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## **REPORT**

**BY MR ALVARO GIL-ROBLES,  
COMMISSIONER FOR HUMAN RIGHTS,**

**ON THE EFFECTIVE RESPECT  
FOR HUMAN RIGHTS IN FRANCE**

**FOLLOWING HIS VISIT**

**FROM 5 TO 21 SEPTEMBER 2005**

**for the attention of the Committee of Ministers  
and the Parliamentary Assembly**

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## I. INTRODUCTION

*In accordance with Article 3 e) of Resolution (99) 50 of the Committee of Ministers on the Council of Europe Commissioner for Human Rights, I accepted the invitation of Mr Philippe Douste-Blazy, Minister for Foreign Affairs of the French Republic, to visit France officially from 5 to 21 September 2005. I was accompanied by Mr Alexandre Guessel, Mr John Dalhuisen and Ms Aurélie Campana, all members of my office. I would like to start by thanking the French authorities for the efforts they made, and the resources they deployed, to make the visit a success. I should also like to express my warm thanks to Ms Annie-Claire Mari, of the Ministry of Foreign Affairs, for her precious help in preparing the visit, in implementing the programme and throughout the visit itself, during which she accompanied me. I am very grateful, too, to Mr Jean-Paul Delevoye, the French Ombudsman, for providing valuable advice, helping to arrange the programme and joining me at several points in the journey.*

*During my visit, I had the full co-operation of the French authorities, who allowed me to visit all the places and institutions I wished to see. I was also able to share my impressions with various leading members of the government – Mr Nicolas Sarkozy, Minister of the Interior and Regional Planning, Mr Philippe Douste-Blazy, Minister for Foreign Affairs, Mr Pascal Clément, Minister of Justice, and Ms Catherine Vautrin, Minister of State with responsibility for Equality and Social Cohesion, all of whom I thank for the constructive discussions I had with them. However, I regret that I was unable, during the several weeks I spent in France, to meet Mr Azouz Begag, Minister of State responsible for promoting equal opportunity.*

*The visit also gave me an opportunity to talk to various representatives of the judiciary. I am particularly grateful to Mr Renaud Denoix de Saint-Marc, Vice-President of the Conseil d'Etat, Mr Bruno Cotte, Criminal Chamber President in the Court of Cassation, Mr Régis de Gouttes, Principal Solicitor General at the Court of Cassation in Paris, Mr Yves Bot, Principal State Prosecutor at the Paris Appeal Court, Mr Bestard, Principal State Prosecutor at the Aix-en-Provence Appeal Court, and Mr Jacques Beaume, State Prosecutor in Marseilles. Unfortunately, I have no room here to name all the people I met, but I thank them most warmly for their helpfulness and the frankness with which they spoke to me. I was also able to discuss a wide range of issues with representatives of several judges' associations.*

*I was very pleased to hear the views of representatives of various French Bars on the present situation regarding public liberties. I would particularly like to thank Mr Jean-Marie Burguburu, President of the Paris Bar, Mr Thierry Wickers and Mr Frank Natali, President and Vice-President of the Conference of Bar Presidents, Mr Laurent Pettiti, Member of the Council of the Paris Bar Association and President's representative for human rights, for the time they gave me. More generally, I would like to thank all the judges and lawyers I spoke to for the information they gave me and the opinions they voiced.*

*In all the regions and cities I visited - Marseilles, Aix-en-Provence, Avignon, Paris, Normandy, Pau, Lannemezan, Corsica, Bastia, and Strasbourg - I had useful discussions with the Préfets: Mr Christian Frémont, Préfet of the Bouches du Rhône and the PACA region, Mr Jacques Barthélémy, Préfet of Seine-et-Marne, Mr Pierre Mutz, Préfet de Police, Mr Emmanuel Berthier, Préfet of the Hautes Pyrénées, and Mr Jean-Claude Faugère, Préfet of the Bas-Rhin and the Alsace region.*

*My thanks, too, to the local officials and elected representatives who gave me a full picture of the situation in their areas. They included Mr Allégrini, Deputy Mayor of Marseilles, Mr Shapira, Deputy Mayor of Paris, and Mr Grossman, President of the Urban Community of Strasbourg.*

