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OPINION

# OPINION ON THE SITUATION OF MIGRANTS AT THE FRANCO-ITALIAN BORDER

19 JUNE 2018



*Opinion on the situation of migrants at the Franco-Italian border: missions in the Hautes-Alpes and Alpes-Maritimes départements – March/April 2018 as adopted unanimously at the plenary session of 19 June 2018.*

## Table of contents

<b>Part I - Border crossings: a Republic at odds with the law</b>	<b>6</b>
<b>A. Legal excesses</b>	<b>7</b>
1. Implementation of the refusal of entry procedure	7
2. Improvised places of detention that do not respect fundamental rights	11
a) Premises of the Col de Montgenèvre Border Police	11
b) Premises of Menton-Garavan station	12
c) Border Police premises at Menton Pont-Saint-Louis	13
<b>B. border fraught with danger</b>	<b>14</b>
<b>Part II - Access to international protection on asylum grounds</b>	<b>16</b>
<b>A. Applying for asylum at the border</b>	<b>16</b>
1. On information about the right to apply for asylum	16
2. On training for Border Police officials	17
<b>B. Applying for asylum on the territory</b>	<b>18</b>
<b>Part III - Non-reception as a policy assumed by the authorities</b>	<b>21</b>
<b>A. On the shortage of accommodation places</b>	<b>21</b>
<b>B. On access to healthcare</b>	<b>23</b>
<b>C. On access to legal information and advice in local areas</b>	<b>25</b>
<b>Part IV - Solidarity: a crime or a duty?</b>	<b>27</b>
<b>Part V - The specific situation of unaccompanied minors</b>	<b>32</b>
<b>A. Border crossings</b>	<b>32</b>
<b>B. The assessment period</b>	<b>35</b>
<b>C. The worrying situation of young people who lose their minor status</b>	<b>37</b>
<b>D. Integration of children under the care of social welfare services</b>	<b>38</b>
<b>Part VI - Protect victims of trafficking in human beings: a lack of detection, identification and protection at the Franco-Italian border</b>	<b>41</b>
<b>Summary of recommendations</b>	<b>44</b>
<b>Legal texts (in French)</b>	<b>48</b>
<b>List of interviewed persons</b>	<b>57</b>

At the time of writing this opinion on migrants and asylum seekers from Italy, dated 19 June 2018, the National Consultative Commission on Human Rights (CNCDDH) cannot turn a blind eye to either the tragic situation regarding the 629 migrants picked up at sea by the rescue ship Aquarius, the Italian authorities' refusal to allow this ship to dock in an Italian port, the silence on the part of the French authorities or the "safe harbour" which only the Spanish authorities eventually agreed to grant. Outraged by the European Union's powerlessness in the face of the tragedies unfolding daily on the Mediterranean coastline, the CNCDDH expects the French Government to take the necessary measures, in light of France's international undertakings, to ensure that migrants are rescued at sea at all times. Given the European Union's response grounded in security concerns, the CNCDDH expects the global challenge posed by migration to be afforded serious consideration, such that Europe's founding values, beginning with dignity as enshrined in Chapter 1 of the *Charter of Fundamental Rights*, are respected.

Several of the CNCDDH's members have drawn its attention to the extremely worrying situation concerning migrants on the Italian border<sup>1</sup>. After receiving a formal request from the Minister of the Interior for an opinion on *the bill "for controlled immigration and an effective right of asylum"*, the CNCDDH decided, for the purposes of informing this opinion through an observation mission, to travel to the Franco-Italian border so as to be able to report back in an objective and impartial manner and understand what the reality is on the ground, as it had already done in Calais and Grande-Synthe<sup>2</sup>. The CNCDDH thus carried out two missions, one in the Hautes-Alpes département, mainly at the Col de Montgenèvre mountain pass, in Briançon and in Gap on 19 and 20 March 2018, and the other in the Alpes-Maritimes département, mainly in Nice, Menton and Ventimiglia, on 12 and 13 April 2018.

That said, in light of the very grave situation it observed during its missions, the CNCDDH has decided to issue a separate opinion from the one addressing the asylum and immigration legislation<sup>3</sup>. During both of these missions, the CNCDDH was deeply shocked by the violations of migrants' rights found and by the alarming practices observed across these two border regions where France is violating fundamental rights, abandoning the principle of humanity and even becoming complicit in situations that can prove deadly<sup>4</sup>. Despite differences depending on the place, the CNCDDH cannot avoid delivering a damning verdict on a political resolve to block the borders to the detriment of respect for migrants' right to life and physical integrity, forced as they are to undertake increasingly perilous journeys over the Alps, a fact laid bare in many distressing accounts which are an affront to human dignity.

1. The CNCDDH Chair along with a member of the Commission had also travelled to the Briançon area at the beginning of 2018, but the situation has got progressively worse since then.

2. CNCDDH, *Avis sur la situation des migrants à Calais et dans le Calaisis*, adopted on 2 July 2015, JORF (Official Journal of the French Republic) no.0157 of 9 July 2015, text no. 102; CNCDDH, *Avis de suivi sur la situation des migrants à Calais et dans le Calaisis*, JORF no. 0164 of 16 July 2016, text no. 124; CNCDDH, *Avis sur la situation des migrants à Grande-Synthe*, JORF no. 0131 of 7 June 2016, text no. 46.

3. CNCDDH, *Avis sur le projet de loi "pour une immigration maîtrisée et un droit d'asile effectif" as adopted by the Council of Ministers on 21 February 2018*, adopted on 2 May 2018, JORF no. 0105 of 6 May 2018, text no. 28.

4. Maryline Baumard, «Quand la fonte des neiges révèle des corps de migrants», *Le Monde*, 8 June 2018.

The individuals intercepted at the Italian border mainly hark from Eritrea, Afghanistan, Sudan or West Africa<sup>5</sup>. There are also a great many children among them – a majority of them unaccompanied. Some are hoping to settle in France while others have their sights set on other countries – Great Britain or Germany for example. These hazardous exile routes are a consequence of European policies<sup>6</sup>. As far as Italy is concerned, since 2015 Europe has lumbered it with the task of receiving an increasing number of migrants arriving via the Mediterranean following the closure of the Balkans route. And yet this country is no longer able or willing to assume this role alone. This is one of the causes behind the victory of the nationalist and populist parties during Italy's recent elections, incidentally. The retreat into nationalistic thinking, and even hostility, of part of the population, as well as the poor reception conditions in Italy, are all reasons driving migrants to seek protection and the right of residence in other European countries.

France, which is not "overwhelmed"<sup>7</sup>, must nevertheless address an unprecedented situation unfolding at its border with Italy. The alerts and recommendations that the CNCDDH issues in this opinion have been prompted by the policy conducted at the Italian border and the inhuman practices observed both in the southern part of the Menton-Ventimiglia border and the Briançon area.

The CNCDDH will focus in turn on the numerous fundamental rights violations at border crossings (I), access to international protection on asylum grounds (II) and non-reception as a policy assumed by the authorities (III). It will also highlight the authorities' treatment of people trying to help, who are charged with the crime of showing solidarity, when all they are doing is making up for the State's failings (IV). Finally, it intends to draw the authorities' attention to the particularly alarming situation of unaccompanied minors (V) and victims of trafficking in human beings (VI).

5. Amnesty International, «Des contrôles aux confins du droit, violations des droits humains à la frontière avec l'Italie, Synthèse de mission d'observation», February 2017.

6. The Common European Asylum System (CEAS) is a framework of texts laying down standards and procedures common to EU Member States in terms of international protection, with a view to harmonising protection systems across EU territory.

7. CNCDDH, *Avis sur le projet de loi "pour une immigration maîtrisée et un droit d'asile effectif" as adopted by the Council of Ministers on 21 February 2018*, adopted on 2 May 2018, JORF no. 0105 of 6 May 2018, text no.28.

## Part I

### Border crossings: a Republic at odds with the law

Since the Schengen Agreement was signed on 14 June 1985 and the “Schengen Borders Code” (SBC) was adopted in 2016<sup>8</sup>, the principle of no internal border checks has prevailed within the Schengen Area. Pursuant to the provisions of Article 25 of the SBC, a Member State may reintroduce border control at the Schengen Area’s internal borders where there is a serious threat to its public policy or internal security. According to Article 32 of the same Regulation, where border control is reintroduced at internal borders, the relevant provisions of Title II on external borders shall apply *mutatis mutandis*, including the rights of foreign nationals who are refused entry.

