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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Third periodic reports of States parties due in 1992

Addendum

FRANCE 1/ 2/

[15 March 1996]

1/ For the second periodic report submitted by the Government of France, see CCPR/C/46/Add.2; for its consideration by the Committee, see CCP/C/SR.800 to SR.803 and the Official Records of the General Assembly, Forty-third session, Supplement No. 40 (A/43/40), paragraphs 357-412.

2/ The information provided by France in accordance with the guidelines on the first part of the reports of States parties is contained in core document HRI/CORE/1/Add.17/Rev.1.

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GENERAL INFORMATION ON ARTICLES 1-27 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Article 1

Paragraph 1

1. France is committed to the principle of the self-determination of peoples, as set forth in the preamble and article 1 of the Constitution of 4 October 1958, and, in observance of this principle, article 53, paragraph 3, of the Constitution provides that "No cession, exchange, or adjunction of territory shall be valid without the consent of the population concerned".

2. Associated with the right of peoples to self-determination is their right freely to determine their political status and to promote their development. France has recognized this right to development and, in this connection, supported the Declaration adopted by the United Nations General Assembly in resolution 41/128 of 4 December 1986, to the preparation of which it made a significant contribution.

Paragraph 2

3. France recognizes the right of peoples freely to dispose of their natural wealth and resources in conformity with international law.

Paragraph 3

4. Article 74 of the Constitution states that the status of the overseas territories shall be determined by constitutional enactments defining, in particular, the powers of their own institutions; changes to their status can be made in the same way, after consultation of the territorial assembly concerned. The territorial assemblies must also be consulted on any bill concerning the individual organization of the overseas territories. Thus, the following former overseas territories of Africa have acceded to independence, having expressed their wish to do so: (Guinea in 1958; other West and Central African States in 1960; the Comoros in 1974 and Djibouti in 1977). The former departments of Algeria did the same in 1962. The former protectorates, mandated territories and trust territories, as well as the former condominium of the New Hebrides, now the State of Vanuatu (since 1980), have also acceded to independence.

5. Consequently, the French Republic currently comprises, in addition to its European territories, four overseas departments (Guadeloupe, Guiana, Martinique, Réunion), four overseas territories (New Caledonia, French Polynesia, French southern and Antarctic Territories, Wallis and Futuna) and two communities sui generis (Mayotte and St. Pierre and Miquelon). The Constitution stipulates that territorial entities shall be free to govern themselves through elected councils and under the conditions laid down by law. The Government Delegate to these entities is responsible for the national interests, administrative supervision and law enforcement (art. 72).

1. Overseas departments

6. The Constitution stipulates that the overseas departments are represented in Parliament, in proportion to their population, by 15 deputies and 8 senators. Subject to certain adjustments dictated by their special situation and provided for in article 73 of the Constitution, the four overseas departments have been administered, since the Act of 19 March 1946, under the same conditions as departments in metropolitan France. They thus follow the general rules for the organization of local communities established, in particular, by the 1982 and 1983 decentralization acts.

7. However, the overseas departments are unusual in that a single territory includes both a region and a department, administered respectively by a Regional Council and a General Council, both of which are elected by universal suffrage. As in the departments of metropolitan France, a prefect is a Government representative responsible for national interests, administrative supervision and law enforcement, in accordance with article 72 of the Constitution.

2. The overseas territories

8. The overseas territories of the French Republic are governed by special rules which take account of their special interests in the context of the overall interests of the Republic, of the local conditions that obtain in communities which are far from the mainland and highly individualistic and also of the unusual features of their legal systems.

(a) French Polynesia

9. The status of the territory of French Polynesia was established by the Act of 6 September 1984, which set up a regime providing for wide-ranging autonomy characterized, on the one hand, by the existence of a territorial executive consisting of a president of Government and of ministers and appointed by the Territorial Assembly and, on the other, by the transfer to the territory of many powers, with those powers to be retained by the central Government being exhaustively enumerated under the regime. The acts of the territorial authorities are directly enforceable.

10. The status of French Polynesia has been modified since that time, also at the request of the territorial authorities, by the Act of 12 July 1990 and the Organization Act of 20 February 1995, which describe the functions of various territorial institutions and establish a distribution of powers more favourable to the territory.

(b) New Caledonia

11. The regime for New Caledonia was established by the Act of 9 November 1988, which includes provisions on the status of the territory in preparation for the referendum on the independence of New Caledonia, to be held in 1998. Through reorganization of the government authorities and, in particular, decentralization of the provinces, this regime, which was adopted by referendum in 1988, will establish the conditions under which the people

of New Caledonia will be asked to vote in 1998, through a self-determination referendum, on whether the territory will remain part of the Republic or become independent. A monitoring committee holds regular discussions with the representatives of the territory concerning problems faced, or progress desired, by the territory.

12. The 1988 Act also calls for the creation of three provinces with general jurisdiction in all matters except those which the law places under State or territorial control. Each province elects an assembly and has its own budget. The three provincial assemblies meet as the Territorial Congress, which is headed by the High Commissioner of the Republic. The 1988 referendum was amended by the Organization Act of 20 February 1995 at the request of the territorial authorities in order to strengthen provincial competence in some areas.

(c) Wallis and Futuna

13. The regime for Wallis and Futuna was established by the Act of 29 July 1961. The Government of the Republic is represented there by a senior administrator. After consulting the Territorial Council, he performs all regulatory acts necessary to implement the deliberations of the Territorial Assembly and those consistent with his mandate as head of the territory under the terms of laws, decrees and regulations. The customary authorities are members of the Territorial Council.

(d) The French southern and Antarctic Territories

14. The French southern and Antarctic Territories have an administrative organization different from that of the other territories because they are unpopulated, except for scientific missions, and hence have no parliamentary representation of their own.

3. Territorial units having special status

(a) Mayotte

15. The special status of Mayotte, whose people opted to remain part of the French Republic in the referendum of 8 February 1976, is laid down by the Acts of 24 December 1976 and 22 December 1979. The Government designates a representative having the rank of prefect. A General Council is elected through universal direct suffrage and is responsible for considering all matters related to the territorial unit. Legislation adopted in metropolitan France does not, as in the overseas territories, apply to the territorial unit of Mayotte unless it is explicitly stated to do so.

(b) Saint Pierre and Miquelon

16. The territory of Saint Pierre and Miquelon became an overseas department and, on 11 June 1985, a special territorial unit. Its regime is akin to that of the overseas departments, although it is adapted to the special nature of the archipelago: the deliberative assembly is the General Council, which is assisted by an advisory Economic and Social Committee, and the President of

the General Council constitutes the executive branch of the territorial unit. The representative of the central Government there exercises the same functions as in the departments.

17. These territories and territorial units are represented in Parliament by deputies (two in the case of New Caledonia and French Polynesia and one in the case of Mayotte, Wallis and Futuna and St. Pierre and Miquelon) and by senators (one per overseas territory or territorial unit). Ongoing cooperation between the State and the overseas territories makes possible the implementation of reforms which allow for the specific characteristics of the territories.

Article 2

Paragraphs 1 and 2

18. The Constitution guarantees the equality of all citizens before the law without distinction as to origin, race or religion. It respects all beliefs (art. 2). The preamble to the Constitution also refers to the 1789 Declaration of the Rights of Man and of the Citizen, article 1 of which states that “Men are born and remain free and equal in rights”. The 1958 preamble also refers to the preamble of the Constitution of 27 October 1946, which states that “Every human being, without distinction as to race, religion or belief, possesses inalienable and sacred rights”. France also ratified the International Convention on the Elimination of All Forms of Racial Discrimination on 28 July 1971.

19. At the national level, under the 1958 Constitution, Parliament establishes the rules concerning the civil rights and fundamental safeguards granted to citizens for the exercise of public freedoms. Act No. 72-546 of 1 July 1972 on action to combat racism punishes incitement to discrimination, defamation against any person because of his origin or his membership or non-membership of any ethnic, national, racial or religious group and any affront to a person on the same grounds.

20. This Act has been supplemented by other legislative instruments, such as Act No. 75-625 of 11 July 1975, amending and supplementing a number of articles of the Penal Code, and the Acts of 22 July 1992, amending the provisions of the Penal Code. Article 225-1 of the new Penal Code makes discrimination not only against individuals, which was already prohibited under the former Code, but also against the members of bodies corporate, punishable by law. This article also broadens the definition of discrimination, which already included discrimination on grounds of race, ethnic origin, nationality, religion, gender, family situation, state of health, disability and mores, to include discrimination on grounds of political opinion or trade union membership.

21. Under article 225-2 of the Penal Code, (a) refusing to provide goods or services; (b) interfering in the normal exercise of any economic activity whatever; (c) refusing to hire, penalizing or dismissing an individual; (d) placing discriminatory conditions on provision of goods or services; and (e) placing discriminatory conditions on an offer of employment constitute discriminatory treatment.

22. Furthermore, article 432-7 of the Penal Code prohibits public officials or employees from engaging in discriminatory behaviour as described in article 225-1 by refusing to recognize any right conferred by law or by interfering in the normal exercise of any economic activity whatever.

23. It should be mentioned that the provisions of the Act of 1 July 1901 on associations allow the courts to dissolve associations whose statutes or activities are contrary to the law and, in particular, to Act No. 72-546 of 1 July 1972 concerning action to combat racism.

24. The law is endeavouring to extend existing prohibitions to new situations, particularly those arising out of technological developments. In this connection, the Act of 6 January 1978 on data processing, the keeping of records and freedom reflects the will to overcome the risks to individual freedoms inherent in the compilation and use of computerized records. This Act will be considered in greater detail in connection with article 17 (see paras. 272-275 below).

25. Lastly, two measures on specific points have been adopted recently:

(a) Act No. 83-634 of 13 July 1983 on the rights and obligations of public officials, which constitutes Title I of the new regulations governing the civil service, provides that “public officials shall have the right to freedom of expression” and that “no distinction may be made between public officials on the grounds of their political, trade union, philosophical or religious opinions, or their gender or ethnic origin”. This Act restates the main principles of the regulations applicable to civil servants, as derived from the judicial practice of the Council of State (Conseil d'Etat) and reflected in the Act of 4 February 1959 containing the civil service regulations;

(b) Article 99 of Act No. 85-10 of 3 January 1985, containing various provisions of a social nature and amending article 2-1 of the Code of Criminal Procedure, has extended the right of “associations working to combat racism” to claim damages in criminal proceedings by enabling them to sue in respect of offences against the person or against property when such offences are racially motivated and are classified as simple or aggravated homicide, injury causing death, threats, assault and battery, vandalism, wilful damage to property or arson.

26. The separation of powers between the legislative and the executive leaves the latter with only residual jurisdiction in relation to public freedoms. Moreover, the governmental and non-governmental authorities responsible for law enforcement measures, i.e. the regulation of individual activities, have to observe the general principles of law and legislation and, in particular, the principle of the equality of all citizens before the law. This principle implies that persons in identical situations are treated in the same way. In its decisions, the Council of State pays careful attention to this principle.

Paragraph 3

27. Any administrative decision may be challenged before the administrative court as ultra vires. The court has the right to annul such a decision. Annulment has the absolute force of res judicata and is binding on all parties, including the administration which is responsible for the enforcement of judgements (on sanctions against violations of public freedoms, see core document (HRI/CORE/1/Add.17/Rev.1)).

28. If the administrative decision in litigation has caused injury, the victim may, in addition, impugn the responsibility of the administration, as well as that of the administrative officer who took the decision, where there has been a personal error on his part. If the officer in question has committed a criminal offence, he may also be prosecuted before a criminal court. As we have already seen (para. 22), the question of liability of an administrative officer may give rise to criminal proceedings if he has been guilty of discrimination (new Penal Code, art. 423-7).

29. These measures mean that citizens have to be properly informed of their rights and of the ways and means of securing the remedies available to them against decisions by the administration. They have to be supplemented by non-contentious procedures so that any problems that arise can, if possible, be settled without the need to go to court. This was the purpose of several reforms introduced recently.

30. If it is to be accessible to citizens, the administration must first of all allow free access to administrative documents of a non-confidential nature. The right of citizens to information is laid down in and governed by Act No. 78-753 of 17 July 1978, which provides for various measures to improve relations between the authorities and the public and was amended and supplemented by Act No. 79-587 of 11 July 1979. Lastly, the administration must inform citizens of the remedies available to them to challenge its decisions and the time limits by which such challenges must be made. Decree No. 83-1025 of 18 November 1983 concerning relations between administration and users lays down the rules which the administration has to follow in this connection.

31. In addition to this reform of the law, the French Government has taken various measures to improve relations between the authorities and the public. A public information service development programme based, inter alia, on the Inter-Ministerial Administration Information Centres (Centres interministériels de renseignements administratifs) (CIRA) and the “Government at your service” centres (“administration à votre service”) (AVS), has been set up.

32. There are now eight CIRAs (one in Paris and seven in the provinces). Their task, as laid down by Decree No. 59-153 of 7 January 1959, is to provide the public with information by telephone on all administrative matters and to improve relations between the authorities and the public.

33. The AVS system arises out of a desire to provide the public, at the local level, with a central reception point which provides information and advice and which can serve as a link between the various administrative

services. The AVS operation entails the establishment of at least one reception point per department, under the responsibility of the prefect. It promotes personalized information for citizens, coordination of services and dialogue at the local level with users of public services.

34. All these measures come as a response to the requirements of a modern democracy, where new approaches must be introduced and encouraged so as to change the thinking and methods according to which relations between authorities and users must be built up without in any way reducing the control of the courts over the authorities - indeed, quite the contrary.

35. If a violation of the rights and freedoms recognized under article 2 of the Covenant is committed by a private individual, the victim may institute proceedings before the criminal courts, where there has been an offence, or before the civil courts, where there has been negligence.

36. Since 2 October 1981, it has been possible for any person to submit a petition to the European Commission on Human Rights if he believes himself to be the victim of a violation by France of the rights recognized in the European Convention on Human Rights of 4 November 1950. If the petition is admissible, the Commission seeks to promote a settlement out of court between the plaintiff and the State. If the Commission does not achieve such a settlement, it prepares a report which may be transmitted to the European Court of Human Rights. On completion of judicial proceedings, the Court hands down a judgement which is binding on the member States.

37. Lastly, France acceded on 3 February 1984 to the Optional Protocol to the International Covenant on Civil and Political Rights, which provides persons who consider that they have been victims of a violation of one of the rights set forth in the Covenant with an individual right to a remedy.

Article 3

38. Equality between men and women is proclaimed in the basic instruments of the Republic: the preamble to the 1958 Constitution explicitly refers to the preamble to the 1946 Constitution, which provides that “the law guarantees women equal rights with men in all domains”. Recent economic and social trends have brought about a parallel evolution in the status of women.

1. Political rights and nationality

39. On 22 April 1957, France ratified the International Convention on the Political Rights of Women, which entered into force in France on 21 July 1957.

(a) Political rights

40. French women have the same political rights as men. In particular, they enjoy on an equal footing with men, without any discrimination, the right to vote in all elections and the right to be elected to all publicly elected bodies (Ordinance of 21 April 1944).

41. Furthermore, Organizational Act No. 83-1096 of 20 December 1983 abrogated article LO-128 of the Electoral Code, which provided that women who had acquired French nationality by marriage were not eligible for membership in the parliamentary assemblies until 10 years from the date on which such acquisition became final. As men have since then also gained the ability to acquire French nationality in this way, the result was that article LO-128 discriminated against women because men were not explicitly mentioned in the second paragraph of this article. The elimination of article LO-128 removed such discrimination since, henceforth, men and women who have acquired French nationality by any means whatever are immediately eligible for the offices of senator, deputy or President of the Republic.

42. Women also enjoy on an equal footing with men the right to hold any public office and to perform any function at all levels of the Government. Act No. 83.634 of 13 July 1983 on the rights and obligations of civil servants states that “No distinction between civil servants may be made on grounds of their opinions on politics or trade unions, their philosophy, religion, gender or ethnic origin” (art. 6). Fifty years after winning the vote, women now account for 53 per cent of the electorate and take part in elections as frequently as men. The abstention rate for women (24 per cent in the 1993 legislative elections) is virtually the same as for men (23 per cent). However, there are still very few women in political decision-making bodies: they account for only 6.1 per cent of the members of the National Assembly and 4.8 per cent of the senators. On the other hand, there has been a greater increase in the number of women elected to local bodies: 17.1 per cent of the members of the Municipal Councils, 5.6 per cent of the members of the General Councils and 12.3 per cent of the members of the Regional Councils are women. The European Parliament, 26 of whose 87 members are women, is the only body in which the number of women members approaches 30 per cent.

(b) Nationality

43. Women also have the same rights as men with regard to questions of nationality. Act No. 73-42 of 9 January 1973, supplementing and amending the Code on French Nationality, provides for equality between men and women with regard to the acquisition, loss or retention of French nationality. Act No. 84-341 of 7 May 1984 did away with one of the remaining cases of discrimination between the sexes with regard to the automatic extension of the loss of French nationality to the wife of a Frenchman who conducts himself as a national of a foreign country. Neither marriage with a foreigner nor a change in the husband's nationality during the marriage automatically entails a change in the wife's nationality.

44. Women enjoy the same rights as men with regard to the nationality of their children, whether born in or out of wedlock. Act No. 73-42 of 9 January 1983 has done away with inequalities between the father and mother in the transmission of French nationality. There is no longer a distinction between paternal and maternal descent or between legitimate and natural descent.

2. Civil rights

45. For a long time, the status of women within the family remained subordinate to concepts dating back to the early nineteenth century and embodied in the restrictive provisions of the Napoleonic Code. However, recent legislative reforms have done away with inequalities which are no longer justifiable today and considerably limited women's autonomy and capacity.

46. Act No. 70-459 of 4 June 1970 concerning parental authority places parents on an equal footing and puts an end to patria potestas. Henceforth, “during the marriage, the father and mother exercise their authority jointly”. “Parental authority includes control of person and property”.

47. The purpose of the Act of 22 July 1987 is to facilitate the exercise of joint parental authority. In the first place, this Act adds a provision which explicitly gives judges the right to assign joint parental authority when a couple separates. The Act of 1987 thus reflects the axiom according to which “the parental partnership continues even after termination of the marital partnership”. Similarly, with regard to natural descent, the 1987 Act encourages the exercise of joint parental authority by amending article 374 of the Civil Code: the exercise of such authority requires only a joint statement by the parents before the guardianship judge.

48. Act No. 85-1372 of 23 December 1985, supplementing Act No. 65-570 of 13 July 1965, paved the way for further progress with regard to matrimonial regimes, the legal administration of the property of minors and their name.