*I would also like to thank the directors of the many facilities I visited – prisons, holding centres for foreigners, waiting zones at airports – and the senior officers at the police stations which I inspected.*

*I am deeply grateful to Ms Josette Durrieu, Senator for the Hautes-Pyrénées, for her invaluable help in preparing and organising my visit to Lannemezan, on which she kindly accompanied me.*

*My very full programme included meetings with the presidents of various independent authorities, Mr Schweitzer, President of the Supreme Authority responsible for Anti-Discrimination Measures and Equality (Haute Autorité de Lutte contre les Discriminations et pour l'Égalité = HALDE), and Ms Blandine Kriegel, President of the Supreme Integration Council (Haut Conseil à l'Intégration). I also had very useful discussions with Ms Claire Brisset, Ombudsperson for Children, Mr Jean-Paul Delevoye, French Ombudsman, and Mr Doucin, Human Rights Ambassador. I particularly appreciated the reception I was given by the National Consultative Commission on Human Rights (Commission Nationale Consultative des Droits de l'Homme = CNCDH), and my very full discussions with the NGO representatives present at that meeting. My most sincere thanks to its president, Préfet Thoraval.*

*I also met Mr Mohamed Boukry, Representative in France of the Office of the United Nations High Commissioner for Refugees (UNHCR), and various civil society representatives. I should like to insist on the vital role played by the non-governmental organisations and associations which are working daily in the field, and which helped me enormously while my journey was being prepared and throughout the visit. My special*

*thanks are due to Ms Hélène Gacon, President of Anafé, Mr Pierre Henry, Secretary General of “France Terre d’asile” and Mr Laurent Giovannoni, Secretary General of CIMADE. Unfortunately, I cannot name all those who gave us their assistance, but they have my very sincere gratitude. Thanks to the helpfulness of the NGOs which run them, I was able to visit a wide range of facilities and engage in genuine dialogue on a number of basic human rights issues.*

## **II. GENERAL COMMENTS**

1. A founder member of the Council of Europe, France signed the European Convention on Human Rights in 1950 and ratified it on 3 May 1974. In 1981, it recognised the right of individual petition to the European Court of Human Rights (hereinafter “the ECHR”). It is also a party to the European Social Charter, and has accepted all the articles in the revised Charter. However, it has still not signed or ratified the Framework Convention for the Protection of National Minorities or Protocol No. 12 to the European Convention on Human Rights (hereinafter “the Convention”), which is regrettable. Moreover, although it has signed the European Charter for Regional or Minority Languages, Protocol No. 14 to the Convention, restructuring its control machinery, and Protocol No. 13, concerning abolition of the death penalty in all circumstances, it has not ratified these instruments, important as they are for the prevention of human rights violations. I can only urge it to consider ratifying them in the near future.
2. Many Europeans see France as the homeland of human rights, and it does in fact provide a high level of human rights protection. It has comprehensive human rights legislation and plays an important part in this area at the international level. Nonetheless, it still has persistent, not to say recurrent, problems – a fact reflected in the many cases brought against it in the European Court of Human Rights. Those most concerned by these problems – particularly government representatives - are aware of and acknowledge them. Indeed, I should emphasise the openness which marked my visit and the unstinting help I was given by all the authorities involved in organising it. This allowed me to visit all the facilities I wished to see, including those regarded as sensitive.
3. France’s positive human rights image owes much to the efforts and commitment of the NGOs and associations which are working on the ground to protect the most vulnerable members of the community. My visit allowed me to form some idea of the immense work they do, and the contribution they make to their country’s good reputation in this area. Spotting problems is another major facet of their work, and the many reports they produce help to highlight difficulties peculiar to France, and make people aware of them. I have always insisted that the role of civil society is vital - and the fact that France has, in recent decades, delegated certain state prerogatives to associations or NGOs seems to me to make it even more important. Undoubtedly, too, NGO involvement helps to diversify approaches to problem-solving. At the same time, NGOs, and the work they do for the most vulnerable, least privileged members of society, are largely dependent on public funding. When that funding declines, as it seems to be doing at present, a whole

range of human rights activities, if not actually endangered, at least become less certain. Indeed, I could not escape the impression that there was some discrepancy between theory and practice.

