

# The Situation of Muslims in France

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## 1. EXECUTIVE SUMMARY

The concept of “minority” is not seen as relevant in the French context. The Constitution defines the Republic as one and indivisible, and there is an official policy to unify the population legally and socially; to ensure that the Nation coincides with the State. In this context, traditional minority rights such as religion and language are governed not by public law, but by the private exercise of public freedoms. The emergence of a large French Muslim community with different traditions and values and a will to participate fully in public life poses new challenges to the underlying assumptions of this system.

In fact, French law recognises minorities on a semi-official, *de facto* basis, and the implementation of the unitary principle is increasingly characterised by “firmness in principle, and flexibility in practice.”<sup>1</sup> Public authorities have made efforts to facilitate access to citizenship for minorities, and the Government is increasingly receptive to claims of particularism. Both politicians and the public are increasingly tolerant of the notion that individuals can express community belonging without being anti-Republican.

### *Discrimination*

Muslims in France – most of whom are French citizens – are often viewed with distrust and suspicion by the so-called *Français de souche* (French by extraction).<sup>2</sup> Public figures sometimes make discriminatory references to Muslims, relying on generalisations and stereotypes that concur with public expectations. Widespread discriminatory attitudes lead to discriminatory practices, particularly with regard to employment and access to public services. However, there is virtually no data available to document the frequency of discrimination on specifically religious grounds, and anecdotal evidence suggests that it is frequently difficult to separate religious discrimination from discrimination on other grounds such as ethnicity, race, or gender. However, there have been some proven cases of explicitly religious discrimination, particularly in obtaining access to citizenship.

<sup>1</sup> N. Rouland, “Les politiques juridiques de la France dans le domaine linguistique” (French legal policies in the linguistic domain), *Revue française de droit constitutionnel*, 1998, 35, pp. 517–562, p. 531.

<sup>2</sup> This use of the category of “French by extraction” is a clear expression of the general ethnicisation of public policy, by which people are identified on the basis of their (real or supposed) social origin or cultural belonging. See H. Le Bras, *Le Démon des origines: démographie et extrême-droite* (The devil of origin: demography and extreme-right), Paris, Ed. De l’Aube, 1998.

Anti-discrimination legislation has been under development since the 1970s, and provides fairly comprehensive protection; the adoption of a comprehensive anti-discrimination law in November 2001 brought French legislation closer to full compliance with the EU's Race Equality Directive.<sup>3</sup> French legislation recognises discrimination on religious grounds, but the common assumption is that religious discrimination is always associated with (and can be addressed along with) racial discrimination. However, without detailed research or statistics it is often difficult to establish the specific motivation for a discriminatory act.

Protection from discrimination is interpreted within the context of the concept of equality. Within this context, "discrimination" is understood as the result of arbitrary, unjustified differential treatment,<sup>4</sup> and the principle of anti-discrimination advances the idea that protection of the individual (equality before the law)<sup>5</sup> precludes the recognition of minorities (equal treatment under the law). Thus, efforts to develop legal and political mechanisms to fight discrimination are linked to efforts to promote equal protection for all citizens.

### *Minority rights*

References to "the Muslim minority" are highly problematic in the legal and political spheres, *inter alia*, and the notion of minority is always framed in relation to the constitutional principles of *laïcité* (secularism) and equality.<sup>6</sup> Rights are recognised *vis-à-vis* individuals only, not groups,<sup>7</sup> and claims regarding the rights of Muslims (or other religious minority groups) – even when framed by Muslim leaders themselves – are rarely defined in terms of minority rights.

France has signed but not ratified the European Charter for Regional or Minority Languages (ECRML), and it has refused to sign the Framework Convention for the Protection of National Minorities (FCNM). Muslims lack official national representation and are thus not eligible for the benefits and advantages accorded to

<sup>3</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, published in the *Official Journal of the European Communities*, 19 July 2000, L 180/22.

<sup>4</sup> D. Lochak in A. Fenet, G. Soulier, eds., *Les minorités et leurs droits depuis 1789* (Minorities and their rights since 1789), Paris, L'Harmattan, 1989, p. 114.

<sup>5</sup> As in the Declaration of the Rights of Man and the Citizen of 1789, the Preamble to the Constitution of 1946, and the Constitution of 1958.

<sup>6</sup> Haut Conseil à l'Intégration (HCI), *L'Islam dans la République* (Islam in the Republic), Paris, Documentation française, 2001, (hereafter, "HCI Report 2001").

<sup>7</sup> J. Poumarède, S. Pierré-Caps, N. Rouland, eds., *Droit des minorités et des peuples autochtones* (Right of minorities and native peoples), Paris, PUF, 1996, in particular, the chapter on France and minorities, pp. 307–345.

groups which have established such representation under the 1905 Combes Law. For example, they are not eligible for tax exemptions on religious buildings or State subsidies for chaplaincies in schools, hospitals and prisons.

In the absence of an agreement with the State, neither the legal system nor the State public administration has succeeded in formulating clear answers for a number of issues linked to the public management of Islam.<sup>8</sup> Particular problems have arisen with regard to access to social services for imams, the establishment of places of worship, Muslim plots in local cemeteries and ritual slaughter.

Underlying all these particular social and policy problems is the tension between an approach to *laïcité* that, while aiming to embody State neutrality, implicitly rests on assumptions of cultural Republicanism,<sup>9</sup> and the legitimate and permanent presence, on French territory, of groups that assume – and claim public recognition for – a religious component to their identity without contradiction to their political commitment as French citizens.

### *Representation*

State authorities have encouraged and sought to facilitate political representation for Muslims at a national level. However, there is often resistance to the idea of extending special recognition and rights to Islam, and *laïcité* is increasingly conceptualised and advanced in terms of Republican values rather than constitutional principles, politicising perceptions of Islam and Muslims.

The Government elected in June 2002 has decided to continue the “Consultation on Islam of France,” which is working to identify a single representative Council of French Muslim communities as a negotiating partner. Until now, the claims of Muslim communities have, for the most part, been resolved by delegating competence for religious issues to local public authorities. Some Muslims and other experts have questioned whether the Consultation is aimed at representing or controlling French Muslims, and whether central representation leaves sufficient space for the expression of diversity (particularly ethnic diversity) within the Muslim population.

### *European dimension*

Generally speaking, French Muslims have not looked to European minority protection legislation or mechanisms to satisfy their demands. However, unlike the EU’s Race Equality Directive, the Employment Directive<sup>10</sup> explicitly identifies religion as one of

<sup>8</sup> According to one Muslim leader, “Muslims lack mosques, cemeteries, places for teaching, an easier access to work and to housing.” Interview with the Director of *La Réussite*, 21 May 2002.

<sup>9</sup> In the sense of the individual citizen’s loyalty to Republican values.

<sup>10</sup> 2000/78/EC of 27 November 2000.

the grounds on which discrimination is prohibited. This explicit recognition of a religious dimension to possible acts of discrimination could be extended to sectors other than employment, leading to new opportunities to articulate and advance claims for the equal treatment for Muslims, individually and collectively, in France.

## 2. BACKGROUND

The Muslim population in France is extremely diverse. Although no accurate statistics are available,<sup>11</sup> according to recent estimates there are approximately 4,155,000 Muslims living in France,<sup>12</sup> out of a total population of 58,520,688. The great majority – about 2,900,000 – are from the Maghreb,<sup>13</sup> but there are large populations from other areas as well: 100,000 from the Middle East, 315,000 from Turkey, 250,000 from sub-Saharan Africa, 100,000 Asians, 100,000 of various other origins, and 40,000 converts. There are also approximately 350,000 asylum applicants and illegal workers who are Muslim.<sup>14</sup> An estimated three million are French citizens. Muslims are settled throughout the country, but there are concentrated communities in the Ile-de-France (35 percent), Provence-Alpes-Côte d'Azur (20 percent), Rhône-Alpes (15 percent), and the Nord-Pas-de-Calais (ten percent).<sup>15</sup>

Several waves of immigrant groups have arrived in France since the early 1960s. Prior to this, Islam had been linked closely to France's colonial history. In particular, 84,000 repatriates from Algeria arrived between 1962 and 1967, following Algerian independence. This group and their descendants, known as *harkis*, demand equal treatment as "normal French citizens," but also claim recognition as a special group:

<sup>11</sup> It is not permitted to collect statistics on the basis of religious affiliation, and the census does not ask questions regarding religion.

<sup>12</sup> These figures are based on a definition of Muslim as a "person of Muslim culture" (on the basis of the nationality of origin of the parents or grandparents). They do not reflect practices, which obviously vary. Thus, figures are hotly disputed, particularly in the media. One recent report suggested much higher numbers: "Thanks to the 11.09 shock, France, with surprise, discovered abruptly that it had become, in less than forty years, the greatest Muslim power in Europe: 5 million Muslims live here today." *Le Nouvel Observateur*, 21 February 2002, n. 1946.

<sup>13</sup> 1,550,000 of Algerian origin, 1,000,000 of Moroccan origin, and 350,000 of Tunisian origin.

<sup>14</sup> HCI Report 2001, pp. 37–38.

<sup>15</sup> For a map indicating the biggest mosques in France, see "Les musulmans de France peinent à s'organiser" (Muslims are having difficulties in getting organised), *Le Figaro*, 18 October 2001, p. 10.

“faithful Muslims” who made sacrifices for France and who wish to remain distinct from other Maghrebi immigrants (also referred to as *beurs*).<sup>16</sup>

At first, most immigrants were young males who came primarily in search of employment opportunities. However, the process of family reunification which took place after the official end to immigration in 1974<sup>17</sup> began to alter the demographics of the Muslim population and with it the public face of Islam. The establishment of places of worship in workers’ dormitories in the 1970s and the appearance of a new generation, born in France to Muslim parents, led to increasing requests for religious education in the 1980 and 1990s, and Islam gradually became a more visible part of French society.<sup>18</sup> Along with the growth in population, therefore, the profile of the Muslim communities has changed radically in the second half of the 20<sup>th</sup> century, with younger generations demonstrating different attitudes towards religious identity and citizenship.

### *Religious identity*

For successive generations of Muslims born in France, religious belonging and upbringing is part of their inherited culture.<sup>19</sup> Even as they increasingly assert the right to public and collective recognition of their religion, young Muslims today refer to Islam in different ways<sup>20</sup> – as a heritage, a tradition, and an origin. Even for non-

<sup>16</sup> The numerous associations of *harkis* have cultivated their image as a group that, as the target of a “genocide,” was particularly victimised by colonialism, and has demanded official acknowledgement and compensation on this basis. Although the official emphasis on equal treatment on the basis of a single French identity generally discourages recognition of ethnic and cultural differences, a law passed on 11 June 1994 recognises the moral debt of the French nation towards the *harkis* “which suffered directly from their engagement in the service of our country.” C.-R. Ageron, “Le ‘drame des Harkis’. Mémoire ou histoire ?” (“Harkis’ drama”. Memory or history?), *Vingtième siècle*, October–December 2000, pp. 3–15, p. 15.

<sup>17</sup> On 3 July 1974, in the context of the oil crisis, the French Government decided to stop recruiting migrant workers.

<sup>18</sup> G. Kepel, *Les banlieues de l’islam* (Islam suburbs), Paris, Seuil, 1987; R. Leveau, G. Kepel, eds., *Les Musulmans dans la société française* (Muslims in French Society), Paris, FNSP, 1988.

<sup>19</sup> C. Jocelyne, *Etre musulman en France aujourd’hui* (To be a Muslim in France today), Paris, Hachette, 1997.

<sup>20</sup> L. Babès, *L’islam positif. La religion des jeunes musulmans en France* (Positive Islam. The religion of young Muslims in France), Paris, éditions de l’Aube, 1997; and L. Babès, *L’Islam intérieur: passion et désenchantement* (Internal Islam: passion and disenchantment), Beirut, Al Bouraq, 2000.

practising Muslims, Islam often remains a strong element of their identity;<sup>21</sup> “it is ... the only cultural and symbolic good that they can specifically assert *vis-à-vis* the *Français de souche* (“French by extraction”) ... which enables them, at the same time, to transform exclusion into a voluntarily assumed difference.”<sup>22</sup> There is also a minority who adhere to more militant forms of Islam, some of whom have established a network of associations, either within mainstream associations or independently.

While certain specific features of Muslim immigrant groups, such as language, appear to have been lost over generations, the sense of religious belonging appears to have remained an important component of their identity. A survey carried out in September 2001 revealed that identification with Islam was stronger than it had been in 1994 or 1989.<sup>23</sup> According to the results of this survey, a higher percentage of Muslims engaged in daily prayers, visited the mosque regularly, or practiced other forms of religious observance in 2001. The survey also revealed that devout Muslims can be found at both ends of the social scale; among Muslims identified as upper middle class, practising families are more numerous than non-practising ones.<sup>24</sup>

### *Citizenship*

Unlike their parents’ generation, young Muslims are increasingly requesting nationality, signalling their intention to remain in France and participate fully in public life, culture and politics. As noted above, most of the Muslims living in France are French citizens, yet segments of the public continue to consider Maghrebi Muslims –

<sup>21</sup> A movement towards secularisation can be identified among young Jews and Catholics as well. See D. Vidal, “Ceux qui croient au ciel, ceux qui n’y croient plus. La France des ‘sans-religion’ (Those who believe in God, those who do not anymore. France and non-believers), *Le Monde diplomatique*, September 2001, pp. 22-23. On Jews, see M. Cohen, “Les Juifs de France. Modernité et identité” (Jews in France. Modernity and identity), *Vingtième Siècle. Revue d’histoire*, n. 66, April-June 2000, pp. 91–106.

<sup>22</sup> D. Hervieu-Léger, “Le miroir de l’islam en France” (Mirror of Islam in France), *Vingtième siècle*, April-June 2000, pp. 79–89, p. 80.

<sup>23</sup> 36 percent of those surveyed declared themselves “believing and practising” in 2001, compared with 27 percent in 1994. Survey *Le Monde*, *Le Point*, *Europe 1*, IFOP survey organisation. The survey is based on interviews with 548 Muslims living in France, and 940 non-Muslim French. *Le Monde*, 5 October 2001. For the complete results, see: <<http://www.ifop.com/europe/sondages/opinionf/islam.asp>>, (accessed on 23 September 2002).

<sup>24</sup> *Le Monde*, 5 October 2001.



unlike immigrants from other countries such as Italy, Spain and Portugal – to be “immigrants” even after four generations in France:<sup>25</sup>

Access to French nationality for Maghrebian youth ... involves Frenchmen granting to the children of the ex-colonised what was, formerly, the colonisers' exclusive privilege. Frenchmen returning to France from Algeria (*pièdes-noirs*), Algerians who deliberately chose France (*harkis*) and a considerable number of other Frenchmen accept with difficulty [that] the offspring of the formerly colonised, who refused to belong to the French empire, now call for French nationality after their parents fought against colonial France. An unresolved historical argument, a feeling that immigrants' membership in the nation is fraudulent, the general feeling that young people with migrant origin reject French civilisation by their ostentatious adhesion to Islam – all this generates discomfort, which deepens insofar as it has never been clarified or publicly discussed. The claim that Islam is incompatible with *laïcité* is rooted, at least partly, in a historical debate which has not taken place among Frenchmen on colonisation, decolonisation and access to French nationality for the sons and daughters of Maghrebian migrants.<sup>26</sup>

In addition, general perceptions are complicated by the fact that a significant number of Muslims are in fact still foreigners (persons born abroad who have kept their foreign nationality).<sup>27</sup> The concepts of nationality and citizenship are not synonymous within the French context, even if they are intimately linked.<sup>28</sup> In theory, French nationality is supposed to open the way to full citizenship.

The French approach has been to promote the assumption of a single, national, public French identity for those immigrants who attain to citizenship – an ideal of national integration which is difficult to reconcile with cultural, linguistic or other affiliations

<sup>25</sup> The March 1999 census revealed that 7.4 percent of the French population (4,310,000 people) were “immigrants,” defined as “any person who is living in France and was born abroad and declaring himself of French or foreign nationality.” Of the immigrant population, only 1,560,000 had French nationality, although 550,000 foreigners took French citizenship between 1990 and 1999, decreasing the population of foreigners by nine percent. For more results of the March 1999 census, see: <<http://www.recensement.insee.fr>>, (accessed 20 September 2002).

<sup>26</sup> F. Khosrokhavar, *L'Islam des jeunes* (The Islam of the young), Paris, Flammarion, 1997, pp. 37–38.

<sup>27</sup> C. Wihtol de Wenden, “L’immigration: quel modèle français?” (Immigration: what French model?), *Revue politique et parlementaire*, March–April 2002, n. 1017–1018, pp. 50–59.

<sup>28</sup> In the French context, “citizenship” refers to a set of practices (access to civic rights, the right to participate in the political and social life of the national community, and access to political rights), while “nationality” refers to the legal tie binding an individual to a State. In the European context, it is becoming more and more clear that the notion of citizenship should be disassociated from a national basis. For a more detailed discussion of citizenship in France, see D. Lochak, “Qu’est-ce-qu’un citoyen?” (What is a citizen?), *La Raison présente*, n. 103, 1992.

which do not accord with those of the majority. Claims for special rights by any minority group are perceived as a threat to the Republic's citizenship structure in the long term.<sup>29</sup> As one expert has noted, in this way "the immigrant problem has been quickly transformed into a reflection on the development of French society and its capacity for integration."<sup>30</sup>

The cultural difference of Muslim French citizens is regarded particularly unfavourably, as adherence to Islam is considered to be at odds with Republican values, especially *laïcité* (see below). Resistance towards anything that is perceived as "foreign" or "not French" is apparent in application procedures for identity cards<sup>31</sup> and nationality papers.<sup>32</sup> Public officials seek to establish applicants' engagement with Republican values and to identify traces of "foreignness" – which can lead to arbitrary, intrusive and sometimes racist questions on personal habits.<sup>33</sup> Naturalisation procedures<sup>34</sup> are extremely long and not

<sup>29</sup> C. Audard, "Multiculturalisme et transformation de la citoyenneté" (Multiculturalism and the transformation of citizenship), *Archives de philosophie du droit*, 2001, 45, pp. 227–243.

<sup>30</sup> D. Schnapper, *La relation à l'autre. Au coeur de la pensée sociologique* (Relation to the other. At the heart of sociological thought), Paris, Gallimard, 1998, p. 410.

<sup>31</sup> Since 1993, individuals wishing to renew their identity cards must prove that they are French citizens – and thus may be required to show a certificate of nationality. According to French barrister Gerard Tcholakian, "some administrative bodies handling disputes are consciously or unconsciously determined to protect racial purity." Cited in M. Maschino, "Liberty, Equality, Identity: Are you sure you're French?" *Le Monde Diplomatique*, 8 June 2002, available at: <<http://MondeDiplo.com/2002/06/08france>>, (French version accessed 10 August 2002).

<sup>32</sup> See M. Maschino, "Liberty, Equality, Identity: Do you eat couscous at home?" *Le Monde diplomatique*, June 2002, available at: <<http://MondeDiplo.com/2002/06/09couscous>>, (French version accessed 10 August 2002).

<sup>33</sup> For example, applicants have been asked questions such as: "How many times a week do you eat couscous at home?"; "Do you often return to Morocco?"; "What language do you speak at home?" See Maschino, "Liberty, Equality, Identity."

<sup>34</sup> Naturalisation refers to the State decision to grant French nationality to foreigners upon their request; unlike in the acquisition of French nationality by birth or marriage, the State plays a central role in the process of granting naturalisation.

clearly defined.<sup>35</sup> Despite these problems, 78 percent of applications for French nationality are approved ultimately.

Although there has been growing official and public recognition of the need to fight discrimination, including in access to citizenship, the feeling that immigrants (or their descendants) need to change to become part of French society is still dominant; some have suggested that it is this attitude which needs to change:

The lack of integration should no longer be attributed only to “the immigrants,” a target population *par excellence* ... defined in terms of disabilities, shortcomings, deficits or other supposedly insurmountable difficulties. These specific needs justify the implementation of particular provisions which inevitably lead to a separate and durable social policy towards people who end up being stigmatised and accused of being responsible for their ... non-integration.<sup>36</sup>

### *Laïcité (Secularism)*<sup>37</sup>

*Laïcité* is considered one of the principal Republican values. State policies to exclude religious expression from public institutions such as schools and the regulation of the public rights and representation of certain recognised religious minorities date back to the beginning of the 19<sup>th</sup> century. The 1905 Combes Law created a legal framework,

<sup>35</sup> Applicants for a certificate of nationality are given a long list of official documents required, including their own birth certificate and one for each of their forebears going back three generations, an official document recording births and deaths in each family for themselves, their parents, in-laws and grandparents, corresponding bank certificates, and personal record of military service and work testimonials. However, the list is marked as “provisional,” and other documents may be requested after an initial review of the application. See Maschino, “Are you sure you’re French?” See also, P. Weil, *Qu’est-ce qu’un Français: histoire de la nationalité française depuis la Révolution*, (What is a Frenchman? History of French nationality since the revolution), Paris, Grasset, 2002, pp. 252–256.

