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Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Request for the opening of a monitoring procedure in respect of France

Opinion*

Co-rapporteurs: Mr Stefan Schennach, Austria, SOC and Mr Valeriu Ghiletchi Republic of Moldova, EPP/CD

A. Decision

1. On 26 June 2013, Mr Luca Volontè (Italy, EPP/CD) and others tabled a motion on "Serious setbacks in the fields of human rights and the rule of law in France". In this motion, the authors assert that the excess of authority and violence perpetrated by the law enforcement agencies during the demonstrations against the passing of the Taubira law, and in particular the alleged abuse of police custody, as well as the alleged compulsory teaching of gender theory from the age of six, violated the European Convention on Human Rights and the country's obligations to the Council of Europe in the fields of human rights and the rule of law. The authors therefore requested that the Parliamentary Assembly open a monitoring procedure in respect of France, in line with Article 2.iii of the terms of reference of the Monitoring Committee.

2. On 2 September 2013, the Bureau of the Assembly referred the motion to the Monitoring Committee for a written opinion in line with paragraphs 3 and 4 of the terms of reference of the Monitoring Committee. Subsequently, on 18 December 2013, the Monitoring Committee appointed Mr Stefan Schennach (Austria, SOC) and Mr Valeriu Ghiletchi (Republic of Moldova, EPP/CD) co-rapporteurs to draft the opinion on the request for the opening of monitoring procedure in respect of France.

3. From the findings of the rapporteurs it is clear that:

3.1. compulsory gender education from the age of six has not been introduced in France. The claim that France would therefore be violating freedom of conscience and parents' rights to educate their children on moral matters, guaranteed by Articles 8 and 9 of the Convention and Article 2 of the Protocol thereto, is unfounded and cannot be a ground for opening a monitoring procedure;

3.2. there does seem to be sufficient indications that, in the tense context of the "*Manif pour Tous*" demonstrations, a number of police officers acted in a manner that may have exceeded their authority or was disproportionate in relation to the situation on the ground. However, the shortcomings in police behaviour that did occur were not of such an order, or of a structural and systemic nature, that would warrant the opening of a monitoring procedure in respect of France;

3.3. the use of police custody in general did not violate the strict legal framework that governs police custody in France. The allegation that police custody was used as a political punishment is therefore unwarranted.

4. On the basis of the findings and conclusions contained in this opinion, the Monitoring Committee does not recommend that a monitoring procedure by the Parliamentary Assembly be opened in respect of France.

* This opinion has been made public by decision of the Monitoring Committee dated 3 September 2015.

5. The committee notes the confusion caused by the lack of consultation on the implementation of the pilot programme “ABCD of Equality”, which raised concern among parents. In the view of the committee, such potentially sensitive (pilot) programmes, should be implemented in close co-operation with parents and parents’ associations.

6. At the same time, the committee expresses its concern about the widespread abuse of controls of identity papers as a means of crowd control during demonstrations, in violation of the relevant provisions of the Criminal Procedure Code and the safeguards contained in this law. It therefore calls upon the French delegation to promptly introduce legislation to prevent the law enforcement agencies from abusing identity checks as a means of crowd control.

7. While welcoming the reforms adopted to increase the independence of the Public Prosecutor, the Monitoring Committee notes that concerns remain with regard to the safeguards to guarantee this independence. The committee therefore calls upon the French authorities to fully implement the recommendations contained in the Nadal report.

8. The Monitoring Committee intends to follow the implementation of these recommendations closely in the framework of its periodic review of the country.

B. Explanatory memorandum by Mr Schennach and Mr Ghiletchi, co-rapporteurs

1. Introduction

1. On 26 June 2013, Mr Luca Volontè (Italy, EPP/CD) and others tabled, through a motion for a resolution, an application to open a monitoring procedure in respect of France. In this motion,[1] entitled "Serious setbacks in the fields of human rights and the rule of law in France", the authors argue that the excess of authority and violence perpetrated by the law enforcement agencies during the demonstrations against the passing of the Taubira law, and in particular the fact that almost 600 people had been placed in police custody and then released 24 hours later, violated Articles 3, 5, 7 and 11 of the European Convention on Human Rights. The authors of the motion also expressed their concern regarding the violations resulting from the compulsory teaching of gender theory from the age of 6, the freedom of conscience and parents' rights to educate their children on moral issues, guaranteed by Articles 8 and 9 of the Convention and Article 2 of the Protocol thereto.