4. Moreover, although France has strong laws in this area, my visit did prompt me to raise a number of problems. However, before discussing the chief ones I noted, I should like to make one general comment. Wherever I went, I noted that the full application of the law was occasionally obstructed by habit. Repeatedly, I heard: “we’ve always done it like that”, “it’s been like that for years” or “it takes time to make changes”. This is by no means a trivial matter, since it raises a clear question concerning the extent to which human rights are respected and practised. I am not saying that the French authorities are blind to the problems. On the contrary, as I said earlier, those problems are not new, and policy-makers, both national and local, are generally familiar with them.
5. However, I do have the impression that France does not always give itself the resources it needs to operate a relatively full legal arsenal, providing a high level of human rights protection. In some areas, there seems to be a gap – sometimes a very wide one – between law and practice. This general comment applies throughout this report, which discusses France’s main shortcomings in human rights protection and the major challenges facing it today.



### III. FUNCTIONING OF THE LEGAL SYSTEM

#### 1. General observations

6. The functioning of the legal system is one of the issues I have to review in all the member states, whether newly democratic or with long democratic traditions. Obviously, France is no exception, and my visit gave me an excellent opportunity to inspect the present state of its legal system, form a better picture of its successes, and discuss its problems with the people I met.
7. France's achievements in building a law-governed state need no recalling here. No-one doubts the effectiveness of its laws, some of which are central to the whole concept of human rights. I shall say nothing here of the Declaration of the Rights of Man and of the Citizen of 1789 – the founding text in this domain, which has left its mark on our continent's history. France's great tradition in the field of law and justice is also reflected in another legislative text of primary importance, the Civil Code of 1804.
8. Before saying something of the problems which affect its legal system today, and which various legal professionals described to me, I should like to make a general point which they made repeatedly to me. Indeed, all of them, judges, lawyers and government representatives, spoke of a trend which has, apparently, become very marked in the last few decades – the knee-jerk passing of new laws in response to new social problems. The result has been a steady increase in the number of laws adopted.
9. Obviously, the law must keep pace with social change, but not at such a rate that neither lawyers nor the public can keep abreast of the process. However, that – according to the many people we spoke to – seems increasingly to be happening. Some of the French bar representatives we met referred to a “legislative proliferation”.
10. The court officials we talked to were also worried. At a very interesting meeting, the State Prosecutor at the Marseilles Regional Court told us that the flood of new laws, including laws on criminal procedure, was causing serious problems for judges and lawyers. He said, for example, that criminal procedure was changing so rapidly that, increasingly, judges were having to spend far more time on formal issues than on the substance of cases.
11. In the long term, the increasing speed with which the law is changing may well create a problem of legal insecurity, since legal professionals will no longer have time to prepare themselves for the coming into force of new texts. For example, the people we talked to told us that the recent “Law adjusting the legal system to deal with new types of crime” (the so-called Perben II law) has caused various problems for French judges and lawyers.