<sup>36</sup> N. Boubaker, “Discriminations raciales. Un timide début de reconnaissance publique” (Racial discrimination. A timid debut of public recognition), *Savoirs et Formation*, March 2001, 51, pp. 21–29, p. 25.

<sup>37</sup> This report will use the French term *laïcité* in order to stress the specificity of the concept in the French context, as French experts assert that “institutional dissociation of religion and morals; the creation of secular morals, the transmission of which is ensured by educational institutions, make French *laïcité* something more than the simple separation of Church and State.” J. Baubérot, “La *laïcité* française et ses mutations,” (French *laïcité* and its variations), *Social Compass*, 45 (1), 1998, pp. 175–187, p. 180.

which has since been enshrined in the Constitution,<sup>38</sup> whereby freedom of conscience and free exercise of religion are guaranteed and protected through a system of separation between State and religious affairs. Within this system, the definition of religion is denominational; religions officially exist only in and through their institutions, and are publicly recognised primarily on the basis of the practices and rituals of their places of worship (see Section 3.3.1).

*Laïcité* is meant to provide a framework for the harmonisation of collective and individual interests. The President of the *Fonds d'action et de soutien à l'intégration et de lutte contre les discriminations* (FASILD) has emphasised that the process of integration should end neither with conversion, nor with renouncement of one's faith.<sup>39</sup> However, a rigid interpretation of *laïcité* makes it difficult to embrace multiculturalism, as culturally (and religiously) specific characteristics and differences are considered secondary to the concept of equality for all individuals:

In France, people confuse the defense of *laïcité* and the right of each person to live according to his own convictions. This country so much fears the loss of the benefits of *laïcité* that people cannot express their religious convictions freely anymore.<sup>40</sup>

### *Public attitudes*

Islam is widely perceived as contradicting Republican values, including the loyalty of the citizen to the Republican State and *laïcité*, as well as fundamental values of democracy, equality, and human rights.<sup>41</sup> France's colonial past has left a legacy of ambivalent attitudes toward Muslims among public authorities in particular, which

<sup>38</sup> First in the 1946 Constitution and then in the 1958 Constitution (4 October, adopted after a referendum on 28 September 1958). Art. 1 states that "La France est une République indivisible, laïque, démocratique et sociale. Elle assure l'égalité devant la loi de tous les citoyens sans distinction d'origine, de race ou de religion. Elle respecte toutes les croyances" (France is an indivisible, laic, democratic and social Republic. It ensures equality of all citizens before the law, without distinction of origin, race and religion. It respects all beliefs). For full texts of French Constitutions, see: <<http://www.legifrance.gouv.fr/html/constitution/constitution.htm>>, (accessed 2 October 2002).

<sup>39</sup> FAS, *Lettre* n. 55, July 2001, p. 9.

<sup>40</sup> Interview with the director of the association "Avicenne," 24 May 2002.

<sup>41</sup> The designation of people according to their place of birth, nationality, origin, religious affiliation, or colour of skin has helped determine the way discrimination is constructed and understood. Thus, the term "foreigner" refers to a juridical definition based on nationality, and identifying a person with his/her origin appears to aim to draw a connection between origin and specific attitudes, even going so far as to imply that the former has a cause and effect relationship with the latter.

feeds upon and reinforces a broader public contempt and mistrust toward Islam and hatred of Arabs in general, and North Africans in particular.

The National Advisory Commission on Human Rights (CNCDH) publishes annual reports which offer some insight into the prevalence of racist attitudes. From 1999-2001, in spite of a gradual decrease in attitudes of rejection towards foreigners, the CNCDH noted a “significant hardening of attitudes towards the issue of immigration,” with Arabs as the principal target: 63 percent of interviewees considered that there are “too many Arabs in France.”<sup>42</sup> The 2001 report (published in March 2002) refers in particular to a Louis Harris survey of March 2001: in that survey 70 percent of interviewees declared that they were “uncomfortable in the presence of persons originating from non-European countries,” with 63 percent stating that they felt “uncomfortable” in the presence of Arabs in particular. Seven out of ten respondents defined themselves as more-or-less racist, although a majority also believed that discrimination in employment and access to goods and services should be addressed.<sup>43</sup> Indeed, discrimination and racism are unacceptable under the Republican principle of equality, and thus the phenomenon of discrimination is widely understood as a major malfunctioning in the Republican system – and a legitimate target of public policy (see Section 3.1).<sup>44</sup>

The experiences recorded by the national anti-discrimination 114 hotline further attest to the existence of xenophobic and racist attitudes and to the fact that these attitudes lead to discriminatory practices, particularly with regard to employment and public services such as housing and access to the healthcare.<sup>45</sup> Following the attacks on the World Trade Center on 11 September 2001, the hotline recorded an upsurge in reported cases of discrimination

<sup>42</sup> *Le Monde*, 22 March 2001.

<sup>43</sup> 81 percent would consider a refusal to hire a foreigner who is qualified for a job as “serious;” 69 percent made the same evaluation regarding a refusal to rent a house to a foreigner and 62 percent regarding refusals to allow young people to enter a night club. Louis Harris survey, March 2001. The Louis Harris survey is conducted yearly by the same institute and is then incorporated into the National Advisory Commission on Human Rights’ annual report to the Prime Minister by the end of March. The value of the survey on “les attitudes des Français face au racism” (French attitudes towards racism) has been strongly criticised. See A. Morice, V. de Rudder, “A quoi sert le sondage annuel sur le racisme,” (What purpose does the annual survey on racism serve), *Hommes et migrations*, 2000, n. 1227, available at: <<http://www.bok.net/pajol/ouv/MoriceHM.html>>, (accessed 26 September 2002).

<sup>44</sup> See V. De Rudder, C. Poirer, F. Vourc’h, *L’inégalité raciste. L’universalité républicaine à l’épreuve* (Racist inequality. Putting Republican universality to the test), Paris, PUF (Pratiques théoriques), 2000, pp. 15–16 and pp. 189–190.

<sup>45</sup> For a presentation of the 114 hotline, see “La mise en oeuvre locale du 114” (Local implementation of the 114), *Migrations études*, May-June 2001, n. 99. See also the description of the 114 at: <<http://www.le114.com>>, (accessed 26 September 2002).

against Muslims. Some callers accused the hotline of helping “supporters of Bin Laden.”<sup>46</sup> Significantly, however, France did not experience a wave of aggression and attacks against Muslims and places of Muslim worship after 11 September,<sup>47</sup> and 67 percent of Muslims taking part in an IFOP-*Le Monde* survey in late September 2001 claimed that they had not noticed any change in attitudes towards Muslims since then.<sup>48</sup> On the other hand, attacks on mosques have increased since April 2002, with incidents (such as provocative graffiti, parcel bombs, and petrol bombs) recorded in Languedoc-Roussillon, Gironde, Ile-de-France, and Nord-Pas-de-Calais.<sup>49</sup>

Respondents in the IFOP-*Le Monde* survey were asked to choose three words which best corresponded to their conception of Islam. 22 percent answered “fanaticism,” 18 percent “obedience,” and 17 percent “the rejection of Western values.” However, it is significant to note that the percentage associating Islam with fanaticism has decreased considerably; in 1994, 37 percent identified Islam primarily with fanaticism. Moreover, the association of positive values with Islam is increasing, as is the trend to evaluate the presence of Islam in France more positively: 22 percent claimed that they were opposed to the establishment of places of worship and construction of mosques (compared to 38 percent in 1994).<sup>50</sup> Commenting on the results of this survey, one expert has noted that while individual Muslims are increasingly accepted, Islam is not: “I have the impression that Islam is still slightly problematic to the French. Integration is effective, but it is not accompanied by a positive vision of the Muslim religion. [Public] opinion accepts Islam in one’s neighbourhood ... as more real than an abstract Islam, which continues to inspire fear.”<sup>51</sup>

Acknowledging discrimination poses a deep conceptual dilemma, because it entails questioning Republican myths – probing the gap between formal and actual equality, between principles and practice. It means confronting the reality that a significant population of so-called *Français de papiers* (French by documents)<sup>52</sup> – who have

<sup>46</sup> Group for the Study of Discrimination (GELD), *Rapport d’activités 2001*. GIP-GELD-114, *Conseil d’orientation du 30 avril 2002* (2001 Report of Activities. GIP-GELD-114, Orientation Board of 30 April 2002) p. 26.

<sup>47</sup> *La Croix*, 22 March 2002.

<sup>48</sup> IFOP-*Le Monde* survey, September 2001. For complete results, see: <<http://www.ifop.com/europe/sondages/opinion/islam.asp>>, (accessed 26 September 2002).

<sup>49</sup> *Le Monde*, 4 May 2002.

<sup>50</sup> IFOP-*Le Monde* survey, September 2001.

<sup>51</sup> Interview with F. Fregosi, political scientist and specialist on Islam in France, CNRS/University Robert-Schuman of Strasbourg, in *Le Monde*, 5 October 2001.

<sup>52</sup> Referring to individuals who have obtained French nationality through naturalisation (i.e. by asking for it) or through marriage.

resolved to become French – are not considered or treated as such. The reality of discrimination constitutes a challenge to the national self-image.

### *Official discourse*

There has been growing official recognition of the problem of discrimination, including religious discrimination, starting in the 1990s and culminating with the declaration of the fight against discrimination as a “major national cause for 2002.”<sup>53</sup> Acknowledgement of discrimination has prompted recognition of the need to develop new approaches towards the integration of diversity and multiculturalism, prompting reflection and debate on political categories such as loyalty (i.e. the idea that all persons attaining French nationality should be required to demonstrate their engagement with central Republican values).

Some political leaders have made attempts to advance and support moderate opinions on Islam and to draw distinctions between Muslims in Europe and terrorism or fanaticism, particularly in the past year.

Moreover, on some occasions action has been taken against public officials who use racist language against Muslims. For example, after a town councillor in Colmar publicly declared that “Islam and its trail of intolerance and chauvinist behaviour must be eradicated,” he was convicted of incitement of racial and religious discrimination and sentenced to five years of ineligibility.<sup>54</sup>

National Front presidential candidate Jean-Marie Le Pen’s success in the first round of the 2002 presidential elections thrust extreme right-wing ideas onto the front pages of newspapers and into the forefront of national debate. Le Pen clearly gained votes by taking a firm position on security and the importance of traditional national values<sup>55</sup> – and by associating these positions with a strong and openly racist anti-immigration stance. Support for Le Pen’s ideas was estimated at 11 percent in Spring 1999; by the 2002 elections, it had reached 28 percent.<sup>56</sup>

Though positions vary among ministers and political actors, a series of initiatives under successive Governments since 1990 have reflected a common tendency to encourage a

<sup>53</sup> Decision of the Prime Minister on 23 November 2001, *Official Journal* 297, 22 December 2001.

<sup>54</sup> Tribunal correctionnel of Colmar, 4 October 2001.

<sup>55</sup> A recurring theme during Le Pen’s campaign was the threat to French identity posed by immigration and foreign influence; Le Pen repeatedly associated crime with immigration. See “Europe’s far right. Toxic but containable,” *The Economist*, 27 April 2002, pp. 29–30.

<sup>56</sup> Enquête Sofres-RTL-*Le Monde*, *Le Monde*, 28 May 2002.

“top-down” representation of Islam,<sup>57</sup> the identification of a single “negotiating partner” to represent French Muslim communities *vis-à-vis* the Government. In addition to reflecting a general public will to regulate relations between Muslims and the State under the same legislation that applies to other forms of worship, this approach also bears traces of the colonial legacy,<sup>58</sup> which “...in Algeria went as far as placing Islam under the regulatory authority of the French Government.”<sup>59</sup> The newly-elected Government has indicated its intention to continue the latest of these initiatives, the “Consultation on Islam of France,” which was launched under the previous Government in 1999 (see Section 4.1). Muslim leaders participating in the Consultation were required to sign a declaration of loyalty to Republican principles, including *laïcité*, freedom of conscience, and equality.

### *Media*

The media has both reflected and contributed to the trend to associate Islam with immigration, criminality, fanaticism and terrorism, thereby providing a justification for exclusion and religiously motivated discrimination.<sup>60</sup> One expert has referred to a “televsual racism” whereby media images and information provide a unifying link between racist attitudes and discriminatory practices in different sectors, such as employment and education,<sup>61</sup> and in different parts of the country.

Public figures and the media often refer to Muslims collectively in association with criminality inside France or with international conflicts. Euphemistic references to “the

<sup>57</sup> The management of religion in the public space is a top-down, national project conducted on a strictly denominational basis. J. Zylbenberg, “La régulation étatique de la religion: monisme et pluralisme,” (State regulation of religion: monism and pluralism), *Social Compass*, 1990, n. 37/1.

<sup>58</sup> See R. Leveau, C. Wihtol de Wenden, *La bourgeoisie. Les trois âges de la vie associative issue de l'immigration* (The Bourgeoisie: the three ages of associative life stemming from immigration), Paris, CNRS éditions, 2001, p. 123.

<sup>59</sup> F. Frégosi, “France: le culte musulman et la République, la régulation publique de l’islam dans un cadre laïque,” (France: Muslim Worship and the Republic. Public regulation of Islam in a secular framework), R. Leveau, K. Mohsen-Finan, C. Wihtol de Wenden, eds., *Islam en France et en Allemagne. Identité et citoyenneté* (Islam in France and Germany. Identity and Citizenship), Paris, Documentation française, 2001, pp. 63–80.

<sup>60</sup> See, e.g. A. Perotti, “Présence et représentation de l’immigration et des minorités ethniques à la télévision française” (Presence and representation of immigration and ethnic minorities in French Television), *Migrations Sociétés*, 1991, vol. 3, n. 18, pp. 39–55. For more recent data on Muslims, see I. Rigoni, “The Muslim media in search of Social and Political Inclusion: A comparison between Britain and France,” European workshop, “Minority Media in Europe: a Revolution from Below?” London, London School of Economics, 26–27 September 2002 (forthcoming).

<sup>61</sup> F. Khosrokhavar, *L’islam des jeunes*, Paris, Flammarion, 1997, p. 43.



neighbourhoods,” the “young people of the suburbs,” “young people of immigrant origin” and especially the attacks of 11 September all reinforce a collective representation of French Muslims (and of Islam at large) as a dangerous element in French society.<sup>62</sup> It is not uncommon for newspapers to report the national origin or religious affiliation of individuals alleged to have committed a crime, particularly when they are Muslims.<sup>63</sup>

Well-known writer Michel Houellebecq, during an interview in September 2001, spoke of Islam in highly insulting terms.<sup>64</sup> Different Muslim associations and mosques (Lyon, Paris) together with the *Ligue des droits de l'homme* (League of Human rights) filed a legal complaint, accusing the writer of “anti-Muslim racism.” The trial took place on 17 September 2002 in Paris, and a judgement is expected on 22 October. Some French NGO representatives have called for the prosecution of Italian writer Oriana Fallaci for incitement and provocation to racial hatred after the appearance of the French translation of the controversial publication *Rage and Pride*.<sup>65</sup>

The topic of Islam has attracted more intense media coverage since 11 September. However, the increased coverage has tended to reinforce stereotypes and to further polarise the French Muslim community. According to one Muslim organisation: “The media has used each incident ... to feed Islamophobia and demonstrate that Islam is incompatible with the Republic.”<sup>66</sup> Though Muslim leaders in France, as elsewhere in Europe, were unanimous in condemning the attacks, there was extensive media speculation about French Muslims’ propensity to support Bin Laden, mainly due to Al

<sup>62</sup> *Le Figaro*, 26 April 2002.

<sup>63</sup> See, e.g. *Le Monde*, 11 June 2000.

<sup>64</sup> Asked to give his opinion on religion and the different forms of monotheism, he stated that: “La religion la plus con, c’est quand même l’islam” (The most stupid religion is Islam) and added that Islam is “a dangerous religion.” M. Houellebecq, entretien avec D. Sénécal, *Lire*, September 2001. For the complete interview, see: <<http://www.lire.fr/entretien.asp/idC=37437/idTC=4/idR=201/idG>>, (accessed 27 September 2002).

<sup>65</sup> According to “Licra” (International Alliance against Racism and Anti-Semitism), “Her writing is ... an incitement to hatred against a community and therefore a violation of public order.” According to a representative of the Movement against Racism and for Friendship among Peoples, “the contents of the book gravely offend a group of persons, Muslims, because of their religion: this is a punishable violation under our legal system.” G. Martinotti, *La Repubblica*, 21 June 2002. Interestingly, Muslim associations did not take part in this action.

<sup>66</sup> Interview with the director of *Institut Formation Avenir*, 17 May 2002.

Qaida's apparent connections with European networks.<sup>67</sup> The daily *Le Figaro* wrote of "a community torn between emotion and convictions," pointing out that while Muslim leaders denied any connection between Islam and terrorism, they also made strong anti-American remarks.<sup>68</sup>

Several leaders of Muslim associations have decried the tendency among TV and newspaper reporters to spotlight the views of radical individuals who are not representative of the Muslim population, further distorting the image of Islam in the public eye. Indeed, despite the fact that the network of Muslim associations is extremely dynamic and diverse, the same persons tend to be presented as representatives of Muslims on TV or in the press. Thus, the diversity of French Muslim communities and of their activities at the local and community level is generally not known to either the public authorities or the broader public.

### 3. MINORITY PROTECTION: LAW AND PRACTICE

France has ratified the major international agreements guaranteeing protection against discrimination.<sup>69</sup> However, it has consistently entered reservations on articles relating to the rights of individuals belonging to ethnic, religious or linguistic minorities,<sup>70</sup> and so far has refused to ratify either the Framework Convention for the Protection of National Minorities (FCNM) or the European Charter for Regional or Minority Languages (CRML).

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<sup>67</sup> One of the persons who took part in the attack, Mr. Atta, had lived in Hamburg for some time before moving to the United States. After some cases of French persons who had converted to Islam and engaged with Al Qaida had been made public, the press reported on the socialisation process in French mosques in Strasbourg, Paris and other big cities to illustrate the potential risk posed by Islam in France. V. Amiraux, "The Perception of Political Islam in Europe after September 11: Changing Paradigm or Changing actors?" in A. Karam, ed., *Transnational Political Islam*, Pluto Books, 2002 (forthcoming).

<sup>68</sup> *Le Figaro*, 21 September 2001.

<sup>69</sup> France voted for the Universal Declaration of Human Rights and has ratified, *inter alia*, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the International Convention on the Elimination of all Forms of Racial Discrimination, and the International Convention on the Elimination of all Forms of Discrimination Against Women.

<sup>70</sup> Including on Art. 27 of the UN International Covenant on Civil and Political Rights (ICCPR) and on Art. 30 of the Convention on the Rights of the Child (CRC).

International conventions take precedence over domestic legislation,<sup>71</sup> and European Community Law prevails over domestic law. Courts and the Council of State increasingly give consideration to the rulings of international bodies, especially as more and more plaintiffs refer to these rulings in their complaints.<sup>72</sup> Moreover, in some areas, such as the system of proof and the concept of harassment,<sup>73</sup> European directives had a perceptible impact on the rulings and practice of French courts even before the adoption of the 2001 anti-discrimination law.<sup>74</sup>

### 3.1 Protection against Discrimination<sup>75</sup>

Since the 1970s, a series of laws have been adopted to facilitate the fight against discrimination, culminating with the adoption of comprehensive anti-discrimination legislation in November 2001.<sup>76</sup> In the face of growing evidence of discrimination

<sup>71</sup> 1958 Constitution, Art. 55.

<sup>72</sup> For example, the Council of State referred to the clause of Article 9 of the ECHR stipulating that freedom of religion is subordinated to public security issues in its ruling that veils could not be worn in identity card photos, in the interest of protecting the authenticity of identity documents. Council of State, 27 July 2001, n. 216903.

<sup>73</sup> The plan of legal reform discussed by Parliament at the end of 2001 foresaw the integration into labour regulations and the Penal Code of provisions to sanction moral harassment which, according to the terms of the European directives, constitutes one of the possible forms of discrimination. GELD *Activities Report 2001*, p. 14.

<sup>74</sup> See D. Borillo, "Les instruments juridiques français et européens dans la mise en place du principe d'égalité et de non-discrimination" (French and European legal tools in the implementation of the principle of equality and non-discrimination), *RFAS*, n. 1, 2002, pp. 113–129.

<sup>75</sup> For a review of the French approach towards protection against racial discrimination, see Z. Aboudahab, "La protection des personnes contre les discriminations 'raciales.' Evolution du droit français et exigences du droit européen" (Protection of persons against racial discrimination. Evolution of French law and European law requirements), *Ecarts d'identité*, n. 99, at: <[http://ecid.online.fr/french/numero/article/art\\_99.html](http://ecid.online.fr/french/numero/article/art_99.html)>, (accessed 26 September 2002).