2. In pursuance of Resolution 1115 (1997), as amended by Resolutions 1431 (2005), 1515 (2006), 1841 (2011), 1936 (2013) and 2018 (2014), an application to initiate a monitoring procedure, which may originate, *inter alia*, from a motion for a resolution or recommendation tabled by no fewer than 20 members of the Assembly representing at least six national delegations and two political groups – is to be considered by the Monitoring Committee which, after the appointment of two co-rapporteurs and after carrying out the necessary investigations, will prepare a written opinion for the Bureau. This opinion should contain a draft decision to open or not a monitoring procedure. If both the Monitoring Committee and the Bureau of the Assembly agree to open the monitoring procedure, or if they take divergent positions, the written opinion adopted by the Monitoring Committee shall be transformed into a report containing a draft resolution, which will be included for debate on the agenda of the next Assembly part-session. If both the Monitoring Committee and the Bureau of the Assembly agree that there is no need to open a monitoring procedure, such decision shall be recorded in the Progress Report of the Bureau and the Standing Committee, subject to confirmation by simply vote of the Assembly during the discussion of the Progress Report.

3. On 2 September 2013, the Bureau of the Assembly referred the motion to the Monitoring Committee for a written opinion in line with paragraphs 3 and 4 of the terms of reference of the Monitoring Committee. Subsequently, on 18 December 2013, the Monitoring Committee appointed Mr Stefan Schennach (Austria, SOC) and Mr Valeriu Ghiletchi (Republic of Moldova, EPP/CD) as co-rapporteurs to draft the opinion on the request for the opening of monitoring procedure in respect of France.

4. A fact-finding visit was made to Paris on 11 September 2014. During this visit, we were able to meet the Paris Police Commissioner, the Paris Public Prosecutor, the French Delegation to the Assembly, one of the parents' associations (the PEEP), the organisers of the protests against the Taubira law, and a number of lawyers. We were not able to meet the former Education Minister, Vincent Peillon, nor his successor Ms Najat Vallaud-Belkacem, who was appointed just a few days before our visit. Regrettably we were also not able to meet the second largest parents' association, the FCPE, which cancelled our meeting at the last moment. We wish to thank the French delegation to the Assembly for its hospitality and the excellent organisation of the visit. We would also like to thank the European Centre for Law and Justice (ECLJ), an NGO with its headquarters in Strasbourg, which facilitated our contacts with the organisers of the "Manif pour tous" and the lawyers of several protesters. In addition, the ECLJ provided us with a large number of statements on alleged police brutality and legal analyses of the structural problems, as identified by them, during the arrests and detention of the demonstrators, and the subsequent judicial action taken.

2. Compulsory gender theory education from the age of six

5. The motion for a resolution alleges that compulsory teaching of gender theory as from the age of 6 has been introduced in French schools. However this is not correct and based on, possibly purposeful, erroneous information that was widely disseminated on social networks. The representatives of the parents association we met, as well as our colleagues in the French delegation, all confirmed that there was no compulsory gender theory education[2] in French primary schools. The furore on the social media was related to the introduction of a trial programme, primarily on a voluntary basis, called "ABCD of Equality", in 275 schools and 600 classes in 2013.

[1] Doc. 13255.

[2] We were told that there was no such thing as gender theory, but that since the 1960s there had been gender studies carried out by American universities to look at the way in which society assigns roles to each sex, with one of the focuses being to make a distinction between gender as a social construct and an individual's biological sex.

6. According to the evaluation report drafted by the Education Inspectorate in June 2014, "*the aim of this initiative is to foster a positive change in attitudes among teachers and pupils of both sexes. Jointly led by the Ministry of Education and the Ministry of Women's Rights, it is one of the ways of achieving the objectives laid down in the interministerial agreement on gender equality in the education system for the period 2013-2018, particularly in terms of the priority attached to taking action as early as primary school".* It was designed to train trainers and then teachers to help them "become aware of their attitudes relating to sexist prejudice and stereotypes and to ensure a higher degree of equal treatment in their teaching practices".

