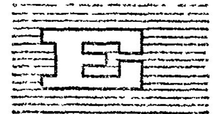

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Reports on civil and political rights for the period 1 July 1971 - 30 June 1977 received from Governments under Economic and Social Council Resolution 1074 C(XXXIX)

FRANCE

[27 October 1978]

Developments in France during the period 1 July 1971 - 30 June 1977 include:

Influence of United Nations instruments containing principles and norms for the recognition, protection and promotion of civil and political rights and, in particular, measures adopted to implement such instruments

(a) Act No. 73-1224 of 31 December 1973 authorizing the ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and of Protocols No. 1 of 20 March 1952, No. 3 of 6 May 1963, No. 4 of 16 September 1963 and No. 5 of 20 January 1966, and Decree No. 74-360 of 3 May 1974 publishing these texts.

This Convention reaffirms the existence of a number of fundamental decrees benefiting the individual. France has not made a declaration under article 25 concerning individual petitions.

On the other hand, it has declared, in accordance with article 46, that it recognizes as compulsory the jurisdiction of the European Court of Human Rights.

(b) Act No. 75-581 of 5 July 1975 authorizing the ratification of the Protocol Amending the Single Convention on Narcotic Drugs of 1961, signed at Geneva on 25 March 1972 (Journal Officiel de la République Française (JORF), 6 July 1975,p.6868), and Decree No. 75-1076 of 4 November 1975 publishing the above-mentioned Protocol (JORF, 20 November 1975, p. 11869):

The Protocol of 25 March 1972 sets out to extend and strengthen the provisions of the Single Convention of 25 March 1961, which was already supplemented by the Convention on Psychotropic Substances of 21 February 1971.

The innovations introduced by the Protocol consist essentially in:

Strengthening the International Narcotics Control Board created by the 1961 Convention;

Standardizing the measures applicable to drug addicts;

Laying down rules with regard to extradition;

Placing Governments under the obligation to furnish more detailed information to the International Narcotics Control Board, principally in respect of opium cultivation and the manufacture of synthetic drugs.

(c) Act No. 75-1132 of 10 December 1975 authorizing the accession of the Government of the French Republic to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, opened for signature at Montreal on 23 September 1971 (JORF, 12 December 1975, p. 12660).

The Montreal Convention of 23 September 1971 sets out to strengthen international co-operation in the suppression of offences which may be committed against aircraft.

It supplements the Tokyo Convention of 14 September 1963 on Offences and Certain Other Acts Committed on board Aircraft and the Hague Convention of 16 September 1970 for the Suppression of Unlawful Seizure of Aircraft, extending their principal provisions to unlawful acts other than the hijacking of aircraft.

In order to bring its domestic legislation into line with the obligations deriving from the Convention, France has had to insert in its Penal Code a new article 462-1 making it a crime to communicate false news or information which may jeopardize the safety of an aircraft in flight. This adaptation was effected by Act No. 75-624 of 11 July 1975 (see below).

Significant developments with regard to the recognition, protection and promotion of civil and political rights during the period from 1 July 1971 to 30 June 1977

Inviolability of the person

Act No. 76-1106 of 6 December 1976 relating to the development of the prevention of industrial accidents (JORF, 7 December 1976):

This Act institutes a number of measures intended to improve workers' safety in all respects.

Thus, the chief of an enterprise is obliged to furnish information to his employees, he may be required to apply certain preventive measures by the Ministry of Labour, and he bears objective responsibility in the event of inexcusable negligence.

At the penal level, the Act envisages the possibility of penal conviction in a case where the chief of the enterprise has failed to remedy certain dangerous situations after due warning by the Ministry of Labour.

Moreover, fines imposed on wage-earners guilty of violations of rules concerning health and safety may be charged to their employers.