Amid the sheer numbers of migrants bound for Europe in 2015, European nations rolled out measures to strengthen checks at their borders<sup>9</sup>. Accordingly, in France, following an unpublished internal memo from the Ministry of the Interior and Prefect of the Alpes-Maritimes département, associations had already noticed that systematic border checks were being carried out from 11 June 2015<sup>10</sup>. Border checks were then officially reintroduced for the first time in the context of the COP21, and extended owing to the terror attacks perpetrated on French soil. For each extension (six since 2015<sup>11</sup>), France has notified the European Commission of its intention to temporarily reintroduce border control. Each time, it has cited the risk associated with the persisting terror threat and the hosting of major sports or political events “posing heightened risks for the population and specific pressure on the internal security services”<sup>12</sup>. Checks have thus been ramped up, to the point of becoming almost systematic, involving the Armed Forces in particular and using increasingly sophisticated means<sup>13</sup>. Although counter-terrorism is officially cited as the

8. Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code).

9. Tougher border checks had already been observed in 2010 and 2011 following the “Arab Spring” uprisings.

10. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDH on 12 & 13 April 2018 – meeting between associations on 12 April 2018 (Anafé, Intersos, Caritas, Caffim, Terre des Hommes).

11. On 4 April 2018, France extended the reintroduction of border control for the sixth time since 2015 for a new six-month period running from 1 May 2018, when the Schengen Borders Code provides that the total period may be extended to a maximum length of two years (Article 25).

12. See, for example, memo from the French authorities on the extension of the reintroduction of internal borders dated 3 October 2017, [www.gisti.org/IMG/pdf/note\\_2017-10-03\\_via\\_ceu\\_st12933.xx17.pdf](http://www.gisti.org/IMG/pdf/note_2017-10-03_via_ceu_st12933.xx17.pdf)

13. In Menton, mobile units forming the general reserve of the national police force (specialising in keeping law and order), known as CRS, mobile gendarme officers and military officers deployed for Operation Sentinelle are posted for the checks (Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDH on 12 & 13 April – interview with Jean-Philippe Nahon, Superintendent). Sentinelle troops were also posted to the Briançon area over the summer of 2017 for the purposes of border checks (Mission carried out in the Briançon area by the CNCDH on 19 & 20 March 2018 – meeting between associations (Tous migrants, MJC). Means such as drones, night vision binoculars and devices that can detect movement as well as four-wheel drives are used to track migrants, [www.roya-citoyenne.fr/wp-content/uploads/2018/04/mouv-luca-mars-2018.pdf](http://www.roya-citoyenne.fr/wp-content/uploads/2018/04/mouv-luca-mars-2018.pdf), [www.france-terre-asile.org/actualites/actualites/actualites-choisies/un-mediateur-demande-par-les-associations-face-a-l-afflux-de-migrants-a-la-frontiere-franco-italienne](http://www.france-terre-asile.org/actualites/actualites/actualites-choisies/un-mediateur-demande-par-les-associations-face-a-l-afflux-de-migrants-a-la-frontiere-franco-italienne), Amnesty International, “*Des contrôles aux confins du droit, violations des droits humains à la frontière avec l’Italie, Synthèse de mission d’observation*”, February 2017.

grounds for reintroducing internal border checks, the CNCDH notes that this has never been mentioned unprompted during the interviews held. In reality, the reintroduction of border controls appears to have more to do with controlling flows of migrants and combating irregular immigration.

In this context, the CNCDH draws attention to the hazy definition of the border zone – not least in the Briançon area – and is concerned about the procedures for controlling and returning foreign nationals in this zone. Accordingly, the Prefect of the Hautes-Alpes département explained that the zone where foreign nationals could be refused entry had been defined by her predecessor, but that it did not necessarily correspond to the 20-km strip<sup>14</sup>. According to the Border Police, entry can be refused as soon as a check has been carried out on a foreign national on the territory of the municipalities of Montgenèvre and Nevache<sup>15</sup>, and therefore as far as the entrance to Briançon. The CNCDH has misgivings about these different interpretations by stakeholders on the ground, insofar as they could lead to random checks with no legal basis. Such legal uncertainty is a factor in the emergence of zones where practices are developing that do not respect migrants’ rights.

It should be noted that random checks, outside of the special scheme stipulated where border controls are reintroduced, can be carried out pursuant to Article 78-2 of the Criminal Procedure Code<sup>16</sup>, across a zone extending between France’s land border with States in the Schengen Area and a line lying 20 kilometres inside it, as well as in the publicly accessible areas of ports, airports and rail or bus stations open to international traffic and designated by order and around these stations. Such checks are strictly regulated, however, particularly by the case law of the Court of Justice of the European Union<sup>17</sup>. Individuals stopped for questioning on such grounds may be subject to a readmission procedure<sup>18</sup>. However, once internal border controls have been reintroduced, the French authorities may refuse entry to foreign nationals not fulfilling the entry conditions to the territory at the land borders and notify them of a decision to refuse entry<sup>19</sup>. These foreign nationals are considered not to have entered the territory.

## A. Legal excesses

### 1. Implementation of the refusal of entry procedure

14. Mission carried out in the Briançon area by the CNCDH on 19 & 20 March 2018 – interview with Cécile Bigot-Dekeyzer, Prefect of Hautes-Alpes.

15. Mission carried out in the Briançon area by the CNCDH on 19 & 20 March 2018 - Interview with Jean-Bernard Rouffignac, Border Police commanding officer.

16. See appended documents.

17. CJEU, 22 June 2010, case C-188/10, Melki and C-189/10, Abdeli.

18. Each State that has signed a bilateral agreement may hand to the authorities of the co-signing country any irregular foreign national stopped for questioning on its territory and for whom there is evidence that s/he spent time in or comes from this neighbouring country.

19. See the paragraph below, I.A. 1., on implementation of the refusal of entry procedure.

The reintroduction of border control leads to the setup of authorised border crossing points where systematic checks take place<sup>20</sup>. Individuals who are not permitted to enter France are subject to a refusal of entry procedure governed by the law and guaranteeing their rights. And yet this is not what the CNCDDH observed in practice<sup>21</sup>.

The CNCDDH's attention was alerted to the fact that the Border Police (PAF) were carrying out racial profiling, particularly on the train from Ventimiglia in Italy to Menton-Garavan in France. Checks on trains are systematic and 70% of stops for questioning in the Alpes-Maritimes département happen in the rail sector according to the Border Police<sup>22</sup>. Individuals are stopped for questioning on the train and if they do not have administrative documents on them enabling them to enter France, they are arrested for the purposes of being returned to Italy. When the CNCDDH asked the Border Police about what measures are in place to avoid racial profiling, the force replied that it checked the identity of all passengers on the train<sup>23</sup>. And yet the association members who take the train from Ventimiglia to Menton on a daily basis maintain that they have never had their identity checked, unlike individuals "who look foreign"<sup>24</sup>. Other reports based on direct observations confirm that racial profiling is indeed being practised on these trains<sup>25</sup>. The CNCDDH once again voices its objection to discriminatory checks<sup>26</sup> which, as the Court of Cassation confirmed on 9 November 2016,

20. In the Alpes-Maritimes département, in 2017, 48,362 individuals were stopped for questioning by the various law enforcement forces and 44,433 were issued a notification of refusal of entry on national soil, compared with 32,285 in 2016. From 1 January 2018 to 24 May 2018, 12,538 migrants were stopped for questioning, 10,983 of whom were issued a notification of refusal of entry on national soil. In Hautes-Alpes, which is a smaller département, 1,900 refusal of entry decisions were pronounced in 2017 compared with 316 in 2016 - Information forwarded by the Menton and Briançon Central Directorate of the French border police (DCPAF). Note that a number of individuals were refused entry several times.

21. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 - interview with the Border Police and meetings between associations on 12 & 13 April.

22. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 - interview with Jean-Philippe Nahon, superintendent of the Alpes-Maritimes Central Directorate of the French border police and Cécile Bataille, police chief at the Alpes-Maritime Département-level Border Police Directorate.

23. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 - interview with Jean-Philippe Nahon, superintendent of the Alpes-Maritimes Central Directorate of the French border police and Cécile Bataille, police chief at the Alpes-Maritime Département-level Border Police Directorate.

24. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 - meeting between associations on 12 April 2018; In the summer of 2017, it should be noted that Albanian families managed to cross the border without difficulty - ECRE and AIDA, Access to asylum and detention at France's borders, 30 April 2018, link on 7 June 2018: [www.asylumineurope.org/sites/default/files/franceborders.pdf](http://www.asylumineurope.org/sites/default/files/franceborders.pdf)

25. Amnesty International, *Des contrôles aux confins du droit, violations des droits humains à la frontière avec l'Italie, Synthèse de mission d'observation*, February 2017; Forum réfugiés-Cosi, "Les obstacles à l'accès à la procédure d'asile dans le département des Alpes-Maritimes pour les étrangers en provenance d'Italie. Constats et recommandations", April 2017; Report from Action Briançon dated 9 & 10 January 2018 written by Myriam Laidouni-Denis, EELV advisor "Visite surprise de la PAF poste frontière Montgenèvre"; CGLPL, report of the visit from 4 to 8 September 2017 of the Menton border police premises (Alpes-Maritimes) - 2<sup>nd</sup> visit, control of migrants on the Franco-Italian border, 5 June 2018.

26. CNCDDH, *Avis sur la prévention des pratiques de contrôles d'identité abusives et/ou discriminatoires*, adopted on 8 November 2016, JORF no. 0054 of 4 March 2017, text no. 81.

amount to serious misconduct for which the State can be held accountable<sup>27</sup>.

Foreign nationals subject to checks at authorised crossing points are notified a refusal of entry pursuant to Articles L. 213-2 of the French Code for Entry and Residence of Foreigners and Right of Asylum (CESEDA)<sup>28</sup> and R. 213-1 of the CESEDA<sup>29</sup>. All refusals of entry into France are subject to a reasoned written decision taken, except in cases of asylum applications, by the customs or national police department tasked with border controls. Foreign nationals refused entry are notified of this decision with indication of their different rights: to warn or have warned the person to whom they have stated they are headed, the embassy or counsel of their choice and to refuse to be repatriated until the period of one clear day has elapsed. In principle a personal interview must have been held prior to the refusal of entry with a view to examining the situation in-depth. This shall be held immediately except where the foreign national, upon completing the refusal of entry form, asks to exercise some of his/her rights, including the one entitling him/her to one clear day, which gives him/her 24 hours before being sent back. Rights must be notified in a language which the foreign national understands. An appeal on the grounds of abuse of power before the administrative courts is possible against the refusal of entry, but does not suspend enforcement of the measure.

During both of its missions, the CNCDDH found that the guarantees surrounding the refusal of entry procedure were not honoured and that the foreign nationals were unable to exercise their rights. First of all, no personal interview was held and no in-depth examination of the situation was carried out<sup>30</sup>. The interviews that the CNCDDH held in the Alpes-Maritimes département with the Border Police and associations confirmed that, often, the CRS platoons providing backup for the border police officers fill out the refusal of entry form after a perfunctory identity check, which they then get signed by the border

27. Cass, Civ. 1<sup>st</sup>, 9 November 2016, appeal nos 15-25.873, 15-25.872, 15-24.212 and 15-24.210.

28. "All refusals of entry into France are subject to a reasoned written decision taken, except in cases of asylum applications, by an official coming under a category set by regulatory channels.

Foreign nationals refused entry are notified of this decision with indication of their right to warn or have warned the person to whom they have stated they are headed, the embassy or counsel of their choice and, except in Mayotte, to refuse to be repatriated until the period of one clear day has elapsed. For asylum applications, the decision also mentions their right to lodge an appeal for annulment on the grounds of Article L. 213-9 and describes the methods and time-limits for such redress. The decision and accompanying notification of rights must be communicated in a language that migrants understand. They are asked to indicate on the notification if they would like to benefit from one clear day. Foreign minors not accompanied by a legal representative may not be repatriated until the one clear day period stipulated in this paragraph has elapsed.

When the foreign national does not speak French, the following article shall be applied: Article L. 111-7.

The authorities may implement the decision pronouncing the refusal of entry of its own motion."

29. "The reasoned written decision refusing a foreign national entry into France, provided in Article L. 213-2, is taken, except in cases of asylum applications, by the head of the customs or national police department tasked with border controls, or an official appointed by the latter, holding at least the rank of chief customs officer second class or police sergeant or, in Saint-Barthélemy, by the commanding officer of the national gendarmerie unit or a military officer appointed by the latter, holding at least the rank of gendarme.

In aerodromes assigned exclusively or principally for use by the Ministry of Defence, this decision may also be taken by the commanding officer of the naval gendarmerie unit or air gendarmerie unit or by a military officer appointed by the latter, holding at least the rank of gendarme."

30. CGLPL, report of the visit from 4 to 8 September 2017 of the Menton border police premises (Alpes-Maritimes) - 2<sup>nd</sup> visit, control of migrants on the Franco-Italian border, 5 June 2018, p. 46.

police<sup>31</sup>. What is more, the procedure should be conducted in a language that the foreign national understands<sup>32</sup>. When asked about this, the Menton Border Police explained that their officers always manage to find someone in their ranks who is able to communicate with the migrants in a language they understand. And yet the various convictions from Nice Administrative Court reveal the opposite<sup>33</sup>. Second, the CNCDH has found that the right to one clear day was not respected regarding migrants refused entry in Hautes-Alpes or Alpes-Maritimes. When asked about this, the Border Police explained that the provisions of the Schengen Borders Code do not apply to the authorised border crossing points as these are not along an external border<sup>34</sup>. And yet such interpretation runs counter to Article 32 of the Schengen Borders Code, which provides for the implementation of rules bearing on external border controls when border control at internal borders is reintroduced. In such a case, the authorised border crossing points must therefore be considered external borders, and the associated rules and guarantees applied – which includes the time-limit of one clear day. This is the conclusion reached by two Nice Administrative Court orders dated 22 January 2018 and 23 February 2018 incidentally, with the provisions of Article L. 213-2 of the CESEDA being applied to checks carried out at these border crossing points<sup>35</sup>.

In this regard, the amendment adopted<sup>36</sup> during the parliamentary debates on the asylum and immigration bill, providing for inapplicability of the right to one clear day for refusals of entry notified at the land border,<sup>37</sup> confirms that such guarantees should, however, apply in the present case.

**Recommendation no.1:** The CNCDH calls for the strictest compliance with the legal provisions. It draws attention to the intentionally narrow interpretations, or even misinterpretations at times, practised thereof, to the detriment of migrants. It particularly calls for a personal interview to be held, rights to be notified in a language that the foreign national can understand, an in-depth examination of the latter's situation and compliance with the right

31. The association Anafé claimed to have seen refusal of entry forms filled out by CRS officers on the bonnet of a car. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDH on 12 & 13 April 2018 – meeting between associations on 12 April 2018 (Anafé). According to the CGLPL's report, in practice the police are routinely entering refusal of entry decisions without reading or explaining them to the foreign nationals concerned - CGLPL, report of the visit from 4 to 8 September 2017 of the Menton border police premises (Alpes-Maritimes) – 2<sup>nd</sup> visit, control of migrants on the Franco-Italian border, 5 June 2018, pp 45-46.

32. According to the CGLPL's report, nearly 60 different nationalities have been recorded among the individuals checked – CGLPL, report of the visit from 4 to 8 September 2017 of the Menton border police premises (Alpes-Maritimes) – 2<sup>nd</sup> visit, control of migrants on the Franco-Italian border, 5 June 2018, p. 17.

33. Nice Administrative Court, 22 January 2018, no.1800195; Nice Administrative Court, 23 February 2018, no. 1800699.

34. At Montgenèvre Border Police, local officials claim to have seen pre-ticked refusal of entry forms - Report from Action Briançon dated 9 & 10 January 2018 written by Myriam Laidouni-Denis, EELV advisor "Visite surprise de la PAF poste frontière Montgenèvre". The Border Police sent a document to the CNCDH setting out the provisions which, in its view, do and do not apply on the border (see the appended form). In Menton, the Border Police gave the CNCDH a pre-ticked refusal of entry form (see the appended form).