12. This is actually an important and very ambitious text, designed – among other things – to enable France to modernise its criminal procedure and catch up on some of its international obligations. For one thing, it brings rules on the European arrest warrant into French law. For another, it allows France to satisfy the requirements of the ECHR concerning procedure in cases where judgement is given in absentia. And these are only two of its important contributions. At the same time, its 224 sections have amended 350 of the Code of Criminal Procedure's 934 articles, and 70 articles in the Criminal Code, making this one of the most sweeping reforms of French criminal procedure. Most of these changes took effect more or less at once, i.e. 4 or 5 days after the law had been published in the Official Gazette, creating major problems for legal professionals. Indeed, it is quite understandable that judges and lawyers should not find it easy to take such radical reforms on board so quickly.
13. This is why I think that French lawyers must be listened to when they plead for a break in what they call this “legislative rainstorm”, giving them time to absorb the new texts. I must say, however, that I found the French government very understanding on this point. In fact, the Minister of Justice, Mr Pascal Clément, told me at our meeting that he fully understood the anxieties of legal professionals, and said that the government had indeed decided to call a temporary halt and reduce the number of bills tabled in parliament.
14. Some of the people I met made even stronger points. While noting the definite tendency to pass new laws whenever new problems arose, none denied that changes in criminal procedure were necessary. Many felt, however, that the changes had sometimes been made too quickly, and cited the 1994 reform of the Criminal Code as an example to be followed. That reform was well prepared, particularly by the Badinter Commission, which spent about 10 years drafting a new Code. The same care was taken with the coming into force of the new text, which was introduced in stages.
15. The people I spoke to accordingly suggested that a general discussion of the needs and future of French criminal in the 21<sup>st</sup> century would be useful. This might lead to the drafting of a new Code of Criminal Procedure, and, as far as possible, to preparation of its coming into force on a consensual basis.
16. I would like to make a number of specific points regarding the functioning of the French legal system which came up during my visit.

## 2. Working conditions in courts

### *a. Practical problems connected with premises*

17. Some of the French courts' problems are well-known, indeed, have been broadly aired in public for some time. The slowness with which they operate, for instance, has been condemned by the ECHR in several judgments, some of them recent.<sup>1</sup>
18. The courts' excessive caseload is certainly not the only problem; there have been other criticisms too. That is why I made a point of visiting several courts, to discuss their main problems with judges – and also to see those problems for myself. I went to the regional courts in Paris, Marseilles, Bobigny and Bastia, and the Appeal Courts at Paris and Aix en Provence, not to mention the Court of Cassation and the Conseil d'Etat, where I had very useful discussions
19. I am very grateful to all the judges and lawyers who agreed to see me and gave me the benefit of their views. They know the strengths and weaknesses of the courts better than anyone, and this made their comments particularly useful. Seeing the courts for myself, I could often see exactly what they meant.
20. One does not have to be an expert on courts to see how glaringly short of resources the French system is. In fact, most of the court premises I saw were small, not to say cramped. This is not just a problem at the Palais de Justice in Paris. That imposing, historic and celebrated edifice no longer has room for all the courts it houses, but – modern as they are - newer, custom-built courthouses, like the Regional Court at Bobigny, also seem small and overcrowded.
21. There are various reasons for these problems, and I feel the main ones should be mentioned. Nearly all the people I met told me that the courts were seriously underfunded. I was very struck by the bitterly ironic tone which lawyers and judges adopted when they spoke of state spending on the courts, which they compared with state spending on culture. In the 1980s, the Government decided that at least 1% of the total budget should go to culture. They have stuck to this in the meantime, which is clearly a good thing – but it appears that the budget for the courts has never attained that level and still falls short of 1%. That figure speaks for itself, and the effects are plain to see.
22. In fact, some court premises are positively run-down, and seem a throwback to another era. The judges' offices I saw were cramped and inadequate, particularly as judges do not use them simply to study cases, but also to receive parties and hold certain hearings.
23. The situation in certain holding facilities is particularly bad. These are guarded areas, usually consisting of cells for one or more occupants, which are used to house detainees

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<sup>1</sup> The most recent are: the Kress judgment 7/6/2001 (*Application No. 39594/98*), the Zannouti judgment 31/7/2001 (*Application No. 42211/98*), the Malve judgment 31/7/2001 (*Application No. 46051/99*), the Laidin judgment (No. 2) 7/1/2003 (*Application No. 39282/98*), the Benmezziane judgment 3/6/2003 (*Application No. 51803/99*).

from police stations or prisons, who are brought to courts for hearings or other procedural reasons. Legally, they are – like courthouses as a whole - the responsibility of judges. In practice, however, they are the responsibility of the police officers who guard the prisoners. The result, I was told, is that neither judges nor police feel totally responsible for them.