Lastly, in the event of an industrial accident occurring in an enterprise where serious or repeated breaches of health and labour safety rules have been recorded, the court must require the enterprise to present, within a fixed time-limit, a plan of execution of work intended to restore normal safety conditions; the works committee and the health and safety committee or, failing that, the shop stewards must be consulted in connexion with this plan. After consultation with the regional director of labour and manpower, the court may direct the enterprise to implement this plan within a maximum time-limit of five years or, in some cases, to replace it by another.

Prison sentences may be imposed in the event of failure to submit a plan to the court or to put the plan into effect.

It should in addition be noted that Decree No. 77-61? of 9 June 1977 established special health and safety committees on building and public works sites.

Freedom from torture or cruel, inhuman or degrading treatment or punishment

Several texts were enacted for the purpose of establishing alternative penalties or modifying régimes for the execution of sentences.

I. Alternative penalties

Act No. 75-624 of 11 July 1975 amending and supplementing certain provisions of penal law (JORF, 13 July 1975, p. 7219) and the decrees relating to the application of this Act, without awaiting the completion of the work of the Commission for the general review of the Penal Code, introduced into French penal law a number of changes and additions which are likely to have great practical consequences.

Firstly, the Correctional Court (Tribunal correctionnel) can now choose from a fairly wide range of penalties which it can substitute for imprisonment. It is recognized that prison sentences, and especially those between 15 days and six months in length, have serious shortcomings, particularly inasmuch as they reduce the offender's chances of social rehabilitation. Such sentences, unless indispensable, should therefore be replaced by other measures whose object may be, depending on the nature of the case and the personality of the offender, dissuasion by means of a heavy fine, the confiscation of a vehicle or the withdrawal of a driving licence; rendering the offender harmless by prohibiting him from exercising certain activities of a professional or social nature; rehabilitation through the application of suitable measures of assistance and supervision, or even a simple warning without punishment.

Secondly, verdict-rendering courts, sentencing judges and State counsel judges (magistrats du parquet) are granted considerable powers, either to modify the execution of the sentence by the suspension, division or reduction of the penalty, depending on the situation and behaviour of the offender, or to facilitate his rehabilitation by limiting certain effects of the conviction, such as entering the sentence in the police record, withdrawal of residence permit, or professional disqualification.

Lastly, as a result of parliamentary amendments, provisions have been adopted which did not appear in the original bill, including the creation of a new measure known as "placing under judicial protection" [illegible] juvenile offenders.

II. Execution of sentence

(A) Act No. 72-1226 of [illegible] December 1972, which is intended to simplify and supplement certain provisions concerning penal procedure, sentences and the execution of sentences, [illegible] in each Tribunal de grande instance one or more [illegible] judges perform the function of sentencing judges.

The sentencing judge determines the main features of the treatment of each offender in the penal institution to which he is committed and in particular grants outside employment, semi-freedom and home leave. Except in urgent cases he hands down a decision after consulting a sentencing commission, such commissions now having been established in each penal institution.

(B) Decree No. 75-402 of 23 May 1975 amending certain provisions of the Code of Penal Procedure (JORF, 27 May 1975, p. 5268) represents the principal element in the penitentiary reform undertaken by the Government on the basis of a diversification of sentence execution régimes.

1. This diversification proceeds from the dual orientation of criminal policy with regard to execution of sentences:

Towards relieving, as far as possible, such constraints of imprisonment as are not an inevitable consequence of the privation of freedom (particularly by developing the prisoner's relations with the outside world and preparing him as rapidly as possible for social re-adaptation),

Towards applying maximum security measures [illegible] prisoners [illegible] sentences for the most serious crimes [illegible] of the person.

2. The main lines of diversification of the execution of sentences are as follows:

In addition to medical institutions and institutions set aside for penal tutelage (a supplementary measure applied to multiple recidivists) two categories of institution have been established in accordance with the dual orientation defined above:

(a) Central prisons in which a security régime is applied and, among these institutions, reinforced-security institutions or sections of institutions;

(b) Detention centres, including closed and open institutions, where the régime is principally oriented towards resocialization.

