the objectives pursued.

Lastly, the CNB condemns the reduction in procedural guarantees with the introduction of single-judge hearings as the rule before the National Court for the Right of Asylum, to the detriment of collegiality, which is crucial in this type of litigation involving vulnerable persons. In addition, the law provides that detained foreign nationals will no longer have physical access to courtrooms, with increased use of video hearings, which compromises the right to a fair trial. The CNB condemns these inhumane and discriminatory trial procedures, which hinder access to the courts and public hearings, which are fundamental to an effective defence.

The CNB recommends that the Committee encourage France to revise this law to ensure adequate procedural guarantees and respect for the fundamental rights of foreign nationals.

2. Conditions of detention

CNB documentation on the same subject :

Le droit de visite du bâtonnier : deux ans de pratique et de constats, report, 17 and 18 Nov. 2023

The CNB is alerting the Committee to the conditions of detention observed by barristers between 2021 and 2023 in administrative detention centres (CRAs).

Since an instruction issued by the Ministry of the Interior in 2021 and a circular issued in 2022, the profile of detainees has changed, with more and more former prisoners being included: in 2022, 26.6% of detainees were released from prison, compared with around 8% in 2014.

This development has led to the *penitentialisation of* the ARCs, where conditions and organisation are now similar to those in prisons. *This* has led to an increase in violent incidents and suicide attempts. In response, the centres are restricting movement within the buildings, moving even closer to the prison system.

The bar associations have also noted that detention conditions in several centres are undignified and that health care is inadequate, particularly in the area of addictions. The change in the profile of detainees since the aforementioned instruction has led to an increase in the number of addicts without any increase in the number of medical staff.

Lastly, the CNB remains particularly concerned about the detention of minors aged 16 to 18.

It asks the Committee to remind France of its international obligations regarding the conditions in which foreign nationals are held.

G. Right to privacy

CNB documentation on the same subject :

The conversation and access to connection data, report, 13 Jan 2023

Report on the draft law on the 2024 Olympic and Paralympic Games, report, 3 Feb. 2023

1. Algorithmic video surveillance

The CNB expresses serious concerns about surveillance devices and the use of new technologies in France. In particular, the algorithmic video surveillance systems (VSA) authorised for the 2024 Olympic Games, while not using facial recognition, pose a risk to privacy by analysing behavioural data likely to individualise the people recorded on the images.

The CNB is particularly concerned about the increasing delegation of surveillance tasks to private companies, particularly for the development of surveillance systems such as the VSA, when these tasks should remain the responsibility of the State. This outsourcing in sensitive sectors such as public security raises questions about the protection of citizens' fundamental rights and freedoms.

2. Conversation and access to connection data in criminal cases

The CNB also calls on the Committee to take an interest in French legislation on the retention of and access to connection data in criminal cases, which, in its view, presents risks for the respect of privacy rights and the protection of personal data.

On the one hand, the current legal framework, in particular Article L34-1 of the French Post and Electronic Communications Code, authorises the general and undifferentiated retention of data for periods of up to five years, without having to demonstrate the strict and individualised need for this retention period.

Access to connection data by the prosecuting authorities is also inadequately regulated, with the public prosecutor able to authorise such access without prior review by an independent administrative or judicial authority. This lack of adequate supervision jeopardises the right to privacy and exposes France to surveillance that is incompatible with international human rights standards. In addition, access to connection data by prosecuting authorities may be undertaken in low-level proceedings concerning offences punishable by at least 3 years' imprisonment[9] . The importance of the invasion of privacy requires, on the contrary, that access to connection data be limited to proceedings concerning serious crime offences, as ruled by the Court of Justice of the European Union[10] .

H. Freedom of assembly, demonstration and association

CNB documentation on the same subject :

In favour of the right to demonstrate, motion, 12 June 2020

Police - Population, the profession's recommendations for restoring the bond of trust, report, 13 Oct. 2023

Resolution on police and judicial treatment of demonstrators in the context of social movements, resolution, 6 and 7 Apr. 2023

The CNB is very concerned about the infringement of the right to demonstrate and the disproportionate use of force by the forces of law and order in France. These concerns are based in particular on the observations of the legal profession, which regularly defends the fundamental rights of citizens in the context of social movements.

[9] C. pr. pén., art. 60-1-2, 1°.
[10] CJEU, Télé2, C-203/15, 21 Dec. 2016

An essential component of freedom of expression, freedom of assembly and association imposes positive obligations on States, which must not only refrain from hindering it but also allow it to be exercised effectively.

However, the CNB wishes to remind the Committee that France has imposed restrictions on this freedom that go beyond what is necessary and proportionate, in particular through prefectoral bans on gatherings during the Covid-19 crisis, resulting in a ban on demonstrations on the public highway without authorisation from the executive. Although the Conseil d'Etat suspended and then annulled this ban[11] , it nevertheless demonstrates the French government's worrying determination to restrict freedom of demonstration and assembly.

The CNB also draws the Committee's attention to measures such as "*anti-assembly*" orders, which are often adopted within timeframes that prevent any effective appeal and lead to systematic bans on undeclared processions and assemblies. The Paris Administrative Court has suspended such orders, while emphasising, in view of the practice of publishing these orders late to prevent any challenge, that "*except on imperative grounds of urgency linked to the maintenance and safeguarding of public safety in a serious situation, a police measure restricting public freedoms must be published within a period allowing useful access to the interim relief judge seized on the basis of article L. 521-2 of the Code of Administrative Justice*".[12] While the annulment of such an order may be reassuring, it demonstrates once again the French government's determination to restrict freedom of demonstration and assembly.

The CNB also condemns the disproportionate use of force by the police during demonstrations. For example, the demonstration against the megabassin project in Sainte-Soline marked a new turning point in the use of so-called intermediate force weapons. In a single day, 5,015 tear gas grenades were fired, as well as 89 GENL dismantling grenades, 40 ASSR deflagrating devices and 81 LBD shots. These facts are indicative of the increasing use of weapons in law enforcement operations.

The CNB considers that the use of weapons that may be legally classified as weapons of war within the meaning of article R311-2 of the CSI is not justified and calls for their rationalisation.

It is also concerned about the continued use of certain techniques, such as the "*nasse*", which restrict freedom of movement and are designed to intimidate demonstrators[13] .

It also condemns the misuse of criminal procedure and measures that are particularly prejudicial to individual freedoms, such as the misuse of police custody and the forced taking of fingerprints and photographs of demonstrators for the sole purpose of registering them in the absence of any offence. The Défenseure des droits had also warned of the consequences of preventive arrests on the outskirts of demonstrations, which increase tensions and can lead to disproportionate deprivation of liberty. These practices are perceived as attempts at intimidation aimed at stopping a social movement, rather than maintaining public order in a proportionate and necessary manner.

Lastly, with regard to violence committed during demonstrations, the CNB calls for better identification of police personnel, in particular by unconditional and sanctioned compliance with the requirement to wear the unique law enforcement identification number (RIO) in order to make it easier to identify the perpetrators of abuse. In addition, and as already emphasised

[11] CE, no. 440846, 13 June 2020; CE, no. 441265, 6 July 2020
[12] TA, Paris, 1er Apr. 2023
[13]

above, it seems crucial to introduce effective monitoring of police operations by independent bodies such as the Human Rights Defender.

The CNB therefore calls on the Committee to remind France of its international obligations regarding the protection of freedom of assembly and demonstration and the use of force.