(a) Matrimonial regimes

49. The reform carried out is a continuation of the 1965 reform, which established a new legal regime of community property (community of property acquired during the marriage). The 1965 Act was an important step forward in ensuring equality between the spouses, particularly by restoring to a married woman the management of her own property, but it maintained the principle of the management of common property by the husband even if the wife had taken part in the most important decisions and even if she had some privileges, mainly at the time of liquidation. Because of the weight of custom and the logic of a system dominated by the husband's powers, however, advantage could not be taken of the text's egalitarian potential and further legislative action was required.

50. Such action concerned the following three areas:

(a) Management of common property. The new Act has “bilateralized” the powers formerly given to the husband alone: in order to ensure equality, but also the autonomy of each spouse, the wife, like the husband, may henceforth manage and dispose of common property on her own, although certain important acts can be carried out only by mutual agreement of both spouses.

(b) Composition of the community. The community is unified by the elimination of the wife's assets and by removal of the very complex distinctions hitherto made between men and women in respect of joint

liabilities. The purpose of these provisions, in addition to establishing equality, is to make it easier for the wife to obtain credit, particularly where she exercises a separate occupation. Thus, the law now stipulates that "both spouses are free to practise an occupation, receive earnings and wages therefrom and dispose of them as they see fit after meeting the expenses associated with the marriage" (Civil Code, art. 225) and that each spouse "shall be free to administer, commit or dispose of his or her own personal property".

(c) Dissolution of the community: as the wife now has the same powers as her husband, the privileges formerly granted to her (the right to recover possession, for example) have been cancelled; the rule for the assessment of indemnification due as compensation for the transfer of community assets to a single estate or vice versa has been made more flexible.

(b) Legal administration of the property of minors

51. The father no longer has a pre-eminent role. Adopting a solution consonant with that already in force for parental authority, the new Act provides that, where both parents exercise parental authority in common, whether they are married or unmarried, they jointly ensure the administration of the property of their under-age children. In other cases, such administration is ensured by the parent with parental authority under the supervision of a guardianship judge.

52. In the case of joint administration, each parent is regarded by third parties as having received the power to perform alone administrative acts concerning the estate of the child. Acts involving the disposal of property require the consent of both parents. Lastly, the right to dispose of income from the property of the children, which is connected with legal administration, is granted to the father, the mother or both jointly, according to the particular case.

(c) Name

53. With regard to transmission of a name, according to long-standing custom, accepted by the courts, the father's name has taken precedence. Thus, legitimate children bear their father's family name and natural children bear the family name of whichever parent was the first to recognize them. If recognition was simultaneous, the child bears the father's name (Civil Code, art. 334-1).

54. Without invalidating the rules concerning the transmission of name by filiation, Act No. 85-1372 of 23 December 1985 grants to each child the right to add to his surname, and use, the surname of the other parent which has not been transmitted to him. A name thus added cannot be transmitted to one's children. Its utilization is left to the judgement of its holder, who is under no other obligation in order to make use of it than that of indicating his intention to the administrative departments entitled to issue the documents which he wishes to have drawn up in the two names and that of providing proof of his right to use them. During a child's minority, this right is exercised by the person with parental authority.

55. Marriage in no way alters the family names of the two spouses (Act of 6 Fructidor II); the Decree of 20 March 1985 adds to the family record book a paragraph stating that “marriage shall have no effect on the names of the spouses, each of whom shall continue to bear only the surname entered on his or her birth certificate”.

56. Either spouse may add the other's family name to his or her own and, in the case of the wife, substitute for her own in daily usage; in the case of the wife, this may, under the Prime Minister's circular of 26 June 1986, be the name of her former husband if she is authorized to continue to use it (Civil Code, art. 254), without the words “wife”, “divorced” or “authorized to use the name of”.

3. Women engaged in occupations

57. Act No. 83-635 of 13 July 1983, amending the provisions of the Labour Code and the Penal Code relating to occupational equality between men and women, prohibits job discrimination on grounds of gender and establishes the rule of equality. Henceforth, pursuant to articles 225-1 and 225-2 of the new Penal Code, a person's gender can in no circumstance constitute grounds for refusal to hire, for dismissal or for offering employment. The Act also incorporates into the Labour Code provisions on the prohibition of occupational discrimination between men and women.

58. An Equal Opportunities Board set up under the Act has been attached to the Ministries responsible for women's rights, labour, employment and vocational training. The Board, made up of representatives of the authorities and of labour and qualified individuals, is responsible for helping to define and implement policies relating to occupational equality between men and women (Labour Code, art. L 330.2).

59. Furthermore, article 1 of Act No. 85-772 of 25 July 1985 containing various provisions of a social nature (Journal Officiel of 28 July 1985) completed the 1975 and 1983 reforms by including among punishable discriminatory acts that hamper the exercise of an economic activity discrimination based on gender, moral conduct or family situation. The Act also adds article 2-6 to the Code of Criminal Procedure in order to enable associations working to combat discrimination based on gender or moral conduct to institute proceedings before the civil courts.

60. Furthermore, the Act of 22 November 1992 added to the Labour Code article L.122-46, prohibiting any employee from being penalized or dismissed for having suffered, or refused to suffer, sexual harassment from an employer and nullifying ipso jure any provision to the contrary. Furthermore, article 222-33 of the new Penal Code makes sexual harassment by a person in abuse of authority deriving from his post punishable by one year of imprisonment and a fine of 100,000 francs.

61. Lastly, on 1 July 1983, the French Parliament adopted an Act authorizing the ratification of the United Nations Convention on the Elimination of All Forms of Discrimination against Women. The instruments of ratification were deposited with the United Nations on 14 December 1983.

4. Position of women in public service

62. Article 6 of Act No. 83-634 of 13 July 1983 on the rights and obligations of public officials provides that no distinction may be made between officials because of their gender, subject to the application of article 21 of Act No. 84-16 of 11 January 1984, which contains statutory provisions relating to Government public service and allows separate recruitment of men or women to bodies in which the person's gender is a prerequisite for performance of the duties involved. A list of the bodies in question was laid down in the Decree of 15 October 1982; the number of such bodies was limited by the Decree of 26 August 1985.

63. The Act of 11 January 1984 also establishes in article 21 a procedure whereby the few remaining derogations are reviewed, in consultation with the competent joint bodies, on the basis of a report on the application of the principle of equality of the sexes in public service that is submitted to Parliament every two years. For example, physical education and sports teachers and police officers on active service are no longer on the list of bodies with separate recruitment.

5. Situation of women in the army

64. Act No. 72-662 of 13 July 1972, the Armed Forces Act, does not include any provisions on the recruitment of women into the armed forces or their situation therein. Soon after the promulgation of this Act, the women's corps, which had existed since the end of the Second World War, were scheduled to be abolished, by 1 January 1976 in the case of the officers' corps, and by 1 January 1997 in the case of non-commissioned officers. At the same time, new regulations specifically applicable to officers and non-commissioned officers of both sexes were enacted by Council of State decrees, and it was stipulated that women could elect to serve under either the old or the new set of regulations. Most chose to serve under the new ones.

65. Henceforth, therefore, women, whether career soldiers or enlisted, serve under the same regime as their male counterparts. They have the same rights, employment guarantees and obligations (with regard to general duties, chain of command, promotion, decorations, brevets, diplomas or certificates and remuneration). With regard to recruitment, women may volunteer for national service, enlist in the ranks or as non-commissioned officers or take the recruitment examinations for the officers' corps.

66. It should be explained that while enlistment in some corps (for example, the corps of military engineers, special staff officers, naval education instructors, nurses and military hospital technicians) is open to either sex, other corps are open to both men and women but, in view of conditions of employment of these corps, which are subject to operational constraints, limitations on women's access thereto may be established by decree of the Minister responsible for the armed forces.

67. Lastly, it should be noted that Act No. 92.9 of 4 January 1992, amending the National Service Code, deals with voluntary service by women. If temporarily unfit for service, women volunteers may be temporarily exempted from the obligations resulting from enlistment. Special conditions apply to

women volunteers on maternity leave: they are entitled to an allowance of 15 per cent of the base pay. A new article R 233.1 of the National Service Code summarizes the rights of pregnant women volunteers (compulsory prenatal examinations, a maternity record issued by the Ministry of Defense health service, maternity leave and a young child allowance).

Article 4

Paragraph 1

68. This article makes it possible for the parties to derogate from their obligations under the Covenant "in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed". The protection of individual freedoms cannot be envisaged in the same way during normal periods and in time of emergency. When a State is experiencing a crisis, the ordinary law of freedoms gives way to much more restrictive measures which may be envisaged prior to the situation or may be introduced on such occasion.

69. In France, emergency regulations concerning public freedoms have been drawn up. They are governed by article 16 of the Constitution and by law.

1. Article 16 of the Constitution

70. Article 16 of the Constitution concerns situations where "the institutions of the Republic, the independence of the nation, the integrity of its territory or the fulfilment of its international commitments are under grave and immediate threat and when the proper functioning of the constitutional authorities is interrupted". In such a situation, "the President of the Republic shall take the measures demanded by these circumstances after official consultation with the Prime Minister, the Presidents of the Assemblies and the Constitutional Council". The decision to invoke article 16 is taken by the President of the Republic, who informs the nation by a message.

71. The basic effect of the entry into force of article 16 is to extend the competence of the President of the Republic in both the legislative and the regulatory fields. He may take all measures "prompted by a will to ensure within the shortest possible time that the constitutional governmental authorities have the means of fulfilling their duties. The Constitutional Council shall be consulted with regard to such measures". In addition, the entry into force of article 16 entails ipso jure the meeting of Parliament and the suspension of the right to dissolve it.

72. The measures taken to apply article 16 may involve both matters which normally fall within the scope of the law and those which derive from regulatory powers. The administrative courts may be called upon to exercise control in this area since the legality of such measures may be challenged before the Council of State.

73. Article 16 has been applied only once since the entry into force of the Constitution of 4 October 1958, i.e. from 23 April to 29 September 1961.

2. States of exception established by law

74. States of siege and states of emergency are governed by the law.

(a) State of siege

75. This is an exceptional measure which dates back to the era of besieged towns. This long-standing measure is provided for by the Act of 9 August 1849, as amended by the Act of 3 April 1878. A state of siege is declared in the event of immediate danger resulting from a foreign war, a civil war or an armed insurrection. It is decreed in a meeting of the Council of Ministers and it may not be maintained for more than 12 days; any extension beyond that limit must be authorized by Parliament (Constitution, art. 36).

76. In the past, a declaration of a state of siege has had a number of effects, all having in common the assumption of law-enforcement powers by the military authorities:

(a) the military authorities take over from the civilian authorities in maintaining law and order;

(b) the powers to maintain law and order exercised by the military authorities are broader than normal;

(c) the jurisdiction exercised in normal times by the ordinary criminal courts in matters of crimes and offences against State security may be transferred to the military courts.

(b) State of emergency

77. Governed by the Act of 3 April 1955, a state of emergency is declared in the event of imminent danger resulting from serious attacks on public order and in the event of national disasters (floods, earthquakes, explosions, etc.). It is decreed in the Council of Ministers.

78. Its main effect is to extend the powers to maintain law and order.

(a) In a simple state of emergency, the police are still the normal civilian authority, but they are invested with powers which derogate substantially from the law of the land, such as restrictions on movement, local expulsion, restricted residence and restriction of collective freedoms. The Act nevertheless provides specific guarantees: a person against whom an expulsion or restricted residence measure has been ordered may appeal to a commission consisting of general councillors. In addition, the administrative court with which an appeal is lodged on the grounds of action ultra vires, and the State Council in the event of an appeal, must give a decision within a very short time;

(b) A grave state of emergency gives the police authorities powers to order searches at any time of day or night and to control the press, radio, cinema and theatre. Such extended measures must be expressly decreed.

79. Under Act No. 82-621 of 21 July 1982 concerning the investigation and trial of military offences and offences against the security of the State and amending the Codes of Criminal Procedure and of Military Justice, the Permanent Courts of the Armed Forces have been abolished. In the event of a declaration of a state of siege or a state of emergency, territorial courts of the armed forces may be established; they will have the same jurisdiction as in time of war.

Reservation to article 4, paragraph 1

80. When France acceded to the Covenant, the Government made a reservation in relation to article 4, paragraph 1. This reservation states that "the circumstances as set forth in article 16 of the Constitution for its implementation, in article 1 of the Act of 3 April 1878 and in the Act of 9 August 1849 for the declaration of a state of siege, in article 1 of the Act of 3 April 1955 for the declaration of a state of emergency and for the proper application of these instruments, must be understood as complying with the terms of article 4 of the Covenant". The French reservation specifies the interpretation to be given to measures taken by the President of the Republic in application of article 16 by stating that the expression "to the extent strictly required by the exigencies of the situation" would not be such as to limit the power of the President of the Republic to take "the measures required by these circumstances".

Paragraph 2

81. When France acceded to the Covenant, it undertook not to derogate from articles 6, 7, 8 (paras. 1 and 2), 11, 15, 16 and 18, should it be required to take measures derogating from its obligations in the circumstances provided for in article 4, paragraph 1.

Paragraph 3

82. France has also undertaken, in the event of its being required to avail itself of the provisions of article 4, paragraph 1, to inform the other States parties, through the Secretary-General of the United Nations, of the provisions from which it has derogated and of its reasons for doing so.

Article 5

Paragraph 1

83. This paragraph envisages the hypothesis of a State, group or person interpreting a provision of the Covenant in such a way as to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized in the Covenant. The French Government believes that such an activity or act would in itself be contrary to the Covenant.

Paragraph 2

84. Paragraph 2 of the article envisages another hypothesis: one in which other basic human rights are recognized and protected pursuant to instruments

other than the Covenant or pursuant to custom. This article prohibits any restriction upon or derogation from these rights which may be based on the pretext that the Covenant does not recognize them.

85. The French legal system, the main features of which are outlined in the core document (HRI/CORE/1/Add.17/Rev.1), is based on instruments which guarantee certain rights and freedoms to individuals. Some of them are not included in the Covenant but, since they form part of ordinary legal norms, they enjoy the same protection and the fact that they are not mentioned in the Covenant cannot be interpreted as a licence to derogate from them.

Article 6

Paragraph 1

86. The right of every human being to life is affirmed in article 3 of the Universal Declaration of Human Rights and in article 2 of the European Convention on Human Rights, both of which form part of the French legal system. There are legal provisions making homicide and murder of a child under the age of 15, a parent or grandparent, a particularly vulnerable person, a Government representative or a witness punishable by life imprisonment. Murder and poisoning are punishable by a 30-year prison sentence.

87. These crimes carried the death penalty until 9 October 1981, when the death penalty was abolished by Act No. 81-908, which abrogated articles 12-17 of the Penal Code relating to the death penalty and article 713 of the Code of Criminal Procedure concerning the enforcement of sentences. It also abrogated or amended a number of articles of the Code of Military Justice concerning the death penalty as a sentence by military courts.

Paragraph 2

88. As mentioned above, the death penalty was abolished in France by Act No. 81-980 of 9 October 1981. This Act is general in scope and there are no specific derogations from its application. Article 9 of the Act extends its effect to death sentences passed since 1 November 1980 and to sentences appealed on a point of law if the appeal is withdrawn or dismissed.

Paragraph 3

89. Since 26 November 1950, France has been a party to the Convention on the Prevention and Punishment of the Crime of Genocide. French criminal legislation provides for the punishment, on various counts, of the different aspects of genocide.

Paragraphs 4, 5 and 6

90. Since the death sentence has been abolished, these three provisions do not apply to French law.

Article 7

91. The French Government is deeply committed to the condemnation and punishment of torture. France thus took an active part in the preparation both of the Universal Declaration of Human Rights of 10 December 1948 and of later instruments designed to combat this odious practice, particularly the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (United Nations General Assembly resolution 3452 (XXX) of 9 December 1975). On 18 February 1986, France ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It also took an active part in the preparation of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which it ratified on 9 January 1989.

92. French legislation provides for the punishment of acts of torture. Article 222-1 of the new Penal Code states that offenders who employ torture or commit barbaric acts shall be sentenced to 15 years of imprisonment. Such acts are punishable by life imprisonment if committed before, during or after a crime.

93. Moreover, individuals are protected from any act of violence committed without lawful cause by public officials or employees carrying out their functions or mission or on duty. The punishment depends on the nature and gravity of the act of violence, and the offender's rank constitutes an aggravating factor in many crimes or offences.

94. For the implementation of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 72 of Act No. 85-1407 of 30 December 1985, containing various provisions of criminal procedure and criminal law, incorporated into the Code of Criminal Procedure an article 689-2 introducing the rule of universal jurisdiction in matters relating to torture.

Article 8

Paragraph 1

95. France abolished slavery by the Decree of 27 April 1848 and, since that time, it has been associated with all activities aimed at putting an end to the practice of slavery. It is therefore a party to the Slavery Convention of 25 September 1926 and its amendments and to the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 7 December 1956. France is also a party to the United Nations Convention of 2 December 1949 for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

Paragraph 2

96. Similarly, the state of servitude does not exist in France and the French Constitution refers to the 1789 Declaration of the Rights of Man and of the Citizen, which states in article 1: “Men are born and remain free and equal in rights” and in article 6: “The law is the expression of the general

will of the community ... All citizens (are) equal in its sight". The Constitution itself embodies this principle in article 2: "It (France) ensures the equality of all citizens before the law, without distinction as to origin, race or religion".

97. The general principle of freedom set forth in the Declaration of the Rights of Man and of the Citizen covers the individual and collective freedoms guaranteed by the Constitution, the laws and judicial practice, as outlined in the core document (HRI/CORE/1/Add.17/Rev.1) and as an examination of some of these freedoms will show.

Paragraph 3

98. The relationship between a man and his work is governed in France by the principles embodied in the preamble to the Constitution of 24 October 1946: "Everyone has the duty to work and the right to obtain employment". The worker is recognized as possessing certain rights: the right to defend his rights and interests by trade union activity, the right to strike and to participate in determining working conditions and in the management of enterprises. These rights are exercised in accordance with the relevant legislative instruments.

99. "Forced labour" was abolished in France by an ordinance of 4 June 1960. Forced or compulsory labour would therefore be illegal even outside the cases listed in paragraph 3 (c). "Traffic in women" and the exploitation of the prostitution of others are thus punishable offences. Articles 225-5 and 225-10 of the new Penal Code make procuring an offence punishable by imprisonment and a fine - the punishment being even harsher in the case of the prostitution of a minor. Criminal sanctions are incurred if procuring is committed by an organized band or is accompanied by torture or barbaric acts.

Article 9

Paragraph 1

100. The preamble to the Constitution refers to the 1789 Declaration of the Rights of Man and of the Citizen, article 7 of which states: "No person shall be accused, arrested or imprisoned except in the cases and according to the forms prescribed by law".