As a corollary of such diversification, a uniform régime is applied, as far as possible, in institutions of the same category, in order to simplify and clarify the conditions of application of imprisonment régimes.

For similar reasons the "progressive régime" involving a diversification of rules in different sections of the same prison has been abolished.

3. The régimes applied in the different categories of institution are as follows:

(a) Security institutions

(1) Central prisons (at present numbering six, including four set aside for very long sentences).

Under the régime applied in these prisons, the inmates spend the night in solitary confinement and the day in the company of others; this régime is based on the prisoners being put to work and engaging in communal activities in the spheres of education, sport and recreation. Relations with the outside world, though allowed in the ordinary way, are subject to the following precautionary measures:

Visiting rooms with separation arrangements;

Home leave permitted only when less than three years of the sentence remain to be served.

(2) Reinforced security centres or institutions (at present numbering nine, including eight in operation):

These are small-capacity institutions or sections of institutions (30 places on the average);

The prisoners spend the day in the company of others, but in very small groups (two to five persons);

Special security measures (surveillance of movements, numerous searches, etc.) are adopted, and the number of supervisory personnel is proportionally much larger than in all other institutions.

(b) Detention centres:

(1) The detention centres include the following:

Closed centres: eight;

Open centre: one (Casabianda Agricultural Centre), and outside work site: one (Fontevraud);

Centres set aside for young offenders: Ecrouves, Loos, Oermingen.

(2) The régime is "principally oriented towards the resocialization of prisoners". Certain privileges are added to the general features of the régime for penal institutions, as follows:

More extensive organization of collective life (access to meeting rooms outside working hours and hours set aside for supervised activities);

Prisoners are authorized to wear personal clothing instead of the regulation clothing supplied by the administration;

More extensive relations with the outside world, namely:

Visiting rooms without separation arrangements;

On completion of the first third of the sentence, possibility of obtaining five-day home-leave passes and even, once a year, ten-day passes;

Authorization to use the telephone.

(C) Act No. 75-551 of 2 July 1975, relating to the situation of detainees and their families with regard to sickness and maternity insurance, provides that all detainees retain, in addition to family allowances, the right for their families to receive sickness and maternity benefits for a period of one year.

Moreover, detainees at penal labour are themselves entitled, not only to the benefit of the legislation relating to industrial accidents, but also to sickness and maternity insurance under the general conditions of social security, and also to old-age pensions (Act of 31 December 1975).

Freedom from slavery, the slave trade, servitude and forced or compulsory labour

The third part of the Act of 11 July 1975 extended and reinforced measures to suppress procuring.

Freedom from arbitrary interference with one's privacy, family, home or correspondence and from attacks upon one's honour and reputation

Decree No. 75-341 of 13 May 1975 relating to the right of reply on French radio and television broadcasting stations, and amending the decree of 30 September 1953 reforming the procedure of the administrative courts and the decree of 28 November 1953 on administrative arrangements for its application (JORF, 14 May 1975, p. 4867) established, inter alia, a new offence, namely, failure to broadcast a reply in the manner prescribed by the National Commission on the Right of Reply set up by the same decree.

This offence is punishable by a fine of 1,000 to 2,000 francs.

The text concerns only State broadcasting stations and physical persons.

Protection of the law

Equality before the law and equal protection of the law without any discrimination

Act No. 75-625 of 11 July 1975, amending and supplementing the Labour Code with regard to the particular rules relating to female labour, and article L 298 of the Social Security Code and articles 187-1 and 416 of the Penal Code relating to racial discrimination (JORF, 13 July 1976, p. 7226), comprises provisions aimed at improving the protection at work of the female wage-earner who is expecting a child or has just given birth and at the penal level, imposes a penalty of two months' imprisonment and a fine of 3,000 to 30,000 francs for any agent of public authority who knowingly refuses a person the enjoyment of a right by reason of his or her sex, and a penalty of two months' to one year's imprisonment and a fine of 2,000 to 10,000 francs for anyone who refuses a person, by reason of his or her sex, a service or article habitually supplied.