<sup>76</sup> Law 2001-1066 of 16 November 2001 (*Official Journal*, n. 267, 17 November 2001, p. 18311). For the full text of the law, see: <<http://www.france.qrd.org/texts/discrimination/loi2001-1066.html>>, (accessed 26 September 2002). For all official texts concerning the fight against discrimination (including preparatory documents before 2000), see: AEQUALITAS, at: <<http://www.mapage.noos.fr/marika.demangeon/france/francetextes.htm>>; for a bibliography of anti-discrimination initiatives, see: <<http://www.mapage.noos.fr/marika.demangeon/france/francedocuments.htm>>, (both accessed 23 September 2002).

against minority groups, including Muslims, there has been increasing recognition from officials and the public that there is a need for State-supported action to ensure that these laws are respected in practice. However, the need for anti-discrimination policies and programmes is always balanced against and placed within the framework of the Republican principle of equality.<sup>77</sup>

Racial, ethnic, national or religious discrimination was first prohibited in relation to provision of goods and services and employment (hiring and firing) in 1972.<sup>78</sup> Discrimination on the basis of gender and family circumstances was prohibited in 1975,<sup>79</sup> customs in 1985,<sup>80</sup> and disabilities and health status in 1989.<sup>81</sup> The 1992 Penal Code prohibits discrimination on grounds of “real or supposed membership or non-membership of an ethnicity, nation, race or religion,”<sup>82</sup> *inter alia*, and sanctions direct discrimination by public authorities on these grounds.<sup>83</sup>

Anti-discrimination legislation adopted in November 2001 establishes a general framework for fighting discrimination.<sup>84</sup> Its principal innovations include introduction of the concept of indirect discrimination and provisions stipulating reversal of the burden of proof for those bringing discrimination claims. Several articles of the Law on

<sup>77</sup> See V. De Rudder, C. Poirret, F. Vourc’h, *L’inégalité raciste. L’universalité républicaine à l’épreuve* (Racist inequality. Putting Republican universality to the test), Paris, PUF (Pratiques théoriques), 2000.

<sup>78</sup> Law 72-546 of 1 July 1972. Sanctions were outlined in the Penal Code, Art. 415 (amended as Art. 225-1).

<sup>79</sup> Law 85-772 (1975).

<sup>80</sup> Law 89-18 (January 1989).

<sup>81</sup> Law 90-602 (July 1990).

<sup>82</sup> Penal Code of 22 July 1992, amended 1 March 1994, Art. 225-1 through 225-4.

<sup>83</sup> Penal Code of 22 July 1992, amended 1 March 1994, Art. 432-7: “Discrimination as defined in Article 225-1 against a natural or legal person by a representative of the official authority or in charge of a public service function, in the exercise or on the occasion of the performance of his duties, is punished by three years of imprisonment and a €45,000 penalty when it consists of: 1. refusing the benefit of a right granted by law; 2. blocking the normal exercise of any type of economic activity.”

<sup>84</sup> See D. Borillo, “Les instruments juridiques français et européens dans la mise en place du principe d’égalité et de non-discrimination” (French and European juridical instruments in implementing the principle of equality and non-discrimination), in particular the last section of the article, pp. 124–129.

Social Modernisation further extend the application of the November legislation (for instance, to cover discrimination in rental of accommodations).<sup>85</sup>

### *Lack of data*

There is virtually no data available to document the frequency of discrimination on specifically religious grounds, though anecdotal evidence suggests that it is frequently difficult to separate religious discrimination from discrimination based on ethnicity, race, gender or other grounds.<sup>86</sup> For example, the national 114 hotline does not often receive complaints of religious discrimination, although implicit insults or pejorative references to the religious origin of complainants are not uncommon. According to some experts, assumptions about religious values subtly colour perceptions and actions in ways which are difficult to substantiate:

Because of their origin, individuals are associated with values held to be irreconcilable with those supposed to guarantee 'national identity.' This ideological construct – more subtle than the expression of violent racism, justifies ambiguous practices which are increasingly difficult for victims to identify or prove.<sup>87</sup>

Despite the existence of a fairly comprehensive legal framework, few complaints of discrimination make it to court.<sup>88</sup> Victims allegedly have difficulty preparing legal claims and often do not follow up on complaints submitted to public bodies in general, whether through the police, the 114 or by other means. Moreover, there is little monitoring of case files, and therefore little information on how complaints are resolved. Courts rarely apply existing legislation sanctioning discrimination;<sup>89</sup> there has

<sup>85</sup> Law on Social Modernisation (also known as the Aubry's Law, after the then Minister of Social Affairs), adopted in December 2001, Art. 49, 50 and 51. See: <<http://www.mapage.noos.fr/marika.demangeon/france/francetextes.htm>>, (accessed 27 September 2001).

<sup>86</sup> According to the director of *La Réussite*, for example, "Racism is not strong. I prefer to say that there are misunderstandings owing to poor information." Interview with the director of *La Réussite*, 21 May 2002.

<sup>87</sup> *Etude sur les services de téléphonie à caractère social* (Study on telephone services with a social dimension), CREDOC, December 2001, p. 34.

<sup>88</sup> For example, of 60 allegations of discrimination transmitted to the specialised Subcommittees for Access to Citizenship (CODAC), and then to the Office of the Public Prosecutor in 2000, by the end of 2000, 70 percent were, in the process of police investigation, 11 percent had been classified as without repercussions, and 19 percent had given rise to legal proceedings. Rapport Igas, *Bilan du fonctionnement des Codac*, December 2000.

<sup>89</sup> According to Art. 225-2 of the Penal Code, discriminatory practices on racial, ethnic, religious or sexual grounds in employment and in access to goods and services, *inter alia*, are punishable by up to two years' imprisonment or a fine of up to €30,000.

been an average of 80 convictions of discrimination annually since 1995.<sup>90</sup> Proving allegations of discrimination is difficult; until recently there was no provision to shift the burden of proof, and there is still insufficient awareness of the existence and use of this provision. The imposition of prison sentences is rare and the level of fines for discriminatory behaviour has stabilised at approximately €1,500. The possibility to initiate legal and penal proceedings against legal entities or to sue for civil liability is not often utilised.<sup>91</sup>

There have been some proven cases of explicitly religious discrimination, particularly in obtaining access to citizenship (See Section 3.3.5). Again, discrimination against Muslims rarely takes place on solely religious grounds; more usually, there appears to be a complex mixture of racial, ethnic, religious and other motivations. However, in the absence of ethnically or religiously coded data, it is difficult to develop a more nuanced picture.

### *Policy initiatives*

There have been a number of important anti-discrimination policy initiatives in recent years. Notably, a 1998 HCI report documenting the extent of racial discrimination<sup>92</sup> prompted a series of important governmental decisions which have changed radically the framework for anti-discrimination debate and action.<sup>93</sup>

The 1999 Belorgey report represented the first programmatic expression of this change in policy.<sup>94</sup> At a difference to earlier assessments, this report assessed society's preparedness for the integration of diversity rather than the individual's preparedness to integrate. The report proposed a set of strategies to combat racial, ethnic and religious discrimination, and the fight against racial discrimination was taken up as an official objective of the Socialist Government on 18 March 2000, at *les Assises de la citoyenneté* (Meeting on citizenship). The Belorgey report also provided key impetus for the development and adoption of the Law on Social Modernisation and the anti-discrimination legislation of 16 November 2001.

<sup>90</sup> E. Serverin, quoted in GELD, *Activities Report 2001*, p. 44.

<sup>91</sup> The GELD mentioned only one case of religious discrimination in its 2001 report, p. 50.

<sup>92</sup> Haut Conseil à l'Intégration, *Lutte contre les discriminations: faire respecter le principe d'égalité* (The fight against discrimination: Having the equality principle respected), Presented to the Prime Minister on 20 October 1998, Paris, La Documentation française, 1998.

<sup>93</sup> Such as special Subcommittees for Access to Citizenship (CODAC) in 1999, the Group for Research and the Fight against Discrimination (GELD), the 114 hotline; and a number of important documentation and research projects. See Section 4.1.

<sup>94</sup> J.-M. Belorgey, *Lutter contre les discriminations. Rapport à Madame la Ministre de l'emploi et de la solidarité* (Fighting against Discrimination. Report presented to the Minister of employment and solidarity), April 1999.

The 2001 legislation represents another significant step forward in the fight against discrimination. Reversal of the burden of proof should facilitate attempts to prove discrimination in court. However, as of yet there is no provision for the creation of a dedicated central anti-discrimination authority, as required by the EU Race Equality Directive. Moreover, though the concept of indirect discrimination was introduced, it has not yet been precisely defined. According to one expert, this is because compliance with EU Directives on this point “would imply referring to [special] categories of the population (which is prohibited by the French Constitution).”<sup>95</sup> Institutionalisation of the concept of indirect discrimination is believed to run counter to the constitutional principle of the unity of the Republic.

Public authorities have made some efforts to encourage more effective implementation of anti-discrimination legislation. For example, the Minister of Justice issued a circular on 16 July 1998 urging prosecutors “to show a strengthened vigilance in researching and recording of this type of infringement.”<sup>96</sup> In a decision of 12 September 2000, the Court of Cassation recognised the legitimacy of proof generated through testing in cases of racial discrimination,<sup>97</sup> and the validity of this ruling was upheld by the Court of Cassation on 11 June 2002.<sup>98</sup>

### 3.1.1 Education

Equal access to free public education is guaranteed for all, and all children (including foreigners) of school age are under an obligation to attend school.<sup>99</sup> The sphere of education is framed and regulated by the principle of *laïcité* and by the 1989 Law on

<sup>95</sup> See D. Borillo, “Les instruments juridiques français et européens dans la mise en place du principe d’égalité et de non-discrimination” (“French and European legal tools in the implementation of the principle of equality and non-discrimination”), note 3, p. 126.

<sup>96</sup> Quoted in GELD, *2001 Report of activities*, p. 44.

<sup>97</sup> *Le Monde*, 26 October 2000. The technique of testing has been systematised by SOS-Racisme. Initially, testing was organised particularly at nightclubs refusing to let people in without justification, apparently because of their migrant origin.

<sup>98</sup> Court of Cassation, n. W 01-85.560 F.-D. J.-P. Duhamel, one of the lawyers defending SOS Racisme’s proposal that testing should be accepted as proof of discrimination argued that testing could be a useful tool beyond night clubs; testing could serve the fight against discrimination in other areas, such as employment. See: <[http://www.le114.com/actualites/fiche.php?Id\\_Actualite=68](http://www.le114.com/actualites/fiche.php?Id_Actualite=68)>, (accessed 26 September 2002).

<sup>99</sup> Education Code, Art. L131-1-12 For complete text, see: <<http://www.legifrance.gouv.fr>>, (accessed 26 September 2002).

Orientation in Education,<sup>100</sup> which affirm the individual right to freedom of conscience. In practice, these two principles have come into conflict, particularly with regard to students belonging to religious minorities, including Muslims.

It is a central objective and responsibility of French public schools to train students in Republican values<sup>101</sup> including *laïcité*,<sup>102</sup> and to ensure both equal treatment of individual pupils and respect for pluralism. As such, local officials have the competence to regulate the public expression of religious belonging in schools, *inter alia*. The so-called “veil affairs” illustrate the tension between public space and private choices; the difficulties inherent in balancing the requirements of *laïcité* against the needs of Muslim students.<sup>103</sup>

The first chapter in the “veil affairs” opened on 27 November 1989, when the Council of State ruled on the question of whether Muslim girls should be permitted to wear

<sup>100</sup> Law on Orientation in Education, 10 July 1989. See J.-M. De Queiroz, “Les remaniements de la ‘séparation scolaire’” (Changes in the ‘school separation’), *Revue Française de Pédagogie*, n. 133, October–December 2000, pp. 37–48.

<sup>101</sup> Public schools are established and maintained by the State, and private schools are governed by associations, religious groups, or other private groups, and may or may not be under contract with the State. In parallel with the process of secularisation of education, several laws have contributed to the development of a private school sector (primary, secondary, and university). Officially, private schools cannot benefit from public financial support of more than one tenth of their annual expenses. For many years, private schools were sponsored exclusively by private sponsors, though several forms of indirect assistance were available, such as allocation of rooms, State social grants for pupils (children attending private schools are eligible for these grants since 1951). The Debré Law of 1959 introduced two possibilities for a private school to receive State funding: the simple contract (*contrat simple*) and the contract of association (*contrat d’association*). Under a simple contract, staff expenses are covered by the State for teachers and State-accredited professors; though private schools with a simple contract have autonomy in determining the content of their curricula, they retain the obligation to prepare students for official degrees, and must use authorised books and organise the teaching programme in line with the programmes and schedule of public schools. The contract of association allows for more significant financial support: the State pays for staff expenses and also for material expenses on the basis of costs in the public sector. It also allows more freedom in defining the content of the teaching programme. For more on this issue, see G. Bedouelle, J.-P. Costa, *Les laïcités à la française* (Secularism French style), Paris, PUF (Politique d’aujourd’hui), 1998.

<sup>102</sup> See J.-M. De Queiroz, “Les remaniements de la séparation scolaire” (Changes in school separation), *Revue Française de Pédagogie*, n. 133, October–December 2000, pp. 40–41.

<sup>103</sup> Avis n. 346.893 sur le port de signes d’appartenance à une communauté religieuse dans les établissements scolaires, *L’actualité juridique. Droit administratif* (Opinion on wearing signs of belonging to a religious community at school in *Legal news. Administrative law*), 1990, pp. 39–45. See also W. Jean-Paul, “Le Conseil d’Etat et la laïcité: propos sur l’avis du 27 novembre 1990” (The Council of State and *laïcité*: discussion on the opinion given on 27 November 1990), *Revue française de science politique*, 1991, pp. 28–44.



veils in public schools. The ruling weighed the principle of non-discrimination at school (i.e. recognition of the individual student's right to freedom of conscience), against the general principle of *laïcité* – the political and religious neutrality of public services. The Council of State concluded that the practice of wearing veils at school can not be systematically prohibited,<sup>104</sup> but rather that each case should be judged individually to determine if a student's choice to wear the veil is incompatible with *laïcité*. The opinion suggested that the decision could be conditioned by considerations such as the “ostentatiousness” of the veil; whether wearing a veil would harm the smooth operation of the school; and whether wearing the veil can be associated with proselytism.<sup>105</sup>

The Council of State's opinion is quite vague, providing only broad guidelines for a pragmatic approach to the resolution of individual cases rather than a binding rule; there is no indication of how to determine “ostentatiousness,” or of how to determine incompatibility with the principle of *laïcité*.

Teachers and other local authorities did not universally agree with this approach. In October 1993, an MP and former headmaster of a college highlighted to the National Assembly that school officials were experiencing great difficulties in compelling compliance with decisions on individual students' right to wear the veil. The Bayrou circular of 20 September 1994 sought to affirm headmasters' competence to take such decisions as part of their responsibility to instil and maintain school discipline, of which ensuring *laïcité* is a part. Overall, interpretations of the circular have led to a hardening of headmasters' policy; the internal regulations of colleges and high schools clearly have become more hostile to the practice of wearing a veil.

Despite the vagueness of the Council of State's opinion, it did break with a traditionally more dogmatic and restrictive vision of *laïcité* by recognising the right to publicly and individually express one's belonging to a religious community. This principle has been applied in a majority of the 49 cases which reached the Council of State between 1992 and 1999; in 41 of these cases, a school administration's decision to restrict the right to wear the veil was overruled. Although it has permitted the

<sup>104</sup> This position was affirmed by the Jospin circular of 12 December 1989, which assigns the responsibility for deciding whether young girls who insist on wearing a veil should be expelled or not to educational authorities, and specifies that such decisions should be made on a case by case basis.

<sup>105</sup> Council of State, Opinion of 27 November 1989. See full text at: <[http://www.cidem.org/cidem/themes/education/edu\\_infos/textes\\_references/edu\\_t009.pdf](http://www.cidem.org/cidem/themes/education/edu_infos/textes_references/edu_t009.pdf)>, (accessed 4 October 2002).

adoption of certain restrictions for reasons of safety, health, hygiene, or security,<sup>106</sup> the Council of State has affirmed repeatedly that religious belonging and *laïcité* should be considered compatible, and case-law since 1989 has tended to favour the plaintiffs (i.e. the girls wishing to wear the veil).<sup>107</sup> By contrast, a series of legislative proposals have proposed more restrictive readings of *laïcité* rather than increased recognition for cultural diversity.<sup>108</sup>

Schools have also been the scene of a number of other controversies relating to religious expression, such as parental requests that religious dietary requirements be respected in school cafeterias or that their children be excused for religious holidays or from certain courses.<sup>109</sup> There is no law and little guidance to assist public authorities in deciding these cases, and few cases have been taken before courts.

For example, since 2001 the parents of three Jewish children being educated in a public primary school in the suburbs of Paris have been protesting a municipal decision to exclude their children from the school cafeteria. The decision was taken after the parents had refused to sign a protocol committing themselves to prepare their children's meals every day – a practice that is normally adopted for children with allergies. The Movement against Racism and for Friendship between People (MRAP) has assisted the families in filing a case before the ECHR claiming violation of their right to freedom of religion. The case is pending.

<sup>106</sup> Decision of the Council of State of 10 March 1995, cited in A. Epoux, *L'actualité juridique. Droit administratif*, 1995, p. 332. Exceptional restrictions have been ruled permissible in certain school classes, particularly sports and technical education (industrial arts and crafts). Arrêt n. 181486, October 1999. The European Court of Human Rights also appears to support some restrictions on freedom of expression, as it has interpreted Article 9 of the ECHR as “not guaranteeing the absolute right to express religious opinions in a public educational establishment.” See S. Dubourg-Lavroff, “L'expression des croyances religieuses à l'école” (Expression of religious belief at school), *Revue française de droit constitutionnel*, 1997, n. 30, pp. 269–292, p. 287.

<sup>107</sup> Since 1989, case-law has tended to favour the plaintiffs, whether in the decisions given by the Council of State (décisions Yilmaz, 14 March 1994, Ali, 20 May 1996) or by administrative courts (arrêt Aksirin, Tribunal administratif de Strasbourg, 3 May 1995).

<sup>108</sup> Since 1989, ten proposals for laws stipulating a more restrictive reading of *laïcité* have been tabled. See G. Koubi, “Des propositions de lois relatives à la laïcité dans les établissements publics scolaires...” in *Revue de la recherche juridique. Droit prospectif*, 1998, (73), 2, pp. 577–585, footnote 7, p. 578.

<sup>109</sup> The problem has arisen particularly with regard to requests for excused absence for Shabbat. The Council of State made a statement on 31 March 1995, deciding that an authorisation of absence could be granted by school administrations subject to certain conditions; here, too, such issues are resolved on a case by case basis.

ECRI has expressed concern about the “disproportionate representation of foreign children or children of immigrant background” in certain schools, and that language deficiencies may result in the overrepresentation of these children in specialised education courses. On the basis of these concerns, ECRI has encouraged priority to be given to proposals such as that made by the High Council for Integration: that a special body responsible for addressing questions of integration in schools should be established in the Ministry of Education.<sup>110</sup>

### 3.1.2 Employment

French law offers greater protection against discrimination in employment than in any other area,<sup>111</sup> and the evolution of legislation in this area is clearly linked to advances in European legislation.<sup>112</sup> The Labour Laws and the Code on Public Service prohibit discrimination in recruitment on the basis of religious belief, *inter alia*.<sup>113</sup> Job applicants may not be asked to reveal their religious affiliation, and religious convictions cannot be a ground for discrimination in the workplace,<sup>114</sup> or for dismissal; the same applies for public agents.<sup>115</sup> At the same time, it is in this area and in the area of housing that reports of discrimination are most frequent,<sup>116</sup> though few legal complaints are filed.

The rate of unemployment among non-European foreign residents is three times higher (27.7 percent) than among *Français de souche* (9.4 percent).<sup>117</sup> Moreover, ECRI has noted that “possession of French nationality does not seem to prevent discriminatory practices, as unemployment appears to strike the French population of immigrant origin in a way that

<sup>110</sup> See European Commission against Racism and Intolerance, Second report on France, adopted on 10 December 1999 and made public on 27 June 2000, paras, 21–22; 44 (hereafter, “ECRI Report 1999”).

<sup>111</sup> Discrimination is prohibited under the Law on Employment, Art. L 123-1, L 140-2 to 4, Art. L 152-1 to 3 and Art. L 154-1.

<sup>112</sup> Such as, for example, the introduction of provisions allowing reversal of the burden of proof.

<sup>113</sup> Labour Law, Art. 122-45 (see the text as included in the Law on Discrimination of 16 November 2001, at: <<http://www.social.gouv.fr/htm/pointsur/discrimination/presentloi.htm>>, (accessed 27 September 2002).

<sup>114</sup> Labour Law, Art. L 122-35.

<sup>115</sup> See, e.g. Council of State, 8 December 1948, Demoiselle Pasteau.

<sup>116</sup> See, e.g., ECRI Report 1999, para. 36. However, discrimination appears to be stronger in some sectors than in others. See results of survey conducted among 600 young French people, *L'Express*, 5 July 2000, pp. 106–107.