35. Nice Administrative Court, 22 January 2018, no.1800195; Nice Administrative Court, 23 February 2018, no. 1800699.

36. Amendment no. CL 900 to the bill "for controlled immigration and an effective right of asylum".

37. Amendment also applicable in Mayotte.

to one clear day. The CNCDH upholds its disagreement with any new provision which, amid the adoption of the *legislation "for controlled immigration and an effective right of asylum"*, would further undermine the legal situation of migrants turning up at the border.

## 2. Improvised places of detention that do not respect fundamental rights

In the context of the refusal of entry procedure, foreign nationals stopped for questioning have to wait to be notified of a refusal of entry before being sent back to Italy. While their administrative situation is being checked, they wait in the Border Police premises designated for that purpose.

Although CNCDH can understand the pressures on border law enforcement and is aware of the Border Police's sometimes difficult working conditions, it gives a reminder that their duties should never be carried out in violation of human dignity and migrants' fundamental rights and freedoms. And it has been deeply shocked by the conditions in which these people are received in places of detention, outside any legal framework and where no rights can properly be exercised. In the premises of the Col de Montgenèvre Border Police, facilities appeared basic; while in Menton Pont-Saint-Louis, they appeared substandard.

The CNCDH stresses that such deprivation of liberty not sanctioned by the law, which can last a whole night in practice, is an infringement of the fundamental rights of the people being detained: on the one hand, of respect for human dignity, protected by Article 3 of the European Convention on Human Rights (ECHR), Article 1 of the *Charter of Fundamental Rights of the European Union* and Article 1 of the *Universal Declaration of Human Rights* (UDHR); on the other hand, of the right to security of person, enshrined particularly in Article 5-1 of the ECHR, Article 66 of the Constitution and Article 3 of the UDHR.

### a) Premises of the Col de Montgenèvre Border Police

The safe house accommodation at Col de Montgenèvre was installed on 27 November 2017 to avoid, according to the Border Police, sending migrants stopped for questioning at the end of the day or during the evening back to Italy at night. This is a prefabricated building located behind the Border Police's premises, with no source of running water, and a portable toilet cubicle outside (beneath a metre of snow during the CNCDH's visit). Inside, there are three school benches and a few blankets. The Border Police Chief explained that foreign nationals only spend a few hours there, perhaps a whole night, but that there were not sufficient funds for purchasing camp beds, which could have been damaged by occupants anyway. Detained migrants can keep their telephone on them. When asked about meals, the Border Police commanding officer replied that he used the supplies earmarked for people held in custody and that there was no designated budget. It was rare that more than 10 people were placed in these cramped quarters at any one time, and it was not possible

to separate men and women<sup>38</sup>. When asked about the status of these premises, the Border Police commanding officer maintained that it was not a place of detention as the migrants were free to return to Italy whenever they wanted. On that point, the CNCDDH should like to underscore European Court of Human Rights case law. For, in the judgment *Amuur v. France*, the French Government had argued, with respect to waiting areas, that they were not places of detention on the grounds that the foreign nationals concerned were free to return to their country of origin at any time. However, the European Court of Human Rights judged that it did, for all that, involve a restriction on liberty, and that it should therefore come with adequate guarantees<sup>39</sup>. Although the CNCDDH observed very basic reception conditions, it did note a commitment to receiving the migrants as correctly as possible.

### b) Premises of Menton-Garavan station

Regarding systematic stopping for questioning on the rail network between Ventimiglia and Menton, the Border Police explained that, exceptionally, when a large number of migrants are brought in for questioning, use may be made of the premises made available to the Border Police by the SNCF, located on the first floor of Menton-Garavan station<sup>40</sup>, pending their transfer to Menton Pont-Saint-Louis police station. Bars have been put up on the windows of the rooms intended to receive migrants. According to the Border Police, this is to prevent break-ins. But the CNCDDH found that only the rooms where migrants are taken have bars. Layout of the waiting room is extremely basic, with only a few chairs provided. Although the Border Police claim that these premises are only intended to be used pending the transfer of migrants brought in for questioning to Pont-Saint-Louis, associations and institutions have reported that, in actual fact, refusal of entry procedures have been carried out in them and that the migrants were then put directly back on the train to Ventimiglia<sup>41</sup>. When asked about the legal status of these premises, the Border Police replied that they were neither a waiting area nor police premises<sup>42</sup>. And yet, in the context of the COP21, in 2015 they had been given provisional waiting area status<sup>43</sup> from 30 November to 12 December 2015. Stripped of any legal status since then, these premises should have been closed, or at the very least had their status defined.

38. Mission carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018 – interview with Jean-Bernard Rouffignac – Montgenèvre Border Police commanding officer.

39. ECHR, *Amuur v. France*, application no. 19776/92, 25 June 1996.

40. This is the former apartment of the station manager.

41. Amnesty International, *Des contrôles aux confins du droit, violations des droits humains à la frontière avec l'Italie, Synthèse de mission d'observation*, February 2017; CGLPL, *report of the visit from 4 to 8 September 2017 of the Menton border police premises (Alpes-Maritimes) – 2<sup>nd</sup> visit, control of migrants on the Franco-Italian border*, 5 June 2018; Report from Action Briançon dated 9 & 10 January 2018 written by Myriam Laidouni-Denis, EELV advisor “Visite surprise de la PAF poste frontière Montgenèvre”.

42. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 – interview with Jean-Philippe Nahon, superintendent of the Alpes-Maritimes Central Directorate of the French border police and Cécile Bataille, police chief at the Alpes-Maritime Département-level Border Police Directorate.

43. Prefect of the Alpes-Maritimes département, order creating two temporary waiting areas in the Alpes-Maritimes département, Prefectural Order no. 2015-1036, 13 November 2015.

### c) Border Police premises at Menton Pont-Saint-Louis

Migrants stopped for questioning at the authorised border crossing point of Pont-Saint-Louis and on the train are taken to Menton Pont-Saint-Louis Border Police station. They are only supposed to stay there for as long as it takes to check their administrative situation and notify them of a refusal of entry. The CNCDDH was deeply shocked by the conditions in which migrants are held in these premises, where human dignity did not seem to be respected.

The waiting area located on the ground floor of the station provided very spartan reception conditions (benches, squat toilets with no locks). The Border Police explained that this room was reserved for children and women but the associations interviewed<sup>44</sup> explained that they had already received calls from girls who found themselves in this room with men. To cope with a growing influx of migrants, the Border Police built an extension on to this waiting room, outside the station, comprising three prefabricated units arranged in the yard, covered by wire netting. Two portable toilets have been installed in the yard. The prefabricated units have been reinforced by metal armoured walls and do not have any furniture (no chairs or mattresses) or electricity even – on the grounds that these units had been damaged by migrants. The Border Police explained that, in periods of large influxes, there might be as many as 40 people per prefabricated unit, which means that there could be up to a hundred people using this tiny yard at the same time. This extension is locked and placed under CCTV surveillance. Officially it is neither a place of deprivation of liberty nor detention, but the migrants are not free to leave voluntarily. The Border Police explained that migrants were not supposed to spend more than 4 hours there, but from the reports and observations of the officials who visited on 31 March 2018<sup>45</sup>, it becomes clear that some spend the night there, especially migrants stopped on trains at the end of the day, since the border with Italy is closed at night.

Although a Conseil d’Etat order gave the green light for these premises to stay open<sup>46</sup>, the CNCDDH is gravely concerned about the deprivation of liberty in this “improvised waiting area”. It should be noted that the Conseil d’Etat order was taken on an application for interim measures, based solely on the observations of the parties, with no on-site visit. The Conseil d’Etat did not rule on the details of the site and based its decision on the sole finding that migrants “have access to washing facilities and bottles of water to consider that there is no serious violation of a fundamental freedom”. It cannot be considered that an in-depth inspection of the conditions and period of deprivation of liberty was carried out or that the migrants benefit from the right to effective redress.

44. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 – meeting between associations on 12 April 2018 (Intersos and Terre des Hommes).

45. CGLPL, *report of the visit from 4 to 8 September 2017 of the Menton border police premises (Alpes-Maritimes) – 2<sup>nd</sup> visit, control of migrants on the Franco-Italian border*, 5 June 2018; Report from Action Briançon dated 9 & 10 January 2018 written by Myriam Laidouni-Denis, EELV advisor “Visite surprise de la PAF poste frontière Montgenèvre”.