7. The evaluation report points to one clear shortcoming, namely that the parents of pupils were not informed in advance. This may have been the cause of much of the misconceptions about the programme that were going around after its introduction. The PEEP (the Federation of Parents of State School Pupils) informed us that, as it was not known which education authorities, even less which schools, would be involved in this experiment, nor how it was planned to be introduced; parents had not been adequately informed about this pilot project. This had given rise to suspicions, amplified by rumours on social networks, which had led a number of parents to withdraw their children from school for whole days, including from schools which were not involved in this pilot experiment.

8. Also in response to the profound reactions of several parents, the Minister of Education announced, just before the summer holidays of 2014, that the pilot project to combat gender stereotypes would not be rolled out nation-wide. On 25 November 2014, the new Education Minister announced a gender equality action plan, comprising basic and in-service training for staff, the involvement of parents and the production of teaching kits covering all levels of school education, from nursery to baccalauréat. It was no longer a question of experimentation but of underlining the fact that since 1989, the law had tasked schools with promoting gender equality.

9. From the information we received, it is clear that the allegation in the motion for a resolution that "due to compulsory teaching of the gender theory from the age of 6, of the freedom of conscience and of parental rights to educate their children on moral matters guaranteed by Articles 8 and 9 of the Convention, and Article 2 of the Protocol thereto" are "violated" is unfounded and can therefore not be a ground to consider the opening of a monitoring procedure in respect of France by the Parliamentary Assembly.

3. "Taubira Law"

10. France is one of the 24 countries in Europe that have legislated to recognise a civil partnership between persons of the same sex: the Civil Solidarity Pact (PACS) has been around since 1999 and has become increasingly more popular, including among heterosexual couples.

11. In contrast, same-sex marriage is legal in only 11 of the 47 Council of Europe member States.[3] Enactment of a law authorising same-sex marriage was one of the campaign promises made by François Hollande in the 2012 presidential elections. Taken up and championed by the Justice Minister, Christiane Taubira, this law was passed on 18 May 2013. It provides for the possibility of civil marriage, and the adoption by one of the members of the same-sex couple of the other's child. It does not provide for the right to medically assisted procreation or the right to surrogacy. It should be noted that surrogacy is actually completely prohibited in France. The Taubira law aroused considerable opposition, particularly from Christian circles who believed that a child should have the right to a father and a mother, and gave rise to demonstrations on a scale not seen for 30 years.

4. The demonstrations against the Taubira or "marriage for all" law

12. Protests against the – at that time draft – law took place when it was being debated in parliament. The intensity of the debate and protests, reportedly[4], lead to a tense and polarised political climate surrounding the adoption of this law. The first large demonstration against the Taubira law was held in Paris and other cities outside the capital following the approval of the text of the draft law in the Council of Ministers. The biggest national demonstration against the draft Taubira law took place in Paris on 13 January 2013. It consisted of three processions which left from the Porte Maillot, the Place d'Italie and the Place Denfert Rochereau, converging at the Champ de Mars. This demonstration was attended, according to the *Préfecture*,[5] by 340,000 people and according to the organisers by more than a million. These

[3] The most recent country to legislate to allow same-sex marriage was Ireland, where a referendum in May 2015 gave the green light for such legislation.
[4] This was the general feeling of the members of the French delegation to the Assembly with whom we met.
[5] The *Préfecture* said that the Champ de Mars in front of the Hôtel des Invalides has a total surface area of 83,000 m^2, and could not therefore accommodate a million people.

demonstrations passed without any major clashes[6] and in a reportedly good-natured atmosphere, as did the demonstration in front of the *Assemblée Nationale* on 2 February 2013.

13. It was the demonstration held on 24 March 2013 which led to clashes and violence. The organisers had asked to be able to demonstrate along the Champs-Elysées. However, the *Préfet* had issued, one week before the demonstration, a prohibition for the demonstration to take place on the Champs-Elysées, which was approved by the administrative court. The route that was accepted left from the Pont de Neuilly to Avenue de la Grande Armée, where the demonstration was supposed to end at 17:00 just in front of the Arc de Triomphe. The police had been given orders to prevent the demonstrators from crossing the Place de l'Etoile in order to reach the Champs-Elysées. A dense crowd (one million persons according to the organisers) then found themselves in a dead end, face to face with the police who made extensive use of tear gas to disperse the growing crowd that included elderly people who had come to demonstrate with their children and grandchildren. Both organisers and police agree that hooded and armed rioters, primarily far-right militants eager to provoke a confrontation with the police, had mingled with the protesters, especially after the order to disperse had been given.