<sup>117</sup> Source Insee-Dares-2000, *Le Monde* (Cahier Emploi), 4 September 2001.

is comparable to foreign residents.”<sup>118</sup> Nor can this discrepancy be explained by differences in levels of education and training; it does not diminish when the same comparison is made between non-European and French residents with the same degree.<sup>119</sup>

Although no detailed statistics regarding discrimination against particular ethnic or religious groups is available, Muslim leaders claim that discrimination is pervasive in hiring and in the workplace. According to one Muslim association leader, “the Muslim community experiences employment discrimination linked with national origin (North-African, African) or religious membership (having a beard or wearing a veil) – attributes which have no bearing on their ability to exercise a profession.”<sup>120</sup> Anecdotal evidence suggests that discrimination against young people from Arab neighbourhoods is particularly strong.<sup>121</sup> Muslims have claimed that they are frequently discriminated against on the basis of their name in access to certain professional positions, and several associations have used the testing technique to demonstrate how access to employment can be affected by perceptions about the first name or family name of candidates.<sup>122</sup> According to the spokesperson of the Union of Muslim Associations of Seine Saint Denis (UAM 93), the sense of community among different groups of French Muslims – which is not otherwise very strong – is greatly strengthened by the daily discrimination they experience.<sup>123</sup>

<sup>118</sup> See ECRI Report 1999, para. 36. According to ECRI (para. 43), the unemployment rate for young men both of whose parents were born in Algeria is estimated to be almost four times higher than that of people of the same age but of French origin.

<sup>119</sup> *L'insertion professionnelle des étrangers*, (Professional integration of foreigners), Notes et documents, February 2001.

<sup>120</sup> Interview with the Director of *Institut Formation Avenir* (Muslim association), 17 May 2002.

<sup>121</sup> P. Bataille, *Libération*, 30 June 2000. See also P. Bataille, *Le racisme au travail (Racism at work)*, La Découverte, 1997. Also, Comments at OSI Roundtable Meeting, 28 June 2002. *Explanatory note: OSI held a roundtable meeting in Paris in June 2002 to invite critique of the present report in draft form. Experts present included representatives of academia, civil society organisations, Muslim leaders, lawyers, and journalists.*

<sup>122</sup> In 1999, the *Mouvement contre le racisme et pour l'amitié entre les peuples* (MRAP, Movement against Racism and for Friendship between Peoples) filed 35 legal complaints for discrimination on the basis of the complainant's name to various courts; 24 have not yet received an answer. See N. Negrouche, “Changer de prénom pour trouver un emploi. Discrimination raciale à la française” (Changing name to find a job. Racial discrimination French style), *Le Monde diplomatique*, March 2000, p. 7, available at: <<http://www.monde-diplomatique.fr/2000/03/NEGROUCHE/13405>>, (accessed 26 September 2002). The new anti-discrimination legislation can be expected to facilitate the processing of these claims.

<sup>123</sup> Interview with the spokesperson of the UAM 93, 21 May 2002.

The 114 hotline has recorded numerous complaints of discrimination in employment, some explicitly motivated by the victim's religious affiliation. For example, a hotline employee addressing a complaint to a temporary employment agency by telephone on 11 January 2002 was told, "You should understand me, you send me *Zoubidas*<sup>124</sup> and I have a middle-class clientele which does not want such employees in their homes." On 25 March 2002, another caller claimed that "[the temporary employment agencies] do not manage to find you a job because of your name, and it has become more difficult since the events of 11 September."<sup>125</sup>

The "veil issue" has also had an impact in the field of employment. In May 2000, after several regional education administrations decided that Muslim women should not wear veils while teaching, the Council of State ruled that respect for *laïcité* precludes the public expression of religious belief by employees of institutions of public education, regardless of their function. However, the Council again delegated to the administrative authorities the competence to take veil-related decisions on a case by case basis.

Recently, the HCI asserted that wearing a veil may result in discrimination against Muslim girls and women during job interviews or in gaining access to public service jobs, and on this basis expressed reservations about the practice of wearing the veil at school and in other circumstances:

it must be ... clearly stated [to the school-going public] that the veil constitutes an obstacle on the way to integration. In the first place, it is important to stress that the implicit gender inequality implied by the veil is in complete opposition with the social standard in our country. It is not the duty of the school institution to involve itself in the private relations between men and women, but it is its responsibility to explain to students the discriminatory situation that such attitudes, which are at variance with the context in which they live, can generate for them... One can also point out the difficulties of professional integration to which veiled young girls expose themselves.<sup>126</sup>

Temporary employment agencies often receive specific requests from companies not to send Muslim workers. Though they are at risk of losing clients if they insist upon sending Muslim workers, they are also at risk of prosecution if they honour such requests, as they, rather than the firms which are their clients, are considered the employer.<sup>127</sup> Some NGOs have filed legal complaints against agencies on behalf of

<sup>124</sup> A typical Muslim name, used as a reductive and pejorative term for designating women from Arab (probably Maghrebi) origin.

<sup>125</sup> GELD, *2001 Activities Report*.

<sup>126</sup> HCI Report 2001, pp. 98–99.

<sup>127</sup> See e.g. Étude du Cabinet Copas (FAS-Adecco) sur les techniques d'élaboration des annonces et des profils des emplois (...) (Study on the techniques of elaboration of advertisements and profile of employment).

Muslim complainants. For example, SOS Racisme recently brought a case against *Adecco*, after having discovered that the agency had recorded an applicant's foreign background in his file;<sup>128</sup> moreover, the agency was accused of having accepted employers' requests explicitly to exclude people of colour or "non-BBR" (bleu, blanc, rouge – the colours of the French flag, meaning that the applicant should be neither black nor Arab).<sup>129</sup> *Adecco* has now signed an agreement to desist from such discriminatory practices.<sup>130</sup>

As in the sphere of education, the right to freedom of expression is upheld in the workplace. The case-law of the Cassation Court (which rules on labour regulations) has affirmed that the right to privacy encompasses religious modes of dress, such as wearing a hat,<sup>131</sup> *inter alia*. However, in the case of conflict between the right to privacy and freedom of expression and *laïcité*, employers can intervene in a similar manner to school headmasters. For example, employers must respect the right to expression of religious belief, but may introduce restrictions on this right if required by public order, security, hygiene, health or other considerations.<sup>132</sup> In practice, certain religious practices are commonly tolerated. For example, employers are officially encouraged to excuse Muslim employees from work on important religious holidays, though this decision remains at the discretion of the head of department.<sup>133</sup>

Trade unions have often taken an active role in fighting discrimination, particularly with regard to equal treatment of workers with regard to their enjoyment of social and trade union rights.<sup>134</sup> For many years, trade unions represented the only mechanism

<sup>128</sup> See: <<http://www.sos-racisme.org/presse/lemonde6200.htm>>, (accessed 28 September 2002).

<sup>129</sup> "BBR" is a term that has been used in particular and extensively by the extreme-right party of the National Front of J.-M. Le Pen.

<sup>130</sup> See J. de Linares, "Quand une entreprise s'engage contre la discrimination" (When a firm gets engaged in fighting against discrimination), *Le Nouvel Observateur*, week of 9 Thursday May 2002, n. 1957, available at: <<http://www.nouvelobs.com/articles/p1957/a17323.html>>, (accessed 28 September 2002).

<sup>131</sup> Cass. 22 January 1992.

<sup>132</sup> Thus, according to one court decision, there is no violation of the right to freedom of expression in requesting a Muslim butcher to handle pork. See Cass. soc, 24 March 1998, AZAD c/M'ZE.

<sup>133</sup> Government circular of 23 September 1967. Each year, the State publishes the list of religious holidays for which authorised absence can be granted. For Muslims, this involves *Aïd al Seghir*, *Aïd el Kebir*, and *Mawlid*. A Muslim absent from work for *Aïd el Kebir* cannot be fired, Cass. Soc., 16 December 1981, *Bull. Civ.*, V, n. 968, p. 719.

<sup>134</sup> See *Hommes et Migrations*, n. 1187, May 1995, pp. 12–31.

available to immigrants, who did not have the right of association until 1981.<sup>135</sup> Unions receive and process complaints of discrimination, and also provide mediation services and other forms of assistance to their members. Although they have always opposed the formation of separate community-based unions (i.e. unions of Muslim workers), union representatives have successfully negotiated agreements on behalf of Muslim union members, such as the right to take Muslim holidays, or respect for dietary requirements in workers' cafeterias. Different companies have taken different approaches to satisfying union demands that special provision should be made for religious observances such as prayer and fasting.<sup>136</sup>

### *Government response*

The Ministry for Employment and Solidarity organised a roundtable in May 1999, gathering social partners and Government officials to discuss the problem of racial discrimination in the workplace. The roundtable produced the "Grenelle Declaration," which contained a series of proposals for fighting discrimination in employment:

- conduct research on the extent and nature of discrimination in the workplace;
- provide support and training to all public and private actors (including trade-unions) in the fight against discrimination;
- promote employment counselling and mentoring for young people;
- issue public statements supporting the fight against discrimination;
- consider necessary modifications to legislation to facilitate the fight against racial discrimination, including the right for trade unions to lodge complaints on behalf of victims, reversal of the burden of proof, and the establishment of a warning right (*droit d'alerte*).

### *Treatment of non-French nationals*

Employment laws require equal treatment and prohibit discrimination without distinction between nationals and foreigners. However, several recent reports have drawn attention to discriminatory practices against non-French nationals in the employment sector, and the director of one Muslim association asserts that there is "a racism in French public opinion which touches upon the integration even of

<sup>135</sup> M. de Rudder Véronique, F. Vourc'h, "Les syndicats face aux nouvelles discriminations" (Trade unions agents face new discrimination) *Hommes et Migrations*, n. 1187, May 1995, pp. 12–22.

<sup>136</sup> C. Wihtol de Wenden, J. Barou, M. Diop, N. Kerschen, E. de Saint-Blanquat, T. Subhi, *Analyse des conflits récents survenus aux usines Renault de Billancourt depuis 1981 au sein de la population immigrée*, (Analysis of recent conflicts in Renault Billancourt's factories since 1981 among immigrants), *Contrat de connaissance* CNRS/RNUR, January 1986.

doctors.”<sup>137</sup> Though the principle of non-discrimination among workers is enshrined in the Constitution as well as in the ECHR, one 1999 report revealed that as many as 615,000 private sector jobs are closed to non-French nationals and an additional 625,000 private sector jobs are closed to persons who do not possess a French degree.<sup>138</sup> French nationality is a requirement for some jobs in the public sector, effectively barring non-French nationals from access to as many as seven million jobs – 30 percent of the total number of jobs available.<sup>139</sup>

There have been a number of official efforts to address this situation, which have been inspired to some extent by developments at the European level.<sup>140</sup> For example, following a lobbying effort by various associations, including the *Groupe d'information et de soutien aux travailleurs immigrés* (Group of information and support to immigrant workers, “GISTI”), a 2001 circular removed the nationality requirement for jobs in the social security administration.<sup>141</sup> However, many restrictions remain in place, and many non-nationals are relegated to working illegal, often dangerous jobs, without sufficient social protection.

### 3.1.3 Housing and other goods and services

A number of laws have been established to facilitate the fight against discrimination (particularly racial discrimination) in housing. For example, the right to decent housing

<sup>137</sup> Interview with the director of the Muslim association Avicenne, 24 May 2002.

<sup>138</sup> Non-French nationals are barred from working in 50 mostly private professions including pharmacists, surgeons, dentists, and lawyers as well as from some jobs in the communications sector. A French diploma is required for about 30 professions, including in health, law, architecture, hairdressing, and real estate and travel agencies. In addition, the status of “civil servant” is closed to non-EU citizens. See Report by Brunet Consultants, *Les emplois du secteur privé fermés aux étrangers* (Employment in the private sector closed to foreigners), November 1999, unpublished.

<sup>139</sup> Restrictions apply with regard to jobs in State, hospital and territorial administration (5.2 million jobs), and to jobs at the Post Office, Air France, GDF-EDF (the electricity company) and industrial and commercial public entities (one million jobs). For a detailed description of the jobs which are closed to foreigners, see GIP-GELD, “Une forme méconnue de discrimination: les emplois fermés aux étrangers (secteur privé, entreprises publiques, fonctions publiques)” (A little-known form of discrimination: jobs closed to foreigners, such as private sector, public firms, public functions), note 1, March 2000.

<sup>140</sup> See GELD, note 1, p. 10.

<sup>141</sup> Circulaire DSS/4 B n. 2001-514, 22 October 2001, NOR MESS0130701C, *Bulletin Officiel du Ministère des affaires sociales*, n. 2001-44 (29 October to 4 November 2001). For full text see: <<http://www.gisti.org/doc/textes/2001/dss4b2001.html>>, (accessed 27 September 2002).



is a constitutional right since the decision of the Constitutional Council in 1995.<sup>142</sup> Most recently, the Law on Social Modernisation, adopted on 17 January 2002, explicitly prohibits discrimination in housing.<sup>143</sup> However, unequal access to subsidised housing, poor housing conditions and patterns of segregation affect those perceived to be foreigners in general (not only Muslims).<sup>144</sup>

Though there is little available research, economic and social differences between *Français de souche* and the population of foreign origin (both immigrants and French citizens of foreign origin) are reflected in both the private and public housing markets. A number of studies have revealed that these differences are underpinned and exacerbated by discriminatory practices in the screening and selection of applicants for subsidised public housing in particular.<sup>145</sup> There is also some evidence of discrimination in the private market,<sup>146</sup> particularly in renting or buying private flats and houses. Social housing in the public sector has reflected the same trend, leading to greater segregation, despite a declared intention to fight against patterns produced under the purely economic rationale which prevails in the private sector.<sup>147</sup>

There were approximately four million subsidised housing units as of 1998, representing 17 percent of all real estate and more than 45 percent of rented houses. Some selection among applicants for subsidised housing is necessary, as the number of requests exceeds the number of available units. Discrimination during the process of screening and selection is a complex and cumulative phenomenon. Applications are evaluated at the local level according to a number of criteria, and it is difficult to determine whether discrimination occurs on ethnic, national, religious, or social and

<sup>142</sup> Conseil Constitutionnel, 19 January 1995. Decision n. 94-359 DC. Law on Housing Diversity (*loi relative à la diversité de l'habitat*).

<sup>143</sup> Law on Social Modernisation, Art. 159, 160, 161, 162.

<sup>144</sup> One recent study of discrimination in social housing revealed that officials in charge of allocations, though they had been issued with guidelines specifying that interviewees were all families coming from sub-Saharan Africa, adopted a “global discourse” referring to “Africans,” “blacks,” and “those people.” In other words, instead of using the category indicating specific geographical origin, officials placed interviewees in broader categories. See V. De Rudder, C. Poirer, F. Vourc’h, *L'inégalité raciste. L'universalité républicaine à l'épreuve* (Racist inequality. Putting Republican universality to the test), Paris, PUF (Pratiques théoriques), 2000, p. 100–102.

<sup>145</sup> Note published by GELD on social housing, note 3, 10 May 2001, “Les discriminations raciales et ethniques dans l'accès au logement social” (Racial and ethnic discrimination in the access to social housing) under the direction of Patrick Simon (hereafter “GELD, note 3”). See GELD webpage or: <<http://www.sos-racisme.org/presse/notegeld.htm>>, (accessed 25 September 2002).

<sup>146</sup> See GELD, note 3.

<sup>147</sup> See GELD, note 3.

economic grounds – or some combination of these; again, religion is rarely the determining factor. However, it is clear that the public perception of “sociological risk” posed by an individual’s presumed national or ethnic group in particular has become a central consideration.<sup>148</sup> Thus, despite the fact that group identification is officially discouraged, collective perceptions colour official policies for evaluating “good” and “bad” candidates, and families of foreign origin are disproportionately assigned to housing in peripheral, poorer neighbourhoods.<sup>149</sup> Although no research is available to quantify discriminatory practices during the process of establishing and building the files of individual applicants, it is well known that such practices are widespread.<sup>150</sup>

Complex and lengthy bureaucratic procedures and the high level of discretion granted to local housing authorities create ample opportunity for unequal treatment of applicants.<sup>151</sup> Yet because numerous officials are involved in the management and screening of any one individual’s file, it is difficult to determine individual responsibility for discriminatory handling of any one particular case. Individuals of foreign origin claim that they often

<sup>148</sup> J.-C. Toubon, “L’attribution des logements sociaux,” *Migrations-Société*, 1998, vol. 10, n. 60, pp. 65–82.

<sup>149</sup> See V. De Rudder, M. Guillon, *Autochtones et immigrés en quartier populaire* (Autochthonous people and immigrants in popular neighborhoods), Paris, CIEMI-l’Harmattan, 1987; see also A. Tanter, J.-C. Toubon, “20 ans de politique française du logement social” (20 years of French Social Housing Policy), *Regards sur l’actualité*, 1995, n. 214, pp. 30–50. More recently, several studies have shown that the residential mobility of populations who were placed in housing in peripheries is very low and plays a central role in the process of segregation of and therefore discrimination against the population living in these areas. GIP-GELD-114, *Rapport d’activités 2001. Conseil d’orientation du mardi 30 avril 2002*, p. 14.

<sup>150</sup> As indicated in GELD, note 3, on discrimination in the housing sector, the main difficulty lies in the near impossibility of determining the source of a discriminatory act in this sector, partly because of the numerous different actors taking part in the process of establishing and processing the application.

<sup>151</sup> The practice of indicating individual applicants’ nationality in HLM files was introduced in October 1984. The *Commission Nationale Informatique et Libertés* (CNIL, National Commission for Information and Freedom), a public agency in charge of ensuring that information regarding the racial or ethnic origin, political, philosophical or religious opinion, trade-union affiliation, etc. is not recorded in a person’s file, stated in 2002 that nationality should not be used in a discriminatory manner in the allocation of social housing; though nationality can be recorded in HLM applications, information on date of arrival, place of birth and nationality of the applicant’s parents cannot be used as criteria for deciding on HLM applications. Moreover, information on nationality can be included only under “civil status;” it cannot be indicated anywhere else in the file. Offices and agencies in charge of the administration of the social housing filing system are not authorised to give this information to other officials who might ask for it. See Deliberation n.01-061, 20 December 2001 of the CNIL, giving recommendations on filing in the sector of social housing (version I-14012002), <<http://www.cnil.fr>>, (accessed 26 September 2002).

have to wait longer than *Français de souche* to receive a housing assignment, and indeed 28 percent of immigrant families have been waiting for housing for at least three years.<sup>152</sup> At the same time, it is precisely these populations which are most dependent on social assistance, due to their economic vulnerability.

The prevalence of discriminatory practices in the allocation of public social housing has been highlighted by several recent cases. For example, SOS-Racisme revealed in 2001 that the Public Office of Development and Construction (OPAC) of Metz, which manages the distribution of public housing for the local *Habitations à loyers modérés* (low-rent housing, hereafter “HLM”) was recording the ethnic origin of applicants on its housing forms, in a manner that clearly violated privacy laws.<sup>153</sup> The software used in Metz was also being used by other public offices responsible for allocating subsidised housing, suggesting that the practice is widespread. Moreover, the practice appears to reinforce patterns of segregation: in Metz, 70 percent of the inhabitants of the HLM’s in outlying districts are non-Europeans, compared to only 2.5 percent in the city centre.<sup>154</sup> GELD has called for the removal of illegal references to national or ethnic origin in individual computer files.<sup>155</sup>

In April 1998, the newspaper *Sud Ouest* reported on the illegal practice of “scoring” which was practised in a district of La Rochelle (Charentes), by which housing applicants were screened and given a score depending on their social profile, with points allotted for such attributes as place of birth, possession of a new car, and length of term of present employment. Preferred applicants were those receiving the lowest score – those who were white, had a French name, were of French origin, etc.

### *Government response*

The Government has attempted systematically to implement a policy of “social integration” or “mixing” (*mixité sociale*) in the areas where this was considered necessary.<sup>156</sup> The so-called “Anti-ghettos Law” of 1991 created a public obligation to

<sup>152</sup> GELD, note 3, on discrimination in the housing sector.

<sup>153</sup> More specifically, OPAC was using the information for other purposes than in relation to civil status. CNIL, Deliberation, 21 January 1997. See: <<http://www.cnil.fr>>, (accessed 26 September 2002).

<sup>154</sup> *L’Humanité*, 1 July 2001.

<sup>155</sup> GELD, note 3, on discrimination in the housing sector.

<sup>156</sup> This policy of “mixing” different categories of population was initiated first through a decree (19 March 1986) and then through two laws, the Besson Law of 1990 and the Orientation Law on the City of 1991.

promote mixed populations in every district.<sup>157</sup> This directive may have had the unintended result of encouraging the discriminatory practices enumerated above;<sup>158</sup> it is hard to see how housing authorities can ensure mixed populations in public housing units without systematically taking nationality into account.

In 1999, the Secretary of State for Housing initiated several measures to strengthen monitoring of and sanctions against discriminatory behaviour by public housing agencies.<sup>159</sup> For example, monitoring of the practical implementation of allocation procedures was initiated to guarantee that allocations would produce ethnically and socially mixed neighbourhoods, and that the number of documents required from the individual or entity renting out a house or flat would be reduced in order to facilitate the allocation process.