Right to an effective remedy for acts violating the fundamental rights granted by the constitution or by law

(a) Act No. 75-229 of 9 April 1975, empowering associations set up for the purpose of the suppression of procuring to bring civil actions (JORF, 11 April 1975, p. 3788), authorizes associations recognized as being in the public interest whose purpose is the suppression of procuring and the granting of social assistance to persons engaged in prostitution or in danger of engaging therein, to bring civil actions before all courts competent to receive such actions in respect of procuring offences as defined in the Penal Code.

(b) Act No. 77-5 of 3 January 1977, guaranteeing the payment of compensation to certain persons who have suffered physical injury as a result of an offence (JORF, 4 January 1977, p. 77), as incorporated in articles 706-3 to 706-13 of the Code of Penal Procedure, authorizes the payment by the State of compensation under the heading of court costs to certain persons who have suffered physical injury as a result of an offence.

A jurisdictional commission attached to each Court of Appeal is responsible for deciding on claims for compensation.

The purpose of this Act is to ensure national solidarity with the victims of any offence which endangers life or physical well-being. Henceforth, the national community guarantees the payment of compensation to the most disadvantaged victims who are unable to obtain compensation through the means and procedures available under ordinary law.

Presumption of innocence; right to a fair and public hearing by an independent and impartial tribunal; guarantees for defence

Act No. 72-1226 of 29 December 1972, which was intended to simplify and supplement certain provisions relating to penal procedure, sentences and the execution of sentences (JORF, 30 December 1972, p. 13783), relates to judicial inquiries, the composition of courts and court decisions.

1. Judicial inquiries:

In the case of an appeal against orders of an investigating judge which are not subject to appeal, the presiding judge of the *Chambre d'accusation* is given sole responsibility for the decision to declare the appeal inadmissible.

In addition, the Act is intended to limit the exercise of the right of appeal in respect of orders of an investigating judge concerning expert appraisements as provided for in articles 156 (para. 2), 159 (para. 2) and 167 (para. 2) of the Code of Penal Procedure.

In order to safeguard the rights of the defence while discouraging the use of appeals as a delaying tactic, the new article 186-1 of the Code of Penal Procedure maintains the right of both the accused and the plaintiff to lodge an appeal against orders of an investigating judge with the *Chambre d'accusation*, but at the same time accords "screening" powers to the presiding judge of this court.

2. Composition of courts:

(a) The minimum age for jurors in Assize Courts has been reduced from 30 to 23 years.

(b) The Ministère Public has been placed on an equal footing with the other parties in Assize Court proceedings.

Under article 312 of the Code of Penal Procedure, the Ministère Public is now obliged to address his questions to defendants, witnesses and all persons called before the court through the presiding judge, and not directly as used to be the case.

(c) The Act provides that, in certain circumstances, the Correctional Court may be constituted by a single judge.

These circumstances are determined by three sets of provisions.

(a) Only cases involving five of the most common categories of offence may be heard by a single judge.

However, the Correctional Court must sit in collegiate form if the person accused of one of these offences is being held in custody pending trial at the time of his or her appearance before the court.

(b) Within the limits thus established, the Correctional Court may be constituted by a single judge only if certain general decisions have been taken beforehand within each jurisdiction.

(c) It shall be for the presiding judge of the Tribunal de grande instance and for him alone to decide whether the Correctional Court within his jurisdiction may be constituted by a single judge.

3. Court decisions:

(a) In cases where a judgement by default comprises an immediate prison sentence, the court may, if it considers such action appropriate, have recourse to a new measure in order to try a second time to ensure that the defaulting defendant appears before it.

In such cases, the court may refrain from immediately declaring null and void the defendant's application for reconsideration of the judgement but may adjourn the case until a specified date and order the police to search for the party concerned in order to bring him before the Procureur de la République.

(b) The Act permits the court entertaining jurisdiction to release the offender from all or part of the prohibitions, penalties or professional disqualifications resulting ipso facto from the judgement, either at the time of sentencing or later, at the request of the party concerned.