14. According to the lawyers we met, and confirmed by the police, large numbers of persons had been taken to police stations for identity checks in violation of the legal framework governing identity checks in France. In addition, according to the lawyers, approximately 200 people were placed in police custody[7], while police insulted and used unjustified violence against peaceful protesters.

15. Subsequent demonstrations took place on 21 April 2013, 5 May 2013 and 29 May 2013, but according to the Police Commissioner, the protest movement had begun to die down from March onwards.

16. According to the Police Commissioner, between late 2012 and June 2013, when in between 800,000 to 900,000 people had taken to the streets in Paris; there were 1,397 arrests, 432 people placed in police custody, and 843 identity checks. In all, 92 police officers were injured.

17. Only one demonstrator, Nicolas Bernard-Buss, a 23-year-old student, arrested on 16 June, was convicted of forceful resistance against a "person holding public authority" and given a four-month prison sentence (two months of which were suspended). This sentence was commuted on appeal on 9 July 2013 to a €3,000 fine, €1,500 of which was suspended.[8] According to the lawyers we met, there were a number of people given moderate fines, but no-one was prosecuted for violence or other criminal offences. In virtually all cases, the demonstrators were released at the end of their police custody with a caution.

5. The legal framework of the right to demonstrate in France

18. The right to demonstrate is a constitutional right in France. However, it is subject to a legal framework that places strict conditions, and that can place restrictions, on demonstrations. Organisers are obliged to notify the *Préfecture* in advance of the date, the start and finishing times of the demonstration and the proposed route. The Police Commissaire, under the supervision of the administrative court, can ban a demonstration, or simply the route or part of the route. Banning orders were rare: in 2013 there had been just 0.8 per thousand. The Police Commissioner told us that there were roughly 7,000 events per year on the public highway in Paris, half of which were protest demonstrations. In addition, he informed us that the Champs-Elysées are strictly reserved for celebrations of a national character and that request for demonstrations on this location are consistently refused[9].

19. Once a dispersal order has been given by the organisers, a demonstration becomes an unlawful assembly, defined by Article 431-3 of the Criminal Code as "any gathering on the public highway or in any place open to the public where it is liable to breach the public peace". An unlawful assembly may be dispersed by the law enforcement forces after two orders to disperse have been issued without effect, by, amongst others, any police officer bearing the insignia of his or her office. Any person, who wilfully continues to take part in an unlawful assembly after the orders to disperse have been issued, is liable to a one-year prison sentence and a €15,000 fine.

[6] By decision MDS-2015-126 of 21 May 2015, the national Ombudsman (Défenseur des Droits), having received a complaint from demonstrators who had been kettled by the police for 3 hours, felt that this measure had been disproportionate and recommended that the Ministry of the Interior ensure that the conditions and methods of this crowd-control technique be more strictly regulated.

[7] "garde a vue"

[8] This student, whose arrest was widely covered in the media, lodged no appeal on points of law. He cannot therefore take his case to the European Court of Human Rights as he failed to exhaust all domestic remedies.

[9] The organisers of the "*Manif pour tous*" protests pointed to the fact that protest by farmers had taken place on the Champs Elysées. The police argued that these protests had also not been authorised by the authorities.

6. Identity checks

20. From our meetings it became clear that during the demonstrations a large number of persons had been taken to police stations in order to establish their identity, often, as it seems, as a measure of crowd control in contradiction, or even abuse, of the legal provisions that govern identity checks by the police. It should be emphasised that when a person is brought to a police station to establish his or her identity, this does not amount to that person being placed in police custody or "*garde à vue*". In the following paragraphs we will outline the legal framework for identity checks in France, as well as the legal framework for police custody, as these issues are at the heart of the allegations made in the motion for a resolution.