101. The right to liberty as provided for in article 9, paragraph 1, is recognized in article 66 of the Constitution, which states: "No one may be arbitrarily detained". It is the task of the judicial authority to ensure that this principle is respected under the conditions prescribed by law.

102. This instrument and those enacted for its enforcement embody three basic principles:

(a) The legality of offences and penalties: this is the principle that, before an act is punishable, it must be declared so by law; it also implies that the applicable penalty must also be specified by law;

(b) The exclusive jurisdiction of the judicial authority for penal action;

(c) The presumption of the innocence of the accused as the guiding principle of penal procedure.

103. The arrest or detention of an individual may not be decided arbitrarily and must be effected in conformity with the procedure established by law. When an offence has been committed, the judicial police carries out an on-the-spot or preliminary investigation designed to identify the person or persons presumed responsible and to search for and safeguard evidence of the offence. During this phase, the judicial police is subject to the authority of the public prosecutor.

104. The police may keep a person who is considered a suspect on police premises for a certain period of time in order to question him. This is known as police custody, a procedure regulated by the Code of Criminal Procedure. Such a measure may be decided only by an officer of the judicial police and may not exceed a period of 24 hours, which may be extended for a further 24 hours by the prosecutor.

105. After this first extension, a further prolongation of 48 hours may be authorized in cases of drug trafficking or acts of terrorism. This measure must be authorized by the examining magistrate or, at the request of the Government Attorney, by the presiding judge of the court of major jurisdiction or a judge delegated by him (Code of Criminal Procedure, arts. 706-24 and 706-29). In principle, no prolongation of custody may be ordered until the person in question has been produced before the judge.

106. Anyone held in custody may, at his own request, have a person with whom he normally lives, a parent, grandparent, brother or sister, or his employer, notified by telephone. If the judicial police officer considers it necessary for the purposes of the investigation to refuse this request, he must refer the matter without delay to the Government Attorney for a decision.

107. Anyone held in custody may request an immediate medical examination (Code of Criminal Procedure, art. 63-3). Such persons may also meet with a lawyer after being in custody for 20 hours (Code of Criminal Procedure, art. 63-4); this is extended to 36 hours in cases involving procuring, extortion or conspiracy and 72 hours in cases involving drug trafficking and terrorist acts.

108. Lastly, any documents signed by detainees while in custody must give the grounds for the use of this measure, its exact duration, the exact duration of the periods of questioning and the intervals between them. These records must also mention the fact that the individual has been informed of his rights in a language which he understands at the beginning of the procedure.

109. In the case of minors, the Act of 4 January 1993 states that:

(a) Minors under the age of 13 may not be placed in custody;

(b) If the minor is over the age of 13, his guardian or the person or agency responsible for him must be informed immediately of his placement in custody unless the Government Attorney or the examining magistrate decides not to do so for a given period of time;

(c) The custody period for a minor over the age of 13 may not be extended until he has been brought before the Government Attorney or the examining magistrate;

(d) A minor against whom proceedings have been brought must have a lawyer. Furthermore, the Act of 24 August 1993 states that where there are serious and corroborating indications that a minor between the ages of 10 and 13 has committed, or attempted to commit, an offence punishable by at least seven years' imprisonment, he may, for the purposes of the investigation and with the prior approval, and under the supervision, of a magistrate, be held in custody for a period not to exceed 10 hours.

110. Lastly, it should be noted that article 35 bis of the amended Ordinance of 2 November 1945 on conditions governing the entry and sojourn of foreigners in France establishes the procedure for administrative custody. A foreigner who must be handed over to the competent authorities of a member State of the European Community, is the subject of a deportation order or must be escorted to the border but cannot immediately leave France may, if necessary, be assigned to premises not part of the prison system pursuant to a written, substantiated decision of the departmental State representative.

111. This assignment, which is for a 24-hour period, may be extended by the presiding judge of the court of a major jurisdication or a judge delegated by him for a period of six days after the person concerned has been heard by the court in the presence of counsel. This six-day period may be extended by the judge for a maximum of 72 hours in the case of an emergency presenting a serious threat to public order or if there is proof that additional time is needed to obtain the travel documents required for implementation of the deportation order.

112. Court orders extending such custody may be appealed before the senior president of the Appeals Court, who must hand down a decision within 48 hours of submission of the case. Throughout the period in question, the Government Attorney may visit the premises and verify the conditions of custody. A person in custody may also request the assistance of an interpreter, a doctor or a lawyer and, if he wishes, may communicate with his consulate or with an individual of his choice.

113. Furthermore, Act No. 93-1417 of 30 December 1993, which includes various provisions related to immigration control and amending the Civil Code, established a new procedure known as judicial custody. This procedure applies to foreigners who have not submitted to the competent administrative authority the travel documents necessary for implementation of a deportation order or who have not provided the information which would make possible the implementation thereof. The judge may place such persons in detention for a maximum of three months. The judge must inform the person in question of his rights with regard to assistance and communication. In addition to the

assistance of an interpreter, a doctor or a lawyer, foreigners have the right to communicate by mail or by telephone with anyone whom they choose and to receive visitors authorized by a court-appointed magistrate.

Paragraph 2

114. The Code of Criminal Procedure empowers the examining magistrate to charge any person who has taken part, either as perpetrator or as accomplice, in the acts brought before him. The accused is defended by a lawyer who is entitled, throughout the investigation, to consult the case file, which must contain all the documents pertaining to the procedure.

The writ of capias (“mandat d'amener”)

115. The writ of capias is an order given by the court to the police to bring the accused before it without delay. Article 123 of the Code of Criminal Procedure states that the order must specify the identity of the accused, the nature of the charge and the applicable section of the law. It thus informs the accused of the charges against him.

116. In the event of a flagrant crime, where the case has not yet been brought before the examining magistrate, the Government Attorney may issue a writ of capias against any persons suspected of having taken part in the offence and must question such persons forthwith (Code of Criminal Procedure, art. 70).

The arrest warrant (“mandat d'arrêt”)

117. The arrest warrant is an order given to the police to search for a person with no known address where there are serious and corroborating grounds for charges being brought against him, or a person who has been charged and is currently a fugitive, so that he may be taken to the place of detention indicated on the warrant, admitted and held in custody.

118. French law has long governed in great detail the form and use of writs of capias and arrest warrants. However, it set no maximum limit on the time spent in detention during transfer before the judge who issued the warrant or the waiting period before the person appeared before the judge. The Act of 9 July 1984 stipulates the duration of these periods. It establishes the principle that any person found within 200 km of the bench of the examining magistrate who has issued a warrant must appear before the magistrate within 24 hours at the latest.

119. Where the accused person is apprehended beyond this limit and where he cannot be transferred immediately or does not agree to such transfer, he must be produced within the same period of time before the Government Attorney of the place where he is arrested. He must then appear within four days before the examining magistrate who has issued the warrant, this period being extended to six days in the case of transfer from an overseas department to another department or from metropolitan France to an overseas department.

120. Except in cases of force majeure, failure to comply with these time limits entails the release of the person apprehended by order of the examining

magistrate hearing the case. In any event, deprivation of freedom suffered as a result of the execution of a writ of capias or arrest warrant is deducted, from the duration of any sentence passed.

Paragraph 3

121. In order to protect individual freedoms, the period from the time when an individual is arrested or detained until he appears in court must be kept as short as possible.

Pre-trial detention

122. In order to prevent an accused person from covering his tracks or disappearing, it may be necessary to place him in pre-trial detention for this period. This is decided by the examining magistrate and must meet certain formal requirements. The decision must specify the exact reasons for the order, the opinion of the prosecutor and the comments of the accused and of his defence counsel, if any. Secondly, pre-trial detention may be ordered only if the penalty for the presumed offence is a minimum of two years' imprisonment. Furthermore, this decision is authorized only where the constraints provided by judicial supervision are insufficient and this measure is the only means of (a) maintaining public order; (b) preventing pressure from being exerted on witnesses or collusion from taking place between the accused and their accomplices; (c) preserving material proof or evidence; (d) halting commission of an infraction or preventing its recurrence; or (e) ensuring that the person remains at the court's disposal. The Act of 6 August 1975 limited the period of pre-trial detention to six months in the case of a first offence where the penalty does not exceed five years' imprisonment.

123. Act No. 84-576 of 9 July 1984, which is intended to strengthen the rights of persons with regard to pre-trial detention and the execution of a court order, provides for statements to be made by the prosecution and the defence before an examining magistrate who is considering the possibility of placing the suspect in pre-trial detention (new Code of Criminal Procedure, art. 145). In this case, the examining magistrate, following the statements made during the first appearance or, if necessary, during the investigation, must inform the accused that he has the right to be assisted by counsel of his own choosing or by a court-appointed lawyer. The lawyer who is chosen or appointed is immediately informed and may consult the file without delay and communicate freely with his client. The examining magistrate then holds a hearing in chambers during which he hears first the charges brought by the public prosecutor, then the comments of the accused and his counsel.

124. If the accused cannot be assisted immediately by counsel or if the lawyer requests time to prepare a defence, the judge has to postpone his ruling on placing the accused in detention. He may then, if he deems it essential, by a substantiated decision referring to the circumstances which have just been described, order the imprisonment of the accused for a specific period which may not exceed five days. During this period, statements by the prosecution and the defence must be made in the presence of the accused. If,

after the hearings, the judge does not order him to be placed under detention, the accused is released, whether or not the public prosecutor appeals that decision.

125. A genuine exchange is therefore conducted between the parties before any decision is taken to imprison an individual who is presumed innocent. In 1993, the average length of pre-trial detention was 7.3 months. In 1992, of a total of 49,838 individuals held in pre-trial detention, 35 per cent were detained for less than one month, 32 per cent for one to four months, 18.23 per cent for four to eight months and 13 per cent for more than eight months (source: National Criminal Records Office).

126. When the trial is concluded, if the accused is found guilty, the period spent in pre-trial detention will be counted as part of the period of imprisonment. If the case is dismissed (because the examining magistrate deems that the evidence is insufficient to justify a trial) or the accused is discharged or acquitted, he may claim compensation if the detention has caused him injury that is manifestly abnormal and of particular gravity (Code of Criminal Procedure, art. 149). This compensation procedure was introduced by the Act of 17 July 1970.

Judicial surveillance

127. The Act also established a new legal technique, judicial surveillance, designed to replace detention. The decision to place an accused person under this type of surveillance is taken by the examining magistrate if he considers that the measure is necessary for the purposes of the investigation or in the interests of public safety. The accused is then subject to various types of restriction on his freedom of movement, on whom he can associate with and on his professional activities and must report regularly for checking.

128. The order placing an accused under judicial surveillance may involve the requirement that he should post bail, the amount and payment schedule to be determined by the examining magistrate, bearing in mind, for example, the accused's financial situation. He may be allowed to pay the amount in several instalments. The bail serves to guarantee his appearance at all stages of the proceedings leading up to sentencing and the payment of legal expenses and fines.

129. Moreover, the immediate referral procedure instituted by the Act of 9 September 1986 empowers the Government Attorney to refer a case to the court on the same day as the accused is brought before him. In order for him to do so, the charges must, in his opinion, be sufficient and the prescribed penalty must be not less than two or more than five years' imprisonment.

130. It should be added that the Acts of 30 December 1987 and 6 July 1989 placed limitations on the grounds for, and length of, placement of minors in pre-trial detention. For example, pre-trial detention is no longer authorized under any circumstances for minors under the age of 13. With regard to ordinary offences, pre-trial detention of minors aged 13 to 16 has been prohibited since 1 March 1989. If the minor is between the ages of 13 and 16 and the prescribed penalty is seven years' imprisonment or less, pre-trial detention may not exceed one month with the possibility of extension for one

month. If the prescribed penalty is greater than seven years' imprisonment, pre-trial detention may not exceed one year (4 + 4 + 4). With regard to criminal offences, if the minor is between the ages of 13 and 16, pre-trial detention may not exceed one year (6 + 6). If the minor is between the ages of 16 and 18, it may not exceed two years (1 year, adversary proceedings + 1 year).

131. It should also be explained that the court education service must be consulted before any application or decision for placement of a minor in pre-trial detention or prolongation of such detention. The report prepared by this service must be attached to the record of proceedings. Any decision for placement in, or prolongation of, pre-trial detention must be preceded by adversary proceedings held in the presence of all the parties concerned and their lawyers.

132. For example, during 1993, 1,299 minors were detained. In 50 per cent of those cases, the period of detention did not exceed one month. It should also be emphasized that the number of minors in detention (both pre-trial and post-sentencing) has steadily decreased over the past few years. For example, the number of minors in pre-trial detention fell from 989 on 1 January 1987 to 445 on 1 January 1993.

Paragraph 4

133. Any violation by the administrative or judicial authorities of the rules for the protection of personal security is punishable by law. The new Penal Code defines the acts which are punishable and specifies the persons concerned (arts. 432-4 to 432-6). Generally speaking, the acts concerned involve attacks on individual freedoms. The persons concerned are public officials or employees carrying out their functions or mission or on duty. Article 136 of the Code of Criminal Procedure states that, in the event of violation of individual freedom, the administrative authority may never take the case to a higher court and the regular courts have jurisdiction in all cases.

134. Moreover, the defendant may at any time apply for release. The application must be submitted to the examining magistrate, who must immediately transmit the file to the Government Attorney and take a decision within five days. If he fails to do so, the accused may raise the matter directly with the public prosecutor, who must take a decision within 20 days. The accused also has the option of applying for release at any time. In this case, the court must reach a decision within 10 days, failing which the accused is automatically released.

Paragraph 5

135. As indicated in the comments on paragraph 3, anyone who has been wrongfully detained may claim compensation (para. 126). The Act of 17 July 1970 introduced a special procedure for the compensation of persons held in pre-trial detention in connection with proceedings which conclude with a decision not to prosecute them or to discharge or acquit them, when such detention has caused them “damage that is manifestly abnormal and of particular gravity”. The compensation, awarded by a Board composed of three judges of the Court of Cassation whose decision is final, is payable by the

State, which can claim against any person who has provided information in bad faith or any person who has given false evidence and whose wrongful act has led to or prolonged the detention.

136. As for actual unlawful arrest or detention, the Government is required under article L.781-1 of the Judicial Organization Code to make good any damage caused by a defect in the administration of justice. Liability is incurred in the event of gross negligence or a denial of justice. Where liability is due to personal fault on the part of a judge, the Government undertakes to make good the damage, but can claim against the judge.

Reservation to article 9

137. France has made a reservation concerning this article, on the basis of the very subtle nature of the distinction it implies between criminal charges and purely disciplinary charges. Thus, the article cannot be invoked against the application of the regulations governing discipline in the armed forces. The same reservation applies to article 14 of the Covenant (see para. 258). A reservation has also been made to similar provisions in articles 5 and 6 of the European Convention on Human Rights.

Article 10

Paragraph 1

138. French prison regulations are fully in line with European prison regulations (recommendations Nos. R (87) 3 and R (92) 16, adopted by the Committee of Ministers of the Council of Europe).

139. A broad movement of legislative reform has been undertaken in recent years, whose main stages have been:

(a) Act No. 70-643 of 17 July 1970, aimed at providing stronger safeguards for the individual rights of citizens;

(b) Act No. 72-1226 of 29 December 1972, simplifying and supplementing a number of provisions relating to criminal procedure, penalties and their enforcement;

(c) Act No. 73-624 of 11 July 1975, amending and supplementing a number of provisions of criminal law;

(d) Act No. 78-1097 of 22 November 1978, amending a number of provisions of the Code of Criminal Procedure on the enforcement of custodial penalties;

(e) Act No. 87-482 of 22 June 1987, relating to the public prison service, defining the aims of the public prison service: enforcement of penal decisions and sentences, preservation of public security, reinsertion of persons entrusted to it by the judicial authorities and individualization of penalties. This Act makes provision for and determines the extent of private sector involvement in the planning, building and certain aspects of the operation of penal institutions. Lastly, it abolishes the obligation for

convicts to work, while making provision for work and training activities to be taken into account in assessing the convicts' conduct and capacity for reintegration;

(f) Act No. 90-589 of 6 July 1990, amending the Code of Criminal Procedure and the Insurance Code, and relating to the victims of offences. This introduces a new article 728-1 into the Code of Criminal Procedure, concerning the financial assets of detainees. The article incorporates into law the general rules applicable to the allocation of detainees' financial assets and the procedure for compensating claimants from the portion reserved for them;

(g) Act No. 90-9 of 2 January 1990, amending article 720 of the Code of Criminal Procedure, in order to enable convicts working outside penal institutions to enter into contracts of employment;

(h) Act No. 92-1279 of 8 December 1992, amending book V of the Public Health Code and relating to pharmacies and medicines, and in particular article L 595-9 1 instituting pharmacies for internal use in penal institutions;

(i) Acts Nos. 92-683, 92-684, 92-685 and 92-686 of 22 July 1992, abrogating the 1810 Penal Code and establishing the new Penal Code;

(j) Act No. 92-1336 of 16 December 1992, relating to the entry into force of the new Penal Code and the amendment of a number of provisions of criminal law and criminal procedure required by the entry into force of the new Code; the new Penal Code became applicable on 1 March 1994;

(k) Act No. 93-2 of 4 January 1993, reforming criminal procedure and Act No. 93-1013 of 24 August 1993, amending the Act of 4 January 1993;

(l) Decree No. 93-192 of 8 February 1993 amended a number of provisions of the third part (decrees) of the Code of Criminal Procedure and updated the provisions relating to the transfer of prisoners, social welfare, education and appeals against decisions by the visiting magistrate;

(m) Decree No. 93-347 of 15 March 1993 amended articles D 200 and D 347 of the Code of Criminal Procedure to bring them into line with the new texts relating to efforts to combat smoking;

(n) Act No. 94-43 of 18 January 1994, relating to public health and social welfare amended the arrangements for providing health care to detainees, by transferring responsibility for it from the prison service to the public hospital service, and extending welfare to all detainees, who are thus covered by the general social security system from the moment of their incarceration.

Paragraph 2

140. Detainees are divided into different categories, details of which will be provided in the section relating to paragraph 3 (paras. 151 to 177), and prisoners awaiting trial are separated from convicted prisoners. Prisoners

awaiting trial are held in the local prison (maison d'arrêt) nearest the court before which they are to appear. Prisoners with less than one year of their sentence remaining are also held in local prisons.

1. Prison population

141. On 1 January 1995, the total prison population was 51,633 in mainland France and 2,272 in the overseas departments. Of the total prison population of 53,905, 23,093 were awaiting trial (including prisoners pending appeal or application for judicial review), 22,990 were serving ordinary prison sentences and 7,511 criminal sentences and 311 were serving civil imprisonment or awaiting extradition.

2. The status of detainees

(a) Prisoners awaiting trial

142. Visiting permits are issued by the magistrate investigating the case. Prisoners may correspond with whomsoever they wish, unless the magistrate decides otherwise. They may communicate freely with their lawyer without the presence of a warder and in a special visiting room, and may correspond with their lawyer without any check by the prison authorities.