In addition, Act No. 75-701 of 6 August 1975, amending and supplementing certain provisions of penal procedure (JORF, 7 August 1975, p. 8035), gives additional guarantees to persons under the jurisdiction of the courts. These guarantees relate to procedure in flagrante delicto and to judicial investigation procedure. In the former case, an accused person arrested in flagrante delicto

will no longer necessarily appear before the court under committal, since the State counsel in court may henceforth confine itself to informing him of the date of the hearing at which he is to be judged and, if necessary, to requesting a judge of the bench to place the accused person under judicial supervision. Where a preliminary investigation has been instituted, it will not be possible to keep a person charged with minor offences in custody for more than six months pending disposal of the case, provided certain conditions are fulfilled; to this should be added a maximum period of two months between the completion of the investigation and the court hearing. In both cases, from the moment of his interrogation by the Procureur de la Republique or of his being placed under detention by the investigating judge, the accused person will be entitled to the assistance of a lawyer of his choice or appointed by the court. The application of this principle will involve a special effort by State counsel judges, examining judges and members of the Bar.

Lastly, the Act of 6 August 1975 establishes a mechanism whereby appeals may be brought before a special commission of the Court of Cassation by officers of the judicial police who have been disqualified or suspended by the Procureur Général of the area.

Personal status

Right to marry and found a family; equal rights of spouses as to marriage, during marriage and at its dissolution

Act No. 75-617 of 11 July 1975 reforming divorce law (JORF, 12 July 1975, p.7171), by abrogating articles 336-339 of the Penal Code which instituted the correctional offence of adultery, put an end to a form of inequality between spouses.

Previously, a wife committed an offence simply by having relations with a man other than her husband, whereas a husband was criminally responsible only if he kept a concubine in the conjugal home.

Moreover, the wife was liable to a prison sentence of not less than three months and not more than two years, whereas the husband was liable only to a fine of 360 to 7,200 francs.

Lastly, complicity was punished only in the case of adultery on the part of the wife.

Freedom of thought and expression; freedom of assembly and association

Two commissions were established by Decree No. 74-937 of 8 November 1974:

The first was established in order to draw up a code of fundamental freedoms. Its terms of reference are to codify laws and regulations concerning the exercise of individual freedoms, to study the case law of administrative and judicial jurisdictions, and to propose any necessary updatings and adaptations, taking into consideration, more particularly, the development of new methods of expression and the use of new techniques entailing a threat to individual freedoms and privacy.

The commission's work has principally taken the form of drafting a bill on the protection of the secrecy of telephone communications and of a bill on police questioning and identity checks.

Independently of this government commission, and following the submission of three parliamentary bills on freedoms, the National Assembly, for its part, has set up a special commission on fundamental freedoms and rights, presided over by the President of the National Assembly and having as its rapporteur the Chairman of the Commission of Laws of the National Assembly.

The second commission was established in order to propose to the Government "measures intended to guarantee that the development of data processing in the public, semi-public and private sectors shall be consistent with respect of privacy and of individual and public freedoms".

The Government submitted to Parliament a bill based on the commission's report. After numerous amendments, this bill was enacted in January 1978.

In addition to establishing an independent authority to supervise the use of data processing, the new act provides for:

(a) The prohibition or limitation in time of the recording of certain data concerning persons and the repression of any misuse of nominal data;

(b) The granting, to persons, groups or enterprises in respect of whom or which nominal data are collected for processing, of the right of individual access to such data, i.e. the right to know of the existence and contents of the data files concerning them and the right to criticize and challenge such files.

Right to freedom of opinion and expression

The Council of State handed down two decisions concerning freedom of opinion and expression:

(a) Freedom of expression of conscientious objectors

In pursuance of the Act of 13 July 1972 relating to the general status of members of the armed forces, an ordinance of the Council of State of 19 March 1975 (Bizieux, Dedieu and Lafond) established that conscientious objectors directed, under the provisions of the National Service Code, to complete their national service in civilian units have the right to exercise a political or trade-union activity and to join a political party when they are candidates for elective public office.