6.1. Identity checks by the police in the framework of a judicial process

21. These identity checks are carried out in connection with the commission of an offence, often in the framework of a police investigation. Under the terms of Article 78-2, first paragraph, of the Code of Criminal Procedure, police officers may verify the identity of persons suspected of having committed, having attempted to commit or of preparing to commit an offence. They may also verify the identity of persons subject to investigations ordered by a judicial authority, and persons liable to provide information that could be useful to investigations into a crime or misdemeanour.

22. There must be "plausible" reasons justifying these checks. On numerous occasions, the Court of Cassation has held that it was not unlawful to detain a person in violation of the legislation on aliens (for example, within the scope of a deportation order), who had voluntarily reported to the police station without having been summoned by letter stipulating the offence in question.

6.2. Identity checks by the police in the framework of an administrative (preventive) process

23. Such checks have a preventative and not a punitive aim, in accordance with the administrative role of the police. Under the terms of the law of 10 August 1993, the identity of any person, regardless of his or her behaviour, may be verified in order to prevent a breach of the peace and any risk to the security of persons or property.

24. However, this law has been considerably moderated by the interpretation given by the Constitutional Council in its decision of 5 August 1993. As a result, widespread and arbitrary identity checks are incompatible with the principle of individual freedom. Furthermore, an officer of the police must prove that there are particular circumstances establishing a risk of a breach of the peace.

25. Nonetheless, quite regularly, identity checks in the framework of an administrative process become identity checks in the framework of a judicial process, often in the wake of allegations of insulting a public official or other forms of resisting public authority as shown, for example, by the various opinions of the National Ethics and Security Commission,.

26. According to the lawyers and the organisers of the "*Manif pour Tous*", it was this type of identity check that was used in the majority of cases in the demonstrations against the Taubira law. In their view these checks were used mainly to harass and intimidate the demonstrators arbitrarily and without justification.

6.3. Identify checks upon the written request of the public prosecutor, in pursuance of the provisions of Article 78-2, second paragraph, of the Code of Criminal Procedure

27. The public prosecutor may submit a request that the police verify the identity of any person in a given place and for a given length of time. This may include, for example, identity checks in the course of a demonstration and along its route. This is what took place during the demonstrations against the Taubira law. We were informed that, as a matter of principle such a zone of criminal investigation is declared, starting at the moment the order to disperse has been given by the organisers at the end of a demonstration, ostensibly to help the police to identify persons who seem to discard the order to disperse.

28. The request must be made for the purposes of investigation into and prosecution of the offences indicated by the public prosecutor.

6.4. Procedure in case a person cannot provide valid identity papers.

29. Article 78-3 of the Code of Criminal Procedure (CCP) provides that an officer of the criminal police may detain an individual on the spot in order to check that person's identity papers. Only if no papers are

produced or if the papers supplied are deemed to be insufficient or "manifestly" false, then the person can be taken to the police station to establish his or her identity. The officer may also accompany the person home to obtain the necessary identity documents, provided that the person in question has given his or her express and free consent.

30. In such cases, the person must not be detained any longer than is strictly required to establish his or her identity and this time may not exceed four hours, deducted from the maximum duration of police custody in cases where such a measure is taken (Article 78-4 CCP). If the individual fails to co-operate, the prosecutor or investigating judge may authorise him or her to be fingerprinted and/or photographed.

31. At the end of the detention, if there is no evidence against the individual, no reference to the identity check may be made in any file. The public prosecutor must ensure that all material relating to the identity check is destroyed within six months.

32. It is not an offence to be unable to prove one's identity, nor is it an offence to refuse to reveal one's identity. In contrast, giving a false identity is against the law.

33. We were informed by the authorities that during the *"Manif pour tous*" demonstrations, as for other large scale demonstrations, in the light of the atmosphere at those events, the police had decided to carry out the initial identity checks at the police station rather than on the spot. It was admitted that this was not foreseen in the CPC which clearly stipulates that for identity checks only persons who fail to produce identity papers can be taken to the police station to establish their identity.

34. We were unable to obtain any specific information on the exact number of complaints filed for unlawful or arbitrary identity checks, police violence or unlawful cases of police custody. Some proceedings are still ongoing.

35. We were told that no further action was taken by the public prosecutor in most of the complaints filed. We were informed by their lawyers that the majority of complainants did not feel that, following this decision to take no further action, it was worth filing a criminal complaint and suing for damages with an investigating judge as there was a requirement to pay a deposit and engage counsel, which could prove very expensive. In addition, they were reportedly discouraged by the likely length of proceedings.