24. Because this is so, conditions in some holding facilities are disastrous, and totally at odds with a modern society's requirements. To assess the question for myself, I visited the facilities at the Palais de Justice in Paris and the Regional Court in Bobigny.
25. The Palais de Justice is a very old, history-laden building, and reflects the events it has witnessed over the centuries – but the holding facility gives a highly unflattering image of the French legal system. It shares its location with the holding centre for foreigners awaiting deportation, which itself seemed to hark back to an era which any civilised person would expect to find long past in France (I shall return to this in the chapter on foreigners). The facility differs little from the centre, although some work does seem to have been done on it recently.
26. I also visited the holding facility at Bobigny. I was very pleased to find that substantial work was being done on it, and the first results - refurbished cells, with proper sanitation and adequate lighting - are already visible. This work is not complete, and I can only urge the authorities to pursue their efforts to improve conditions in the country's worst holding facilities rapidly. I would draw their special attention to the facility at the Regional Court in Evry where conditions, I was told, are particularly bad. Unfortunately, my programme was too full for me to inspect it, but I have no reason to doubt the alarming accounts of it I heard from the judges and lawyers who work in that court.
27. This being so, I feel that improving court premises, including holding facilities, should be one of the Government's priorities.

*b. Lawyers and court officials*

28. I concentrated on two main categories here – registrars and barristers – and will start by considering the first.
29. Obviously, courts and judges cannot function without the help of registrars, whose role in connection with both judgment and enforcement is a vital one.
30. The court officials I spoke to told me that court registries are chronically underfunded, that courts do not always have enough registrars, and that vacancies are not always filled. There are various reasons for this, one being the nature of the competition for admission to the school which trains registrars. The fact that recruitment and placement is organised nationally creates problems when registrars who have completed their training are being assigned to courts, since they may well be appointed to posts far from their home areas.

They are not particularly well paid, and many refuse appointments because the problems of moving seem insurmountable.

31. Some of the people we spoke to suggested that holding competitions at regional rather than national level might help to solve the problem of unfilled posts and allow courts to function more effectively. As things stand, the shortage of registrars makes for longer proceedings and deprives judges of necessary help. To take only one example, the copying of files needed for parties to proceedings is sometimes an excessively long process, simply because there are not enough staff to do the job. The President of the Regional Court in Marseilles told us that - particularly in cases involving several accused and/or civil parties - the court had been trying for some time to minimise the use of photocopiers and facilitate document reproduction by saving documents on computer. She told us that the necessary equipment had been purchased, but that the court lacked staff to scan files, which delayed the computerisation process and left costly facilities idle.
32. This, as I say, is only one of the examples we were given, but it does illustrate the courts' serious lack of technical facilities - and I can only add my voice to those of the court officials who are urging the authorities to face up to the problems and set about solving them.
33. Several of the people we spoke to pinpointed another problem which lies behind the delays. This is the distribution of the courts, which, we were told, is obsolete and no longer keeps pace with social change in France, particularly economic, demographic and social change. Regional courts, for example, appear to be badly distributed: some towns which no longer need courts still have them, while courts in others have excessive case-loads, because demographic change in recent decades has created a totally new situation. Similarly, the areas covered by certain appeal courts no longer coincide with economic regions, which makes it harder for the courts to function effectively and causes serious delays. I think it highly desirable that a comprehensive study of all these questions be made with a view to finding appropriate solutions.

*c. Security problems*

34. My conversations with judges highlighted another problem which should not be ignored - the problem of security in French courts. Obviously, one should not be too alarmist and suggest that attacks on judges are increasing, but the judges I spoke to did express concern, and the authorities should listen to them.
35. French courts are, in the fullest sense of the term, public areas, and their being open to the public is not just a tradition, but a constitutional principle. This freedom of access must be preserved and defended at all costs. Indeed, it was largely because the public would not have access to them that French judges refused to sit in "delocalised" courts, e.g. the projected court in the waiting zone at Roissy Charles de Gaulle International Airport (ZAPI 3). I shall be discussing this point later, but I think it important to mention it

already, since French judges' rejection of any interference with the public character of hearings is proof of their high level of professionalism and dedication to human rights principles.