(b) Supervision of the banning of films

By a decree of 24 January 1975 (Ministry of Information versus Société Rome-Paris Films), the Council of State established its right to investigate the grounds on which the Ministry of Information had imposed a general ban on the showing of a film in France, by reason of the need to reconcile the general interests for which the above Ministry is responsible with due respect for public liberties, and, in particular, the freedom of expression.

Action with a view to ensuring that the rights and freedoms mentioned above are enjoyed by increasing numbers of persons without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status

Two texts were enacted in connexion with efforts to combat racism, and one in connexion with establishment.

(a) Racism

Act No. 72-546 of 1 July 1972 concerning efforts to combat racism (JORF, 2 July 1972, p. 6803).

The texts repressing racial insult or defamation were inadequate, both because the grounds for bringing charges were too restrictive and because the State Counsel could not institute proceedings *ex officio*.

The Act of 1 July 1972 instituted the new correctional offence of "incitement to discrimination, hatred or violence" based on a person's ethnic origin, nationality, race or religion (thus amending art. 24, para. 5, of the Act of 29 July 1881) and stipulates that audio-visual media are henceforth placed on an equal footing with the traditional means of communicating ideas (art. 23 of the same Act). In addition, racial insult and defamation are now punishable even if such insult or defamation is not intended to incite hatred among citizens or inhabitants (new arts. 32 and 33). In order to ensure that these provisions have the maximum deterrent effect, the Act stipulates that, in the case of insult or defamation intended to incite hatred, which is regarded as particularly serious, the *Ministère Public* may institute proceedings *ex officio* (art. 48-6 of the Act of 1881).

The same Act of 1 July 1972 provides for the punishment of acts of racial discrimination committed by a public official "who knowingly refuses the enjoyment of a right to which (the victim) could lay claim" (art. 187-1 of the Penal Code) or by any person who makes an offer of goods or services subject to a condition based on ethnic origin, race, religion or nationality, or refuses to provide an article or a service or to hire or dismiss a person for the same reasons (art. 416 of the Penal Code). This protection is extended to any bodies corporate that may be subjected to such acts of discrimination.

Lastly, while associations aimed at combating racism may take legal action in certain circumstances (art. 2-1 of the Code of Penal Procedure), any associations or groups that incite racism are dissolved by decree.

Act No. 77-574 of 7 June 1977 containing various economic and financial provisions (JORF, 8 June 1977).

Article 32 of this Act supplements the provisions of the Penal Code relating to efforts to combat racism by introducing into the Code new articles 187-2 and 416-1 which impose penalties in respect of any economic boycotts resulting from discrimination based on national or ethnic origin, race or religion.

(b) Establishment

Act No. 76-1288 of 31 December 1976 amending certain provisions of the Public Health Code relating to the exercise of the medical professions (JORF, 1 January 1977, pp. 25-26).

This Act expressly introduces into the Public Health Code, for all the medical professions, the principle of national treatment already applicable since the end of the transitional period provided for in the Treaty of Rome in respect of nationals of States members of the European Economic Community.

In this way it provides for the application of two directives of the Council of the European Communities of 16 June 1975, one concerning "the mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine, including measures to facilitate the effective exercise of the right of establishment and the freedom to provide services" and the other concerning "the co-ordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors".

To this end the Act amends and supplements various provisions of the Public Health Code concerning, in particular, the conditions of nationality for the exercise of the medical professions (art. L 356), the conditions relating to physicians' diplomas and certificates (new arts. L 356-1 and L 356-2), breaches of the law with regard to the illegal exercise of the profession of physician, dental surgeon or midwife (new art. L 367-1 and arts. L 372, L 373, L 374 and L 378) and the conditions for enrolment in the order of physicians (arts. L 413, L 414 and L 415).