36. It is clear to us that the identity checks at the demonstrations against the Taubira law were misused, if not abused, as a means of crowd control in violation of the CPC. Misuse of identity checks and identity verifications is all the easier given that, as noted by the Ombudsman in his observations[10] to the Paris Court of Appeal on 3 February 2015, there is no legal obligation to ensure the traceability of these checks in France: such checks must not be recorded, no counterfoil is delivered and neither police officers nor gendarmes are required to make a report of such checks where they have not led to the finding of an offence.

37. As the Ombudsman points out, the absence of any reasons and written procedure, in particular any trace of the check carried out (specifying at the very least the date and place of the check, the name of the officer and the person being checked and the reasons for the verification), nor even verbal notification to the person in question of the legal basis and reasons for the check, severely hampers access to judicial review and could deprive the person subjected to the identity check of the possibility of successfully challenging the lawfulness of the measure and complaining of its discriminatory nature. We fully concur with this analysis and call on the French authorities to regulate more effectively in future the arrangements for identity checks.[11]

38. It should be noted that abuse of identity checks for crowd control is an issue that surfaced during our own investigations in Paris and was not part of the claims made in the motion requesting the opening of a monitoring procedure, which focuses on the alleged misuse of police custody during the "*Manif pour tous*" demonstrations. As outlined in the previous paragraphs, the issue of police custody is distinct from the possible abuse of identity checks. The abuse of identity checks for crowd control runs counter to safeguards that are present in the Criminal Procedure Code and are clearly against the intentions of the legislator. However, this does not relieve demonstrators who believe they have been wrongfully subject to identity

[10] Decision MSP-MDS-MLD-2015-021 of 3 February 2015. The Ombudsman presented these observations in a case before the Paris Court of Appeal based on Article 141-1 of the Code of Judicial Organisation, for gross negligence of the state on account of the malfunctioning of the justice system, following allegedly discriminatory identity checks.

[11] In this connection, we note with interest that the new code of ethics which is common to both the police and the gendarmerie, which came into effect on 1 January 2014, provides for the reintroduction of the service number to make it possible to identify a police officer in the event of any dispute.

checks of their obligation to apply for any effective remedy to the courts, which they at large have not done. The abuse of identity checks alone is not a sufficient reason to conclude that there would be systemic deficiencies with regard to the rule of law in France that would warrant the opening of a monitoring procedure by the Assembly.

7. Police custody (*Garde à vue*)

39. Police custody (Articles 62 et seq. of the Code of Criminal Procedure) is a measure to deprive an individual suspected of a crime or misdemeanour of his or her liberty for several hours (24 hours in the majority of cases but this may be extended to 48 hours on the request of the investigating judge, or even to 120 hours in cases relating, for example, to terrorism). Its sole purpose must be to prevent the suspect from removing any evidence, fleeing, working out a strategy with potential accomplices or exerting pressure on witnesses.

40. It should be noted that police custody is possible only where the offence can be punished by a prison sentence. This includes the offence of unlawful assembly.

41. Only officers of the criminal police or the *gendarmerie* are empowered to take such a decision. Once the decision has been taken, the public prosecutor must be informed as soon as possible of the custody, either by telephone or by fax.

42. Police custody is highly regulated in the French Criminal Procedure Code. The procedures for police custody have been succinctly outlined on the website http://www.garde-a-vue.com/ which we would like to reproduce in the paragraphs (43 to 46) below for the completeness of our report.

43 From the beginning of police custody, the police officer must provide the suspect, in a language which he or she understands, with the following information:

- The meaning and duration of the custody. If any extension is possible, this must also be notified to the suspect from the outset

- The nature and presumed date of the offence which is the reason for the custody

- The possibility of being examined by a doctor. In point of fact, a medical examination may be requested by the suspect himself or herself, his or her family, the police officer or the public prosecutor to ensure that the suspect is not medically unfit for custody

- The possibility of informing a close relative and the suspect's employer of the custody measure

- The possibility of access to a lawyer from the very first minute of custody. If he or she wishes, the suspect may take advantage of his or right to speak with a lawyer for 30 minutes, and also to have the lawyer's assistance throughout the duration of custody. In certain complex cases, the public prosecutor may ask for the lawyer's intervention to be postponed for 12 hours (72 hours in terrorism cases)

- The possibility of responding to or remaining silent at the various questionings that take place while in police custody.