36. I was also told that there has been an increase in the tension and even violence in courts in certain regions. This violence is generally directed at judges while they are hearing cases or at court staff, starting with registrars.
37. The judges who raised this problem painted a disturbing picture of certain behaviour patterns on the part of persons involved in court proceedings, which they encounter almost daily. They told me that public respect for justice and its representatives is declining; many judgments are contested and greeted with incomprehension by the accused, who find it hard to see that they have acted wrongly. Sentences sometimes provoke violent reactions, which may be accompanied by threats to judges or victims - threats which may even be carried out. Several days before my visit, for example, the terrible crime committed in a courthouse by a female prisoner against a woman registrar, who had just communicated the court's judgment to her, shocked the country. Acts of this kind are intolerable.
38. As a rule, no police are on duty at courthouse entrances or in courtrooms, and this unfortunately helps to create a certain sense of insecurity. Moreover, it should not be thought that criminal courts in difficult outer-city areas are the ones most affected. My interlocutors told me that it was regional courts, mainly dealing with "minor" local disputes, which had the worst problems. Most regional court judges are women; a number have received threats and felt insecure, since these courts are considered quiet and are not policed. I would urge the Ministries of Justice and the Interior to agree on ways of ensuring that hearings can be held safely, while preserving their public character. Above all, a balance must be struck between security needs and the need to provide better facilities for the public in courts.

### **3. The role of counsel**

39. Among the issues most frequently raised at our meetings with lawyers, two were particularly prominent. One was the role of counsel during police custody, the other was the difficult situation created for them by the recently adopted "Perben II Law". I should like to say something on both of these important points.

#### *a. Police custody and the presence of counsel*

40. Most of the lawyers, judges, police officers and civil society representatives I met during my visit were particularly concerned about issues raised by police custody and counsel's role at that stage. Some said that things had improved in this area in recent decades. Others said there were still serious shortcomings, particularly concerning assistance from counsel during police custody, and called for reforms to remove them. In view of what

they said, I think it important to look more closely at the procedure and make a number of comments.

41. Before doing so, however, I should like to say how surprised I was to be told that French law currently provides for 18 different systems of police custody. Being a lawyer myself, I can easily understand how hard legal professionals in France, starting with judges, must find it to cope with this complexity. I can see that each of these systems was probably introduced to cater for a specific situation and meet a specific need, but proliferation on this scale – sometimes misleading even the most expert of lawyers – makes me wonder whether, as I suggested earlier, the time may not have come to start considering a thoroughgoing reform of criminal procedure.
42. Police custody is a measure which allows the police to hold a person who has not yet been charged with an offence, but who must be kept available for investigation purposes, on non-prison premises for a time determined by the gravity of the charges which may subsequently be brought. Under Article 63 of the Code of Criminal Procedure (hereinafter “CCP”), the normal period of police custody is 24 hours, and this may be extended for a further 24 hours with the State Prosecutor’s written authorisation. However, the law also provides for special situations, in which police custody may exceed the 48 hours provided for in ordinary law, and last up to 96 hours for persons suspected of committing exceptionally serious offences, particularly offences connected with organised drug trafficking and terrorism. Whilst this report was being written, a law extending police custody from 4 to 6 days for terrorist crimes was been adopted, but has not yet enter into force.
43. The rights of all persons in police custody are defined in Articles 63-1, 63-2, 63-3, 63-4 and 77 of the CCP. Thus, under Article 63-1, persons placed in police custody must be informed of their rights, the most important being the right to be told the nature of the crime which is being investigated, the right to be examined by a doctor and the right to inform their family that the police are holding them. These rules are obviously in line with European standards, and France respects them fully.
44. I note, however, that the right to remain silent, of which persons in police custody had to be informed under Law No. 2000-516 of 15 June 2000, reinforcing the presumption of innocence and the rights of victims, has now been tempered. The right still exists, but the changes made by the law of 4 March 2002 mean that the police are no longer required to inform detainees of it. In other words, to avail of that right, they must know themselves that it exists, or be informed of it by counsel. I regard France’s retreat on this point as highly deleterious, since concealing legal rights is never a good thing. The right to remain silent must be fully reinstated and all detainees must be informed of it, either orally when they are arrested or by giving them a printed list of their rights. The 2002 law would also have to be amended.