143. Under the provisions of article 716 of the Code of Criminal Procedure, prisoners awaiting trial are kept in individual cells, day and night. Any departure from this principle is attributable to space limitations or temporary overcrowding. The same applies if a prisoner awaiting trial has applied to work and if the demands of such work involve a derogation from the principle.

(b) Convicted prisoners

144. The prison governor issues visiting permits. Visits now take place in visiting rooms without any dividers, unless the governor decides otherwise or a request is made by the prisoner or his visitor.

145. Convicted prisoners may correspond with anybody, daily without restriction and receive letters from anybody. However, their correspondence may be read and monitored by the prison authorities. Whatever the case, all detainees, whether awaiting trial or convicted, have the unrestricted right to sealed correspondence, unchecked by the prison authorities, with certain French administrative and judicial authorities and with European authorities (the European Court of Human Rights, the European Commission of Human Rights and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment). In addition, this list is regularly updated.

146. In order to preserve family ties, convicted prisoners in detention centres are also authorized to telephone their families once or persons holding a visiting permit as often as authorized by the establishment's internal regulations. Convicted prisoners held in detention centres are also permitted to arrange and decorate their cells as they wish, provided no damage is done to the prison installations.

3. Special regime for detained juveniles

147. Article 11 of the Ordinance of 2 February 1945 specifies that “in all cases juveniles shall be held in a special area or failing this in special premises; they will as far as possible be kept isolated at night”. When their imprisonment is unavoidable, means of limiting its duration are adopted.

For example:

(a) Families are informed as soon as the juvenile is brought before the magistrate and throughout the procedure, at the initiative of the judge responsible for the case;

(b) Particular attention is also paid to the individual report on the suspect;

(c) The purpose of the visit by the juvenile magistrate is to enable him to acquaint himself with the actual living conditions of detained juveniles and to meet all persons responsible for them on the spot;

(d) Special attention is also paid to preparing juveniles for release and to the conditions of their release. As soon as they leave the penal institution it must be possible for juveniles to be taken into the care either of their family or of an education service.

148. The conditions under which juveniles are detained were detailed in a circular from the Minister of Justice, dated 4 February 1994. The circular also emphasizes the need for complementarity between measures taken by the prison administration and the young persons legal protection service, in order to limit the period of imprisonment of juveniles and to make preparations for their reintegration when they leave prison.

149. As a means of improving the conditions under which juveniles are imprisoned and of effectively complying with the requirements of article D 53 of the Code of Criminal Procedure concerning appropriate premises for minors, a chart of penal institutions has been jointly prepared by the prison authorities and the young persons' legal protection service, after consultations with the heads of the courts and the regional directors of the prison service and of the young persons' legal protection service.

150. Fifty-three penal institutions were selected. The institutions, which are distributed throughout France, were chosen with a view to preserving family relations and avoid isolating imprisoned juveniles in unsuitable premises. They also possess suitable premises for accommodating juvenile detainees and guaranteeing their security, and for ensuring compliance with the principle that juvenile detainees are held in adjoining cells grouped together in a section of the prison. Lastly, they ensure the provision of socio-educational and training activities suited to the requirements of this category of prisoner.

Paragraph 3

151. One of the prison administration's priorities is to pursue an active approach to the development of alternatives to imprisonment. In addition to increasing the number of prison places, the multi-annual plan for the judicial system provides for the creation of jobs in open institutions, thereby doubling the membership of the probation committees. The increase in prison capacity will be achieved by providing an extra 4,180 prison places.

152. This effort will be supplemented by diversifying prisons and setting up regional prisons, thereby making it possible better to deal with notoriously dangerous prisoners and to build central prisons for small numbers. It is also planned to improve the treatment provided for difficult prisoners by regional medico-psychological services, as well as supervision of dangerous prisoners held in regional prisons.

153. These objectives are also accompanied by special measures:

(a) The work of prison personnel is specially adapted to meet the needs of modern prisons, with a focus on an individualized approach;

(b) Improved provision for the needs of prisoners and for their reinsertion.

These efforts require the introduction of programmes for prisoners in all penitentiaries.

154. The need for planned induction and the definition of such programmes for convicted prisoners are affirmed by recommendation R (87) of the Committee of Ministers of the Council of Europe, dated 12 February 1987. The programmes will make it possible to involve prisoners more actively in serving their sentence and will ensure that their obligations towards victims are more fully taken into account. In addition, by defining programmes it will be possible to provide better treatment for convicted prisoners and better to prepare them for their release. Introduction of the programmes requires a reorganization of induction and observation centres for detainees, formal assessment and the definition of individualized goals closely linked to the policy of individualization within the judicial system.

155. Lastly, the prison service, which intervenes at the last stage of a penal process which in many cases merely reflects a deterioration in an individual's social and economic circumstances, must be organized to cope with individuals who pose problems (imprisoned juveniles, the illiterate, the destitute and prisoners with psychological and psychiatric problems). Consequently, custodial sentences are no longer seen as a form of punishment but as a means of reintegrating convicted persons into society. The assignment of convicted prisoners to a specific institution thus depends on their criminal status, age, state of health and personality.

156. Convicted prisoners are assigned to penitentiaries on the basis of their sex, age, penal status, background, state of physical and mental health and their aptitudes, and, more generally on the basis of their personality and of the penal regime applicable to them for rehabilitation purposes.

157. Counselling of prisoners is based on the information provided by the judicial authorities and the prison service and, if appropriate, on the examinations carried out on them by the prison service's national observation centre. Wherever possible, prisoners are involved in drawing up or adjusting their own programme, which is defined and implemented in consultation with the different categories of staff.

158. Convicted prisoners may be held either in (a) central prisons whose organization and security regime are nevertheless such as to preserve and develop opportunities for the reintegration of convicts and (b) detention centres whose regime focuses principally on the reintegration of convicted prisoners.

159. Assignment of convicted prisoners to central prisons or national detention centres is decided exclusively by the central prison service. Regional detention centres hold prisoners serving sentences of less than seven years who have less than five years of their sentence remaining. As a rule, assignment to these establishments is the responsibility of the regional directors. Convicted prisoners serving a sentence of more than one year are sent to central prisons, detention centres or specialized establishments. Prisoners serving a sentence of less than one year are sent to local prisons. If a juvenile is sentenced to prison, he is entitled to a special regime.

160. In 1991 the prison service drew up a chart of prison establishments for the accommodation of juvenile prisoners in local prisons. Fifty-three establishments were chosen on the basis of their location in terms of the requirements of the courts concerned and to avoid isolating juvenile detainees in unsuitable establishments. This new chart requires efforts to ensure not only that the conditions of detention of juveniles are fully in conformity with legislation and regulations, but that they are suited to juvenile detainees' requirements as regards training and socio-educational measures.

161. The French system of individualization of sentences relies on the visiting magistrate, who is responsible for monitoring the sentences of convicted prisoners and ensuring court sentences are individualized, by deciding upon the main elements of “penal treatment”. Individualization of sentences can occur at two points:

(a) When sentence is passed;

(b) When the sentence is being served, the possibilities for individualization are laid down by the Code of Criminal Procedure: suspended sentence, suspended sentence with probation, deferment of sentence in exchange for community service, alternative sentences such as suspension of a person's driving licence, confiscation of his vehicle, the daily fine and temporary immobilization of his vehicle.

162. The penalty of community service (introduced by the Act of 10 June 1983) has been diversified:

(a) It may take the form of a suspended sentence in conjunction with the obligation to perform community service, which is generally specified at the sentencing stage or subsequently when a custodial sentence of six months or less (handed down in absentia) is "converted";

(b) It may be handed down as a complementary penalty either for certain road traffic offences (art. L.1-1 of the Highway Code), or for certain minor offences.

In this latter case, the introduction of the new Penal Code (Act of 16 December 1992) made provision for the penalty of community service to be handed down as a complementary penalty to punish minor offences of the fifth category.

163. As regards the enforcement of sentences, the law affords a number of possibilities for individualization: parole, furlough, normal or supplementary remission of sentence, suspended sentence, splitting up of sentence, assignment to an open prison and so on. Decisions regarding the enforcement of sentences are generally taken by the visiting magistrate, occasionally by the public prosecutor (suspension of a non-custodial sentence), the trial court (which may pass a concurrent sentence and, in certain cases, suspend the enforcement of custodial sentences) or even by the Minister of Justice (as in the case of certain decisions regarding parole).

1. The treatment of convicted prisoners

164. The Code of Criminal Procedure offers several possibilities for dealing with convicted prisoners in an open environment.

(a) A suspended prison sentence with an 18-month to 3-years period of probation

165. The convicted prisoner is placed under the supervision of the visiting magistrate whose task it is, with the assistance of the probation board, to ensure compliance with the conditions imposed on him and to provide him with such welfare and educational assistance as he may require. A suspended sentence combined with probation is allowed for only part of the prison sentence.

(b) A prison sentence in conjunction with community service

166. The court which hands down a prison sentence may order a suspended sentence together with community service for between 40 and 240 hours. As in the case of a suspended sentence with probation, the convicted person must perform a number of obligations, including community service. This sentence can be handed down only if the accused is present at the hearing.

(c) Community service

167. Community service may constitute a principal or complementary penalty (offences or infringements).

(d) Deferment of the sentence in conjunction with probation

168. This may only be decided at the time of the judgement if the accused is present at the hearing, his rehabilitation is under way, the damage is being repaired and the injury caused by the offence is being remedied. As in the case of a suspended sentence with probation, the party concerned is placed under the supervision of the visiting magistrate for a period which, in this case, may not exceed one year.

(e) Parole

169. The right to grant parole lies with the visiting magistrate or the Minister of Justice. Subsequent to the Act of 4 January 1993, the visiting magistrate is empowered to grant parole to persons serving a sentence of not more than five years. If the penalty involves more than five years' imprisonment, parole is granted by the Minister of Justice. As in the case of the previous measures, a person on parole is under the supervision of the visiting magistrate and of the probation board for a probationary period.

2. Restricted residence

170. This complementary penalty (in respect of correctional or criminal offences) was considerably amended by the Act of 16 December 1992 concerning the entry into force of the New Criminal Code. The prerogatives previously exercised by the Ministry of the Interior were transferred to the judicial authorities. A person sentenced to restricted residence is subject to one or more supervisory measures determined by the court and monitored by the visiting magistrate.

3. Partial release

171. Partial release allows a convicted prisoner, outside the prison, to engage in an occupation under the same conditions as ordinary workers, to follow educational courses or receive vocational training, to follow an internship or take on a temporary job in anticipation of their return to society, to participate in family life or receive medical treatment. Convicted prisoners who benefit from the partial release regime are required to return to the prison as prescribed by the visiting magistrate.

4. External placement

172. External placement enables a convicted person to be employed outside the prison on work supervised by the authorities.

5. Furlough

173. Furlough can be granted to a convicted prisoner for a limited period with a view to preparing his occupational and social rehabilitation and to maintaining his family ties.

6. Socio-educational action in open and closed prisons

174. One of the priorities for the prison administration is to strengthen functional links between the social and educational services in closed and open prisons, since it is a means of guaranteeing better treatment for the individuals entrusted by the judicial authorities to the public prison service.

175. To achieve this, consolidated socio-educational services have been introduced on an experimental basis. The purpose of these services is to ensure continuity in the social and educational aspects of the treatment of prisoners. The services are responsible, at specific locations, for all the tasks entrusted to the probation committees, the committees to assist released prisoners and the social and educational services of prisons.

176. This work, whose primary purpose is to assist persons in their efforts at rehabilitation, involves:

(a) In closed prisons: helping to mitigate the social isolation resulting from imprisonment and preserve social and family ties; and preparing measures for the individualization of penalties;

(b) In open prisons: helping to prepare judicial decisions of a penal nature and ensuring follow-up and monitoring.

177. A circular on social work methods (in open and closed prisons), currently being completed, should allow for a better insight into the social work already under way.

Article 11

178. Failure to perform a contractual obligation is not punishable by deprivation of liberty under French law. Physical constraint in civil and commercial cases and against aliens was abolished by the Act of 22 July 1867. When a debtor is not in a position to fulfil a contractual obligation, the case is resolved by payment of damages.

Article 12

Paragraph 1

179. Freedom to come and go within the national territory is recognized in French law; there is complete freedom of movement. Anyone can travel in France without administrative formalities of any kind and without being subject to any checks, irrespective of the extent of the travel and the purpose of the journey. The same is true when someone leaves his place of abode for good and settles somewhere else or, in other words, where there is a change of domicile. This principle of freedom is subject only to rare exceptions, which will be set out in connection with paragraph 3.

180. Movements of aliens within French territory are governed by special regulations laid down by the Decree of 30 June 1946, as amended by the Decree of 2 September 1994, concerning conditions for the entry and residence of

aliens in France. Aliens are free to move within French territory, subject to a declaration in the case of a change of domicile. In exceptional cases, in the light of the attitude or background of the persons in question, the Ministry of the Interior may order surveillance measures, exclusively in respect of aliens temporarily residing in France.

Paragraph 2

181. Controls are performed by the national authorities at frontier crossings. French nationals must be in possession of an identity card or passport if so required by the country of destination. No exit visa is required for French nationals leaving the national territory.

182. The right to leave national territory is one of the essential components of freedom of movement, which is a constitutional principle. However, the administrative authorities are empowered, subject to close supervision by the administrative court, to refuse to issue a passport, pursuant to general legislation, in six cases: (a) to people who owe money to the Inland Revenue; (b) to persons under judicial supervision; (c) to persons convicted of procuring; (d) to drug traffickers; (e) to persons given an unsuspended sentence of ordinary imprisonment and who have failed to serve their sentence, or to persons on parole, if they have not been issued with a travel permit by the visiting magistrate, and (f) to persons whose travel abroad is likely to jeopardize national security or public order.

183. Where aliens are concerned, departure from French territory may be monitored on grounds of national security. In principle, all aliens, whatever their type of residence permit, may leave the national territory. However, nationals of certain States - the list of which is determined by a decision of the Minister of the Interior - are required to inform the administrative authorities of their intention to leave France, although this does not constitute prior authorization (Act of 24 August 1993, art. 29).

Paragraph 3

184. Travel by non-sedentary persons is regulated by Act No. 69-3 of 3 January 1969 concerning the practice of itinerant activities and the regime applicable to persons travelling in France without a fixed home or address. This Act was framed along liberal lines and introduced noteworthy improvements to the previous regulations, which dated from 1912. Persons who exercise an itinerant activity and who have a fixed domicile in France have simply to sign a declaration, which is renewable periodically. Persons having no domicile or fixed abode must be in possession of a travel permit and must choose a commune for administrative purposes. This commune has certain effects relating to domicile.

185. The freedom of movement of accused persons under judicial supervision and of persons subject to restricted residence is subject to certain limitations because of their status under the Penal Code.

Paragraph 4

186. A French national may not be deprived of the right to enter (or return to) France. Only the loss of nationality, as provided for by the Act of 22 July 1993 amending the Code of Nationality, may have such consequences.

Loss of French nationality

(a) Loss of nationality on request

187. French nationals may lose French nationality at their request, in the following cases:

(i) A child who was not born in France and only one of whose parents is French (Civil Code, art. 18-1), or a child who was born in France, but only one of whose parents was himself born in France (Civil Code art. 19-4). In both cases, the child has the right to relinquish French citizenship in the 6 months preceding and the 12 months following his coming of age;

(ii) Persons of full age who are ordinarily resident abroad, who voluntarily acquire a foreign nationality and file a declaration with a view to loss of French nationality within not more than one year of the date on which the foreign nationality was acquired (Civil Code, art. 23). French males under 35 years of age may file this declaration only if they have complied with the military service requirements under the National Service Code or if they have been excused or exempted from them (Civil Code, art. 23-2);

(iii) French nationals, including minors, who have a foreign nationality may seek the authorization of the French Government to lose French citizenship. This authorization is granted by decree (Civil Code, art. 23-4);

(iv) The French spouse of an alien may relinquish French nationality if he or she has acquired the foreign nationality of his or her spouse and if the matrimonial residence is normally established abroad (Civil Code, art. 23-5).

(b) Loss of nationality through declaration by decree

188. A French national may be declared to have lost French nationality in the following cases:

(i) If he conducts himself, for practical purposes as the national of a foreign country and if he has the nationality of that country. The declaration will be made by a decree issued following confirmation by the Council of State (Civil Code, art. 23-7).

(ii) If, when holding a post in a foreign army or a foreign public service or in an international organization of which France is not a member or, in more general terms, when rendering assistance to them, he fails to resign from his post or desist in his assistance

despite having been ordered by the Government to do so. The person concerned will be declared, by a decree of the Council of State, to have lost his French nationality if, within the period set by the order, which may not be less than a fortnight or more than two months, he has not ceased his activity. Should the opinion of the Council of State be unfavourable, the measure may be taken only by a decree of the Council of Ministers (Civil Code, art. 23-8). Application of these provisions is exceptional.

(c) Loss of nationality by judgement

189. Loss of French nationality may be registered by a judgement when the person concerned, being of French origin by filiation, does not have the corresponding status and has never been ordinarily resident in France and if the progenitors from whom he derived French nationality themselves have neither possessed French status nor had their residence in France within the past half century (Civil Code, art. 23-6). Moreover, in such cases, the person concerned will not be allowed to adduce evidence that he has French nationality by filiation (Civil Code, art. 30-3).

(d) Deprivation of French nationality

190. A French national who has acquired French citizenship may be deprived of French nationality in the following circumstances:

(i) If he is convicted of an act constituting a crime or offence against the security of the State;

(ii) If he is convicted of an act constituting a crime or offence covered and penalized by Book IV, Title III, Chapter II of the Penal Code; this chapter penalizes, in particular, persons, who, while being vested with public authority and acting in their official capacity, commit acts prejudicial to the authorities, for example by abuse of office;

(iii) If he is convicted of evading his obligations under the National Service Code;

(iv) If he has committed acts incompatible with French citizenship and prejudicial to the interests of France for the benefit of a foreign State;

(v) If he has been convicted in France or abroad of an act constituting a crime under French law and sentenced to a penalty of at least 5 years' imprisonment (Civil Code, art. 25).

Loss of nationality will be declared by decree following confirmation by the Council of State. Application of this provision is also highly exceptional and subject to very strict time limits.

191. Pursuant to the Council of Europe Convention on Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality, which entered into force for France on 27 February 1965, French

nationals who are of full age and who acquire of their own free will, by means of naturalization, option or recovery, the nationality of another contracting party, lose their former nationality. They may not be authorized to retain their former nationality.