46. Conseil d’Etat, application for interim measures, 5 July 2017, no. 411575.

**Recommendation no.2:** In light of the substandard conditions at the Border Police station of Menton Pont-Saint-Louis, the CNCDH urges the public authorities to close the three prefabricated units located in the yard of this station with immediate effect. It also asks that the places in which foreign nationals are held pending their return to Italy be defined in legal terms so that the applicable procedures and rights can be respected.

## B. border fraught with danger

It is well known that Italy is often simply a country of transit and that the reintroduction of internal border controls has made crossing this area particularly dangerous. In the Alpes-Maritimes département, a number of deaths have been reported and, according to AFP estimates, at least 16 migrants have died between September 2016 and January 2018 in this département, particularly along the railway lines connecting Italy to France<sup>47</sup>. In the Hautes-Alpes département, exiles' unfamiliarity with the mountain and lack of suitable equipment can put their lives in danger. In the Briançon area, associations<sup>48</sup>, mountain rescue teams and a number of outreach teams<sup>49</sup>, whose dedication the CNCDH commends, have encountered individuals arriving via the Col de l'Echelle or Col de Montgenèvre mountain passes in such a weak state and with personal injuries (serious frostbite in particular<sup>50</sup>) that they had to be taken immediately to Briançon Hospital. There have also been several deaths: on the date this opinion was adopted, three bodies had been found<sup>51</sup>.

47. Link to lefigaro.fr on 25 May 2018 [www.lefigaro.fr/flash-actu/2018/01/26/97001-20180126FILWWW00301-menton-un-migrant-s-echappe-du-poste-frontiere-et-se-blesse.php](http://www.lefigaro.fr/flash-actu/2018/01/26/97001-20180126FILWWW00301-menton-un-migrant-s-echappe-du-poste-frontiere-et-se-blesse.php)) note: in December 2017, one migrant was found dead on the side of the A8 motorway after falling, at Roquebrune-Cap-Martin <https://france3-regions.francetvinfo.fr/provence-alpes-cote-d-azur/alpes-maritimes/menton/roquebrune-cap-martin-migrant-retrouve-mort-au-bord-a8-apres-chute-1391603.html>; in January 2018, in Menton, one migrant was found dead after being electrocuted on the roof of a train, [www.sudouest.fr/2018/01/14/menton-le-corps-d-un-migrant-retrouve-sur-le-toit-d-un-train-4108806-6116.php](http://www.sudouest.fr/2018/01/14/menton-le-corps-d-un-migrant-retrouve-sur-le-toit-d-un-train-4108806-6116.php) ; in January 2018, one migrant who had escaped from the Menton border crossing point sustained serious injuries after a fall [www.lefigaro.fr/flash-actu/2018/01/26/97001-20180126FILWWW00301-menton-un-migrant-s-echappe-du-poste-frontiere-et-se-blesse.php](http://www.lefigaro.fr/flash-actu/2018/01/26/97001-20180126FILWWW00301-menton-un-migrant-s-echappe-du-poste-frontiere-et-se-blesse.php)

48. See, in particular, Tous Migrants, «L'accueil des exilés dans le Briançonnais», 19 March 2018.

49. Mission carried out in the Briançon area by the CNCDH on 19 & 20 March 2018 – meeting between associations on 19 March 2018.

50. La Croix, «Le Briançonnais secourt les migrants qui traversent le col enneigé de l'Echelle», 14 December 2017, [www.la-croix.com/France/Immigration/Le-Brianconnaiss-secourt-migrants-traversent-col-enneige-lEchelle-2017-12-14-1200899538](http://www.la-croix.com/France/Immigration/Le-Brianconnaiss-secourt-migrants-traversent-col-enneige-lEchelle-2017-12-14-1200899538) (link on 3 June 2018).

51. Maryline Baumard, aforementioned article, *Le Monde*, 8 June 2018. We could mention the death of a 31 year-old pregnant Nigerian woman, link to [lemonde.fr](http://lemonde.fr) on 25 May 2018: [www.lemonde.fr/societe/article/2018/03/25/polemique-autour-d-une-migrante-enceinte-et-malade-reconduite-a-la-frontiere\\_5276050\\_3224.html](http://www.lemonde.fr/societe/article/2018/03/25/polemique-autour-d-une-migrante-enceinte-et-malade-reconduite-a-la-frontiere_5276050_3224.html). A Nigerian woman drowns, link on 25 May 2018: [www.nouvelobs.com/faits-divers/20180515.OBS6693/hautes-alpes-la-jeune-femme-qui-s-est-noyee-etait-elle-poursuivie-par-la-police.html](http://www.nouvelobs.com/faits-divers/20180515.OBS6693/hautes-alpes-la-jeune-femme-qui-s-est-noyee-etait-elle-poursuivie-par-la-police.html)) Médiapart, Sur la route des Alpes (1/2): à Briançon, des montagnards solidaires des migrants, 2 November 2018, link on 28 May 2018: [www.mediapart.fr/journal/france/021117/sur-la-route-des-alpes-12-briancon-des-montagnards-solidaires-des-migrants?onglet=full](http://www.mediapart.fr/journal/france/021117/sur-la-route-des-alpes-12-briancon-des-montagnards-solidaires-des-migrants?onglet=full), D'ici, Hautes-Alpes: one migrant found dead along the Col de Montgenèvre, on the French side, 19 May 2018; *Le monde*, In the Alps, the melting snows reveal the bodies of migrants who died trying to reach France, link on 8 June 2018: [www.lemonde.fr/societe/article/2018/06/07/dans-les-alpes-la-fonte-des-neiges-revele-les-corps-de-migrants-morts-en-tendant-de-passer-en-france\\_5310861\\_3224.html](http://www.lemonde.fr/societe/article/2018/06/07/dans-les-alpes-la-fonte-des-neiges-revele-les-corps-de-migrants-morts-en-tendant-de-passer-en-france_5310861_3224.html)

And yet France seems inured to the dangers and suffering engendered by its policy. The CNCDH is aggrieved by this refusal to hear, see and deal with these exile situations that sometimes prove deadly<sup>52</sup>. It emphasises that no policy can justify placing humans in such danger of death and extreme suffering.

**Recommendation no. 3:** The CNCDH calls on the French State to review its border control policy so that it does not endanger the lives of migrants.

52. <https://missingmigrants.iom.int/> ; <http://migration.iom.int/europe/> ; <https://www.iom.int/fr/news/arrivees-de-migrants-en-europe-par-la-mediterranee-en-2018-25-338-deces-en-mer-628>

## Part II

### Access to international protection on asylum grounds

A majority of the people crossing the Franco-Italian border are looking for protection on asylum grounds. And yet the CNCDDH has found that access to asylum applications, whether at the border or on the territory, can be extremely difficult, if not impossible. The CNCDDH underscores the fact that in no way does reintroduction of border control authorise France to derogate from its asylum obligations.

#### A. Applying for asylum at the border

##### 1. On information about the right to apply for asylum

When questioned by the CNCDDH, the Border Police and the authorities<sup>53</sup> maintained that no asylum applications had been submitted at the border<sup>54</sup> which, in light not only of the nationality of the people stopped for questioning but also of the rise in number of asylum applications recorded nationwide, can only beg the question as to why. Such a claim is also at odds with the reports published by associations<sup>55</sup> on access to asylum applications at the border and the convictions of the Prefect of Alpes-Maritimes by the Nice Administrative Court for violation of the right to asylum<sup>56</sup>.

It should be noted that people stopped for questioning on the border are not given any information about the possibility of claiming asylum. For Border Police officials highlight

53. Missions carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 and in the Briançon area by the CNCDDH on 19 & 20 March 2018 – interviews with Jean-Philippe Nahon, superintendent of the Central Directorate of the French border police and Jean-Bernard Rouffignac, commanding police officer, Central Directorate of the French border police.

54. Missions carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 and in the Briançon area by the CNCDDH on 19 & 20 March 2018 – interviews with Jean-Philippe Nahon, superintendent of the Central Directorate of the French border police, Jean-Bernard Rouffignac, police commanding officer, Central Directorate of the French border police, and Jean-Gabriel Delacroy, Deputy Prefect, Chief of Staff of the Prefect of Alpes-Maritimes.