45. That said, the main problem, as I see it, concerns the presence of counsel. Under Article 63-4 of the CCP, all persons detained by the police are immediately entitled to ask to see a lawyer. If they cannot name a lawyer, or the lawyer they choose is unreachable, they may ask the bar president to appoint one.
46. The lawyer chosen or appointed may communicate with the detainee in conditions which ensure confidentiality. In principle, counsel is informed by the principal or a subordinate police officer of the nature and presumed date of the offence which is being investigated.
47. Having seen the detainee for a period which may not exceed 30 minutes, counsel may submit written observations, which are added to the file. He/she may not discuss the interview with any other person while the detainee remains in police custody. If custody is extended, the detainee may again ask to see a lawyer on the same terms as before. If the offence is particularly serious, however, the lawyer may intervene only on expiry of a period of 48 hours (organised crime) or 72 hours (terrorism and narcotics).
48. Access to a lawyer for persons in police custody is today accepted by all Council of Europe member states, and recognised as one of the principal rights of the defence by the ECHR<sup>2</sup> - but is relatively new in French law. In fact, it was not until 1993 that Law No. 93-2 of 4 January gave persons detained by the police the immediate right to see a lawyer in private for 30 minutes, except in cases of drug trafficking or terrorism, in which they were allowed to see a lawyer only on expiry of a 48-hour period. My informants told me that the whole question had given rise to long and heated discussion. They said that police representatives had been very much against the change, arguing that secrecy was vital in the early stages of investigations, and pleading a long tradition in this matter.
49. Ultimately, this right was introduced – which is indispensable. I have, however, strong reservations concerning the fact that French law allows persons in police custody to refuse to see a lawyer. I feel that a lawyer's assistance is valuable for people who are in trouble and often bewildered. It is also important to remove the possibility that police officers may influence detainees, and encourage them to refuse such assistance, on the ground that seeking it would be an admission of guilt.
50. Such reasoning is patently absurd. Moreover, most real criminals are well aware of their rights, and (although they rarely refuse it) have less need of legal assistance than first-time detainees. In any case, obliging all detainees to accept it would remove all suspicions and so benefit all the parties.
51. I should also like to say something about the role of French lawyers during police custody. Being more formal than active, it is - it must be said - still very limited. In fact, lawyers have no access to the file and have only such information on the case as detainees can give them. Detainees, too, have no access to their files, and so the questions put to them are the only ones of which they can inform their lawyers. Moreover, lawyers may intervene only at the outset, and may not attend when detainees are being questioned. They must inform the latter of their rights, and may advise them on conduct

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<sup>2</sup> ECHR, *Murray v. United Kingdom* of 8 February 1996



but, having no access to the police file, they know nothing of the nature and gravity of the charges which may be brought – and this leaves them very little scope for acting as counsel.