44. It should be emphasised that all this information must be provided to the suspect. If such is not the case, the suspect may report this to his or her counsel who can then request the release of his or her client.

45. It can happen that police custody is ended prematurely, for example when it has been clearly established that the suspect is innocent. In other cases, custody will run its full course with two possible outcomes:

- Release without further proceedings. If the public prosecutor considers there are no grounds to initiate proceedings, the suspect may be released. If subsequently new information raises doubts about his or her innocence, the fact that he or she has been released does not preclude a further custody measure.

- Initiation of proceedings: in this case, the public prosecutor has available a large number of options depending on the action to be taken: serving of a summons, bringing the suspect before an investigating judge, referral to the prosecution department, committal for immediate trial, etc.

46. Whatever the outcome of the police custody, a report of the conduct and end of custody must be written by a police official. This will ensure that the suspect's file contains a record of all the significant aspects of the custody.

47. The motion for a resolution tabled by Mr Volontè and others states that most of the individuals placed in police custody were released without charge after 24 hours. The conclusion is drawn that police custody had therefore been misused as a political punishment. We cannot concur with this interpretation, as there are no proof offered that any of the strict legal provisions that govern police custody have been violated. We were unable to obtain sufficient reliable information on the number of appeals against arbitrary police custody or on the outcome of any appeals filed, but again we understood that these were relatively few in comparison to the people that had been placed in police custody.

48. Our findings seem also corroborated by the Ombudsman who has not raised any issues with regard to the demonstrations against the Taubira law, with one exception, which concerns neither identity controls nor police custody. In short, there is no reason for us to conclude that police custody had been used as political punishment.

8. The prosecution service's lack of independence and the problem of conventional and DNA fingerprinting

49. In its observations sent to us, the European Centre for Law and Justice highlighted the prosecution service's lack of independence and the problem of conventional and DNA fingerprinting files as further structural problems justifying the opening of a monitoring procedure against France. We note, however, that neither point is mentioned in the motion for a resolution. We therefore have no mandate to examine these two questions.

50. However, we would merely point out that the examination of the execution of the *Moulin v. France* judgment of 23 November 2010, which had held that the public prosecutor, in the circumstances of the case in question, could not be regarded as a judicial officer authorised by law to exercise judicial power within the meaning of Article 5.3 of the ECHR, was closed by the Resolution[12] of the Committee of Ministers of 5 December 2013. In addition, a law of 25 July 2013 abolished the individual instructions from the Minister of Justice to public prosecutors. In July 2013, the Minister of Justice commissioned the Nadal report which was published in November 2013. This report proposes the government 10 lines of action, including bringing the status of prosecutors into line with that of judges. We strongly recommend that our colleagues in the French delegation to the PACE closely monitor implementation of the recommendations contained in that report.

51. With regard to the legislation on fingerprint files, which the Court in its *M. K. v. France* judgment of 12 April 2013 felt was too vague and in violation of Article 8 of the ECHR, the judgment is being executed and in January 2014, the government put forward an action plan providing for changes to the legislation.

52. From our summary exploration of these topics it seems that the authorities are aware of shortcomings with regard to the public prosecutor and the legislation on fingerprint files, have addressed these concerns, or are in the process of doing so. Therefore, these two issues cannot be considered systemic shortcomings that violate France's human rights and rule of law obligations as a Council of Europe member State, and that therefore would warrant the opening of a monitoring procedure by the Assembly.

9. Conclusions

53. In the motion for a resolution "Serious setbacks in the fields of human rights and the rule of law in France", tabled by Mr Volontè and others, the authors assert that the excess of authority and violence perpetrated by the law enforcement agencies during the demonstrations against the passing of the Taubira law, and in particular the alleged abuse of police custody (*garde à vue*), as well as the alleged compulsory teaching of gender theory from the age of 6, violated the European Convention on Human Rights and the country's obligations to the Council of Europe in the fields of human rights and the rule of law. The authors therefore requested the Parliamentary Assembly to open a monitoring procedure in respect of France, in line with Article 2.iii of the terms of reference of the Monitoring Committee.