Article 13

192. The expulsion of an alien legally residing in France may be ordered when his presence constitutes a "serious threat to public order". The expulsion procedure is governed by the Ordinance of 2 November 1945, most recently amended by the Acts of 24 August and 30 December 1993. Expulsion is ordered by the Minister of the Interior and, in the overseas departments and territories, by the representative of the State. The law provides for a normal expulsion procedure and an emergency procedure.

1. Normal expulsion procedure

193. Administrative case law has defined the concept of "a threat to public order" as being the result of the alien's personal and usual behaviour. It is, moreover, neither necessary nor sufficient for the alien to have been convicted on a criminal charge for an expulsion measure to be justified. Expulsion may be ordered only on the advice of a committee composed of three judges. An alien against whom an expulsion order has been issued is called before the committee to present his case. The proceedings of the committee are open to the public and the person concerned may be assisted by a lawyer, or by any other person of his choice, and by an interpreter.

194. Certain categories of persons may not be expelled:

(a) Aliens aged under 18;

(b) Aliens married for at least one year, whose spouse is of French nationality, provided they have not ceased to live together and that the French spouse has retained his or her French nationality;

(c) Aliens who are the father or mother of a French child residing in France, provided they exercise parental authority, or partial parental authority, over the child or support it;

(d) Aliens who can prove that they have been ordinarily resident in France since the age of 6;

(e) Aliens receiving an industrial accident or illness allowance from a French agency and whose level of permanent incapacity is equal to or higher than 20 per cent;

(f) Aliens who can prove by any means that they have been habitually resident in France for more than 15 years, and aliens who have been regularly resident in France for more than 10 years, unless, during this period, they have been issued with a temporary residence card showing them to be students;

(g) Aliens regularly residing in France on the strength of one of the residence permits provided for by the Ordinance of 2 November 1945 or

international conventions, who have not been sentenced to a final unsuspended sentence of at least one year's ordinary imprisonment. However, aliens who have been given a final unsuspended sentence of any length for an offence covered or penalized by article 21 of the Ordinance of 2 November 1945, articles 4 and 8 of Act No. 73-548 of 23 June 1973, articles L 362-3, L 364-2-1, L 364-3 and L 364-5 of the Labour Code or articles 225-5, 225-6, 225-7 and 225-10 of the Penal Code may be expelled.

Finally, it should be emphasized that the aliens referred to in paragraphs (b), (c), (d) and (f) above, may be expelled if they have been given a final prison sentence of at least five years.

2. Emergency procedure

195. In time of emergency, expulsion may be ordered without any prior consultative procedure. Moreover, in cases of overriding necessity for State or public security, expulsion of all categories of aliens, with the exception of minors under the age of 18, may be ordered. Lastly, in time of emergency and of overriding necessity for State or public security, expulsion may be ordered, without any prior consultative procedure, against any category of aliens, with the exception of minors. As is the case with all administrative decisions, an expulsion order may be appealed in an administrative court within a period of two months. A stay of proceedings may be requested.

196. An alien who is unable to leave French territory immediately may, if necessary, be kept in premises not within the jurisdiction of the prison authorities, in accordance with an administrative decision explaining the grounds for such an arrangement and under judicial supervision. During this period, which may not exceed nine days in all, the person concerned may request the assistance of an interpreter, a doctor, and counsel, and may, if he so wishes, communicate with his consulate and with a person of his own choosing.

197. If an alien establishes that he is unable either to return to his country of origin or to go to any other country, he may be required to reside in a specific place, where he must report periodically to the police or the gendarmerie until a country of reception can be found for him.

198. An alien against whom an expulsion order has been issued may not return to France until the order is rescinded. An application to have an expulsion order rescinded after a period of five years from the date of its implementation may be rejected only on the advice of the committee, before which the person concerned may be represented.

Reservation to article 13

199. France has made a reservation to article 13 of the Covenant in respect, in particular, of the regulations applicable overseas, since geographical remoteness and the resulting special public safety problems have led, as is explained above, to government representatives in such regions being vested with some of the powers exercised in metropolitan France by the Minister.

Article 14

Paragraph 1

200. The principle of equality is affirmed several times in the Declaration of the Rights of Man and of Citizens of 1789. Article 6 provides that the law "should be the same for all, whether it protects or whether it punishes". The same principle is affirmed in article 2 of the French Constitution.

201. Any person subject to French jurisdiction is thus entitled to present his case before the competent court, either in person or through a representative. A minor must be represented by his legal guardian. Adults may be placed under the protection of the court when their mental or bodily faculties are affected by illness, infirmity or weakness due to old age. Where one of these causes, while not preventing them from acting on their own behalf, makes it necessary for them to be advised or supervised in the conduct of their civil affairs, they may be placed under a system of guardianship.

202. Foreign minors enjoy the same rights and guarantees as all other minors residing on French territory. They may therefore benefit from court protection (educational welfare procedure), the goal of which is to protect children in danger and to solve the difficulties which hinder their normal development. This procedure, which takes place before a juvenile judge, is not intended to permanently arrange for a minor to live away from his family. It is flexible enough to allow the measures taken to be amended at any time, depending on circumstances and the child's development. The juvenile judge should nevertheless endeavour to secure the family's acceptance of the measure he intends. Various procedural guarantees are recognized vis-à-vis the minor and his parents.

203. Specific actions with regard to foreign minors have been taken by the external services for the legal protection of young people, together with the representatives of the French education system. For example, in several places, it has been possible, as part of municipal policy, to programme a special class for young gypsies in vocational schools and major efforts are being made to combat illiteracy effectively and encourage the integration of these young people into the school system.

204. All persons, even if not of French nationality, are entitled to appear before a court when they have suffered an infringement of their civil rights. When a person brings his case before a civil court or when he is to be tried by a criminal court, he must follow the procedures laid down to ensure the "proper administration of justice". These procedures are designed to ensure the fairness of the trial and the impartiality of the court.

205. Civil and criminal cases are tried by courts instituted by the State. In France, the creation of new types of court is within the competence of the legislature (Constitution, art. 34). Civil courts try private suits between individuals; criminal courts try criminal cases between the State and a person who, by his offence, has disturbed the social order.

206. All courts of the judiciary obey common rules in judging cases:

(a) The decision is usually pronounced by several persons (rule of collegiality);

(b) The same case, whether civil or criminal, may as a general rule be considered by two courts of different levels in succession (rule of the dual level of jurisdiction). This rule is discussed further in the comments on paragraph 5 of article 14 (see paras. 250-252 below);

(c) All decisions pronounced as final may be appealed on grounds of error before the Court of Cassation.

207. In criminal cases, the independence and impartiality of the court are guaranteed by the separation of the functions of prosecution and sentencing. The function of sentencing belongs exclusively to the criminal courts (police court, correctional court, Assize Court). The prosecution of the person who has committed the offence is entrusted to the Attorney-General, represented by the Public Prosecutor, who directs the activity of the judicial police officers responsible for the criminal investigation. In some cases (criminal procedures or procedures involving a minor), an examining magistrate must be appointed. In other cases, it is the Public Prosecutor who judges whether the nature of the acts requires preliminary proceedings to be initiated by an examining magistrate. In any case, a complainant may always file a claim for criminal indemnification with the senior examining magistrate and thus ensure the initiation of preliminary proceedings.

1. Independence of the judiciary

208. Article 64 of the Constitution of 4 October 1958 states the principle of the independence of the judiciary, of which the President of the Republic, assisted by the Judicature Council, is the guarantor.

209. In the case of trial judges, this independence is ensured by the rule of irremovability: no judge may be given a new assignment, even if it means a promotion, without his consent. Government procurators are answerable to their direct superiors and come under the authority of the Minister of Justice. However, during hearings they may speak independently. Judges and procurators are appointed by decree of the President of the Republic.

210. The Judicature Council, established by the Constitution, is concerned in particular with the appointment of magistrates, and submits a proposal (in the case of the judges of the Court of Cassation, the first president of the Court of Appeal or the President of a High Court), on approval (in the case of the other judges) or a simple opinion (in the case of the government procurators, with the exception of the procurators-general) to the President of the Republic.

211. In principle, there is no time limit to the appointment of judges other than the age-limit, which, with some exceptions, is 65. However, the reporting judges of the Court of Cassation - who only take part in decisions

in cases on which they are required to report - are appointed for 10 years but can neither be renewed nor extended. At the end of this period, they receive another appointment in keeping with their wishes.

212. The Judicature Council is presided over by the President of the Republic; the Minister of Justice is vice-president ex officio and may replace the President of the Republic. It comprises two bodies, one with jurisdiction vis-à-vis trial judges and the other vis-à-vis government procurators.

213. Only the Minister of Justice may initiate disciplinary proceedings. The French Constitution of 4 October 1958, as amended by Constitutional Act No. 93-952 of 27 July 1993 lays down that disciplinary matters shall be dealt with by a single body whose membership varies, depending on whether a trial judge or a government procurator is involved. The adversary proceedings are conducted in camera.

214. The Judicature Council sits as the trial judges' disciplinary body. Its decisions may be appealed before the Council of State. When acting as the disciplinary body for the government procurators, the Judicature Council gives its opinion on the disciplinary measures to be taken. Appeals against the final decision, taken by the Minister of Justice, are heard by the Council of State.

215. As regards the recruitment of judges, the regulations for judges include the provision that candidates for the post of junior magistrate (the title given to trainee magistrates, who are in principle recruited by competitive examination, or in special cases on the basis of qualifications) should, inter alia, be of good moral standing.

2. Composition of an assize jury

216. French citizens of either sex who are over 23 years of age, can read and write in French, enjoy political, civil and family rights and do not come within any of the categories of disqualification or incompatibility laid down in the Code of Criminal Procedure (such as having been sentenced to certain penalties, holding specific public offices, etc.) can serve on a jury.

217. The assize jury is constituted by successive ballots:

(a) A first ballot is held annually, in public, by the mayors of the communes, on the basis of the electoral roll. After verification, persons drawn by lot who do not meet the requirements as to legal capacity are excluded.

(b) A second ballot, where every assize court sits, is held by a board composed, inter alia, of judges and local elected representatives who draw up an annual list of jurors, together with a special list of alternate jurors. Capacity to serve as a juror is again verified.

(c) A third ballot, at the opening of each session of the assizes, is held in open court to draw up the sessional list and the special list of alternate jurors for the session. This, too, is accompanied by a verification of legal capacity.

(d) A final ballot is held for each trial so as to select nine jurors. Both defence and prosecution have the power to challenge.

3. Public hearings

218. Hearings of criminal trial courts for adults are held in public and are, of course, open to the family of the defendant or the accused. The court may, however, order the hearing to be held in camera if it considers that a public hearing would be prejudicial to law and order or to morality. The decision is nonetheless always delivered in open court (Code of Criminal Procedure, art. 306). The presiding judge of the court can also forbid minors, or some of them, to enter the courtroom.

219. Hearings of the juvenile court and the juvenile assize court are held without the presence of the public, with the exception of close relatives. Decisions, however, are delivered in open court. Article 14 of the ordinance of 2 February 1945 concerning juvenile delinquents prohibits the publication of the report of the court proceedings in books, in the press, on the radio, in the cinema, or in any other form, and of all written texts or illustrations concerning the identity or personality of the juvenile delinquents. Thus the decision handed down at a public hearing may not be published unless the minor's name is carefully concealed.

Paragraph 2

220. The presumption of innocence is one of the basic principles of French penal procedure. It is one of the individual's basic rights. This principle is enshrined in article 9 of the Declaration of the Rights of Man and of the Citzen of 1789: “Every man is presumed innocent until he has been declared guilty”, for which the French Constitution affirms its support. An accused person must therefore be considered innocent and treated as such until proof of his guilt is established.

221. The purpose of Act No. 93-2 of 4 January 1993 was to provide further guarantees in that respect. It introduced an article 9-1 into the Civil Code, whereby “everyone has the right to presumption of his innocence” and provides for a specific judicial mechanism which any person who has not yet been tried but has been publicly charged with the acts under investigation may use. Such a person may apply to a judge, even as an interim measure to have a notice inserted in the pertinent publication, in order to put a stop to the infringement of the presumption of his innocence, without prejudice to the possibility of additional damages proceedings.

222. From this principle stems a theory of proof as protective of the rights of the accused. First, proof must be established by the plaintiff or, in other words, by the public prosecutor, and by any claimant for criminal indemnification; it is for the prosecution to establish the legal and material existence of the offence, as well as the participation in that offence by the person being prosecuted. Secondly, at the inquiry stage, the evidence must be sufficient; in other words, the examining magistrate must discover and assemble not only unfavourable evidence, but also evidence favourable to the accused. In addition, if the trial court considers the evidence insufficient, it may order further information to be provided.

223. The type of evidence admissible is subject to certain limitations which will be described below in the comments on paragraph 3 (sect. 7, paras. 242-244). The judge is entirely free in assessing the evidence submitted to him; the only criterion is his "innermost conviction". If it is considered that the evidence produced is insufficient and that some doubt persists, the accused or defendant must be given the benefit of the doubt and must be acquitted or released.

Paragraph 3

1. Informing the accused

224. It has already been stated in the comments on article 9 concerning security of persons how a person accused of a criminal offence is informed of the nature of, and the reasons for, the charge brought against him.

225. In addition, the Code of Criminal Procedure condemns the practice of bringing charges at a late stage, as when the examining magistrate hears as witnesses persons who may themselves have committed, or be accomplices to, the offence. The moment that there are serious indications of a person's guilt and there is a possibility that his being heard as a witness might deprive him of his rights as a defendant, the examining magistrate must no longer hear him as a witness but only as an accused and by examination (Code of Criminal Procedure, art. 105).

2. Preparation of the defence

226. During the investigation procedure, at the "first appearance", the examining magistrate ascertains the identity of the accused and expressly acquaints him with each of the acts attributed to him. If the accused has already requested the assistance of a lawyer and the lawyer has been duly called in, the examining magistrate may proceed to examine him. In the other cases, the magistrate advises the accused of his right to choose a lawyer or to have a lawyer appointed by the court. The lawyer may immediately consult the case-file and may communicate freely with the accused. The examining magistrate then notifies the person that he may only be examined immediately with his consent, given in the presence of his lawyer. If, however, he wishes to make a statement, the examining magistrate will take it immediately.

227. Every bar has a panel of lawyers and trainee lawyers. A duly and officially assigned lawyer cannot refuse to act without a valid excuse or reason. The lawyers' code of conduct stipulates that "any infringement of the law and regulations, any breach of professional rules, any lack of integrity or decorum even in the case of acts not connected with the profession" renders any lawyer committing them liable to disciplinary measures and even disbarment. Disciplinary proceedings are held before the Bar Council to which the lawyer in question is answerable, with appeal lying to the Court of Appeal. Disputes over lawyers' fees are referred successively to the President of the Bar, the President of the High Court and the First President of the Court of Appeal.

228. If irregularities are committed during the investigation, particularly if there has been a violation of a substantive rule such as the rights of

defence, measures of various kinds may be applicable: disciplinary, criminal, payment of damages and nullity (acts which are thus annulled must be removed from the record).

3. Deadline for judgement

229. The Code of Criminal Procedure lays down a number of time limits, particularly for pre-trial detention, with a view to expediting procedures. Congested courts may, however, be a cause of delay. The Act of 10 June 1983 thus introduced new procedures to replace “direct committal”, more particularly by “immediate appearance”, whereby a suspect can in straightforward cases be brought before the trial court without delay and, at the same time, protection of the rights of defence is strictly guaranteed.

4. Right of defence

230. The trial follows the adversary procedure and thus assumes the presence of the defendant or the accused. However, if the accused is being prosecuted for an offence for which the penalty is a fine or a term of imprisonment of less than two years, he may request to be tried in his absence, his lawyer then being heard in his place (Code of Criminal Procedure, art. 411). In the Assize Court, however, the presence of the accused is compulsory before the trial can proceed, unless he is to be tried in absentia (Code of Criminal Procedure, arts. 627 et seq.)

231. The adversary nature of the procedure implies, secondly, that the defendant or accused should be able to avail himself freely of his means of defence. As stated above (para. 226), during the first examination, the defendant or accused is notified by the examining magistrate that he must prepare his defence; he may, for example, request that a court-appointed counsel should be assigned to him.

232. Legal aid, introduced under the Act of 3 January 1972, as amended by the Act of 10 July 1991, is designed to enable natural persons with insufficient resources to assert their rights before the law. Those eligible for legal aid are natural persons of French nationality, nationals of the member States of the European Union, persons of foreign nationality residing usually and regularly in France and foreigners, for whom the conditions of residence have been waived, if they are minors (see below), witnesses assisted by counsel, or defendants, have been accused or convicted, or are claimants for damages in criminal proceedings.

233. The applicant must prove that his monthly resources amount to less than 4,400 francs in order to receive full legal aid and 6,600 francs to receive partial legal aid (these ceilings are reassessed annually under the Finance Act). Any person granted legal aid is also entitled to it in the event of appeal.

234. Legal aid is granted in contentious or non-contentious cases, to claimants or defendants before any court. A legally assisted person has the right to the assistance of a lawyer and to that of all the public and ministerial officers necessary to the proceedings.

235. The Act of 10 July 1991 further provides for more favourable conditions for minors:

(a) Legal aid is granted without conditions of residence in the case of foreign minors;

(b) Separate assessment is made of resources if there is a divergence between the interests of members of the household.

236. With regard to ordinary offences, the above-mentioned decree allows the Bar to conclude protocols with courts of major jurisdiction, whereby, in consideration of stated objectives and assessment procedures, fees paid to barristers by the State are increased. These provisions may be implemented in respect of minors.

237. The Act of 8 January 1993 amending the Civil Code established the principle, in accordance with article 12 of the Convention on the Rights of the Child, of the right of minors to be heard in any procedure concerning them and to be accompanied, if necessary, by a lawyer or person of their choice (Civil Code, art. 388-1). In order to ensure the implementation of this provision, this Act also introduced an article 9-1 into the Act on legal aid of 10 July 1991 extending its effect to the minor and his lawyer.

238. New article 388-2 of the Civil Code also introduces a protective provision, empowering magistrates in general to designate an ad hoc statutory administrator for a minor whose interests conflict with those of his legal representatives. The new provision thus expands the scope for action provided for in the Act of 10 July 1989 concerning the prevention of ill-treatment and allowing the examining magistrate to designate an ad hoc statutory administrator in all sexual abuse proceedings when the interests of the minor and the persons holding parental authority are in conflict.

239. A decree of 15 February 1995 concerning advocacy fees and the equivalent contribution, supplemented by two orders, allows for better remuneration of the lawyers acting in the various procedures involving minors. Major progress has thus been achieved in the last seven years where the defence of minors is concerned.