55. Forum réfugiés-Cosi, “Les obstacles à l'accès à la procédure d'asile dans le département des Alpes-Maritimes pour les étrangers en provenance d'Italie. Constats et recommandations”, April 2017; Amnesty International, “Des contrôles aux confins du droit. Violations des droits humains à la frontière avec l'Italie. Synthèse de mission d'observation”, February 2017; Anafé, “Note d'analyse. Rétablissement des contrôles aux frontières internes et état d'urgence. Conséquences en zone d'attente”, May 2017; “Alertons sur les pratiques étatiques vis-à-vis des migrants à la frontière franco-italienne”, 19 October 2017; Missions carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 and in the Briançon area by the CNCDDH on 19 & 20 March 2018 – meetings between associations.

56. Nice Administrative Court, app. for interim measures, 2 May 2018, no. 1801843; Nice Administrative Court, 4 September 2017; Nice Administrative Court, app. for interim measures, 31 March 2017, no. 1701211.

the provisions of the Schengen Borders Code<sup>57</sup>, and French law<sup>58</sup>, without informing foreign nationals of their right to claim asylum. And yet Article 8 of Directive 2013/32/EU, known as the “Asylum Procedures Directive”, headed “*Information and counselling in detention facilities and at border crossing points*”, provides that “*Where there are indications that third-country nationals or stateless persons (...) present at border crossing points (...) may wish to make an application for international protection, Member States shall provide them with information on the possibility to do so*”. The situation at the Franco-Italian border thus justifies that these provisions be duly implemented, which is not the case at present.

Contrary to what many Border Police officials think, foreign nationals are not familiar with asylum application procedures – and may not even be aware of such a principle where some are concerned. The CNCDDH gives a reminder that information for their attention is therefore particularly necessary. The interview conducted by Border Police officials in view of notifying a refusal of entry decision should not only be personal and in-depth, and include clear questions on the reasons for the person's departure from the country, but also bear on any protection needs, whether on the grounds of asylum or trafficking in human beings<sup>59</sup>.

**Recommendation no.4:** The CNCDDH recommends that migrants be systematically and effectively informed of their right to apply for asylum in France.

##### 2. On training for Border Police officials

Directive 2013/32/EU<sup>60</sup> gives a reminder in its Recital 38 that “*Many applications for*

57. Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code).

58. Although several articles of the French Code for Entry and Residence of Foreigners and Right of Asylum (CESEDA) describe the asylum application procedure at the border, no provisions make it a requirement to expressly inform foreign nationals of such a right.

59. In practice the police are routinely entering refusal of entry decisions without reading or explaining them to the foreign nationals concerned - CGLPL, report of the visit from 4 to 8 September 2017 of the Menton border police premises (Alpes-Maritimes) – 2<sup>nd</sup> visit, control of migrants on the Franco-Italian border, 5 June 2018, pp 45-46.; report from the unannounced visit in Menton to Garavan station and the Border Police premises on Saturday 31 March 2018 by Myriam Laïdouni-Denis and André Rebelo.

60. Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast).

Recital 26: “*With a view to ensuring effective access to the examination procedure, officials who first come into contact with persons seeking international protection, in particular officials carrying out the surveillance of land or maritime borders or conducting border checks, should receive relevant information and necessary training on how to recognise and deal with applications for international protection, inter alia, taking due account of relevant guidelines developed by EASO. They should be able to provide third-country nationals or stateless persons who are present in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and who make an application for international protection, with relevant information as to where and how applications for international protection may be lodged [...]*”.

Article 6: “*Member States shall ensure that those other authorities which are likely to receive applications for international protection such as the police, border guards, immigration authorities and personnel of detention facilities have the relevant information and that their personnel receive the necessary level of training which is appropriate to their tasks and responsibilities and instructions to inform applicants as to where and how*

international protection are made at the border or in a transit zone of a Member State prior to a decision on the entry of the applicant. Member States should be able to provide for admissibility and/or substantive examination procedures which would make it possible for such applications to be decided upon at those locations in well-defined circumstances". Moreover, Recital 26 and Article 6 of said Directive expressly provide that officials coming into contact with persons seeking international protection must be specifically trained. And yet, in the Hautes-Alpes and Alpes-Maritimes départements alike, the CNCDDH has found that Border Police officials lack training on asylum-related issues (information about such a right and its implementation, application of the Dublin Regulation, etc.).

More specifically regarding application of the Dublin Regulation, Border Police officials have told the CNCDDH that people crossing the border are unable to claim asylum in France pursuant to the Dublin Regulation.<sup>61</sup> This claim is unfounded. For, although the country of first entry on European territory is a criterion for the application of the Regulation, others must also be taken into account (including presence of family members, age or country where a visa was issued). Furthermore, the Regulation provides that Member States may decide to examine an asylum application, even if such examination is not their responsibility under the criteria laid down<sup>62</sup>. Incidentally, the Dublin Regulation requires Member States to examine all asylum applications, including those submitted at the border, even if they consider these applications to come under the Dublin Procedure<sup>63</sup>. Such a transfer decision must, moreover, be open to effective remedy<sup>64</sup>. As such, and in any case, where asylum applications are made, the CNCDDH points out that the claimants should be taken to a waiting area so that their application for protection can be duly examined. The fact that Border Police officials have not been trained in this matter is likely to undermine the right to asylum.

**Recommendation no.5:** The CNCDDH recommends more specific training for Border Police officials on asylum-related issues and the setup of objective procedures to monitor the compliance of these officials' conduct with the regulations in this area.

## B. Applying for asylum on the territory

The CNCDDH has found that access to international protection was also difficult once on the territory, even though the situation differs between the two border zones visited and

*applications for international protection may be lodged*".

61. Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013, known as the Dublin Regulation, establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

62. Article 17 of the Dublin Regulation.

63. Article 3 of the Regulation: Access to the procedure for examining an application for international protection  
1. Member States shall examine any application for international protection by a third-country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zones. The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III indicate is responsible.

64. Article 18 of the *Dublin Regulation* and Article L. 742-4 of the CESEDA.

despite reception efforts at the Nice one-stop service for asylum seekers<sup>65</sup>. Indeed, although, in a similar manner, the authorities claimed to the CNCDDH that foreign nationals did not wish or were not eligible to apply for asylum<sup>66</sup>, the Commission's findings show that the reality is not so black and white.

In the Hautes-Alpes département, officially, asylum seekers need to go to the Nice asylum intake unit (PADA) to submit an application.<sup>67</sup> But in practice, they are sent to Marseille<sup>68</sup> or sometimes to the city of Grenoble, which is nearer than Marseille. These destinations are difficult to get to for people coming from Hautes-Alpes. In the Briançon area, although the first asylum seekers who arrived in 2017 were able to benefit from long-term accommodation with volunteers<sup>69</sup>, particularly in the village of Névache and in Briançon, the surge in the number of arrivals has since made it impossible to accommodate all asylum seekers. This is one of the reasons why many claimants swiftly leave the département of first arrival. In Breil-sur-Roya, following convictions of the Alpes-Maritimes Prefecture by the Nice Administrative Court,<sup>70</sup> an informal agreement was put in place, in April 2017, between Cédric Herrou and the gendarmerie to enable migrants staying with him to apply for asylum without being brought in for questioning and returned directly to Italy. Cédric Herrou hands the gendarmerie the list of migrants who will be taken to Breil-sur-Roya station to catch a train to Nice Prefecture. However, despite the terms of this arrangement, the CNCDDH has been informed of several measures preventing access to Cédric Herrou's home, in order to stop asylum seekers from accessing the procedure<sup>71</sup>. The CNCDDH condemns this manifest violation of the right to

65. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 – visit to the Nice one-stop service for asylum seekers on 13 April 2018: the CNCDDH noted a correctly organised system so as to facilitate the management of asylum application registrations.

66. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 – interview with Jean-Philippe Nahon, superintendent of the Alpes-Maritimes Central Directorate of the French border police, Elizabeth Barka, Director of Integration and Migration Regulations, Cécile Bataille, police chief at the Alpes-Maritime Département-level Border Police Directorate, Jean-Gabriel Delacroy, Deputy Prefect, Chief of Staff of the Prefect of Alpes-Maritimes, Pierre Mathieu, Deputy Head of the Specialised Examination Bureau, Stéphane Reverre-Guepratte, Deputy Département-level Director for Social Cohesion and Eric Rose, Territorial Director of the French Office for Immigration and Integration (OFII). Mission carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018 – interview with Cécile Bigot-Dekeyzer, Prefect of Hautes-Alpes.