Procedures for regulating allocations of subsidised housing were modified in 1998.<sup>160</sup> Under the law and accompanying guidelines, those renting out flats or agencies (*bailleurs*) are required to communicate information concerning allocation procedures, and to provide written notification and explanation for refusing an application. The prefect is assigned a central role in ensuring that these legal provisions are respected, and in mediating between the different actors (HLM, applicants, and the departmental administration). The new law also provides for recourse to complaint proceedings through mediation subcommittees and commissions. In accordance with the 1991 law, the State and the HLM jointly introduced the positive step of assigning a single departmental number to protect the privacy of individual applicants and to facilitate the implementation of a housing policy which is truly colour-blind.<sup>161</sup>

Several organisations are engaged in assisting persons confronted with discrimination in access to housing. The National Association for Information on Housing (ANIL) and the Departmental Association for Information on Housing (ADIL), offer advice and consultation free of charge to persons looking to buy or rent a flat. A number of Muslim associations have also established groups to facilitate access to housing.

<sup>157</sup> For more on the specific case of groups originating from the Maghreb, see N. Boumaza, "Territorialisation des Maghrébins: regroupement contraint et désir de dispersion," in L. Haumont, *La ville: agrégation et ségrégation sociale*, (Territorialisation of Maghrebis: forced grouping and desire for dispersion, in *The City: Social Aggregation and Segregation*), Paris, L'Harmattan, pp. 31–53.

<sup>158</sup> See V. De Rudder, C. Poiret, F. Vourc'h, *L'inégalité raciste*, p. 79.

<sup>159</sup> Such as the Inter-ministerial mission for inspection of social housing and the Permanent Secretary of the service for city-planning, construction, and architecture (PUCA).

<sup>160</sup> Law of 29 July 1998 and decree of implementation guidelines 99-836 of 22 September 1999.

<sup>161</sup> Decree of application published in *Official Journal*, 8 November 2000. The single number system was implemented at the departmental level before 31 May 2001.

### 3.1.4 Healthcare and other forms of social protection

There are no indications that Muslim citizens are discriminated against with regard to social protection. However, increasing restrictions have been placed on access to social protection for Muslim and other non-citizen residents in recent years. Moreover, in the absence of official recognition of Islam, Muslim religious leaders do not enjoy access to social protection on an equal footing with the representatives of other recognised religions. There have been some reports of religious discrimination in the healthcare system.

On 13 August 1993, the Constitutional Council specified that foreigners are eligible for social protection upon establishing continuous legal and permanent residence. This paved the way for the adoption of the 1993 Pasqua Law, which aimed to control immigration by imposing stricter restrictions on foreigners' access to social security and other forms of social welfare.<sup>162</sup> The law linked the right to social protection to continuous residence and employment on French territory. Numerous associations and members of Parliament have criticised the law, claiming that it has had a negative impact on the situation of those foreigners who either do not have legal documentation or have not been living in France for a sufficient period of time.<sup>163</sup> Some observers have pointed out that the law has had a particularly negative impact on minors, whose parents sometimes are not able to produce the necessary documentation to prove their right to reside in France, and therefore cannot receive child support.<sup>164</sup> The law also appears to have a discriminatory impact on individuals who have worked legally in France but choose to retire in their country of origin; those who worked and contributed to the social security regime receive a card allowing them to circulate between their place of residence and France. This card gives them access to social protection, but restricts the possibility for other family members to benefit from these rights; there are also some limitations on access to long-term healthcare.

The fact that Islam has no representative institution and is not accorded the same status as other forms of worship has also produced some inequalities in access to social protection. Perhaps the best example of this is the situation of imams, who, unlike Catholic priests, for example, do not enjoy guaranteed access to social protection, though there appears to

<sup>162</sup> *Actualités sociales hebdomadaires*, n. 1850, 22 October 1993.

<sup>163</sup> The main critiques came from NGOs fighting for the rights of foreigners and immigrants; the core critique related to the law's negation of the principle of equality of treatment between French citizens and foreigners, which had been the policy since the end of the Second World War. See D. Fassin et al, *Un traitement inégal. Les discriminations dans l'accès aux soins, Rapport d'études du CRESP n. 5* (Unequal Treatment. Discrimination in access to healthcare), September 2001, available at: <<http://www.inserm.fr/cresp/cresp.nsf/Titre/les+rapports+du+CRESP>>, (accessed 26 September 2002).

<sup>164</sup> GISTI, "La protection sociale des étrangers après la loi Pasqua" (Social protection for foreigners after the Pasqua Law), 1995.

be no legitimate reason for this distinction. Approximately 500 imams are active in France, working under very different conditions, according to their personal circumstances.<sup>165</sup> Some work on a volunteer basis and have another job which guarantees them access to social rights. Others are employed by associations which should cover their social security costs, but are not always in a position to do so. Some imams are therefore excluded from any form of social protection. Since 1978, established forms of worship may use two specific health insurance offices. However, only 50 of the 500 imams benefit from this system; there are no Muslim representatives associated with these offices; and no representative of Islam serves on the office boards, though this is not precluded by their regulations.

Without an official representative and an ecclesiastical hierarchy, there is no mechanism for selecting State-supported Muslim chaplains, who could provide religious services to believers unable to go to places of worship, such as prisoners, hospital patients, and soldiers.<sup>166</sup> As a result, there are relatively few Muslim chaplains<sup>167</sup> and most work either part-time or as volunteers. As of 2001, there were 44 Muslim chaplains, compared to 460 Catholic chaplains, to serve a prison population of 45,000, 50–60 percent of whom were Muslim. Of those 44, only four were working full-time.<sup>168</sup> The problem is particularly acute with regard to the performance of funeral rites.

### *Healthcare*

The social security system (created in 1945) is based on residence rather than nationality. The Pasqua Law of 1993 restricted access to this system to permanent residents (as opposed to those who reside in France irregularly or for short periods). In 1999, the Government created the *Couverture maladie universelle* (Universal illness protection, “CMU”) for persons who are unable to prove their residence status.<sup>169</sup> A system has also been established to provide State Medical Assistance to persons without documents (*les sans papiers*). However, many affected persons are not aware of this healthcare option, and

<sup>165</sup> HCI Report 2001, p. 55.

<sup>166</sup> The HCI has pointed out that without a regulatory framework, there would be an issue of which organisation or individual could legitimately appoint Muslim chaplains. See HCI Report 2001, p. 56.

<sup>167</sup> Discussion with Hanifa Chérifi, “Les musulmans victimes de discriminations. Une inégalité entre les religions” (Muslim victims of discrimination. Inequality between religions), J.-M. Blier, S. de Royer, *Discriminations raciales, pour en finir* (To put end to racial discrimination), 2001, Paris, éditions Jacob-Duvernet, pp. 52–53.

<sup>168</sup> 16 were working part-time and 20 as volunteers. *Le Monde*, 31 October 2001.

<sup>169</sup> Law of 27 July 1999. The CMU began to be applied in January 2000.

the decentralisation process has resulted in the development of different levels of protection in practice between different localities.<sup>170</sup>

Little research is available on the specific treatment of Muslim patients in the public healthcare system, including in public hospitals. However, anecdotal evidence suggests that the cultural and religious background of Muslims sometimes brings them into conflict with healthcare officials.

The medical association Avicenne focuses on providing mediation services for Muslim patients, and its experiences confirm that such services are necessary: “The Muslim patient has to pray when in hospital, and we, as an association, explain to the nurse that she can organise the care around the prayer schedule... Very often, the Muslim patient is not able to explain himself, due to problems related to language, culture, or the unfamiliar hospital environment. He is in a way also a victim of negligence by the medical team. There is a real communication problem, often connected with prejudice.”<sup>171</sup> One Avicenne leader gave an example to illustrate communications problems between nurses and Muslim women:

...all of a sudden a nurse came in screaming that a patient did not want to remove her veil, which is prohibited because it is [something] external to the operating room, and that in addition the patient did not speak French. I went with her to see the patient ... [in fact] the patient was French and spoke French very well; she was a convert to Islam. I then said to the nurse that, first of all, children are allowed to enter the operating room with personal articles, which are external; secondly that she spoke French, which demonstrated that the nurse did not speak to her directly; and thirdly that the problem could have been solved very simply insofar as entering into the operating room, the patient would have worn a head covering. It would have been much simpler to take the time to explain to her the internal rules of the hospital.<sup>172</sup>

Certain Muslim associations have sought to draw attention to the need for State authorities to devote more attention to illnesses such as AIDS among immigrant populations. One association in particular (“Immigrants against AIDS”) has challenged the national public health network to improve its efforts to provide information about AIDS within the immigrant community, within which the issue is still taboo.

Public health services in Paris have taken some steps to address the religious needs of Muslim patients. For example, an internal document for the staff working in Paris hospitals (nurses, assistant, doctors, etc.) provides guidance regarding possible requests

<sup>170</sup> See N. Drouot, N. Simonnot, *Rapport 2001 de l’Observatoire de l’accès aux soins de la mission France de Médecins du monde* (2001 Report of the Observatory of access to healthcare by the France mission of World Doctors), June 2002.

<sup>171</sup> Interview with the director of Avicenne (AMAF), 24 May 2002.

<sup>172</sup> Interview with the director of Avicenne (AMAF), 24 May 2002.

related to diet, body care, and death rituals. However, local hospitals have the discretion to decide whether they wish to address a particular issue or not.

### 3.1.5 Access to justice

French citizens and those who have established legal permanent and continuous residence in France are eligible for State legal aid<sup>173</sup> to ensure equal access to and equal treatment within the justice system.

Two forms of State legal aid are available.<sup>174</sup> First, the State will cover (either fully or partially) the legal fees of *auxiliaires de justice* (justice auxiliaries) for persons who do not have sufficient resources to exercise their legal rights under the justice system.<sup>175</sup> State legal aid is also available for consultation (obtaining legal information, advice or assistance) and assistance during non-judicial procedures. Applicants for legal aid must demonstrate lack of sufficient resources and that their case has not been considered inadmissible or unfounded. Individuals may also appeal decisions by legal aid offices to refuse assistance.

There are some indications of inequalities in the justice system. For example, there appears to be a pattern of discrimination in sentencing, with individuals whose ethnic origin (or supposed ethnic origin) is not French receiving longer sentences for similar crimes. One study found that for the crime of burglary or breaking and entering, 52 percent of foreigners were sentenced to imprisonment without remission (*sursis*), compared to 37 percent of French persons. For possession and acquisition of drugs, 44 percent of foreigners were sentenced to imprisonment without *sursis* compared to 31 percent of French persons.<sup>176</sup> The International Helsinki Federation has also expressed concern over, *inter alia*, the protracted length of pre-trial detention and judicial proceedings<sup>177</sup> and has reported on misconduct by law enforcement officials,

<sup>173</sup> With some exceptions, such as for procedures related to the cancellation of a prefect's decision to return an individual to the border on a ruling of expulsion from French territory, *inter alia*.

<sup>174</sup> Law of 10 July 1991, *Official Journal* of 13 July 1991. Modified by Law 98-1163 of 18 December 1998 creating the Departmental Councils of Access to Law (*les Conseils départementaux de l'accès au droit*).

<sup>175</sup> See *Fiche juridique et pratique*, "Informations Inter-Migrants" (Juridical and practical form, Inter-Migrants Information), n. 25, 15 February 1993.

<sup>176</sup> J.-M. Blier, S. de Royer, *Discriminations raciales, pour en finir*, p. 62.

<sup>177</sup> In July 2001, the ECHR held unanimously that the criminal proceedings against Dris Zannouti, which lasted five years, ten months and ten days, violated Article 6.1 of the ECHR. See Report on France of the International Helsinki Federation, 2002 (hereafter "IHF Report 2002"), p. 129, available at: <<http://www.ihf.org>>, (accessed 1 October 2002).



particularly with regard to non-French nationals.<sup>178</sup> Again, as in other cases, systematic data has not been collected on the causes of apparent discrimination in sentencing, and it is impossible to isolate a religious motivation from ethnic or racial motivations.

As part of a broader process of facilitating access to information about State activities and resources, and improving citizens' awareness of their rights, the Houses of Justice and Law (*les maisons de la justice et du droit*) employ mediators to address disputes and conflicts at the communal level.<sup>179</sup> ECRI noted favourably the development of initiatives to improve representation of persons of immigrant background in the police, as "assistant security officers," and called for an extension of such initiatives to bring about further improvements.<sup>180</sup>

### 3.2 Protection against Racially and Religiously Motivated Violence

Incitement to racial hatred is punishable by law,<sup>181</sup> with enhanced sentencing if it leads to concrete consequences or violence. Incitement as such does not legally constitute discrimination, though racism is a punishable crime.<sup>182</sup> However, legal protection for victims and the stipulation of sanctions in case of violations appears to play only a marginal role in dissuading such crimes and, according to ECRI, it is "generally acknowledged that the number of cases of this type brought before the courts do not reflect the real extent of the phenomena of discrimination and racist expression in society."<sup>183</sup>

Several international organisations have expressed concern over the incidence of violence by public actors, and the lack of sufficiently rigorous investigation of complaints of ill-treatment of detainees and prisoners, particularly immigrants and

<sup>178</sup> See IHF Report 2002, p. 129. See also ECRI Report 1999, para. 30.

<sup>179</sup> Law 98-1163 of 18 December 1998 (Art. 21) and decree n. 2001-1009 of 29 October 2001. For more information on these Houses, see: <<http://www.justice.gouv.fr/justorg/mjd.htm>>, (accessed 26 September 2002).

<sup>180</sup> ECRI Report 1999, para. 32.

<sup>181</sup> Penal Code 1881, Art. 24 and Art. R 625-7.

<sup>182</sup> Pleven Law of 1 July 1972 on penal sanctions against racial discrimination (Law 72-546), available at: <<http://www.antisemitisme.info/lois/plevn.htm>>, (accessed 27 September 2002); stricter sentencing for racism was introduced in 1990. Gayssot Law 90-615 of 13 July 1990, *Official Journal*, 14 July 1990, p. 8333 (NOR: JUSX9010223L). See: <<http://www.jura.uni-sb.de/france/Law-France/190-615.htm>>, (accessed 27 September 2002).

<sup>183</sup> ECRI Report 1999, para. 5.

persons of North African or African origin.<sup>184</sup> According to a report recently released by Amnesty International, “delays and obstacles to trial of some police officers [have] contributed to a climate of impunity.”<sup>185</sup>

The frequency of racially or religiously motivated violence by private actors increased between 1999 and 2000. In 1999, 40 serious incidents (attacks, physical aggression, or destruction of property) were recorded, compared with 146 in 2000.<sup>186</sup> 149 instances of threats or intimidation were recorded in 1999, compared with 772 in 2000.<sup>187</sup> The rise in the frequency of such attacks is clearly linked to international events. For example, the beginning of the second *intifada* in Israel in September 2000 was followed by a sharp increase in racist violence. Similarly, the events of 11 September provoked increased association of Islam with terrorism and fundamentalism, and while the overall number of racist acts actually decreased in 2001,<sup>188</sup> many of those that did take place were linked with 11 September. The CNCDH report for 2001 (published in March 2002) explains that more than 68 percent of racist<sup>189</sup> and xenophobic violence and 63 percent of the threats recorded during 2001 occurred between September and December. These figures do not include anti-Semitic violence; according to CNCDH, more religious violence against Jews was recorded in 2001 than in any other year in the past decade.<sup>190</sup>

Of 163 racially motivated acts of intimidation or violence committed in 2001, 115 targeted North-Africans; though such violence also targets Arab and Muslim communities in general (not only North Africans), it is difficult to isolate a religious motivation. However, racist violence clearly often has a religious dimension, most usually connected to anti-Semitism or anti-Arabism.<sup>191</sup> Places of worship (including both mosques and synagogues) are often the target of attacks, stone-throwing, and partial or total destruction.

<sup>184</sup> ECRI Report 1999, paras. 29–30; IHF 2002, pp. 129–130.

<sup>185</sup> Amnesty International Index: POL 10 January 2002.

<sup>186</sup> 80 percent of the total number of racist actions recorded (or 116 serious acts) were recorded against Jews in 2000 (nine cases in 1999). See CNCDH Report 2001 (published in March 2002), at: <<http://www.commission-droits-homme.fr>>, (accessed 27 September 2002).

<sup>187</sup> See CNCDH Report 2001.

<sup>188</sup> 67 racist acts were recorded in 2001, compared to 146 in 2000. CNCDH Report 2001.

<sup>189</sup> Until the report published in 2002, the registration of racist acts did not include aggression resulting in an eight-day suspension (or less) from work. Beginning with the 2002 report, all grave acts against property or persons will be recorded, regardless of the length of the suspension.

<sup>190</sup> *Le Monde*, 22 March 2002; *La Croix*, 22 March 2002.

<sup>191</sup> L. Harris survey on French attitudes towards racism, March 2001.

Leila Babès, a professor of sociology of religion at the Catholic University of Lille, remarked, following 11 September, that she feared the psychological impact on French Muslim communities: “when one speaks of terrorist groups, the word “Islam” always comes up... this focus is alarming. We fear a resurgence of everyday hostility and a change in the way others will look at us.”<sup>192</sup> A recent survey revealed that the great majority of both French and Muslim interviewees believed that France’s participation in a military action against an Islamic State could provoke serious incidents among the various communities on French territory.<sup>193</sup>

### 3.3 Minority Rights

France has signed but not ratified the European Charter for Regional or Minority Languages (ECRML), and it has refused to sign the Framework Convention for the Protection of National Minorities (FCNM). In an opinion issued in July 1995 at the request of the Prime Minister, the Council of State gave its interpretation of the concept of minority in the French context:

The fundamental principles of the French law, such as they are registered in the Constitution, prohibit any distinction between citizens according to their origin, race or religion. The existence of rights exerted collectively, based on such considerations, would not therefore be recognised in France, where respect for every group’s characteristics – religious, cultural, linguistic or other – is guaranteed by the protection of the individual members of these groups.<sup>194</sup>

There were strong reactions to the signature by the French Government (under Prime Minister Lionel Jospin) of the European Charter on 7 May 1999,<sup>195</sup> and the issue was

<sup>192</sup> Interview with Leila Babès, professor of sociology of religion at the Catholic University of Lille, in *Témoignage chrétien*, 27 September 2001.

<sup>193</sup> 78 percent of Muslims and 84 percent of French interviewees answered that they believed an international conflict would lead to an increase in inter-ethnic conflict in France. *Le Point*, 5 October 2001, n. 1516, p. 75.

<sup>194</sup> Avis du Council of State, n. 357,466, *Rapport annuel*, p. 397.

<sup>195</sup> Regionalist groups immediately protested France’s declaration of reservations at the time the Charter was signed in 1999. There are numerous and contradictory positions on the matter within the French political elite. For example, former Minister of the Interior J.P. Chevènement denounced the “balkanisation” which would ensue if France were to ratify the Charter, while Lionel Jospin and Jacques Chirac tended to support the position of regionalist representatives. On the different positions, see O. Cohen, “Of Linguistic Jacobinism and Cultural Balkanisation,” *French Politics, Culture and Society*, vol. 18, n. 2, Summer 2000, pp. 21–48, in particular pp. 21–27.

referred by the President of the Republic to the Constitutional Council for an opinion on 15 June 1999.<sup>196</sup> The Council's decision stated that the Charter contains clauses which are contrary to the Constitution,<sup>197</sup> "the fundamental principles (of which) are opposed to the recognition of collective rights to any group of whatever type, which is defined by a community of origin, of culture, of language or of belief" and "that private individuals cannot take advantage of a right to use a language other than French, nor to be forced to do it."<sup>198</sup> The Charter's recognition of an "inalienable right" to speak regional or minority languages in public and private life was identified by the Constitutional Council as an attack on the constitutional principles of the indivisibility of the Republic, of equality before the law, and of the unity of the French people.

Claims regarding the rights of Muslims – even when framed by Muslim leaders themselves – are not defined in terms of "minority rights."

The label of minority does not fit in the French context, although there is more and more media pressure to use it. In France, nobody speaks about minorities, even if one uses [the term] on the European level. To a newly-arrived people, one has to give the means of expression which are in the European spirit, in the spirit of *laïcité*, and in the Republican spirit. I can identify myself in the logic of citizenship, and I do not consider myself a [member of a] minority.<sup>199</sup>

### 3.3.1 Religion

Freedom of religion and protection against religious discrimination are legally guaranteed.<sup>200</sup> National legislation further provides for the separation of Church and

<sup>196</sup> Text of the Declaration by President J. Chirac, Prime Minister L. Jospin and Minister of Foreign Affairs H. Védrine, on the interpretation by the French Government of the European Charter in view of an eventual ratification of the Charter. Décision n. 99-412 DC, 15 June 1999. See: <<http://www.conseil-constitutionnel.fr/decision/1999/99412/decl.htm>>, (accessed 26 September 2002).