5. Witnesses

240. Article 281 of the Code of Criminal Procedure does not limit the number of persons whom the accused can ask to be summoned as witnesses before the Assize Court. In principle, the cost of summoning witnesses at the request of the accused is borne by him; but it is customary, and indeed the Act expressly so provides, for the public prosecutor to summon witnesses who are indicated by the accused and whose statements may be useful in arriving at the truth. Under the Act, the public prosecutor is required to notify the accused, at least 24 hours before the hearing, of the list of persons he wishes to call as witnesses. It also requires the accused to notify the public prosecutor of his own list within the same period.

6. Interpreters

241. Every Court of Appeal keeps a list of experts, including a list of interpreters. Any persons not on the Court of Appeal list may be appointed as an interpreter by a criminal court, provided he is at least 21 years of age and takes the oath. Interpreters' fees come within the category of legal costs.

7. Confession

242. A confession may be obtained in the course of an examination, which must of course, always remain within the bounds of legality. However, an accused has the right not to reply to the questions that are put to him. Brutal or inhuman and degrading treatment is punishable by law. In addition, the law condemns any action by a police officer which might constitute dishonesty or provocation.

243. A confession by a suspect does not necessarily mean that he will be charged by the examining magistrate or convicted by a criminal court. A suspect can be charged only if, in the light of all the facts available to the examining magistrate, there is sufficient evidence against him. Moreover, in keeping with the principle of innermost conviction, a confession is always a matter for the discretion of the trial court.

244. With regard to telephone tapping, articles 100 to 100-7 of the Code of Criminal Procedure - which derive from the Act of 10 July 1991 - determine under what conditions the interception, recording and transcription of electronically transmitted information may be allowed in legal proceedings. Such measures may only be ordered by an examining magistrate for a renewable period of not more than four months, when the need for the information makes it necessary, both for serious and for ordinary offences for which the penalty is two years' imprisonment or more.

Paragraph 4

245. French law takes account of the personal status of the offender in designating the respective areas of jurisdiction of the ordinary law courts and specialist courts. Thus persons who are under 18 on the day on which the offence was committed are tried by special courts for minors. Juvenile law is based on two main principles: juvenile judges are specialized magistrates and the decisions they take in the context of criminal proceedings must, in all cases, ensure that education takes precedence over penalties, which may only be imposed exceptionally.

246. During the inquiry, the examining magistrate and the judge of the juvenile court have special powers to take into custody offenders who are minors without resorting to imprisonment: the judge may issue a provisional placement order. A minor under 13 years of age may not be the subject of a criminal sentence, but only of a protection, education, supervision or care order. However, a minor who is 13 years of age and is found guilty of a minor offence in one of the first four categories of minor offences may simply receive an “admonishment”. A preparatory investigation is compulsory in the case of offences committed by minors under 18 years of age.

247. Juvenile courts, which try persons under 18 accused of misdemeanours and class 5 offences, and persons under 16 accused of crimes, are presided over by the juvenile court judge. He is appointed by decree and is assisted by two advisers over 30 years of age, of French nationality, who are known for their interest in children's cases (Judicial Organization Code, art. L.522-3).

248. The Assize Court for Minors is competent to deal with crimes committed by minors of 16 to 18; it is presided over by a court judge who has as assessors two juvenile court judges attached to the Court of Appeal.

249. In these two courts, the rule of open public proceedings is subject to restrictions: the only persons allowed to be present at the hearings are the minor's relatives, his guardian or legal representatives, members of the Bar, representatives of child-welfare societies, delegates representing the judicial surveillance authorities and child-care institutions. In addition, as stated above, the publication of information concerning cases of minors is prohibited.

Paragraph 5

250. As indicated above (para. 206), the rule of the dual level of jurisdiction is the one which is most often applicable in French law. Thus, a person who is found guilty by a police court or a court of summary jurisdiction may appeal against the sentence before a second court: the chamber of summary jurisdiction appeals. In addition, decisions by the police court, the judge of the juvenile court or the juvenile court itself concerning a person under 18 may be appealed before the special chamber of the Court of Appeal.

251. An appeal has the effect of staying enforcement of a criminal sentence. If, however, the accused is being held in custody when he is brought before the court, he remains in custody, despite the appeal, if the court, in its decision, expressly orders that he should continue to be detained. Any final decision pronounced in a case is subject to appeal. The Court of Cassation decides whether the decision is in full conformity with the law without re-opening the trial.

252. On this point, France has made an interpretative declaration to the effect that the law may provide for limited exceptions to the general principle set out in this article. This is true, for example, of offences which come wholly within the competence of the police courts for decision. The same is true at the present time of offences of a criminal nature, but in this case, convictions by final decision can be appealed before the Court of Cassation.

Paragraph 6

253. A criminal court may not reverse a decision it has delivered (except in the case of a judgement by default in connection with which the convicted person has applied for a re-hearing).

254. Application for review of a criminal or correctional trial may be made in various cases listed in article 622 of the Code of Criminal Procedure:

(a) in the case of a conviction for homicide: proof of the existence of the alleged victim;

(b) conflicting decisions;

(c) perjury;

(d) in general, any new element that raises doubt about the guilt of the convicted person.

Applications for review are considered by the Court of Cassation.

255. A finding of judicial error entails the annulment of the criminal conviction and may be accompanied by an award of financial compensation payable by the State and the publication of the order or review judgement. The State may seek redress against the claimant for indemnification, informer or perjurer whose wrongful act has led to sentence being passed (Code of Criminal Procedure, art. 626, as amended by the Acts of 23 June 1989 and 4 January 1993).

256. On the other hand, free pardon gives exemption from the execution of the sentence, but the offence and the conviction still stand.

Paragraph 7

257. A decision which has the authority of res judicata may not be challenged by appeal. In the event of conviction, the trial may not be reopened: the person regarding whom the decision has been taken may not be prosecuted a second time for the same act. In the event of acquittal, the accused may not be arrested or accused for the same acts, even under a different legal definition. This is a public order regulation which may be invoked whatever the circumstances.

Reservation concerning article 14

258. As has been stated in the commentary on article 9 (see para. 137), France has entered a reservation to the effect that this article cannot constitute an obstacle to the application of regulations governing discipline in the armed forces.

Article 15

259. Article 4 of the Penal Code establishes the principle of the non-retroactivity of criminal law. This principle has two consequences:

(a) Retention of the old law if the new law is more severe. Thus, in cases where a new law creates an offence, this law is considered more severe and no one will be convicted for an act which would be an offence under it if the act was committed before the law entered into force. However, the new

criminal law, even if it is more severe, will be applied if it is an interpretative law or if it alters the effects of a criminal conviction;

(b) Immediate application of a new, less severe law.

260. France has completely modified the provisions of its criminal law and criminal procedure. Four Acts of 22 July 1992, an Act of 16 December 1992 and an Act of 19 July 1993 repealed the old Penal Code of 1810 and a new Code was instituted, enforceable as from 1 March 1994. The Acts of 4 January and 24 August 1993, for their part, substantially reformed criminal procedure, and endeavour to ensure a new balance between prosecution and defence by providing a more level playing field. In order to ease the transition from one Code to the other, the Minister of Justice issued judges with a concordance showing for each offence whether the new articles contain less severe or more severe provisions than earlier texts.

Article 16

261. The Civil Code establishes that all French citizens are entitled to the enjoyment of civil rights (art. 3). A person loses his civil rights only on losing his French nationality or in the event of a serious criminal conviction under article 42 of the Penal Code. Civil death was abolished by the Act of 31 May 1854. A criminal conviction no longer carries this extreme penalty.

Article 17

Paragraph 1

262. Several pieces of legislation guarantee the rights covered by this article.

1. Protection of privacy

263. Act No. 70-643 of 17 July 1970, which reinforces the guarantee of the individual rights of citizens, contains a section on the “protection of privacy”; in this section the legislature has established a mechanism for the civil and criminal protection of the right to privacy, including the right to respect for family life. Breaches of this Act are punishable by the civil courts (Civil Code, art. 9), which may award compensation to victims of such breaches and order any measures such as sequestration, seizure, etc., to prevent or put an end to an invasion of privacy. In urgent cases, these measures may be ordered by the interim relief judge.

264. As has already been said, article 9.1 of the Civil Code deriving from the Act of 4 January 1993 allows any person publicly accused, but not convicted, of acts subject to judicial inquiry, to request the interim relief judge to order a notice to be issued to put an end to the infringement of the presumption of his innocence.

265. The law provides penal sanctions against breaches which may consist of listening to or recording the speech or image of a person “in a private place” without consent or, of using or circulating documents so obtained (new Penal Code, arts. 226-1 and 226-2). This legislation contains regulations

covering all categories of apparatus or equipment which can be used for the publication of recordings, documents or photographs constituting an invasion of privacy.

266. In addition to establishing penalties for the manufacture or unlawful use of telephone-tapping equipment, Act. No. 91-646 of 10 July 1991 also specifies under what conditions the public authorities may intercept telephone calls and provides for extremely stringent controls. In addition to telephone-tapping ordered by the judicial authorities, in exceptional circumstances, "security" taps may be ordered, in a written and substantiated decision by the Prime Minister, or one of the two people specifically delegated by him, in order to obtain national security information, protect the essential aspects of France's scientific and economic potential, or prevent terrorism, crime or delinquency.

267. Telephone-tapping under this heading is monitored by a national commission, which is an independent administrative authority. Any decision concerning telephone-tapping taken by the Prime Minister or his representatives is communicated to it. Should the commission consider that a security tap has been authorized in breach of the law, it recommends to the Prime Minister that it should be discontinued. The Prime Minister immediately informs the commission of the action taken on its recommendations. The commission may also monitor any security tap on its own initiative or at the request of any person with a direct or personal interest. The commission reports annually to the Prime Minister on the conditions under which it has been operating and the results of its action. This report is published. It also submits to the Prime Minister at any time any comments it deems useful.

268. Under Act No. 95-73 of 21 January 1995 on security policy and programming, any interested person may apply to the person in charge of a camera-operated surveillance system, the presence of which must be clearly indicated to the public, in order to obtain access to recordings concerning him or in order to verify that they have been destroyed within a maximum period of a month, as required by the law.

2. Freedom of the home

269. Freedom of the home implies freedom to choose, change and use that home. This rule is valid both for a person's main place of residence and for the place where he is actually living, even if only on a temporary basis. The protection of the law implies first of all that entering a home without the consent of the person occupying it is prohibited. Intrusion by a private individual is punishable as the offence of unlawful entry (new Penal Code, art. 226-4). Article 432-8 of the Penal Code also protects the freedom of the home against possible abuse by public authorities; searches and seizure are strictly regulated. Secondly, use of the home is unrestricted, subject to the observance of the health and local planning regulations, and provided that public order, safety and peace are not disturbed.

3. Freedom of correspondence

270. Freedom of correspondence is derived from article 11 of the Declaration of the Rights of Man and of the Citzen of 1789. The 1970 Act requires that

the contents of a letter should be known only to the person to whom it is addressed. In addition, the principle of the inviolability of correspondence is defined in article L.41 of the Code of Posts and Telecommunications. The violation of this freedom is punishable by penal sanctions, whether the offence is committed by a public official (new Penal Code, art. 432-9) or by a private individual (new Penal Code, art. 226-15).

271. Seizure of correspondence may nevertheless be ordered by the examining magistrate, if it is thought useful in establishing the truth in the course of an inquiry into a case. In the same way, the correspondence of prisoners is subject to inspection by the prison governor, with the exception of letters exchanged between a prisoner and his lawyer. Lastly, a state of war authorizes the reintroduction of censorship in the interests of national defence.

4. Use of computer files

272. The protection of the law has also been extended to new areas which involve considerable risk of invasion of privacy, namely, the use of individual computer files by Government departments and large private firms, with the danger that possible interconnection between them might pose to individual freedoms.

273. The Act of 6 January 1978 assigns a specific area to electronic data processing, namely, “service to every citizen”. It is aimed essentially at computer files containing information on individuals. The establishment of such files must, depending on their origin, either be submitted for approval to the National Commission on Electronic Data Processing and Freedoms or simply be brought to its notice.

274. The Act prohibits the compiling of information on ethnic origins, on political, religious or philosophical opinions or beliefs and on membership of trade unions. With regard to the use of files, the Act also prohibits the use of computerized information as grounds for legal decisions implying the assessment of human behaviour. The Act provides one guarantee: the persons concerned have the right to know about and to challenge any personal information held about them. In addition, the Commission has a general power of inquiry: it receives complaints, investigates them, and where appropriate, refers them to the public prosecutor (see the core document, HRI/CORE/Add.17/Rev.1, paras. 114 and 115).

275. The Act of 1 July 1994 complements the Act of 6 January 1978, by including provisions concerning automatic processing of personal data for the purpose of health research. It furthermore establishes an advisory committee on data processing in health research to give an opinion on every data-processing application.

5. Protection of minors

276. Minors are protected by special legislation. The dissemination of particulars of the private life of a minor (photos, film or information) is subject to the written authorization of the persons exercising parental authority, who are legally responsible for protecting the child (Civil Code,

art. 371-2) and representing him in all acts of civil life (Civil Code, art. 389-3). The new Penal Code (art. 227-23) punishes the act of taking, recording or transmitting the image of a minor if it has a pornographic content.

277. Article 39 bis of the Freedom of the Press Act of 29 July 1881 makes it an offence, in the interests of minors, to publish any text or illustration concerning the identity and personality of minors under 18 years of age who have left their parents, guardian, or the person or institution responsible for them or to whom or to which they had been entrusted, unless such publication has been requested in writing by the persons responsible for the minor.

Paragraph 2

278. As indicated in the preceding section, the legal provisions relating to breaches of privacy are protective provisions applying to everyone, without discrimination.

Article 18

1. Freedom of thought

Paragraph 1

279. The right to freedom of thought, conscience and religion has been repeatedly reaffirmed by the basic texts of the Republic since 1789:

(a) Article X of the Declaration of 1789 reads: “No man ought to be molested on account of his opinions, not even on account of his religious opinions, provided his manifestation of them does not disturb public order”, while article XI reads: “The unrestrained communication of thoughts and opinions is one of the most precious rights of man.”

(b) In the labour field, the Preamble to the Constitution of 1946 proclaims the right to freedom of thought: “No one may suffer in his work or his employment because of his opinions or his beliefs.” Pursuant to article 6 of Act No. 83-634 of 13 July 1983, on the rights and obligations of public officials, no distinction may be made between public officials on the grounds of their trade-union, philosophical or religious beliefs.

280. The French State respects, guarantees and encourages freedom of thought:

(a) The Act of 6 January 1978 prohibits the inclusion in files of any information regarding religious, political, philosophical or trade-union opinions (see comments on art. 17 above).

(b) Act No. 72-546 of 1 July 1972 on action to combat racism is part of the regulations governing the right to freedom of thought, conscience and religion (see comments on art. 2 above).

2. Freedom of religion

281. The principle of religious freedom is reaffirmed in article 2 of the Constitution of 4 October 1958: "France shall be a Republic, indivisible, secular, democratic and social. It shall ensure the equality of all citizens before the law without distinction as to origin, race or religion. It shall respect all beliefs."

282. The Act of 9 December 1905 on the separation of Church and State provides that: "The Republic shall ensure freedom of conscience. It shall guarantee the free practice of religion, subject only to restrictions imposed in the interests of public order." According to article 2 of this Act, "the Republic does not recognize, remunerate or subsidize any religion". However, any expenses pertaining to chaplaincy services and intended to ensure the free practice of religion in public establishments such as secondary schools, primary schools, hospices, shelters and prisons may come under the budget of the State, department or commune.

Paragraph 2

283. The purpose of the regulations in force is precisely to enable each individual freely to adopt a belief or religion of his choice. The law ensures that, in all aspects of his public and private life, the individual is protected against any pressure or discrimination arising out of his beliefs or religion.

284. In line with the principles referred to in the comments on paragraph 1, Act No. 83-634 of 13 July 1983 on the rights and obligations of public officials specifies that no record may be made in the file on a public official, or in any administrative document, of his political, trade-union, religious or philosophical opinions or activities.

Paragraph 3

285. The free practice of religion is protected by article 1 of the Act of 9 December 1905, as supplemented by the Act of 28 March 1907. Such practice may be undertaken either by cultural associations or at meetings convened by individuals. Religious groups organize themselves freely and the authorities must limit themselves simply to noting the internal rules they impose on themselves but may not contest or amend them. If differences arise between representatives of a religion, only the representative who is in agreement with the hierarchy by which he was invested is recognized by the authorities. The only instances - neither general nor absolute - in which the free practice of religion may be affected must, in accordance with case law, be based solely on the requirements of maintaining public order, the smooth functioning of public services or maintaining the freedom of conscience of others.

286. The Departments of Bas-Rhin, Haut-Rhin and Moselle constitute a special case. In these three Departments, the regulations governing religions are those that existed before the introduction of the Act of 9 December 1905 on the separation of Church and State; these regulations make a distinction between recognized and non-recognized religions:

(a) The recognized religions, of which there are four, are Catholicism, two Protestant sects (the Lutheran Church of the Augsburg Confession and the Reformed Church) and Judaism. They constitute public services and their ministers are remunerated by the State;

(b) The non-recognized religions, of which there are four, are Islam, the Orthodox Church, the religion of independent Protestant Churches not attached to the Augsburg Confession or the Reformed Church, and the religion of various sects.

287. In theory, an authorization is required to practise the latter religions, under the Decree of 18 March 1859, but that Decree has never been enforced. The followers of these religions form associations which acquire legal personality and legal capacity by being registered with the Records Office of the court of minor jurisdiction at the place where they are headquartered.

288. Article 61 of the local Civil Code provides that the administrative authorities may refuse to register an association having a religious (or political or socio-political) purpose. However, following the ruling handed down by the Strasbourg Administrative Court on 13 March 1979 and upheld on appeal by the Council of State sitting in its judicial capacity in the Decision of 4 July 1980, the administrative authorities can no longer refuse to register an association, particularly a religious association, “on grounds unconnected with the requirements of public order”.

289. Accordingly, in the three Departments of Bas-Rhin, Haut-Rhin and Moselle, there are no longer any restrictions on the right to practise non-recognized religions other than “those imposed in the interests of public order”; in practice, therefore, this right is guaranteed in the same way as the practice of all religions, within the context of the general system of the separation of Church and State.

Conscientious objection

290. The Act of 27 June 1983 amending the National Service Code has reorganized the conscientious objection regime. Its purpose is to abolish checks on the motives of those concerned and to simplify the formalities for submitting applications. Service by conscientious objectors becomes a form of national service, thus conferring greater rights, particularly with regard to access to the civil service. Conscientious objectors have the choice between military service in a non-armed unit and work of a general nature in a civilian unit.

291. In addition, special partly retroactive provisions benefit young persons who were in an irregular position before the reform became effective. Among the provisions of the Act of 9 January 1992 amending the National Service Code, the legislature has made the time-limits for filing applications more flexible, so that they can be admitted up to the 15th day of the month prior to the enlistment date.