67. The Nice Prefecture is competent for asylum seekers located in Alpes-Maritimes, Alpes-de-Haute-Provence, Hautes-Alpes and the Var, link on 15 June 2018: <http://accueil-et-rangers.gouv.fr/demande-d-asile/vous-souhaitez-deposer-une-demande/article/lieu-du-depot-de-votre-demande>.

68. Mission carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018 – meeting between associations.

69. Mission carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018 – meeting between associations on 19 March 2018 (Diocese and Action in Gap, Médecins du monde, Cellule médicale du Refuge, Secours catholique, Refuges solidaires).

70. In 2017, the Alpes-Maritimes Prefect was charged with two counts of violating the right to asylum. On 31 March 2017, the judge hearing the application for interim measures at the Nice Administrative Court charged the Alpes-Maritimes Prefect with violating the right to asylum, with regard to several Eritrean asylum seekers who turned up at a gendarmerie to claim asylum. The gendarmes had referred them to the Border Police, who notified them of a refusal of entry on to French soil and returned them to Italy (Nice Administrative Court, application for interim measures, 31 March 2017, no.1701211).

71. On 4 September 2017, the judge hearing the application for interim measures again charged the Alpes-Maritimes Prefect with violating the right to asylum. The case concerned three men given shelter by a member of the association Roya citoyenne. In August, the gendarmerie and Prefecture had been informed that these three men were heading to Nice to submit their asylum application in the asylum intake unit (PADA), as agreed

asylum. Similarly, the widespread police checks and practice of deporting migrants already on the territory also act as a deterrent.

Moreover, pursuant to an order of the Minister of the Interior dated 20 December 2017, asylum seekers registered in both the Alpes-Maritimes and Hautes-Alpes départements must now go to Bouches-du-Rhône as soon as they come under a Dublin procedure<sup>72</sup>. Asylum seekers are obliged to travel considerable distances to comply with their obligations, despite their particularly vulnerable circumstances. The Nice Administrative Court furthermore urged the Prefect to provide transport tickets to migrants placed under a Dublin procedure<sup>73</sup>.

**Recommendation no.6:** The CNCDDH recommends guaranteeing and facilitating access to asylum application procedures in the Alpes-Maritimes and Hautes-Alpes départements. It particularly recommends opening an asylum intake unit (PADA) in the Hautes-Alpes département.

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between the gendarmerie and the association. They were arrested at Breil-sur-Roya station and taken to Menton Border Police before being deported. The judge hearing the application for interim measures concluded that “the authorities [were guilty of] a serious and manifestly unlawful violation of the fundamental freedom that the right to asylum represents” and urged the Prefecture to register their asylum application within three days (Nice Administrative Court, 4 September 2017).

72. Order of 20 December 2017 on experimentation of the regional roll-out of the procedure for determining the State responsible for examining the asylum application in the Provence-Alpes-Côte d’Azur Region.

73. The judge hearing the application for interim measures at the Nice Administrative Court nevertheless considered, in an order dated 11 April 2018 (no.1801468), that it was for the competent prefecture to pay for journeys to attend summons. The Court particularly held that “The asylum seeker’s allowance (ADA) [...] is not therefore meant to cover costs associated with the proper conduct of the administrative asylum application examination procedure, such as, for example, purchasing train tickets to allow a foreign national to travel from Nice to Marseille, a journey which has become unavoidable since the signature of the order of 20 December 2017 on experimentation of the regional roll-out of the procedure for determining the State responsible for examining the asylum application in the Provence-Alpes-Côte d’Azur Region, which provides that the regional prefect, the Bouches-du-Rhône Prefect, is now competent for renewing an asylum application registered by the Alpes-Maritimes Prefect pursuant to the order of 20 October 2015 (INTV1523803A)”. The Prefecture now issues transport tickets to the foreign nationals concerned.

## Part III Non-reception as a policy assumed by the authorities

The CNCDDH has found that migrants arriving in France are not given a satisfactory reception<sup>74</sup>. For, whether in terms of accessing accommodation, medical care or their rights, foreign nationals are in a particularly vulnerable situation. Thanks to the solidarity of associations and citizens, to the alarm bells sounded by some media sources and to the behaviour of some elected officials, emergency reception can be provided. The CNCDDH was deeply shocked by claims that associations helping to receive migrants are allegedly “opening the floodgates” to more arrivals<sup>75</sup>; some are even being stigmatised under the pretext that they are getting too “involved” or are simply “activists”, which can even lead to legal proceedings.

### A. On the shortage of accommodation places

Much like the situation across the rest of France, emergency housing capacities fall well short of requirements, the result being that the reception afforded foreign nationals arriving on French soil is woefully inadequate. And yet they should benefit from the unconditional right to emergency housing, pursuant to Article L. 345-2-2 of the Social Action and Family Code.

Moreover, as is often the case at national level, the CNCDDH has found that many foreign nationals are not offered any accommodation<sup>76</sup> even when they are duly registered as asylum seekers and therefore eligible to an accommodation place<sup>77</sup>.

In the Briançon area, the CNCDDH was informed that approximately 150 inhabitants had provided shelter for at least one person since migrants had started arriving in the region<sup>78</sup>. In addition, a shelter, called the “Refuge”, has been made available by the Community of municipalities following the individual initiative of citizens grouped together in an association called “Refuge solidaire”<sup>79</sup>. This site can accommodate migrants for a few days

74. The situation regarding young people is examined in a separate section of this opinion.

75. Mission carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018 – interview with Cécile Bigot-Dekeyser, Prefect of Hautes-Alpes.

76. Although there are 496 initial accommodation centre (CADA) places in Alpes-Maritimes and 175 in Haute-Alpes, this is insufficient to house all of the claimants in these départements, link on 7 June 2018: [www.lacimade.org/schemas-regionaux-daccueil-des-demandeurs-dasile-quel-etat-des-lieux/](http://www.lacimade.org/schemas-regionaux-daccueil-des-demandeurs-dasile-quel-etat-des-lieux/)

77. Articles L. 744-1 et seq. of the CESEDA.

78. Mission carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018 – meeting between associations.

79. According to the “Refuge” report, “utilities, electricity and water are paid for by the association and fuel by

and cater to their basic needs: food, lodging and clothing, health monitoring and information about their next steps<sup>80</sup>. They regret that no other public aid, other than the shelter, is forthcoming<sup>81</sup>. The Briançon MJC provides volunteers with support. Two networks, Welcome and Hospitalité<sup>82</sup>, were set up in the region in 2016<sup>83</sup>. In Gap, for example, accommodation places have been created thanks to a squat that has been converted into the “Cézanne” shelter for housing families, and the parish has made a presbytery available for providing young people with emergency housing<sup>84</sup>.

In the Alpes-Maritimes département, the emergency shelter service<sup>85</sup> provided by the 115 hotline, which is grappling with an unprecedented crisis, is coming under increasing strain. Some programmes, such as the Welcome 06 network, are helping to relieve this pressure<sup>86</sup>. The CNCDDH is concerned about the impact of this emergency housing scheme being stretched to capacity. With not enough places in Nice, some migrants are being housed a long way from the city for example,<sup>87</sup> distancing them from the associations and places where the administrative procedures have to be carried out. The associations voice their concerns over the lack of continuity concerning accommodation<sup>88</sup>. Some migrants find themselves in highly stressful situations and sometimes leave the accommodation places very suddenly when their reception comes to an end.

With the schemes stretched to capacity, the vulnerability criteria end up having to be re-considered, which is unacceptable when it most certainly is not the responsibility of associations to determine the degree of vulnerability of the people taken into care<sup>89</sup>. Yet the

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the municipality of Briançon”. The association also pays for the Internet connection. Furniture and bedding are donated. Report of the association “Refuge solidaire”, 28 July to 20 October 2017.