<sup>197</sup> Decision n. 99-412 DC. European Charter for Regional or Minority languages (NOR: CSCX9903612 S). A similar decision had already been issued by the Council of State in September 1996. For more on the role of the Council in this debate, see L. Pinto, "Les excès du Conseil constitutionnel" (Over-zealous Constitutional Council), *Le Monde*, 24 January 2001.

<sup>198</sup> *L'actualité juridique. Droit administratif*, 20 July – 20 August 1999, p. 628.

<sup>199</sup> Interview with the director of *La Medina*, Saint-Denis, 14 May 2002.

<sup>200</sup> Declaration of the Rights of Man and the Citizen of 1789, Art. 10; Combes Law of 1905, Art. 1; Law on Religious Associations of 1901 and 1907; Preamble of the Constitution of 1946 and Labour Laws; ECHR, Art. 9; the 1958 Constitution, Art. 2.

State, *laïcité* (State neutrality towards religion) and respect for freedom of conscience.<sup>201</sup> Although legislation provides a regulatory framework for religions, there is no statutory regulation of forms of worship.

The Combes Law and the Law for Alsace-Moselle are the two principal pillars of the legislation regulating religion. The Combes Law provides for freedom of conscience and freedom of religion, and mandates State neutrality: the Republic does not recognise, fund or subsidise any particular religion (with the exception of State subsidies provided for chaplaincies in schools, hospitals and prisons).<sup>202</sup> The Law organised the transfer of goods owned by institutions of public worship at that time to “cult associations” (*associations cultuelles*), which represent each religious group *vis-à-vis* the Government, and stipulated free use of publicly-owned buildings used for worship (such as churches and synagogues) for these associations. It also prohibited the placement of religious signs in public buildings and religious education in public schools. The provisions of the Combes Law continue to underpin the concept and practice of *laïcité* today; under its terms, the State can organise the legal framework for religions, but it may not interfere with their internal affairs. At the same time, the Alsace-Moselle Law sets forth an exceptional legal regime within which different forms of worship are recognised,<sup>203</sup> attesting to a degree of legal pluralism in this area.

Following the adoption of the Combes Law, the different religions present in France at that time were reorganised to adapt their legal status to its the requirements.<sup>204</sup> Religions

<sup>201</sup> J. Robert, “La liberté religieuse” (Religious Freedom), *Revue internationale de droit comparé*, 1994, 2, pp. 629–644.

<sup>202</sup> The Combes Law is also called the Law on Separation between Church and State. It was adopted on 9 December 1905, published in the *Official Journal* on 11 December 1905, and came into force on 16 March 1906 (*Journal Officiel*, 17 March 1906). See G. Bedouelle, J.-P. Costa, *Les laïcités à la française* (Laïcité French style), Paris, PUF (Politique d’aujourd’hui), 1998, p. 51.

<sup>203</sup> Alsace-Moselle has three departments (Bas-Rhin, Haut-Rhin and Moselle); these are the only departments in which *laïcité* is not applied, and in which religion and worships are managed according to the pre-Combes Law regime, meaning the Concordat (*Convention entre le gouvernement français et Sa Sainteté Pie VII, Agreement between the French Government and His Holiness Pie VII*), which was signed on 15 July 1801 between the French Government (Bonaparte) and the Holy See. On the history of the specific management of religion in Alsace-Moselle, see G. Bedouelle, J.-P. Costa, *Les laïcités à la française*, particularly pp. 143–150. The situations in overseas departments and territories also differ from the basic separation system.

<sup>204</sup> Thus, Lutheran and Reform Protestantism and Judaism became legally recognised forms of worship. This process of separation introduced by the Combes Law was also the result of negotiations between the State and Catholic institutions, and led to a series of agreements which have accompanied the establishment and consolidation of *laïcité* throughout the 20<sup>th</sup> century.

organised in this manner enjoy certain benefits, such as tax exemptions on religious buildings, that other religious groups (such as Muslims) do not enjoy, as they are represented not by an officially-recognised church institution but mostly by common associations (Law of 1901, amended and opened to foreigners in 1981):

...owing to history, the Catholic dioceses and to a lesser extent the Protestant Churches and Jewish [synagogues], benefited from all the advantages and support in the continuity between two systems (recognised religions, from 1801-1905) and separation (1905-...). For other religions, access to one [or more] components of the system ... is subject to as many "acknowledgement" procedures as there are types of support. The acquisition of the statute of a religious organisation, in line with the 1905 law, seems however to constitute a first and forced step towards State "recognition."<sup>205</sup>

The HCI has acknowledged that the Combes Law has produced inequalities in treatment among different forms of worship.<sup>206</sup> For example, unlike Catholics,<sup>207</sup> Protestants and Jews accepted the 1905 law and were thus immediately able to establish religious organisations and to maintain ownership of their buildings. The special legal regime which applies in the three eastern regions (*departments*) represents a clear exception to the concept of equality of religions before the law, and case-law reflects a growing recognition of religious rights for minority groups.<sup>208</sup> Muslims have been officially encouraged to designate a single representative to facilitate negotiations between the religious community and the State (see Section 4.1). However, there is often resistance to the idea of extending special recognition and rights to Islam at the local level,<sup>209</sup> and *laïcité* is increasingly conceptualised and advanced in terms of Republican values rather than constitutional principles, politicising perceptions of Islam and Muslims.

On the whole, *laïcité* is perceived *a priori* by Muslims and particularly by the leaders of Muslim associations as favourable to the expression of religious pluralism and personal religious freedom.<sup>210</sup> However, some question whether the framework functions in

<sup>205</sup> F. Messner, "Relations between municipalities and religions" in F. Frégosi, J.-P. Willaime, eds., *Le religieux dans la commune* (The sacred in the city), 2001, Genève, Labor et Fides, p. 45.

<sup>206</sup> "While (it) was supposed to create a single statute for all religions on the territory, its implementation historically has resulted in legal and factual differences between the different forms of worship." HCI 2001, p. 23.

<sup>207</sup> The Catholic Church did not accept the 1905 legal framework for cult associations until 1924.

<sup>208</sup> There is a sufficient body of court interpretation of the concept of *laïcité* to allow for discussion of a plurality of legal orders.

<sup>209</sup> Messner, p. 93.

<sup>210</sup> 82 percent of Muslims surveyed agreed with the following statement: "One should be able to live in France and comply with all the rules of Islam." IFOP-*Le Monde* survey September 2001.

practice. In the words of one leader, “Muslims have all their rights but the problem emerges when it comes to practice.”<sup>211</sup> Indeed, neither the legal system nor the State public administration has succeeded in formulating clear answers for a number of issues linked to the public management of Islam.<sup>212</sup> Particular problems have arisen with regard to access to social services for Muslim authorities (see Section 3.1.4), the construction of places of worship, Muslim plots in local cemeteries and ritual slaughter.

Underlying all these particular social and policy problems is the tension between an approach to *laïcité* that, while aiming to embody State neutrality, implicitly rests on assumptions of cultural Republicanism,<sup>213</sup> and the legitimate and permanent presence, on French territory, of groups that assume – and claim public recognition for – a religious component to their identity without contradiction to their political commitment as French citizens.

### *The construction of places of worship*

Muslim communities’ requests for the right to construct places of worship represent a constant source of controversy at the local and national levels. Financial support for mosque construction is often provided by immigrants’ countries of origin or by other Muslim countries,<sup>214</sup> making the issue relevant to national debates on foreign policy; for Muslims, the issue symbolises their unfulfilled claim for greater public recognition and visibility.

There are 1,550 registered Islamic “places of worship” throughout France.<sup>215</sup> Most places of worship are prayer rooms of varying size and condition; two-thirds are very small, with a capacity of less than 150 persons. Many are not in conformity with public health and security standards. However, the situation regarding Muslim places of worship has improved somewhat since the beginning of the 1980s. Though sites are not always appropriate, many places of worship are in decent condition.

<sup>211</sup> Interview with the Director of the school *La Réussite*, 21 May 2002.

<sup>212</sup> According to one Muslim leader, “Muslims lack mosques, cemeteries, places for teaching, and easier access to work and to housing.” Interview with the Director of *La Réussite*, 21 May 2002.

<sup>213</sup> In the sense of the individual citizen’s loyalty to Republican values.

<sup>214</sup> For example, Saudi Arabia provided up to 90 percent of the budget for the construction of the central mosque in Lyon.

<sup>215</sup> Muslim communities are entitled to open legally-recognised places of worship under the 1901 Association Law. If they wish to construct a proper mosque (i.e. with the external attributes of a mosque), they are required to negotiate with the local public administration in order to obtain permission. However, these places are not considered religious buildings under French law because Islam is not one of the worships recognised by the Combes Law.

In large cities, the alternative is often between supporting places of worship in neighbourhoods where Muslims live (so-called “district mosques”) and the promotion of a central place (so-called “cathedral-mosques,” with reference to the mosque’s dual community and symbolic function).<sup>216</sup> For example, the municipality of Strasbourg voted on the construction of one central mosque in 1999, and two proposals were submitted by two competing mosques. In September 2002, the mayor of Strasbourg gave official permission to begin construction of the central mosque.<sup>217</sup>

Case-law reflects a growing tendency towards *de facto* recognition of minority religions through the adoption of pragmatic provisions at the local level. However, in the absence of official recognition, local public administrations are not compelled to do so, and not all public authorities have proven willing to make efforts to compensate for inequalities in the treatment of Islam. One Muslim leader describes the difficulties his association encountered in negotiating for the construction of a mosque:

The mayor refused to grant us a building permit and it was only after six years of legal battles ... that ... we were given justice. Since then, the mayor has presented his apologies to the association and considers himself our friend but he still has not permitted us to build our mosque.<sup>218</sup>

Municipalities are prohibited from providing financial support to any form of worship and therefore cannot contribute directly to the construction of a mosque.<sup>219</sup> However, there are no constraints other than town planning regulations on opening places of worship, and municipalities are free to grant a long-term lease or sell a plot of land for this purpose.

Conflicts often arise as a result of resistance from local residents, whose support is a necessary condition for the construction of a mosque.<sup>220</sup> Moreover, the director of *La Medina* (a quarterly magazine of French-speaking Muslims) recently suggested that present arrangements are far from sufficient:

We have not received anything. The leaders of this country ... and [those] who can give subsidies are sometimes Muslim [or] Arab but they are in reality secularists (*laïcards*). Thus, to them any [form of] religious expression

<sup>216</sup> Disagreements have arisen over how to indicate such buildings on city maps.

<sup>217</sup> See J. Fortier, “Feu vert pour la construction d’une mosquée à Strasbourg” (Green light for the construction of a mosque in Strasbourg), *Le Monde*, 6 September 2002, see: <<http://www.lemonde.fr/article/0,5987,3226-289357-00.html>>, (accessed 28 September 2002).

<sup>218</sup> Interview with the director of *La Réussite*, 21 May 2002.

<sup>219</sup> Activities not directly linked with the church, such as charity work, music, etc., can be financed by municipalities.

<sup>220</sup> Locally, several actors are involved: the prefecture, the region, the municipalities, the departments, but also political parties and social groups.



should be rejected and they block any will to help Muslims. Ninety percent of the Muslim associations today do not receive any subsidy although they carry out cultural work (such as support for schools).<sup>221</sup>

The Mediator in the Ministry of Education, Hanifa Chérifi, confirmed this estimation in her comments on the HCI 2001 report:

The HCI stressed the quantitative and qualitative weakness of the places of Muslim worship. It is not uncommon that certain Muslims have to pray in buildings which were not organised for welcoming an audience, in garages, for example. We stressed that some local elected politicians refused to grant building permits in order to avoid the establishment of a mosque in their municipality, while nothing in the law of 1905, which affirms the neutrality of the State in relation to religion, permits such refusals.<sup>222</sup>

The Consultation on Islam, which seeks to resolve the lack of representation of Islam, would establish the right to construct and obtain legal recognition for mosques as religious buildings as defined in Section V of the Combes Law. This would transform the religious landscape, as it would bring Islam out of the cellars, garages, private apartments, and other inappropriate venues in which it is currently practised, and set it within the existing Republic framework.

### *Cemeteries*

With the exception of the Rhine and Moselle region, cemeteries are officially secular,<sup>223</sup> and the provision of separate plots or spaces for the proponents of different religions is prohibited. The Muslim burial practice requiring that the body be placed in the earth without a coffin or tomb, on its right side, with the heart pointing towards Mecca, is considered acceptable under the terms of the Combes Law.<sup>224</sup> However, the practice raised public health concerns, which were addressed by the adoption of a Government circular in

<sup>221</sup> Interview with the director of *La Medina*, 14 May 2002.

<sup>222</sup> Discussion with Hanifa Chérifi, "Les musulmans victimes de discriminations. Une inégalité entre les religions" (Muslim victims of discrimination. Inequality between religions), J.-M. Blier, S. de Royer, *Discriminations raciales, pour en finir*, 2001, Paris, éditions Jacob-Duvernet, pp. 52–53.

<sup>223</sup> Law of 15 November 1881. Law on the Neutrality of Cemeteries, *Bulletin des lois de la république française*, 1981, p. 957.

<sup>224</sup> The Combes Law permits the display of religious signs or symbols on tombstones. See Combes Law, Art. 28.

1975 permitting the creation of special cemetery plots for Muslims (*carrés musulmans*).<sup>225</sup> The issue is also addressed in the text adopted on 28 January 2000 in the framework of the Consultation on Islam (See Section 4.2).<sup>226</sup>

In 1991 the competence to establish separate plots for Muslims was granted to local mayors.<sup>227</sup> However, mayors do not always exercise their discretion in this area to the benefit of Muslim citizens. For example, the mayor of Toulon refused to grant a cemetery concession to a North African woman for the reason “that she was an Arab, and should be a Christian.”<sup>228</sup>

The principal outstanding problem concerns exhumations and the removal of bones to an ossuary once a cemetery concession is to be closed; cemetery concessions are always granted for a certain period of time due to lack of space. If a concession is granted to a family free of charge by the municipality for a funeral, then it is possible to use the same space for another burial after having removed the bones. It is also possible to rent a concession for a longer period or forever, according to local prices decided by the municipality. Beyond the financial difficulty of renting such a space (while in the country of origin it would often be free), in Islam, once a person is buried, exhumation is forbidden. Therefore, Muslims object to this practice, and either make arrangements to be buried in their country of origin (which is very expensive), or municipalities make arrangements to accommodate them if space is available. No solution has been found for this issue, which is likely to grow in importance in coming years, as demand for space increases.<sup>229</sup>

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<sup>225</sup> Government circular, 28 November 1975. However, the measure amounts to an accommodation to the Muslim community which, strictly speaking, is illegal, as Art. 97-4 of the Communal Law (now Art. 2213-9 of the General Code of Territorial Collectivities) states that the mayor is not authorised to make distinctions or particular provisions related to the faith or belief of the deceased. HCI Report 2001, pp. 57–59.

<sup>226</sup> For complete text, see:  
<[http://interieur.gouv.fr/information/publications/istichara/mars\\_1.htm](http://interieur.gouv.fr/information/publications/istichara/mars_1.htm)>, (accessed 14 December 2001).

<sup>227</sup> Circular of the Minister of Interior, 14 February 1991.

<sup>228</sup> F. Frégosi, citing article in *Libération* of 21 October 1998, p. 20.

<sup>229</sup> There is one Muslim cemetery in France in Bobigny (on the periphery of Paris). It was created in 1931 because of the proximity of the French-Muslim Hospital. Even in this case, some problems arose when the displacement of some tombs became necessary.

*Ritual slaughter*

The State regulates the practice of ritual slaughter to ensure compliance with regulations regarding hygiene, public order and public health. Increasingly, ritual slaughter is managed locally, in accordance with European regulations,<sup>230</sup> with intervention of the prefect where necessary. However, the number and distribution of slaughterhouses remains insufficient to meet the needs of the Muslim community. This has sometimes resulted in unregulated slaughter, which has attracted considerable media attention during such holidays as *Aïd el Kebir*.

Municipalities and other State partners are in charge of regulating the annual slaughter. They have developed local solutions, such as establishing provisional sites, reopening old slaughterhouses for the occasion, and publishing official lists of places for slaughter in the area. The central problem remains that of the number and location of these sites. Six official slaughterhouses are listed (four in the Seine et Marne, one in the Yvelines, and one in the Val d'Oise), but there are none in the departments in which Muslims are in fact more numerous (Val de Marne, Seine Saint Denis, Hauts de Seine, and Essonne).

The Ministers of Agriculture and Interior made an attempt to deal with the problem by issuing a circular on 1 March 2001 permitting slaughterhouses to be established by dispensation of the local authorities. However, this ran counter to the European Commission regulation prohibiting ritual slaughter outside of official slaughterhouses, and an outbreak of typhus fever in 2001 added impetus to demands for stricter regulation.<sup>231</sup> In October 2001, by order of the Council of State, administrative judges cancelled the March circular, and the Government, in agreement with Brussels, plans to close all dispensation sites by 2004.

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<sup>230</sup> The protection of animals at the time of the slaughter is regulated by Decree 97-903 of 1 October 1997, transposing Directive 93/119/EC. The decree of 16 April 1964 relates to the protection of certain domestic animals and to the conditions of slaughter. The order of 28 November 1970 grants to the intercommunity rabbinical subcommittee of ritual slaughter the competence for designating the person in charge of the sacrifice.

<sup>231</sup> *Le Monde*, 22 February 2002.

### 3.3.2 Language

The Constitution states that French is the sole official language of the French Republic.<sup>232</sup> Moreover, the French language is perceived as the symbolic receptacle of national consciousness<sup>233</sup> and the medium through which national culture, history and traditions are transmitted.<sup>234</sup> From this perspective, proposals to recognise regional or minority languages<sup>235</sup> have been rejected as contradictory to the Constitution and to Republican values.

The European Charter for Regional or Minority Languages (ECRML) expressly protects languages without giving individual rights to those who speak them. However, this has not allayed fears that recognising the right to use a minority language would be tantamount to recognising the existence of a linguistic minority.<sup>236</sup> Indeed, Part II of the Charter explicitly associates regional or minority languages with the territory in which they are spoken, raising additional risks of community claims. Commentators on the Charter have noted that the Charter's use of the term "group" (rather than "minority") refers in French only to the individuals who constitute a group rather than

<sup>232</sup> The first sentence of Article 2 of the Constitution reads: "The language of the Republic is French." See the entire text of the Constitution and its history at: <<http://www.assemblee-nat.fr/connaissance/constitution.asp>>, (accessed 26 September 2002). The Constitution was amended in 1992 to make modifications necessary after the ratification of the Maastricht Treaty. At the same time, Article 2 was amended to affirm French as the only official language. Constitutional Law 92-554 of 25 June 1992. See: <[http://www.legisnet.com/france/constitutions/v\\_republique\\_les\\_revisions.html](http://www.legisnet.com/france/constitutions/v_republique_les_revisions.html)>, (accessed 26 September 2002). France (together with Spain) is the only EU country to make this explicit constitutional reference to an exclusive official language. Some EU candidate States, such as Romania and Bulgaria, also have the same practice. N. Rouland, "Les politiques juridiques de la France dans le domaine linguistique" (French legal policies in the linguistic domain), *Revue française de droit constitutionnel*, 1998, 35, pp. 517–562, p. 549, note 128.

<sup>233</sup> F. Rohmer-Benoît, "Les langues officieuses de la France," (The Unofficial Languages of France), *Revue Française de Droit Comparé*, 2001, May, pp. 3–29.

<sup>234</sup> French has been the only language used in official documents since the Villers-Cotterêt prescription in 1539.

<sup>235</sup> 75 regional languages are spoken in France (most in Overseas departments and territories). Rapport Cerquiglini, *Les Langues de la France, rapport au Ministre de l'éducation nationale, de la recherche et de la technologie* (The Languages of France. Report to the Ministry of National Education), April 1999. See also *Langues et cultures régionales* (Regional languages and cultures), La Documentation française, 1998.

<sup>236</sup> "Commentaires des décisions du Conseil constitutionnel" (Comments on the Constitutional Council's Decisions), *L'actualité juridique. Droit administratif*, 20 July – 20 August 1999, p. 577.

to the group itself.<sup>237</sup> However, the principal objection to implementation of the Charter centres around arguments that its implied recognition of collective rights, including linguistic rights, would undermine the unity of the French people and the indivisibility of the Republic, and Governments have consistently opposed the obligations foreseen by certain articles of the CRML providing for the use of minority languages with public authorities and in the justice system, including in courts.