Paragraph 4

292. The principle of freedom of education has constitutional authority. Although it does not appear either in the Declaration of 1789 or in the Preamble to the 1946 Constitution, the latter does in fact give constitutional status to the basic principles recognized by the laws of the Republic, including freedom of education (Constitutional Council, Decision No. 77-87 of 23 November 1977).

Article 19

Paragraph 2

293. Article XI of the Declaration of the Rights of Man and of the Citizen of 26 August 1789 proclaims the right to the unrestrained communication of thoughts and opinions. Where the press is concerned, the legal framework is essentially defined by the Act of 29 July 1881 and its several amendments. French law revolves around two basic concepts:

(a) Affirmation of the principle of freedom of the press, which excludes various preventive techniques, such as authorization to print, censorship and surety bonds;

(b) The establishment of a system for punishment which spells out press offences but rejects any offence based on one's opinion.

294. By way of introduction, Act No. 86-1067 of 30 September 1986, on freedom of communication, sets forth the principle that audio-visual communication is free (art. 1) and creates an independent administrative authority to guarantee the exercise of that freedom. One of the main functions of that organization is to preserve the pluralism of the media in assigning radio and television broadcast frequencies and in franchising cable services. The Constitutional Council has made pluralism of trends of thought and expression a constitutional objective.

Paragraph 3

295. Exceptions to the principle of freedom of expression are defined by law and justified as necessary in order to protect individual rights and safeguard society's overall interests.

1. Respect of the rights or reputations of others

296. The right to the respect of privacy is proclaimed in the Civil Code. Compensation may be awarded by civil courts for violations of this right, which constitutes an offence under the Penal Code.

297. The right to the respect of the presumption of innocence under article 9 of the 1789 Declaration of the Rights of Man and of the Citizen was reinforced by several provisions of the Act of 4 January 1993, aimed at enhancing protection against violations of this right by the media.

298. Any individual or legal entity has the right of reply in respect of the press (the amended Act of 29 July 1881, on freedom of the press) and audio-visual communications media (amended Act of 29 July 1982; Decree of 6 April 1987). This right compels the editors of the publications concerned to publish rebuttals, under penalty of criminal sanctions.

299. The victims of insinuations that might damage their honour or reputation and which are based on their origin or on their membership or non-membership of a specific ethnic group, nation, race or religion may authorize an anti-racist association to exercise their right of reply in the press or audio-visual media (Act of 13 July 1990, on the punishment of all racist, anti-semitic and xenophobic acts).

300. Insulting certain categories of public officials is an offence punishable under the Penal Code.

301. Specific offences are covered by the Act of 29 July 1881 on freedom of the press in order to protect the reputation of individuals or legal entities. This Act punishes defamation and libel, not only of living persons but also of the memory of the dead. The severest punishment is reserved for defamation and libel against constituent bodies, public authorities, members of parliament, ministers and government officials. The Act further penalizes libel against the President of the Republic, foreign Heads of State and Government and their diplomatic representatives.

2. Protection of national security, public order, public health and morals

302. The Act of 29 July 1881 on freedom of the press empowers the Minister of the Interior to prohibit the circulation, distribution and sale on French territory of foreign publications or publications from foreign sources that might disturb domestic public order.

303. An Act of 16 July 1949 on publications for young people, amended by Act No. 87-1157 of 31 December 1987, empowers the Minister of the Interior to take steps restricting the sale of French publications of any sort that represent a danger to youth because of their licentious or pornographic nature, or because of the amount of space devoted to crime, violence, racial discrimination or hatred, or incitement to drug use or trafficking. These publications may be barred from being sold to minors or displayed in public or from engaging in publicity.

304. Under the Act of 29 July 1881, direct incitement to commit any of the crimes and offences that endanger the basic interests of the nation as defined by the Penal Code (treason, espionage, other attacks on the institutions of the Republic or on its territorial integrity) is a punishable offence. The same Act makes direct incitement to the acts of terrorism defined by the Penal Code, as well as vindication of such acts, an offence.

305. The Act of 29 July 1881 also makes direct incitement, even when it has no consequences, to commit any of the following violations, an offence:

(a) Wilful endangerment of life, wilful attacks on the integrity of the person and sexual attacks, as defined by the Penal Code;

(b) Theft, extortion and wilful destruction, debasement and damage that endangers people, as defined by the Penal Code. Vindication of these crimes is also punishable.

306. The Public Health Code makes an offence of incitement to drug use or trafficking, even if such incitement has no consequences, and of the presentation of these crimes in a favourable light.

307. Since the enactment of Act No. 87-1133 of 31 December 1987, the Penal Code has treated incitement to suicide if such incitement results in suicide or attempted suicide as an offence.

308. The Act of 13 July 1990 penalizing all racist acts defined a new offence under the Act of 29 July 1881 on freedom of the press: that of disputing the existence of crimes against humanity, as defined by the Charter of the 1945 International Military Tribunal at Nuremberg.

Article 20

Paragraph 1

309. French law does not penalize propaganda for war as such. France has therefore made a declaration interpreting the text of this article: the word “war”, as it appears in article 20, paragraph 1, must be understood to mean a war that is contrary to international law. In any event, it is considered that French law in this regard is adequate.

310. France considers that self-defence is and will remain a right and a duty of States, as enshrined in Article 51 of the Charter of the United Nations. What is more, participation in any military action decided upon by the Security Council may become a duty incumbent upon France as a State Member of the Organization. France therefore believes that it was not the intention of the authors of the Covenant to jeopardize that right and that duty or to prohibit any activities in the field of information designed to promote national defence.

311. French law, which penalizes the vindication of war crimes, is in keeping with the intentions of article 20.

Paragraph 2

312. The Act of 29 July 1881 on freedom of the press made incitement to commit certain crimes or offences itself an offence. However, incitement to crimes or offences is punishable only if there have been consequences - that is, only if the crime or offence advocated has actually been committed and there is a direct connection between the two. As an exception to this rule, incitement is punishable, even if there are no consequences, in cases of rape, murder, looting, arson, theft, extortion, wilful destruction that endangers people, and crimes or offences against the basic interests of the State.

313. The Act of 1881 also makes the vindication of certain serious crimes, such as murder, looting, arson, rape and, since 1951, war crimes or collaboration with the enemy a punishable offence. Penalties for incitement to crimes and offences are greater when such incitement is carried out "for the purposes of anarchist propaganda" (Act of 28 July 1894).

314. Incitement to racial discrimination, hatred or violence was made an offence by the Act of 1 July 1972, which amended the Press Act of 29 July 1881. Defamation and racial insults constitute an offence under the Act of 1 July 1972.

315. Pursuant to the Act of 6 December 1993 on the safety at sporting events, bringing, wearing or displaying insignia, signs or symbols suggesting a racist or xenophobic ideology in a sports venue, while a sporting event is taking place or being publicly broadcast, constitutes an offence.

316. Incitement to and vindication of terrorism are punishable by five years' imprisonment and a fine of F 300,000 under an Act of 9 September 1986, which defines terrorism as being connected with an individual or collective attempt to disturb public order to a serious extent by means of intimidation or terror.

317. Act No. 87-1157 of 31 December 1987, which amended the Act of 29 July 1881, made vindication of crimes against humanity punishable. Under a Decree of 18 March 1988, the Penal Code makes it an offence to wear or display in public any uniform, insignia or emblem depicting the perpetrators of crimes against humanity. There is, however, no violation if these objects are worn or displayed for a film, spectacle or exhibition depicting historical events.

318. The Act of 13 July 1990 added an article 24 bis to the Act of 29 July 1881 on freedom of the press, which makes anyone who disputes the existence of crimes against humanity, as defined by article 6 of the Nuremberg Charter, liable to one year in prison and a F 300,000 fine. It also penalizes the authors of "revisionist" theses that deny the extermination of the Jews and the existence of the gas chambers.

319. The article establishing penalties for crimes against humanity, particularly genocide, was made a part of the new Penal Code on 1 March 1994, whereas previously this crime had constituted a separate offence, under Act No. 64-326 of 26 December 1964, which proclaimed the non-applicability of statutory limitations to crimes against humanity.

Article 21

320. Freedom of assembly is guaranteed by the Act of 30 June 1881. In French law, a meeting is distinguished from a gathering (by its intentional and organized nature), from a demonstration (by the fact that it is not held on the public highway), and from an association (by its temporary nature). Private meetings enjoy absolute freedom; they are not subject to special formalities of any kind. Public meetings - meetings which are open to all - are in principle free and are likewise not subject to administrative formalities of any kind.

321. The Act of 1881 lays down very limited rules for public meetings. The organizers must set up a “bureau” to maintain order and assume responsibility for the meeting. An administrative or judicial officer may attend the meeting and, in the event of any violence or disorder incompatible with the continuation of the meeting, dissolve the meeting at the bureau's request or on his own initiative. “Any speech contrary to public order and morals or containing incitement to an act constituting a crime or offence” is prohibited. In the event of a breach of this rule, the bureau becomes criminally liable.

322. Mayors and prefects are empowered to ban public meetings in cases where it is impossible to reconcile respect for freedom with the maintenance of public order, taking account, for example, of the strength of the police force available as compared with the foreseeable seriousness of the disturbances (regulations laid down in the Council of State Judgement of 13 May 1933 in the “Benjamin” case). The judge weighing the question of action ultra vires ascertains the existence of the material facts and satisfies himself that the banning measure is commensurate with the gravity of the danger to public order. If private meetings present an exceptionally serious threat to public order, they may be banned. However, this situation arises very rarely.

323. France has made a declaration to the effect that article 21 will be applied in accordance with article 11 of the European Convention on Human Rights, which does not prohibit legitimate restrictions on the exercise of such rights by members of the armed forces, the police or the Administration.

Article 22

Paragraph 1

1. Freedom of association

324. Freedom of association is guaranteed by the Act of 1 July 1901. The constitutional nature of this freedom was recognized by a Decision of the Constitutional Council dated 16 July 1971; it is one of the basic principles recognized by the laws of the Republic and solemnly reaffirmed by the Preamble to the Constitution.

325. Freedom to form an association is absolute. There are three categories of association: non-registered, registered and recognized as being in the public interest. The last two categories have legal personality and a declaration of association must have been lodged at the time of their formation. This declaration does not confer any supervisory powers on the authority receiving it. Recognition of an association’s being in the public interest is granted by decree, following a decision of the Council of State.

2. Trade-union freedom

326. Trade-union freedom is given constitutional status by the Preamble to the Constitution of 1946: “Everyone may defend his rights and interests by trade-union action and may join the trade union of his choice”. Trade-union freedom is governed by the Act of 21 March 1884. The formation of a trade union is unrestricted, but a trade union may not set itself any purpose other

than the defence of occupational interests. It may thus be created only within an occupation and have as its members only persons engaged in the occupational activities concerned. The trade union's statutes and the names of its officials must be registered at the town hall.

327. All wage-earners are free to join or not to join the trade union of their choice and to withdraw from it if they so wish. The Act of 27 April 1956 prohibits employers from taking any account of trade-union membership when hiring workers.

328. The Act of 27 December 1968 recognizes the existence of a trade-union branch in all firms employing more than 50 wage-earners. The Act of 9 June 1992 authorizes dockers, who relied solely on (intermittent) employment agencies, to join cargo handling firms as full-time employees; in this manner they are covered by general labour legislation.

329. The Act of 21 March 1884 conferred upon workers in private enterprises the right to form trade unions, but excluded State officials. However, trade unions of civil servants, such as post-office employees and school teachers, have been in existence since the beginning of the twentieth century. In acknowledgement of this, the first set of general regulations on public officials, of 19 October 1946, expressly conferred upon civil servants, including members of the police force, the right to form trade unions, in terms that were reproduced by the Order of 4 February 1959 and then by the Act of 13 July 1983. The latter instrument adds that “the trade unions of public officials are entitled to engage in negotiations with the Government at the national level prior to the determination of changes in remuneration and to discuss with the authorities responsible for management, at the various levels, matters relating to the conditions and organization of work”. Military personnel, however, are not entitled to form trade unions.

330. The conditions governing the exercise of the right of public officials to form trade unions were set forth in a directive by the Prime Minister dated 14 September 1970 and, subsequently, in the Decree of 28 May 1982. In particular, the Decree confers upon any Government servant wishing to do so the right to attend a trade-union information meeting in administrative buildings for one hour a month during working hours. It also allows trade-union representatives time off for their trade-union functions. As concerns employers' associations, case law has evolved and now, like workers' organizations, they are entitled to exercise before any court all the rights accorded to civil parties with respect to acts that damage the collective interests they represent - including through interlocutory proceedings. Case law thus questions the distinction between occupational interests that serve a social purpose, which are defended exclusively by employees' trade unions, and occupational interests that serve an economic purpose, which are defended by employers’ associations. The full scope of trade-union action is thus provided for.

Paragraph 2

331. The Act of 1901 renders null and void associations having a cause or objective which is unlawful or contrary to the law or public morals or proposing to attack the integrity of the national territory or the republican

form of government. In such cases, the civil courts have the power to render the articles of association null and void and dissolve the association. Certain categories of association may, however, be subject to a less liberal regime.

1. Religious communities

332. Religious communities are governed by the amended Act of 1 July 1901. They may be freely formed, but must be legally recognized by a decree issued after approval by the Council of State. Such recognition confers upon them legal personality, which enables them to receive, acquire and dispose of property. Some acts, however, are forbidden to them or require administrative authorization (the acquisition whether by gift or for valuable consideration of real estate and transferable securities, the alienation of real estate and transferable securities, loans, exchanges and settlements). Religious communities that are not recognized have no existence in law, but they do have a de facto existence. Religious communities can be dissolved by a decision of the authorities, voluntarily or through extinction. Their dissolution is announced by decree issued after approval by the Council of State.

2. Foreign associations

333. Since promulgation of the Act of 9 October 1981, in contrast to the situation that previously applied, foreign associations in France enjoy the same rights and are subject to the same obligations as French associations.

3. Combat forces and private militias

334. There is one last category of association whose rights are restricted by the Act of 10 January 1936 on combat forces and private militias, namely, associations which incite to armed demonstrations in the streets, which are organized as combat forces or whose purpose is to attack by force national unity or the republican form of government. The same applies to associations which advocate collaboration with the enemy. The dissolution of such associations is pronounced by order of the Council of Ministers. Keeping such an association in being or recreating it in another form is a criminal offence. However, the administrative court may verify whether the association that has been dissolved was in fact of a nature such as to warrant the penalty of dissolution.

335. The Act of 1 July 1972 extended these provisions to cover associations which incite to discrimination, hatred or violence against a person or group of persons on the grounds of their origin or of their membership or non-membership of a specific ethnic group, nation, race or religion or which propagate ideas or theories tending to vindicate or encourage such discrimination, hatred or violence.

336. Article 7 of Act No. 86-1020 of 9 September 1986 on action to combat terrorism and attacks on the security of the State also supplements article 1 of the Act of 10 January 1936 to make it possible to dissolve associations or de facto groupings which “engage, on French territory or from such territory, in machinations designed to instigate acts of terrorism in France or abroad”.

Paragraph 3

337. France is a party to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organise. It is thus bound by the obligations arising from that Convention and cannot prejudice them by legislative measures.

338. With regard to article 22 of the Covenant, France has made a declaration which has been referred to in the comments on articles 19 and 21 and under which the article will be applied in accordance with articles 11 and 16 of the European Convention on Human Rights.

Article 23

Paragraph 1

339. Protection of the family by the State is guaranteed in the Preamble to the Constitution of 27 October 1946: "The nation ensures to the individual and the family the conditions necessary to their development". French legislation favours the family by granting various advantages and social benefits (family allowances, tax deductions, fare reductions, etc.).

Paragraph 2

340. The right of men over 18 years of age and of women over 15 years of age to marry and to found a family is recognized (art. 144 of the Civil Code). However, the Act of 23 December 1970 provides that the government procurator at the place where the marriage is celebrated may waive the age-limit if serious reasons warrant it.

Paragraph 3

1. Conditions for the validity of a marriage

341. The consent of the spouses is necessary for a marriage contract (art. 146 of the Civil Code). The spouses themselves must appear in person before the civil registrar. Consent to the marriage must be completely free and the spouses must be at liberty to change their minds up to the last moment. The only exception is that the President of the Republic may for grave reasons authorize the celebration of the marriage if one of the future spouses has died after completing official formalities which indicate his or her unequivocal consent (art. 171 of the Civil Code).

2. The nullities of marriage

342. The distinction between the relative and absolute nullities of marriage determines which persons can bring an action for annulment:

(a) In the case of relative nullity (lack of free consent, lack of parental consent in the case of minors), only the injured spouse or the parents whose consent was lacking can bring an action to annul the marriage;

(b) In the case of absolute nullity (marriage not performed by a competent registrar, one of the spouses below the legal age for marriage), an action to annul the marriage can be brought either by the spouses themselves or by any person who has an interest in the matter or by the public prosecutor.

This distinction is of no consequence as regards the effects of nullity, which are the same whoever has brought the action for annulment.

343. Under article 175-2 of the Civil Code, amended by the Act of 30 December 1993 containing provisions relating to immigration control,

> "A registrar may refer a case to the Attorney-General of the Republic when there are serious reasons to believe that the marriage in question is likely to be annulled for lack of consent. The individuals concerned are so informed. The Attorney-General of the Republic must, within a 15-day period, enter an objection to the marriage or decide that the marriage shall be postponed. The individuals concerned and the registrar are informed of his reasoned decision. The postponement may not exceed one month's duration. The marriage may not be celebrated until the Attorney-General of the Republic has made known his decision to allow the marriage to take place, or if he has not entered an objection to the said marriage by the time one month has expired.
>
> The decision of the Attorney-General of the Republic may be challenged by either of the future spouses, even if he or she is a minor, by appeal to the president of the district court of major jurisdiction, who shall rule within a 10-day period. The decision of the president of the district court may be referred to the court of appeals, which shall also rule within a 10-day period".

3. Free union

344. French law does not prohibit free union, but does not recognize it either. It is a de facto relationship which is not subject to any special legal requirement and, as such, is not protected by the law.

345. It does not affect personal status, does not create any special legal regime so far as property is concerned and does not give rise to any rights of inheritance. From the property point of view, however, if the unmarried partners have collaborated in carrying out a joint activity, case law recognizes the existence of a de facto partnership which is liquidated in the event of separation, each party taking his share of the profits even if the business belonged to only one of them. In the absence of a de facto partnership, the courts grant compensation, on the basis of enrichment without cause, to the unmarried partner who has made a free contribution to the other's activity.