52. Many of the people I spoke to, both lawyers and others – complained of these restrictions. Some even claimed that the lawyer's role during police custody was not that of counsel.
53. It is not for me to comment on their remarks. However, I feel that no democratic society has anything to fear from the presence of responsible lawyers, who respect their profession's ethical code, during police custody. On the contrary, many European states have found that many police officers, who start by having serious doubts about the presence of lawyers, are strongly in favour once they see what it involves. In fact, if a lawyer is present when detainees are being questioned, the police have no need to fear unfounded allegations of violent and illegal behaviour, since he/she can confirm that any such accusations are false. The presence of a lawyer is also a useful safeguard for police officers in danger of losing their temper, since it may stop them from breaking the rules.
54. This is why I think it that French law-makers need to start thinking about extending the role of lawyers during police custody. I had an opportunity to put my views to the Ministers of the Interior and of Justice, who are primarily concerned by this question. I fully understand that national traditions, particularly in the matter of criminal procedure, are tenacious, but I feel that the time is ripe for change. To ensure that the fundamental rights of persons in police custody are respected, I think it essential that the role of lawyers be strengthened by giving them the right to be present when their clients are being questioned. This is common practice in most European countries (e.g. Spain, Italy and the United Kingdom). If this change is thought too radical, it is important to start moving in this direction. The first step might be to allow the lawyer to be present when the detainee is signing his/her deposition - which would provide an extra guarantee that his/her rights are being protected.
55. I also have strong reservations concerning the fact that no legal assistance whatsoever is allowed for 72 hours in drug-trafficking and terrorism cases. I am fully aware that these are very serious accusations and take longer to investigate than ordinary offences. At the same time, the absence of all legal assistance for 72 hours does not strike me as appropriate, particularly since these are cases in which we are defending our democratic values against potential enemies of democracy and human rights – which seems to me to make it even more necessary that we should respect those values ourselves.
56. I fully understand that investigations must be kept secret to ensure that they succeed, but I am also sure that there are ways of reconciling respect for our fundamental principles with the need to protect investigations. When I visited the Court of Cassation, a possible compromise solution was suggested. The eminent lawyers I met there responded with interest and understanding when I voiced my concern regarding the excessively long absence of a lawyer when (to take only that example) suspected terrorists are being held in police custody.

57. Applying European criteria, I believe that access to a lawyer must be guaranteed before 72 hours have expired. The rules on police custody in drug-trafficking, terrorism or indeed any other cases should not differ from the norm. This is a matter of affirming our values' superiority to the lies put forward by extremists of all sorts, who are only too pleased to boast that we are frightened and that their attacks have forced us to retreat from our principles. This is why I believe that the presence of a lawyer should be accepted from the beginning of police custody, and urge the French authorities to give this step, which many of our member states have already taken, their close attention.
58. However, I can see that it would not be appropriate to allow some persons held by the police on suspicion of participating in terrorism or large-scale crime to choose a lawyer, since this might seriously jeopardise the investigation. This being so, a lawyer should be appointed as soon as a person is placed in police custody, obviously on condition that the detainee might later call in a lawyer of his/her own choice (the sooner the better, since I am far from having a rooted preference for appointed, rather than selected lawyers). Moreover, since these cases are highly important, appointing official defence counsel impartially from among the best at the bar would make eminently good sense. In this connection, I particularly welcome the suggestion, made by one of my distinguished interlocutors, that official defence counsel in cases of this kind be appointed from among the 12 secretaries to the Paris Bar Conference ("*secrétaires de la Conférence de stage du Barreau de Paris*") since police custody in terrorism cases is commonest in Paris. This seems to me a very sound proposal, and one which might meet security needs, while also promoting respect for fundamental rights.
59. I think it important that France should move forward in this matter, since it faces condemnation by the ECHR<sup>3</sup>, which found, in *Murray v. United Kingdom*, that depriving a detainee of access to a lawyer for the first 48 hours violated the Convention<sup>4</sup>. The Court has since confirmed this ruling, and I feel that France should conform to it.
60. In my view, reform in the matter of access to a lawyer for persons in police custody is urgently needed in France, and I urge the French authorities to effect it on a consensual basis, having first consulted all the legal groups concerned and found a solution which ensures that fundamental rights are respected.

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<sup>3</sup> The EU Commission's Green Paper on "Procedural safeguards for suspects and defendants in criminal proceedings throughout the European Union", COM(2003)75, also highlights these shortcomings.

<sup>4</sup> See ECHR, *Murray v. United Kingdom* of 8 February 1996: "the concept of fairness enshrined in Article 6 (art. 6) requires that the accused has the benefit of the assistance of a lawyer already at the initial stages of police interrogation. To deny access to a lawyer for the first 48 hours of police questioning, in a situation where the rights of the defence may well be irretrievably prejudiced, is - whatever the justification for such denial - incompatible with the rights of the accused under Article 6 (art. 6). [...] There has therefore been a breach of Article 6 para. 1 in conjunction with paragraph 3 (c) (art. 6-1+art. 6-3-c) of the Convention as regards the applicant's denial of access to a lawyer during the first 48 hours of his police detention".

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