Part III of the Charter, which relates to the teaching of regional or minority languages, is less problematic.<sup>238</sup> Teaching in languages other than French is already permitted in primary and secondary schools, provided such classes are not mandatory, and do not interfere with the common rights and obligations of all students, including the obligation to study French.<sup>239</sup> Nonetheless, some politicians have expressed the belief that the Charter's provisions for the dissemination of educational materials in regional languages, support for cultural activities, and libraries, *inter alia*, are excessive. For example, the mayor of the 11<sup>th</sup> district of Paris expressed his fears that the Charter would give new opportunities for teaching in languages such as Arabic, "taking France far from its Republican ideal."<sup>240</sup>

The State has taken a number of initiatives to support the teaching of immigrant languages, often in collaboration with immigrants' States of origin, beginning in the 1970s. The ELCO ("Teaching of Languages and Cultures of Origin") programme dates back to 1973.<sup>241</sup> ELCO aimed to promote the integration of schoolchildren while preserving the possibility for them to return to their countries of origin.<sup>242</sup> ELCO programmes offered classes in a variety of languages, starting with Portuguese in 1973, and gradually adding other languages: Italian and Tunisian Arabic in 1974; Spanish and Moroccan Arabic in 1975; Serbo-Croatian in 1977; Turkish in 1978, and Algerian

<sup>237</sup> "Commentaires des décisions du Conseil constitutionnel" (Comments on the Constitutionnal Council's Decisions), *L'actualité juridique. Droit administratif*, 20 July – 20 August 1999, p. 574.

<sup>238</sup> The State has shown increasing support for teaching in regional languages. The Deixonne Law on Schools (11 January 1951) permitted the use of local and regional dialects in primary schools. On 30 December 1983, Government circular 83-547 laid the foundations for bilingual courses in some public schools. The Law of Orientation on Education of 10 July 1989 and the Bayrou circular of 7 April 1995 (95-086) restated official State commitment to the teaching of regional languages.

<sup>239</sup> Déc. N. 96-373 of 9 April 1996, cons. 92.

<sup>240</sup> See *Le Monde*, 19 June 1999.

<sup>241</sup> CEFISEM have been created in 1975, as Centres for study, training and information for the schooling of the children of migrants, to help the teachers to integrate non French-speaking pupils at schools.

<sup>242</sup> HCI, *Liens culturels et intégration* (Cultural Ties and Integration), La Documentation française, June 1995.

Arabic in 1981. The courses are offered in public schools to children whose parents choose for them to attend. Countries of origin cover almost the entire cost of the classes; the French public administration contributes by providing the classroom.

ELCO attendance has been decreasing in recent years, particularly for Portuguese and Italian. In 1993-94, only 99,184 children attended ELCO lessons, mainly in primary schools. Demand for Arabic instruction, however, has increased substantially. State officials advance the argument that teaching foreign languages in a controlled, State-supported environment allows for quality-control as well as for monitoring of course content; some have expressed concern that children following language courses organised by Muslim associations could be exposed to anti-Republican values.

Teaching religion within the context of the ELCO programme has been a subject of heated debate.<sup>243</sup> Some critics have contended that discussion of Islam in ELCO classes has consisted principally of violent denouncement of French *laïcité* by teachers, who act more in the interest of the countries of origin rather than in the interest of the pupils. It seems clear that offering Arabic as a foreign language in public schools would open opportunities for students to learn about Islam in a more controlled setting, which would be preferable to the more *ad hoc* ELCO formula.

The language issue is central to the process of individual integration, as knowledge of French is a criterion of evaluation for citizenship applicants.<sup>244</sup> There are signs of increasing proficiency in French among Muslim citizen and immigrant communities. Increasingly, events taking place in mosques or at public meetings of Muslims (such as the annual meeting of French Muslims at Le Bourget Exhibition Centre) take place in two languages: French and Arabic. Even for theological and religious questions, French is more and more commonly used.

### 3.3.3 Education

Muslims identify two issues of particular importance to their communities in the area of education. First, they seek adequate religious instruction for their children and improved education on the history, culture, and contributions of Islam for all public school pupils. Second, they are concerned to ensure adequate training for teachers, religious instructors and imams.

<sup>243</sup> F. Lorcerie, "L'Islam dans les cours de langue et culture d'origine: le procès" (Islam in the Teaching of Languages and Cultures of Origin Courses: the Trial), *Revue européenne des migrations internationales*, 1994, vol. 10, n. 2, pp. 5-43.

<sup>244</sup> Officials which interview citizenship applicants have to specify level of command of the French language in their review of the application.

In one recent survey, 85.7 percent of Muslim pupils (both practising and non-practising) stated that their religious convictions were “important” or “very important” to them.<sup>245</sup> Confronted with this reality, some observers have suggested that religious history (including the history of Islam) should be reintroduced as part of the curriculum of public schools.<sup>246</sup> At present, the religious education of young Muslims is provided either by the family at home or by associations and mosques in the framework of Koranic courses, independently and outside of regular school hours.

The lack of qualified teaching staff and the need to provide training to imams have become increasingly important issues since the beginning of the 1990s. Several attempts have been made by Muslim associations to develop appropriate training institutions for imams. For example, in 1992, the private European Institute of Social Sciences opened an Islamic theological training institute in Saint-Léger-de Fougeret, near Château-Chinon (Nièvre) for imams and religious educators. The institute aims “to give Islam stable structures responding to the needs of Muslims while taking into account the specificity of their surroundings.”<sup>247</sup> The Institute has 160 students from France and other European countries. Its buildings and grounds belong to the Union of Islamic Organisations of France (UOIF), and financial support is provided by the States of the Arab peninsula. Complete training lasts six years (eight years for converted Muslims, who need more time to learn Arabic) and costs approximately €2000 per year.<sup>248</sup> It is also possible to attend the Institute for shorter training courses, particularly for classes in Arabic. In January 2000, the Institute opened a branch near Paris (in Saint-Denis). There have also been discussions in Strasbourg regarding the establishment of a Muslim faculty of theology just as there are Protestant or Catholic faculties of theology.<sup>249</sup>

However, these attempts have not received sufficient levels of support and have failed to satisfy either the Muslim community or the public authorities, and the Consultation

<sup>245</sup> 494 schoolboys and girls and secondary school students (42 percent of whom were Muslims) were interviewed between 2000 and 2001, V. Geisser, K. Mohsen-Finan, *L’islam à l’école. Une analyse sociologique des pratiques et des représentations du fait islamique dans la population scolaire de Marseille, Montbéliard et Lille* (Islam at school. A Sociological Analysis of Practices and Representations of Islam among school population in Marseille, Montbéliard and Lille), Rapport de l’IEHSI, 2001.

<sup>246</sup> For example, ECRI has “encourage[d] the French authorities to ensure that education in tolerance and respect for difference play a primordial role ... in addition, ECRI considers that it would be extremely beneficial to develop, within the current history programme, a section devoted to the input brought by the immigrant population to France.” ECRI Report 1999, para. 20.

<sup>247</sup> For the text of presentation see: <<http://www.iesh.org>>, (accessed 20 September 2002).

<sup>248</sup> *Le Monde*, 7 February 2002.

<sup>249</sup> There is space for such discussions in Strasbourg due to the specificity of the region of Alsace and Moselle. See Section 3.3.1.

plans to elaborate a concept to ensure improvements in training opportunities. Such initiatives would facilitate the emergence of a group of imams who are not only well-versed in Islam, but sensitive to the French context. This would also encourage greater knowledge and understanding of Islam in France more generally. Recently, the Minister of Interior declared himself in favour of the establishment of a university institute of Muslim theology, to be financed partly from public resources, in order to train Muslim religious authorities.<sup>250</sup>

There is one private Islamic school, the *medersa Taalim oul Islam* of Saint Denis of the Réunion, which has been under contract with the State since 1990,<sup>251</sup> and several projects to support the establishment of private Islamic schools, including one operated by *La Réussite*, an association based in the Parisian suburbs.<sup>252</sup> Since September 2001, the organisation has been operating a single experimental class (*sixième*),<sup>253</sup> according to a curriculum approved by the Minister of Education, together with an additional hour of non-obligatory religious instruction. *La Réussite* is currently undergoing a three-year observation period, after which time it may be able to conclude a State association contract, which would solve the financial difficulties with which it has struggled to date.

### 3.3.4 Media

There are no State-funded media outlets for Muslims, although a number of private radio stations and newspapers target Muslim audiences. The use of other languages in the media is not restricted,<sup>254</sup> although a law passed in 1994 (also known as the Toubon Law, after the then Minister of Culture and Francophonie) does specify that the use of French in the commercial sphere must be at least as prominent as any other language and also prohibited the use of foreign terms in certain areas to protect French from becoming Anglicised).<sup>255</sup>

There is an official category of “private radios” – category A. Among the 600 private radio stations of this category (as of January 2002), there were some community radio

<sup>250</sup> *Le Monde*, 17 September 2002. See: <<http://www.lemonde.fr>>, (accessed 20 September 2002).

<sup>251</sup> See Section 3.1.1.

<sup>252</sup> There are two other projects of Muslim schools: the school *Avenir* in La Courneuve and *La Maison des enfants* in Villepinte.

<sup>253</sup> Interview with the director, Aubervilliers, 21 May 2002.

<sup>254</sup> Moreover, since the law of 29 July 1982, the choice of medium of media expression is also free.

<sup>255</sup> Loi Toubon sur la défense de la langue française (Toubon Law concerning the defense of French language), Loi n. 94-88 (1 February 1994), *Official Journal*, 2 February 1994, p. 1800.



stations as well.<sup>256</sup> *Beur FM*, a secular and independent radio station, defines itself as the “radio station of North-Africans in France.” The station does not aspire to make Islam one of its central topics, but aims to reach a general public,<sup>257</sup> and particularly “all minorities in France.” The president of *Beur FM*, Nacer Kettane, in February 1999 launched the “Professional Union of thematic radios (UPRAT),” which gathers some of the private radio stations of 11 different communities (including several Jewish radios, *Beur FM*, African radio, and several Maghrebian stations. Another radio station reaching a Muslim audience is *Radio Orient*, which targets the middle-class, educated, Arabic-speaking community.

Public radio and TV stations transmit religious programmes of the various religions represented in France every Sunday morning.<sup>258</sup> Since 1983, there has been a programme on Islam called *Connaître l’Islam* (Knowing Islam), consisting mainly of commentary on the Koran and discussions of the interpretation of certain texts.

More recently, it seems that magazines are becoming the most dynamic type of media utilised by Muslims. Published in French, *La Medina* (monthly) and *Islam* (quarterly) are both edited by Hakim El Ghissassi. Since 1999, *La Medina* has been presented as a magazine of cultures and societies. It deals with various issues related to the situation of Muslims in France or to international events. *Islam* is rather a journal of Muslim history and theology, which was created in 2002. Here again, beyond purely religious discussions, topics relevant to Muslims in Europe, such as regulations and legal frameworks, are very often central topics of the publication. The publication *Hawwa* is a journal edited by a group of Muslim women, established in 1999.

### 3.3.5 Participation in public life

The Republican framework recognises no specific political rights for any minority group.

Access to citizenship is officially available to all individuals who choose to integrate into the French nation. However, there are many reports of problems in gaining access to citizenship, and it appears that naturalisation officials sometimes interpret adherence to Islam as a sign of unwillingness to integrate into the French nation – and reject citizenship applications from Muslims on these grounds. For example, one young woman’s application was refused on the grounds that she insisted on wearing a veil; the

<sup>256</sup> See: <[http://www.ddm.gouv.fr/radio/dossiers\\_thematiques/panoradios.html](http://www.ddm.gouv.fr/radio/dossiers_thematiques/panoradios.html)>, (accessed 25 September 2002).

<sup>257</sup> See: <<http://www.beurfm.net>>, (accessed 17 August 2002).

<sup>258</sup> G. Bedouelle, J.-P. Costa, *Les laïcités à la française* (Secularism French style), Paris, PUF (Politique d’aujourd’hui), 1998, pp. 71–74.

decision was overruled on appeal.<sup>259</sup> In another case, dating from 1994, the Council of State annulled a decision to refuse French nationality to a young woman on similar grounds<sup>260</sup> (see also Section 2).

There are some signs of the growing strength of the Muslim electorate. For example, Nicolas Sarkozy, the newly-appointed Minister of the Interior, publicly committed himself during the 2002 legislative electoral campaign to continue the work of the Consultation on Islam initiated by the previous Government “in an electoral climate where every vote counts.”<sup>261</sup> Especially given widespread disillusionment among Muslims with the perceived lack of results in addressing issues of concern to them by the left-wing Socialist Government, some right-wing political parties and candidates have made efforts to appeal to Muslim voters. For example, all of the right-wing candidates in the 2002 presidential elections tried to attract the North African electorate, particularly through their stance on the situation in the Middle East.<sup>262</sup> Right-wing parties presented an increasing number of candidates of North African

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<sup>259</sup> “Considering that, to refuse the naturalisation application presented by Mrs. A., of Moroccan nationality, the minister has based his decision on the fact that her behaviour, in particular with regard to dress... reflected a refusal to be integrated into the French community; [that he has]... founded his evaluation on only one element, which is that Mrs. A. wears the Islamic veil known as *hejab* everyday, which covers her hair entirely as well as her neck and shoulders, and that the minister considers this to reveal a system of thought which is opposed to the values of the French Republic; considering that he claims that Mrs. A.’s wearing the *hejab* represents a symbol of the submission of women and therefore negates one of the basic principles of *laïcité* and constitutes a sign of allegiance to the religious policy declarations of Islamist movements and reflects a rejection of the central values of a country defending the respect of democratic values and gender equality; that, however, the elements of the file do not clearly establish that the fact of wearing the Islamic veil is likely to be a refusal by Mrs. A. to adhere to the values of the French Republic and therefore a refusal of integration; that thus, the decision which is challenged is spoilt by an error in assessment; that it has to be cancelled, without the necessity of ruling on other elements of the request...” Administrative court of Nantes, Request n. 98.80.

<sup>260</sup> “Considering that if Mrs. B., of Moroccan nationality, claims to be a Muslim woman of strict observance and wears the Islamic veil, nothing shows that either of these facts and circumstances, or any other facts invoked by the administration and relating to the behaviour of the plaintiff are likely to reveal a problem with her assimilation into French society; thus the Government could not legally be opposed on the basis of these reasons to Mrs. B.’s acquisition of French nationality; that, consequently, Mrs. B. has the basis to require the cancellation of the decree ... refusing her the acquisition of French nationality.” Conseil d’Etat statuant au contentieux, n. 161251, session of 25 November 1998 (reading of 3 February 1999).

<sup>261</sup> See *Libération*, 30 May 2002 and *Le Monde*, 6 June 2002.

<sup>262</sup> Declaration made by N. Djennar, in charge of the programmes on elections on *Beur FM*, cited in *Libération*, 29 January 2002.

origin on their electoral lists. Still, Muslim communities do not appear to have exercised a decisive impact during the 2002 elections.

Several mainstream political parties as well as a number of trade unions and civic organisations have expressed a growing interest in the challenges raised by Muslim communities to traditional notions of *laïcité* and the Republican framework, as well as in the problem of discrimination and unequal treatment among religions. Several civic associations have established working groups on *laïcité*, explicitly questioning the place of religion in the public sphere, particularly in education.

There are very few Muslims in positions of political power or responsibility. However, there are signs that the recent emergence of a new middle class of French Muslims is already effecting changes in the spheres of business and higher education, through the institution of strong community networks (see Section 4.2). This new middle class has defined its interests primarily in economic terms, rather than in terms of defence of the interests of the Muslim community, although there has been some level of political mobilisation around issues of racism and discrimination, particularly in the sphere of employment.

There is also a growing movement to ensure representation of the interests of Muslims in local political structures, including trade unions and political parties. In many cases, however, these associations promote pluralism or diversity rather than the interests of the Muslim community *per se*. For example, the Muslim Students of France won seven percent of the votes during the last elections to the CROUS (Regional Councils for University Welfare), but emphasises its aim to represent the interests of students in general.<sup>263</sup> Similarly, the Party for a Pluralistic France, led by Tawfik Mathlouthi, is presented as a Republican party, for “ensuring that the diversity of cultures as well as the unity and integrity of our fatherland are respected.”

The State-sponsored “Consultation on Islam of France” offers a channel for participation in public life for some Muslim leaders. However, some observers have noted that the top-down organisation of the Consultation has raised suspicions that the intent is to control and direct Muslim communities rather than to create a mechanism for facilitating their input and participation (see Section 4.1).

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<sup>263</sup> The association was established in 1989 and does not define itself as an attempt to ensure representation of the Muslim community for Muslim students, but as an association with a general vocation.

## 4. INSTITUTIONS FOR MINORITY PROTECTION

There is no national body to ensure protection against discrimination and provide independent assistance to victims of discrimination, as required by the EU Race Equality Directive.<sup>264</sup> However, there are several institutions more-or-less exclusively devoted to the fight against discrimination, such as the Action and Support Fund for Integration and the Fight against Discrimination (FASILD) and the Directorate of Population and Immigration (DPM).

However, this institutional framework addresses discrimination in general; there is no special body to address issues faced by the Muslim population in particular. The process of Consultation, in which a large number of Muslim representatives are participating, is the clearest official attempt to provide a framework for exchange and discussion on the question of how best to ensure representation of the interests of Muslims.

### 4.1 Official Bodies

#### 4.1.1 The Mediator of the French Republic (ombudsman)

The Mediator of the French Republic (ombudsman) was established in 1973.<sup>265</sup> The Mediator is an independent authority which may receive complaints concerning the operation of Government offices, local authorities, public establishments and any other public service bodies in respect of their dealings with the public. The Mediator is appointed for six years by the Council of Ministers, and appoints and manages a network of district-level delegates. The Office may make recommendations as deemed necessary to resolve complaints or issues referred to it, and if it appears that the application of the appropriate legislation or regulations would result in an injustice, it may make recommendations to bring about an equitable outcome to a complainant's case.

In 2000, 53,706 complaints were sent to the Mediator's office, a 4.7 percent increase compared with 1999.<sup>266</sup> In 2000, the Parliament passed a law conferring new powers

<sup>264</sup> Council Directive 2000/43/EC, Art. 13, requires member States to designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin, capable of providing independent assistance to victims of discrimination, conducting independent surveys concerning discrimination, publishing reports and making recommendations on any issue related to such discrimination.

<sup>265</sup> Law 73-6, 3 January 1973.

<sup>266</sup> 5,278 were directed to the Mediator's office (Parisian headquarters) and 48,428 to district delegates. *Le Médiateur de la République. Rapport annuel 2000*, La Documentation française, Paris, 2001.

on the Mediator. In particular, it extended the Mediator's competence to refer to the recommendations and practices of foreign counterparts and to the European ombudsman.

Generally speaking, the Mediator works to improve and enhance respect for the rights of citizens in various sectors, and to settle disputes between citizens and public bodies. The Office conducts investigations in five sectors: general administration, public service/pensions, taxation/finance, justice/town-planning and social services. The rights of foreigners and issues related to religion and Islam fall under the general administrative sector.<sup>267</sup>

Since November 1994, Hanifa Cherifi has been working as project leader and Mediator within the Ministry of National Education. She has been in charge of mediating in the veil cases, of which there have been several hundred since she took office. The national Mediator for National Education is assisted by academic mediators and departmental correspondents; mediators (who are also officers of the Ministry of Education), may intervene in conflicts related to public education services among parents, pupils, students or staff.

#### 4.1.2 Anti-discrimination bodies

The Belorgey report recommended the establishment of a number of official bodies to facilitate the fight against discrimination. The *Groupe d'intérêt public – Groupe d'études des discriminations* (Public Interest Group – Group for the Study of Discrimination, GIP-GELD) and the Sub-committees on access to citizenship (CODAC) were both created in 1999, immediately following the publication of the report.

##### *Sub-committees on Access to Citizenship (CODAC)*

CODAC subcommittees are departmental agencies which have the objective of promoting equal access to citizenship at the regional and departmental levels. They coordinate the activities of the different public services involved in anti-discrimination work, provide employment counselling and give expert consultation and assistance on specific cases of discrimination.<sup>268</sup>

<sup>267</sup> Which also includes: Foreign Affairs, Agriculture, Local Authorities, Commerce and Trade, Culture, Education, Industry, Domestic Affairs, Youth and Sport, Post and Telecommunications, State-owned Enterprises, and Transportation.

<sup>268</sup> For more information on the CODAC and an evaluation of their activity, see: <[http://www.social.gouv.fr/htm/pointsur/discrimination/01\\_526ta1.pdf](http://www.social.gouv.fr/htm/pointsur/discrimination/01_526ta1.pdf)>, (accessed 28 September 2002).

CODAC also provides legal translations for calls to the 114 hotline,<sup>269</sup> which offers victims of discrimination a forum for discussion, and the service of relaying requests for information and advice to the appropriate authority, free of charge. However, it can transmit complaints to the prefecture only for those callers who agree to give their personal information and who consent to the CODAC setting up a file on the complaint. Files are then handled by referees named by the departmental prefect. Referees are either public officials or association representatives.

In practice, many callers are unwilling to reveal their personal information, and the 114 hotline has instead become an official forum for open, anonymous discussions. From 16 May 2000 to 31 December 2001, 71,473 calls relating directly to discrimination were made to the hotline.<sup>270</sup> The most frequent complaints of discrimination were recorded with regard to employment and access to goods and services.<sup>271</sup> On the basis of hotline calls, women and men appear to face different forms of discrimination, in different sectors.