346. Under social welfare legislation, certain consequences of a free union are recognized:

(a) The Act of 2 January 1978, which establishes a general system of social security, provides that any person who, not being married to the

insured, can show that he or she is effectively, wholly and permanently dependent upon the latter may obtain recognition of entitlement to sickness insurance benefits;

(b) Any person who provides for the effective and permanent support of children is entitled to family allowances, irrespective of his or her marital status.

Furthermore, under recent decisions of the Court of Cassation, the female unmarried partner is one of the priority beneficiaries in the event of the death of the male unmarried partner and of the allocation of the lump sum payable by the social security services.

347. So far as taxation is concerned, marital status does not affect the number of allowances ("parts") taken into account in assessing income tax on natural persons. The return is filed for the fiscal home or separately by the two partners, each on the basis of his or her own allowances, any children being treated as dependants of one or the other, according to the choice of the parents.

4. Acquisition of French nationality by marriage

348. The conditions for the acquisition of French nationality by a foreign husband or foreign wife who enters into marriage with a person of French nationality are identical. Since the Act of 22 July 1993, a foreigner or stateless person may, two years after the marriage, acquire French nationality by filing a declaration, provided that the spouses have continued to live together and the French spouse has retained his or her nationality. The two-year period is eliminated when, either before or after the marriage, a child is born whose filiation is established with respect to both spouses, if the requirements of cohabitation and the nationality of the French spouse have been met.

349. The Government can, however, by a decree issued through the Council of State, refuse acquisition of French nationality, within one year of the filing of the application, or, if the application has been refused, after the day when the judicial decision accepting the regularity of the declaration has become res judicata. [léxique général]

Paragraph 4

350. Women have the same rights and responsibilities as men throughout marriage. Within the family unit, parents are placed on an equal footing in regard to their relations with their children (Acts of 4 June 1970 and 23 December 1985 relating to parental authority).

351. Regulations governing the role of husband and wife are laid down in the Acts of 13 July 1965 and 23 December 1985, which improve the position of the woman by abolishing regulations dating from 1804. The spouses contribute to the costs involved in the marriage in proportion to their respective means, unless such contributions are governed by matrimonial agreements (Civil Code, art. 214). Each of the spouses must give consent to the contract defining the terms on which the family's accommodation is provided (Civil Code, art. 215).

352. Either of the spouses may individually enter into contracts in regard to the maintenance of the household or the education of children. Any debt contracted in this way by one spouse makes the other spouse jointly liable Civil Code, art. 220). Either spouse may, without the consent of the other, open a deposit account or hold securities in his or her own name. The spouse who is the depositor shall be free to dispose of the money and securities deposited (Civil Code, art. 221). The wife is entitled to engage in an occupation without the consent of her husband (Civil Code, art. 223) and either of the spouses who is in receipt of earnings or wages is entitled to spend them freely after having discharged his or her marital responsibilities (Civil Code, art. 224).

353. The conjugal home is chosen by common consent by the spouses (Civil Code, art. 215). In case of disagreement, it is the judge, and not as formerly the husband, who decides. The requirement for the permission of the husband in regard to the management of the property of minors is now abolished. The wife may freely draw money from a savings bank account opened in the name of her child.

354. Divorce may be obtained on the basis of mutual consent, joint application or agreed request. It may also be applied for on the grounds of prolonged disruption of life together, where the parties have in fact lived apart for six years. The spouse making the application bears the full cost of doing so and the judge may reject the application if the other spouse can prove that divorce would have exceptionally severe material or moral consequences for himself or herself (taking account of age and the duration of the marriage) or for the children (Civil Code, art. 240). Finally, divorce may be applied for by one spouse on the grounds of alleged actions by the other spouse, when those actions constitute a serious or repeated violation of the duties and obligations of marriage and make the continuation of life in common intolerable (Civil Code, art. 242).

355. Either of the spouses may be required to pay the other an allowance to compensate, as far as possible, for the disparity in the relative living conditions caused by the breakup of the marriage (Civil Code, art. 270). With regard to the granting of maintenance payments, which are included among the responsibilities of parents, the Act of 22 December 1984 provides for intervention by the agencies dispensing family benefits to recover unpaid maintenance debts. These agencies provide two separate services:

(a) Assistance in recovering unpaid maintenance, in which the agency itself institutes the procedures for recovering maintenance from the person who owes it (service offered to all parents owed maintenance);

(b) Maintenance advance: family support allowance (ASF), which is paid only to single parents with dependent children.

The main purpose of the Act of 22 December 1984 is to help recover unpaid maintenance by ensuring that responsibility is assumed by the people concerned, namely the parents. The Act achieves this by means of the agency acting as intermediary between creditors (mostly women) and debtors.

356. The two “bioethics” Acts of 29 July 1994 strengthen the principles and rules governing biomedical ethics in a field where scientific progress should be facilitated without jeopardizing human dignity. The Act strengthens the Civil Code and Public Health Code by providing for the necessary controls for the new forms of medicine involving the application of recent discoveries in the field of genetics.

357. Its provisions cover pre-natal diagnostics, medically-assisted reproduction and predictive medicine:

(a) The purpose of pre-natal diagnostics is to seek ways of treating and preventing verified abnormalities; it may in certain cases lead to a therapeutic abortion;

(b) Medically-assisted reproduction is aimed solely at correcting a couple’s medical infertility and providing the child about to be born with a maximum of guarantees. To that end, the Act lays down strict conditions for such interventions with respect to parents’ consent, age requirements and origin of the embryo;

(c) Predictive medicine assumes that particular care is taken with respect to conditions of prescription, quality of tests, transmission of test results and clinical follow-up of patients.

358. Where research using the human genome is concerned, the law excludes any transformations of genetic features with a view to altering an individual's germ line, but does authorize research for the prevention and treatment of genetic diseases.

359. The Act is also aimed at providing a legal framework for the sensitive issue of donation and use of components and products of the human body, by establishing strict modalities concerning the obtaining of consent, advertising in providing information to the living donor, preserving the donor’s anonymity and health security regulations. These laws provide for criminal and administrative penalties if certain of their provisions are violated.

360. The Act of 1 July 1994 sets forth regulations for the treatment of personal data to be used for health research. Finally, the Civil Code, amended by the Act of 29 July 1994 relating to respect for the human body, guarantees the filiation of children conceived using medical reproductive techniques, in view of the difficulties they might encounter.

Article 24

Paragraph 1

361. The preamble to the Constitution of 27 October 1946 “guarantees to all, and notably to the child, the mother and the aged worker, health protection, material security, rest and leisure”. It also guarantees the right of the child to education: “The nation guarantees equal access of children and adults to education, professional training and culture. The establishment of free, secular, public education at all levels is a duty of the State”.

362. In France, a minor is a person of either sex who has not reached the end of his 18th year (Civil Code, art. 388). During minority, the child is subject to parental authority. The parents exercise this authority in order to "protect the safety, health and morals of the child". They have the right and the duty to care for, supervise and educate the child (Civil Code, art. 371-2).

363. If the father and mother are both deceased or if they are either physically or legally incapable of expressing their wishes, their legitimate children become subject to guardianship (Civil Code, art. 390). The guardianship judge is required to exercise general supervision over wardship and guardianship in the case of any minors who reside in his area. If the minor is legally incapacitated, all juridical acts must be performed by his representative, father or guardian.

364. When the parents' marriage is dissolved by divorce, the rights and duties of the father and mother in regard to their children persist (Civil Code, art. 286). Act No. 93-22 of 8 January 1993 stipulates: "Parental authority shall be exercised jointly by both parents. In the absence of an amicable agreement or if the judge deems such an agreement to be contrary to the child's interests, he shall designate the parent in whose home the children habitually reside. If the interests of the child so dictate, the judge may assign parental authority to one of the parents. On their own initiative or at the judge's request, the parents may comment on the arrangements for the exercise of parental authority" (Civil Code, art. 287).

365. In accordance with the Act of 8 January 1993, joint parental authority is to become the rule not only during marriage, but also after divorce (Civil Code, new arts. 287 and 373.2), as well as in families where the parents are not married, if both parents have at least shown by their behaviour that they are willing to assume their responsibility (Civil Code, new art. 372).

366. The Act extends to divorced or unmarried parents exercising joint parental authority the rules that were formerly applicable only to married couples, i.e.:

(a) Presumption of parents' agreement in respect of the ordinary acts of parental authority;

(b) Provisions applicable to the settlement of disagreements between the parents over what the best interests of the child require;

(c) Similarly, the provisions governing devolution of parental authority during the marriage or after divorce, when one of the parents dies, loses or is temporarily divested of parental authority, are now applicable to unmarried couples jointly exercising parental authority.

367. Educational assistance measures may be ordered by the judge if the health, safety or morals of a non-emancipated minor are in danger or if his or her education is seriously at risk (Civil Code, art. 375). However, the Code provides that a minor must remain in his normal surroundings wherever possible (art. 375-2).

368. Criminal law penalizes violence, and deprivation of food or care in respect of children under 15 and the penalties are heavier when the lawful father and mother, whether natural or adoptive, or any other persons having authority over the children and entrusted with their care are guilty of such acts (Penal Code, art. 312). Incitement to debauchery and corruption of persons under 18 or, in a few cases, under 16 is a criminal offence (Penal Code, arts. 334-1 and 334-2).

369. When the National Council on Popular Education and Youth, an advisory body on questions of young people and community life, was set up through the Decree of 24 January 1986, two bodies were attached to it, one of which was the Commission on the Protection of Minors (the other deals with licensing). Previously, a national youth and sports council, attached to the Ministry of Education, had been responsible for the protection of minors, on the basis of Decree No. 60-94 of 29 January 1960, which is still in force. Under this Decree relating to the protection of minors, during school holidays, professional leave or leisure time, temporary or permanent measures may be taken by ministerial decree prohibiting any individual in authority "who has seriously endangered children's health or emotional or physical security" from working in a holiday or leisure centre.

370. The Decree of 28 November 1983 on relations between the authorities and the public provides for an adversary procedure prior to referral of a case to the Commission on the Protection of Minors. After the events relating to the situation described above have occurred, a file is opened by the departmental youth and sports office in the place of residence of the individual concerned. That person is then invited to look over the file and has a 30-day period in which to submit comments.

371. The Departmental coordination commission for matters relating to youth, established by Decree No. 86-279 of 27 February 1986, then meets and hears the person concerned if that person so desires. If the department concerned has not established such a commission (27 departments did not have one as of the beginning of 1992), a direct transmittal order is issued. The individual concerned is informed of the Commission's opinion and has a further 30-days in which to consider it.

372. Finally, the Commission on the Protection of Minors meets and rules on the "departmental" opinion (the individual concerned may again be heard). On the basis of this opinion and ruling, the Minister of Youth and Sports either closes the case, sends a letter of warning or adopts a measure of restriction.

Paragraph 2

373. The certificate of registry of the birth of a child is the most important of all certificates denoting civil status and is governed by a large number of special regulations. The declaration of birth must be made by the father; doctors or surgeons, midwives, health officers or other persons present at the birth are also under the obligation to declare it (Civil Code, art. 56). The birth may be declared by other individuals, notably the mother herself when she has given birth without witnesses or when the persons referred to in article 56 are unable to declare the birth.

374. The declaration of the birth must be made within three days of delivery to the local registrar (Civil Code, art. 55). If it is made after the required period has elapsed, the registrar must not accept it and a certificate can be issued only following a ruling by the civil court (Civil Code, art. 55). The birth certificate must indicate the day, time and place of birth and must include particulars enabling the child to be identified: sex, given names.

375. The surname is acquired by filiation. A legitimate child bears the name of his father. An illegitimate child bears the name of whichever of his parents has recognized him. His rights to property and in matters other than property are protected by law.

1. Legal status of illegitimate children in matters other than property

376. French law, which states in article 334 of the Civil Code the principle of equality between a legitimate child and an illegitimate child, recognizes the same equality between the different kinds of illegitimate children, namely, between “ordinary” illegitimate children and “adulterine” illegitimate children - defined by the legislature as children “whose father or mother, at the time of conception, was bound by the ties of marriage to another person” (art. 334, para. 2).

377. The only special feature concerns incestuous connection, for, under article 334-10 of the Civil Code, “if there exists between the father and mother of the illegitimate child one of the bars to marriage laid down in articles 161 and 162 ... on the ground of relationship and filiation as regards one of them has already been established, the establishment of filiation as regards the other shall be prohibited”.

378. Lastly, with reference to the exercise of parental authority over an illegitimate child, it should be noted that, under article 374, paragraph 2, of the Civil Code, when both parents have recognized the child, “parental authority shall be exercised entirely by the mother”. However, the article also provides that the court may “nonetheless, at the request of either one or the other or of the public prosecutor, decide that it shall be exercised by the father alone or by the father and the mother jointly ...”.

2. Illegitimate children and succession

379. In principle, illegitimate children have the same rights of succession as legitimate children (Civil Code, art. 757). The rights of adulterine children, however, are fewer when such children are in competition with the spouse and the legitimate children who are victims of the adultery (Civil Code, arts. 759 and 760).

Paragraph 3

380. Any child, wherever he is born, in France or abroad, whatever the nature of his filiation, legitimate, illegitimate or fully adopted, is French if at least one of his parents, either his father or his mother, possesses French nationality at the date of his birth.

381. However, if he is born outside France of only one French parent, he has the right within the six months preceding his coming of age to relinquish French nationality if he possesses another nationality by filiation. This right of repudiation is lost if the foreign parent acquires French nationality while the child is still a minor.

382. French nationality may also be acquired by birth in France, if the child is born in France of unknown, stateless or foreign parents, if the foreign laws do not give it the nationality of either of the parents. The child is then deemed to have been French from birth.

Article 25

383. France is a political democracy which recognizes absolute equality of rights for all citizens. The principle of equality enshrined in the Declaration of the Rights of Man and of the Citzen of 1789 is adopted in article 2 of the Constitution of 4 October 1958: "It shall ensure the equality of all citizens before the law, without distinction as to origin, race or religion".

1. Participation in the conduct of public affairs

384. Any person may take part in the conduct of public affairs either by electing or by being elected. Since the French system of democracy is representative, French citizens elect their representatives. Deputies to the National Assembly are elected by direct suffrage, Senators by indirect suffrage.

385. Article 3 of the Constitution provides that all French citizens of both sexes who have reached their majority and who enjoy civil and political rights are entitled to vote (majority is fixed at 18 years of age by the Act of 5 July 1974 - Civil Code, art. 488).

386. In accordance with article 88-3 of the Constitution as reproduced in Constitutional Act No. 92-554 of 25 June 1992, subject to reciprocity and according to the modalities set forth in the Treaty on European Union, signed on 7 February 1992, the right to vote and eligibility for municipal elections may only be granted to citizens of the Union residing in France. Such citizens may not hold the office of mayor or deputy mayor or take part in the appointment of the senatorial electors or in electing senators. An organizational law to the same effect, enacted by both houses, sets forth the conditions for its implementation.

387. All French citizens are equally eligible to serve on publicly-elected bodies constituted under national law. Candidates who have completed their 23rd year, who are of French nationality, who have (in the case of men) completed their military service and who have not been declared ineligible may be elected to the National Assembly. Ineligibility may either be absolute, resulting from conviction for a criminal offence, or relative, covering certain categories of official, chiefly those wielding official authority (Ordinance of 24 October 1958). Candidates who have completed their

35th year, who are of French nationality, who have (in the case of men) completed their military service and who have not been declared ineligible may be elected to the Senate.

388. To qualify for election to the departmental general council, a candidate must have completed his 21st year and must not have been declared ineligible. A candidate for the municipal council of a commune must have completed his 18th year, must either be an elector of the commune or must appear on the registers of the commune as a direct taxpayer and must not be ineligible either on ordinary grounds or on the grounds of absolute or relative ineligibility, designed to prevent the election of persons whose influence would pervert the course of the election or who are exempt from public duties or are being assisted by charitable agencies. To be elected mayor, a candidate must have completed his 21st year and must not have been declared ineligible.

389. A number of recent laws have made for greater decentralization:

(a) Act No. 82-213 of 2 March 1982 relating to the rights and freedoms of the communes, departments and regions abolished administrative and financial supervision of the communes and departments and extended the powers of the regional councils. Since 1986, the regions have been full-fledged territorial communities;

(b) Act No. 91-428 of 13 May 1991 relating to the territorial community of Corsica establishes a territorial community with a special status in the light of the special features arising out of its geography and history. The Corsican Assembly, elected by direct universal suffrage, and its President, as well as the Corsican Executive Council and its President, elected by the Corsican Assembly from among its members, cooperate in administering the region;

(c) Act No. 92-125 of 6 February 1992 relating to local government strengthened public participation in community life and created new opportunities for cooperation among local communities;

(d) Act No. 82-1171 of 31 December 1982 relating to the organization of the regions of Guadeloupe, Guyana, Martinique and Réunion arranges for the members of the regional councils, which are the deliberative bodies for these communities, to be elected for six years by direct universal suffrage;

(e) Act No. 83-8 of 7 January 1983, supplemented by Act No. 83-663 of 22 July, governs the division of powers as between the communes, departments, regions and the central Government.

(f) Act No. 83-390 of 18 May 1983 provides that the senators who represent French persons domiciled outside France are elected by a college composed of elected members of the Supreme Council of French Nationals Abroad.

390. National sovereignty may be exercised directly by the people through the referendum (Constitution, art. 3). Universal and equal suffrage by secret ballot is recognized and guaranteed under article 3 of the Constitution.

Access to public service

391. The rules governing access to public office are laid down in Act No. 83-684 of 13 July 1983 on the rights and obligations of public officials and Act No. 84-16 of 11 January 1984 containing statutory provisions concerning the Government civil service. In addition to Government civil service, Act No. 84-53 of 26 January 1984 established the territorial civil service (personnel of the territorial communities).

392. Access to public office is open to any person of French nationality enjoying all his civil rights and fulfilling the physical requirements necessary for the exercise of his duties (male candidates must in addition be in a regular position as regards the laws on army recruitment - Statutes, art. 16). The only means of access to public office is by competitive examination.

Article 26

393. The principle of equality of all persons before the law, as enshrined in France's basic instruments, has been set out in the commentary on article 2. This guarantee, which has constitutional status, means that any discrimination likely to undermine human dignity is prohibited. Articles 225-1 et seq. of the new Penal Code penalize discrimination on grounds of origin, sex, family situation or membership or non-membership of any specific ethnic group, nation, race or religion.

Article 27

394. Article 2 of the Constitution of 4 October 1958 declares that France shall be a Republic, indivisible, secular, democratic and social. It shall ensure the equality of all citizens before the law, without distinction as to origin, race or religion. It shall respect all beliefs. Since the basic principles of public law prohibit distinctions between citizens on grounds of origin, race or religion, France is a country in which there are no minorities and, as stated in the declaration made by France, article 27 is not applicable as far as the Republic is concerned.

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