54. In this opinion we have attempted to assess the merits of these claims. Although implicit in the motion for a resolution, it is important to note that the alleged deficiencies in the fields of human rights and the rule of law need to be of a systemic and structural nature in order for them to warrant the opening of a monitoring

[12] Res CM/resDH (2013)240.

procedure by the Parliamentary Assembly. This therefore necessarily has been an important criterion in our assessment.

55. As we have outlined above, no compulsory gender education from the age of 6 has been introduced in France and therefore the allegation that "due to compulsory teaching of the gender theory from the age of 6, of the freedom of conscience and of parental rights to educate their children on moral matters guaranteed by Articles 8 and 9 of the Convention, and Article 2 of the Protocol thereto" are "violated" is unfounded and can therefore not be a ground to consider the opening of a monitoring procedure in respect of France by the Parliamentary Assembly.

56. The adoption of the "Taubira Law" raised considerable emotion in the country and took place in a contentious and charged political climate. The very large demonstrations that were organised against the adoption and implementation of this law took place largely in full respect of the legal framework that governs political manifestations and demonstrations in France. This legal framework seems overall in line with Council of Europe standards in this field. Regrettably, the demonstration on 24 March 2013 resulted in violence and clashes with the police, also as it appeared to have been infiltrated by small groups of right-wing activists eager to provoke violence. In this tense context, it cannot be excluded that a number of police officers acted in a manner that exceeded their authority or was disproportionate in relation to the situation at hand. However, from the limited number cases filed and pursued against the police in relation to these demonstrations, we cannot but conclude that the shortcomings in police behaviour that did occur were not to the extent alleged by the authors of the motion, and certainly not of a structural and systemic nature that would warrant the opening of a monitoring procedure in respect of France.

57. Similarly, on the basis of our investigations we cannot conclude that the use of police custody violated, in general, the strict legal framework that governs police custody in France. This also seems to be confirmed by the relatively few appeals that have been filed by persons placed in police custody in relation to the demonstrations against the "Taubira Law". The allegation that police custody was used as a political punishment is therefore unwarranted.

58. However, during our investigations we did discover that identity checks are abused by the law enforcement agencies as a measure of crowd control during demonstrations, by systematically taking persons to police stations to establish their identity even if these persons can produce valid identity papers on the spot. This abuse of identity checks violates the provisions for such checks in the Criminal Procedure Code and clearly runs counter to the intention of the legislator when adopting the safeguards in the code to avoid such abuses. It is clear that this abuse is widespread and not limited to the "*Manif pour tous*" demonstrations in Paris, and, at times, could amount to harassment of peaceful protesters and bystanders. However, the abuse of identity checks in itself cannot be considered sufficient reason to conclude that there are systemic deficiencies with regard to the rule of law in France that would warrant the opening of a monitoring procedure by the Assembly. At the same time we warn against belittling this issue. The abuse of identity checks violates the law and the intentions of the legislator in this respect. The abuse of identity checks combined with so-called "profiling" could easily take on racial overtones, as also pointed out by the Ombudsman in his observations on this issue. That would not sit well with the country's human rights obligations to the Council of Europe or its image of a country at the forefront of the protection and promotion of human rights, which France rightfully cherishes. We therefore call on our colleagues in the French delegation to the Assembly to promptly introduce legislation that will prevent the law enforcement agencies from abusing identity checks as a means of crowd control.

59. Although not part of the grounds given in the motion for a resolution, we also looked into the allegations by civil society representatives that the prosecution service's alleged lack of independence and the problems of conventional and DNA fingerprinting files are structural problems that would justify the opening of a monitoring procedure against France. However, our findings cannot corroborate these conclusions. The French authorities are well aware of the shortcomings in this respect and have taken action to address them. While welcoming these reforms, we note that concerns remain with regard to the safeguards to guarantee the independence of the public prosecutor and therefore recommend that the French authorities fully implement the recommendations contained in the Nadal report.

60. In conclusion, based on our findings, we do not recommend opening a monitoring procedure by the Parliamentary Assembly in respect of France. The two recommendations made above should be followed by the Monitoring Committee in the framework of its periodic reviews of the country.