At the same time, surveys reveal that the hotline is not widely known among the Muslim community; only 13 percent of those surveyed in 2001 knew of its existence of the hotline.<sup>272</sup> The majority (55 percent) of the 9,920 cases brought before the CODAC for which files were opened<sup>273</sup> claimed their “real or supposed origin,” as the source of the discriminatory act they were reporting. Ten percent reported discrimination because of the colour of their skin, two percent because of their name, and more than 20 percent because of both skin colour and origin. Just over two percent

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<sup>269</sup> The 114 hotline operates on the basis of Art. 9 of the Law on the Fight against Discrimination of 16 November 2001. It was managed by the Directorate of Population and Immigration (DPM) in collaboration with the Minister of Interior until 1 January 2001, when its management was taken over by the GELD.

<sup>270</sup> 62 percent came from men; two-thirds were from French citizens. Approximately 14 percent were witnesses to rather than direct victims of discrimination, and 20 percent of the calls were made by someone other than the victim. More than 67 percent of the calls were made by adults between 26 and 59 years of age, and 21 percent by people of less than 25 years.

<sup>271</sup> From 16 May 2000 to 31 December 2001, an average of 30 complaints daily were transmitted by the 114 staff to the CODAC, with significant regional differences; 34 percent of all calls originated from the area around Paris. By far the largest number of complaints – 37 percent – were related to employment, professional life, or training. 13 percent concerned access to public goods and services, 11 percent were related to housing or social situation, six percent to education, and two percent to health.

<sup>272</sup> By comparison, surveys indicate that 73 percent of the population are aware of the hotline for child abuse and 63 percent of the friendship hotline (SOS Amitié) for people who are depressed, feel alone, etc. *Etude sur les services de téléphonie à caractère social*, CREDOC, December 2001.

<sup>273</sup> Of a total of 71,473 callers between 16 May 2000 and 31 December 2001.

mention other causes for discrimination, such as cultural membership (real or supposed), and 9.3 percent claimed a combination of reasons (origin, name, colour of the skin and other causes).<sup>274</sup>

### *The Group for the Study of Discrimination (GELD)*

Since October 1999, GELD has functioned as both a national observatory and a mechanism for taking action against discrimination, facilitating coordination, information, support, training and communications work in the area of anti-discrimination. As noted in Section 3.1, a number of GELD recommendations have been incorporated into the comprehensive anti-discrimination legislation adopted in 2001, including: changes to the system of proof, witness protection and protection of complainants against retaliation; enlargement of the powers of inquiry by inspection services on cases related to discrimination, and harassment.

The GELD has proposed setting up a prevention policy which would combine the efforts of the State, social partners (including NGOs, trade unions, and employers' associations), and various associations.<sup>275</sup> There have been some suggestions that the GELD Steering Committee should review and evaluate religious discrimination, but these have never been taken up.

### *Agency for the Development of Intercultural Relations (ADRI)*

The Agency for the Development of Intercultural Relations (ADRI) was transformed into a *Groupe d'intérêt public* (GIP) in November 1998. The GIP-ADRI is a national resource centre<sup>276</sup> promoting official recognition of racial discrimination and aiming to facilitate the development of a dynamic public anti-discrimination policy. Its Steering Committee includes representatives of the State administration, social partners (including NGOs), and migrant associations. It also contracts external experts to prepare studies on special topics such as access to healthcare and social welfare, or access to positions in the civil service for youth with an immigrant background.

### *Action and Support Funds for Integration and the Fight against Discrimination (FASILD)*

The Action and Support Funds for Integration and the Fight against Discrimination<sup>277</sup> have shifted from an exclusive focus on integration towards anti-discrimination activities,<sup>278</sup>

<sup>274</sup> GELD, *2001 Activity Report*, pp. 23–24.

<sup>275</sup> *Rapport d'activités, 2001*, p. 6.

<sup>276</sup> See: <<http://www.adri.fr>>, (accessed 26 September 2002).

<sup>277</sup> Formerly the Social Action Fund for immigrant workers and their families (FAS). Law 2001-1066 of 16 November 2001 modified both the name and the mission of the FAS. Note du Fas (Minutes), March 2002,

challenging the traditional assimilationist notion that integration on the Republican model compels the renunciation of ethnic, national, cultural or religious specificity. Instead, FASILD promotes a two-way integration process; an “integration à la française ... conceived of as an effective process of reciprocity which compels French society to go on, to move, to open up and become mixed, in order to prepare for a common future.”<sup>279</sup>

Within this framework, Regional Commissions for the Integration of Immigrants (CRIPI) have been created to represent FASILD at the regional level. CRIPI offices aim to address both victims and perpetrators of discrimination and also to raise awareness of the negative effects of exclusion, stereotyping of immigrants and discrimination among the broader public.<sup>280</sup> FASILD/CRIPI activities include efforts to improve conditions for newly-arrived immigrants; active support for the integration of individuals; taking action against segregation processes; and conducting a broad public awareness campaign. FASILD takes the approach that policies to promote integration must be complemented by actions to fight discrimination.

### *Other bodies*

The High Council for Integration (HCI) was created by ministerial decree in 1989.<sup>281</sup> It is in charge of making proposals for integration upon request of the Prime Minister or of the inter-ministerial Council.<sup>282</sup> It acts as an adviser to the Prime Minister on a number of “sensitive” topics, including Islam. The National Consultative Commission of Human Rights, which was created in 1984, publishes annual reports on racism, xenophobia and discrimination. It is primarily a forum for exchange, where representatives of NGOs and union confederations, experts, and MPs are invited to talk. The Commission publishes yearly reports.

### 4.1.3 The consultation on Islam of France

The Minister of Interior has competence for religious questions and issues. Since 1990, there has been a series of ministry-led governmental initiatives to establish official

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<sup>278</sup> Décret n. 2002-302, 28 February 2002.

<sup>279</sup> Note du FAS, 25 March 2002.

<sup>280</sup> “Campagne 2002,” *La lettre du FAS*, n. 56, August 2001, p. 1.

<sup>281</sup> Decree of the Prime Minister, 19 December 1989 (89–912).

<sup>282</sup> Completed by a decree on 30 January 1984.



representation for Islam.<sup>283</sup> Though representing different political positions, these initiatives have shared a common policy objective: to organise a centralised, hierarchical representation of Islam.

Public policies in religious matters always implicitly refer to the model of the Roman Catholic Church, which serves as a reference point for the State when it comes to the question of organising Islam:

... the religious institutional infrastructure of the Roman Catholic Church constitutes an implicit reference to the religious institutional construction of the Republic itself ... But in order to make this system work beyond Catholicism, it is necessary for religious institutions to fit into this denominational framework. It is in particular necessary that religious institutions could send qualified representatives to talk with the public authorities, but also [who are likely to] be recognised by the believers as legitimate persons to speak on their behalf.<sup>284</sup>

Indeed, the Muslim community has been criticised regularly by public officials for having failed to produce a single, common representative according to this model, on the grounds that this has prevented the institutionalisation of Islam and impeded dialogue. The Consultation is intended to encourage what State officials see as the necessary process of “standardising” the relationship between the State and Islam.

In 1999, Minister Chevènement launched the latest of these initiatives, the “Consultation on Islam of France” (also referred to as the *Istichara*), which will be taken forward by the newly-elected Government, under the leadership of the present Minister of Interior, Nicolas Sarkozy. Minister Chevènement concluded, at the close of the Consultation’s preliminary review phase, that “...the legal texts which govern the different forms of worship and organise *laïcité* in our country can also be appropriate for Islam and must therefore help its integration as well as the organisation of the Muslim religion in France.”

The Consultation initially included five organisations: the Union of the Islamic Organisations of France (UOIF), the Muslim Institute of the Paris Mosque, the National Federation of Muslims of France (FNMF), the *Tabligh* (a movement of Pakistani origin) and the *Diyanet* (Office of Religious Affairs representing the Turkish

<sup>283</sup> A succession of Ministers of the Interior have sought to promote the identification of an official negotiating partner. First, in 1989, Minister P. Joxe sought to establish a Council of Reflection on Islam in France (CORIF), followed Minister Charles Pasqua, who created a Council of Representation of French Islam and oversaw the preparation of a Charter for Muslim worship. Minister J.P. Chevènement in October 1999 set up a Consultation of the Muslims of France, with the participation of elected representatives of the Muslim community.

<sup>284</sup> D. Hervieu-Léger, “Le miroir de l’islam en France” (The Mirror of Islam in France), *Vingtième siècle*, April–June 2000, pp. 79–82., at p. 82.

State). Participants in the Consultation were divided into two colleges. The first college involves representatives from the principal national federations; the second gathers six large and independent regional mosques. Six significant personalities have been associated with the project to advise the two colleges and the Minister. All participants were requested formally to recognise Republican laws so “it is publicly stated that there is no conflict of principles between the tradition of Muslim worship and the legal organisation of religion in France.”<sup>285</sup>

The objective of the Minister was to finalise a text which would provide guidelines to prefects in meeting the needs of local Muslim communities. In addition, Consultation participants enumerated the principal issues for which they see an urgent need for a concrete solution:

- the creation of denominational organisations as foreseen by Title IV of the Combes Law of 1905;
- the creation of new places of worship;
- a statute for regulating the rights and needs of Muslim religious staff.

The Consultation produced a draft agreement on a methodology for electing an authority to represent the Muslim community.<sup>286</sup> On the basis of this agreement, on which the participants of the Consultation (but not all Muslims, nor all leaders) have agreed, elections will be organised in registered Muslim places of worship and buildings owned by Muslim associations,<sup>287</sup> with the number of delegates determined by their surface area rather than their attendance.<sup>288</sup> This methodology has been criticised by some Muslim leaders, as it is not based on representation and actual attendance by believers, but rather on recognition of financial capacity to rent big spaces, which

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<sup>285</sup> *Signature des principes et fondements juridiques régissant les rapports entre les pouvoirs publics et le culte musulman en France* (Signature of the principles and legal basis managing the relations between public authorities and Muslim worship).

<sup>286</sup> Framework Agreement of 3 July 2001 between the members of the Consultation and the Minister of Interior, representing the State. For a summary of the different steps of the Consultation and related statements by the newly appointed Minister of Interior, N. Sarkozy, see: <[http://www.interieur.gouv.fr/rubriques/c/c1\\_le\\_ministre/c13\\_discours/comor](http://www.interieur.gouv.fr/rubriques/c/c1_le_ministre/c13_discours/comor)>, (accessed 4 October 2002).

<sup>287</sup> The election was initially scheduled for 26 May 2002 but, due to the electoral timetable, elections have been postponed indefinitely.

<sup>288</sup> Electoral regional committees (CORELEC) have gathered the representatives of the large Islamic Federation and have helped determine the number of delegates from the different associations. Places of worship of less than 100m<sup>2</sup> will have one delegate. The Paris Mosque, the biggest in France, will have 18.

smaller associations (with small-scale capacity) do not have. For example, the Paris mosque, though it is the largest mosque in Paris, is not the most frequented by Muslims living in Paris and its suburbs.

The Consultation has opened real opportunities for dialogue and exchange to facilitate the resolution of certain problematic issues. The President of the Association Avicenne has described the Consultation as a “balanced initiative.”<sup>289</sup> On the other hand, many important issues are not addressed,<sup>290</sup> and it does not integrate all communities settled in France; some association leaders feel that they have been excluded from the process. Moreover, it has been very difficult to motivate Muslims to actively participate in the initiative, and public interest has also been quite low, despite extensive media coverage.

The Consultation has not won unanimous support from Muslim communities. Many Muslim leaders report that they are participating out of fear of being excluded rather than out of genuine support for the project. Several leaders (both participants in the Consultation and those not participating) have criticised the participation of persons or groups who do not represent a moderate interpretation of Islam<sup>291</sup> – a criticism which has intensified since 11 September; Dalil Boubakeur, the rector of the Big Mosque in Paris, denounced the participation of radical elements (meaning the *Tabligh*) in the Consultation in a daily newspaper.<sup>292</sup> Soheib Benschekh, spokesman of the National Federation of the Muslims of France (FNMF) for the south of France and Consultation participant since it was launched, has referred to the initiative as a “bureaucratic *mechouia*” (Tunisian salad), and called for an end to “this post-colonial approach. The Minister of Interior even called this Consultation *istichara*, with an associated publication whose title is in Arabic. But we are in France! It seems like they are looking for ‘local colour’ folklore.”<sup>293</sup> The most frequent critique voiced by Muslims is that the Consultation has adopted a paternalistic approach: Muslim leaders

<sup>289</sup> Interview with the President of Avicenne, Ecole de médecine, Paris, 24 May 2002.

<sup>290</sup> Such as, for example, the question of how to deal with Muslim countries which are still considered by some Muslims in France as their country of origin and how to deal with Islam in cases of conflict of international private law.

<sup>291</sup> For example, these critiques have been offered by Soheib Benschekh, major mufti of Marseilles, and by Muslims close to the ex-Rassemblement pour la République (RPR; the right-wing political party of the current President Chirac, renamed *Union pour la Majorité* in September 2002) such as Hamlaoui Mekachera, President of the National Council of French Muslims, and Khadija Khali, President of the Association of Muslim Women of France, who have criticised the inclusion of the Union of the Islamic Organisations of France (UOIF) and the *Tabligh* in particular.

<sup>292</sup> *Libération*, 29 October 2001.

<sup>293</sup> *Libération*, 22 October 2001.

and communities feel that the Consultation is aimed to check and control their loyalty, which is placed under doubt *a priori*.

However, increased institutionalisation of Islam undeniably would bring certain benefits and facilitate the resolution of certain issues. For example, it would be easier to clarify and regulate the role of Muslim communities' States of origin through an official interlocutor. At present, the role of foreign States in financing places of worship and mediating in national controversies (such as the veil affairs), *inter alia*, clearly demonstrates that French policy has been incapable of dealing with these issues internally.

## 4.2 Civil Society

It would be impossible to list all NGOs, Muslims' or migrants' associations which are engaged in fighting against discrimination. Organisations such as the *Groupe d'information et de soutien des immigrés*, (Group of Information and support to Immigrants, GISTI) or the *Mouvement contre le racisme et pour l'amitié entre les peuples*, (Movement against Racism and for Friendship between Peoples, MRAP) have integrated discrimination as one of their main topics, whether through workshops for internal staff or the organisation of public events.<sup>294</sup>

Though the concept of "minority" is rejected within the French legal framework, a consensus is emerging among Muslim associations that they, as a group, are treated differently from other religious minorities.<sup>295</sup> Muslim associations have formed several federations to identify and represent common interests *vis-à-vis* the State. For the moment, these associations remain the principal medium for communication between the State and Muslim communities.

Several national organisations have sought recognition as the official State representative of the Muslim community. These include the National Federation of the Muslims of France (FNMF), the Paris Mosque, the Union of the Islamic Organisations of France (UOIF), and the *Tabligh*.

The FNMF was established in 1985, and aims to meet the religious, cultural, educational, social and humanitarian needs of Muslims. The Paris Mosque (established in 1926) numbers more than 500 local associations among its members. Until 1993, it was financed by Saudi Arabia; today it is funded by the financial contributions of its members (a majority of whom are of Moroccan origin), and is closely affiliated to the Algerian

<sup>294</sup> See for the GISTI: <<http://www.gisti.org/doc/actions/2001/emplois/index.html>>, (accessed 2 October 2002) and for the MRAP: <[http://www.mrap.asso.fr/rubrique.php?id\\_rubrique=29](http://www.mrap.asso.fr/rubrique.php?id_rubrique=29)>, (accessed 4 October 2002).

<sup>295</sup> OSI Roundtable Meeting, Paris, July 2002.

Government. It has always been closely associated with various Government initiatives. The UOIF (established in 1983), is the French branch of the Union of the Islamic Organisations in Europe. It manages the European Institute of Social Sciences of Saint Léger de Fougeret (Nièvre). The *Tabligh* – a movement of Pakistani origin – is also a major actor within the Muslim community. The association “Faith and practice,” which belongs to this movement, is especially active in providing assistance and services to the residents of the so-called disadvantaged districts.<sup>296</sup>

Though they have established a strong presence at the regional and local level, local Muslim groups and associations were largely excluded from the Consultation until July 2001, when the Framework Agreement proposed to establish a Regional Council of Muslims in France along with the National Council.<sup>297</sup> Through regional and local groups, demands articulated by the younger generations (mainly for public recognition of their religion and a more active fight for equality among French citizens, regardless of their cultural and religious differences) are voiced alongside more traditional claims for Muslim plots in public cemeteries, new places of worship, and respect for dietary requirements by public service providers, reflecting an increasing will on the part of Muslim communities – including both observant and non-observant Muslims – to involve the State more actively in managing their affairs.

In their regional specificity, these local groups reflect the diversity of the Muslim communities, in terms of both organisation of religious life and character and style of leadership. The sensitivity of different municipalities to issues of relevance to Muslim communities is often a good indicator of the level of organisation of the local Muslim association(s). Growing awareness of the presence of Muslim communities is also apparent in the practice of some local businesses; for example, the director of one supermarket chain in Marseille has opened a *halal* section to meet the demands of his clientele.

The leaders of local Muslim associations increasingly utilise their positions and social capital as a resource for their members. Muslim associations and the Muslim elite engaged in other institutions such as the FAS or other anti-discrimination bodies and agencies promoting integration are now implicitly requested to play the role that institutions such as the school or the army played during the colonial period: they facilitate the emergence of groups of individuals acting in networks, providing

<sup>296</sup> This list is not exhaustive. There are also Turkish associations, Muslim African associations, and a number of mystic or Sufi groups.

<sup>297</sup> Most associations initially organised along ethnic lines, in some cases in relation to the States of origin (particularly for the Turks).

assistance to each other to gain access to increasingly higher positions.<sup>298</sup> Numerous local associations have emerged as effective and reliable partners for local governments.

Some Muslim associations have expressed concern about the impact of an increasingly intrusive official security policy (implemented by the national secret service but also by local police) on the daily life of Muslim communities. Local initiatives and activities are closely scrutinised by intelligence services, which reportedly sometimes use questionable means of compelling cooperation from Muslims. Coercive methods of compelling cooperation are likely to create more problems than they solve, and to exacerbate tensions further.

Finally, statements of association leaders reveal that they are aware of the potential – and the limitations – of the European-level institutions and legislation in addressing the issues and problems they confront at the domestic level:

Concerning the representativeness of Islam, the veil, places of worship – there will be an encouragement to arrange all these things in France, as the European framework is in favour of it ... the European Court of Human Rights represents a hope for Muslims. Muslims are informed about European legislation, but for the time being they do not see the necessity to call upon non-national authorities... They wish first to solve conflicts at the national level. Thanks to Europe, Muslims can hope to be better understood and recognised in France.<sup>299</sup>

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<sup>298</sup> R. Leveau, K. Mohsen-Finan, “France-Allemagne: nouvelles perspectives, identités et sociétés” (France-Germany: new perspectives, identities and societies), R. Leveau, K. Mohsen-Finan, C. Wihtol de Wenden, eds., pp. 9–15, p. 14.

<sup>299</sup> Interview with the director of La Réussite, 21 May 2002.

## 5. RECOMMENDATIONS

### To the French Government

#### *Discrimination*

- Affirm commitment to the fight against all forms of discrimination, including religious discrimination; create an official communications policy to encourage more visible public and official involvement in the fight against discrimination.
- Develop a coherent, comprehensive anti-discrimination policy, outlining targeted actions, which should include mechanisms to ensure systematic reparation and compensation of victims of discrimination as well as sanctioning of administrative bodies which practice discriminatory policies.
- Complement formal measures for the fight against discrimination with measures to provide information and training about Islam for non-Muslims, particularly for civil servants.
- Establish a central body to conduct research and monitoring of all forms of discrimination (particularly in regard to education, employment, housing, and public services) on an ongoing basis, including through the collection of statistical data on the basis of religious affiliation, while ensuring adequate protection of privacy and personal data.
- Support research and debate on the legal and symbolic distinctions currently drawn between nationals and non-nationals; clearly and consistently disassociate Islam from immigration issues: Islam and Muslims should be discussed and treated as an integral part of society.
- Provide active support for the development and implementation of a public information campaign to fight the diffusion of stereotypes, particularly by the media.

#### *Minority Rights*

- Place priority on ensuring adequate and effective training for public officials in schools and in local bodies regarding available resources for accommodating the needs of religious communities, including Muslims.
- Research the need for training for Muslim teachers and imams, and provide support for training where necessary.
- Ensure quality language instruction in Arabic as a foreign language to meet rising demand in public and private schools (collèges and lycées).

*Institutions*

- Establish a High Council of Worships to promote exchange and partnership among religious communities.
- Encourage associations and representatives of Islam in France to organise themselves also at the European level.

**To the European Union**

- Conduct research and statistical assessment on the situation of Muslims in Europe.
- Develop methods for providing information to Muslims about their rights and duties as EU citizens, including about the available mechanisms for legal recourse in cases of discrimination.
- Establish mechanisms to facilitate the political participation of Muslims at the European level.