80. Mission carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018 – meeting between associations. Between 28 July 2017 and 28 February 2018, 2,760 people were received there, 1,403 of whom were declared to be children. On average, 200 meals are distributed every day, especially with the help of Secours catholique, which means that around 20,000 meals were distributed between June and December 2017. In the winter of 2018, eight volunteers helped out at the “Refuge” between the hours of 7am and 10pm every day.

81. Although the volunteers did concede to the CNCDDH that no request for public funding had been submitted for want of time - Mission carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018 – meeting between associations.

82. The Welcome programme offers hospitality and free, temporary housing within a network of families and religious congregations, for asylum seekers whose applications are currently being processed but who are not housed through the national reception system, link on 5 June 2018: [www.jrsfrance.org/jrs-welcome-refugie/](http://www.jrsfrance.org/jrs-welcome-refugie/)

83. In this regard, some thirty families, assisted by a few families outside the network, have accommodated twenty or so migrants according to the Département-level Directorate for Social Cohesion.

84. Mission carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018 – meeting between associations. This has provided around 1,600 overnight stays and meals ensured by volunteers.

85. 70% of places available through the 115 emergency shelter hotline are occupied by asylum seekers according to the associations.

86. On 13 April 2018, the programme, which places asylum seekers in families, was accommodating 14 asylum seekers.

87. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 – meeting between associations on 13 April 2018 (Habitat et citoyenneté).

88. Secours catholique has two day shelters in Nice, one for over 30 year olds and one for under 30 year olds.

89. The associations find themselves facing an impossible dilemma: is a woman who is eight months pregnant more vulnerable than a mother of two with breast cancer? - at the southern part of the border (Menton-

State asks the associations submitting requests for accommodation places to specify the degree of vulnerability of the people concerned.

**Recommendation no.7:** The CNCDDH calls on the State to guarantee safe house accommodation at the border for migrants to enable them to rest for a few days. Such accommodation should not be subject to examination of the migrants’ administrative situation<sup>90</sup>.

## B. On access to healthcare

To begin with, the CNCDDH would like to stress the importance of safeguarding the right to health for the most deprived populations. This fundamental right has been reiterated in several recent CNCDDH opinions, which underscore both access to healthcare and the importance of prevention<sup>91</sup>.

The associations and volunteers met with all made the point that the migrants on the Franco-Italian border have an urgent need for medical care and counselling. A good many of them suffer from not only physical but also mental health problems because of what they may have endured in the country of origin, during their migration journey or when crossing the border<sup>92</sup>. Moreover, the reception conditions and difficulties determining their entitlement to healthcare take a further toll on their health and can trigger the onset of certain disorders like scabies.

Whilst the CNCDDH commends the dedication of the associations and volunteers in this respect, it issues the State with an urgent reminder that it must fulfil its obligations and that it is not the place of civil society to stand in for the ordinary health service, even if this is commonly the case in this particular area.

In the Hautes-Alpes département, the associations explained to the CNCDDH that some fifty people were mobilised within the medical unit over the 2017-2018 winter and that this mainly relied on donations (medicines, medical equipment, etc.). In the Briançon “Refuge

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Ventimiglia) by the CNCDDH on 12 & 13 April 2018 – meeting between associations on 13 April 2018 (Médecins du monde).

90. In Ventimiglia for example, one reception centre was opened but its entrance manned by police who took the fingerprints of the migrants given accommodation. This led to the centre being shut down - Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 – meeting between associations on 12 April 2018 (Caritas).

91. CNCDDH, *Avis sur le respect des droits fondamentaux des populations vivant en bidonville*, adopted on 20 November 2014, JORF no. 0034 of 10 February 2015, text no. 92, Paras 45-52; CNCDDH, *Avis sur la situation des migrants à Calais et dans le Calaisis*, adopted on 2 July 2015, JORF no. 0157 of 9 July 2015, text no. 102, Paras 14-16.

92. In the Briançon area, the suffering observed includes frostbite in 26% of cases, infections in 40% of cases and trauma in 30% of cases - Mission carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018 – meeting between associations on 19 March 2018.

solidaire” shelter, one room was set aside for medical check-ups to ensure that, during the interview that is supposed to be held on the arrival of each newcomer, the latter’s health is systematically examined<sup>93</sup>. In February 2018, following the initiative of Médecins du Monde, an agreement was signed between the Regional Health Agency (ARS), Briançon public hospital and the Refuge solidaire, particularly to enable medicines to be distributed or the sheets used at the shelter to be washed<sup>94</sup>. Migrants may also be referred to the healthcare access centre for disadvantaged people (PASS) if necessary. Accordingly, during the CNCDDH’s visit, more than 400 people received care under this arrangement during the winter of 2017-2018. The CNCDDH commends the laudable cooperation between Briançon hospital, associations and volunteers<sup>95</sup>.

Despite the exceptional medical cover provided in the Alpes-Maritimes département, the healthcare access centres for disadvantaged people (PASS) are woefully under-equipped and overburdened<sup>96</sup>. Owing to the increasing numbers of people requiring medical care, the selection criteria for accessing such care are becoming ever more drastic, in the same way as the criteria determining access to safe house accommodation. The CNCDDH emphasises that access to healthcare is a right for all migrants.

Regarding mental health problems, even psychiatric disorders in some cases, the CNCDDH has received reports that access to healthcare was particularly problematic, when such problems usually require long-term care that is not always compatible with the conditions and period of migrants’ stay in the region. More broadly, the various interviews laid bare a shortage of specialists for tending to such needs<sup>97</sup>.

**Recommendation no.8:** In order to enable appropriate and comprehensive care delivery for all migrants, adults and children alike, in need, the CNCDDH recommends scaling up the human and material resources allocated to healthcare access centres for disadvantaged people (PASS). It also recommends setting up a scheme for providing care for mental health problems with assistance from interpreters or cultural mediators as well as specific training for health workers in this type of care.

93. Report of the association “Refuge solidaire”, 28 July to 20 October 2017: “depending on each situation, the person is either taken to the hospital A&E department, or meets with the medical unit volunteer if a check-up takes place in the daytime”.

94. Clothing, which may also be contaminated by scabies, continues to be washed by the volunteers. Medicines were previously obtained through donations.

95. Mission carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018 – meeting between associations on 19 March 2018.

96. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 – meeting between associations on 13 April 2018 (Habitat et Citoyenneté, Médecins du monde).

97. Mission carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018 – meeting between associations on 19 March 2018 and interview with France terre d’asile on 20 March 2018.

## C. On access to legal information and advice in local areas

The CNCDDH underscores the fact that migrants need to know and understand their rights in order to be able to exercise them where applicable. This is all the more necessary given the increasing complexity of law concerning foreign nationals, which the CNCDDH has repeatedly criticised<sup>98</sup>. In practice, access to conventional legal information centres is a challenge since migrants are unaware of them and because of the language barrier where some are concerned.

In light of this situation, the CNCDDH once again praises the efforts of associations to overcome such problems and inform migrants of their rights. In Gap, in the Hautes-Alpes département, the association France terre d’asile, which runs an initial accommodation centre (CADA), holds information sessions for people who are not accommodated in its CADA, even though this does not form part of its remit<sup>99</sup>. In Briançon, for people housed in the “Refuge solidaire” shelter, the service MAPEmonde<sup>100</sup> attached to the Briançon MJC provides collective information for migrants about their rights, especially the asylum application procedure<sup>101</sup>. The CNCDDH is concerned about the drastic cut in State funding to this legal information and advice centre for foreign nationals since 2003, where two members of staff are already being laid off. In the Alpes-Maritimes département, associations<sup>102</sup> are trying as best they can to provide legal assistance, when this does not even form part of their remit<sup>103</sup>.

**Recommendation no.9:** The CNCDDH recommends lending adequate and sustainable support to associations that inform and assist migrants in accessing legal advice.

98. In this regard, see its most recent opinions: CNCDDH, *Avis sur le projet de loi “pour une immigration maîtrisée et un droit d’asile effectif”* as adopted by the Council of Ministers on 21 February 2018, adopted on 2 May 2018, JORF no. 0105 of 6 May 2018, no. 28, *Letter from the Chair on the bill “for controlled immigration and an effective right of asylum”* dated 27 March 2018, link on 2 May 2018: [www.cncddh.fr/fr/publications/lettre-de-la-presidente-sur-le-projet-de-loi-pour-une-immigration-maitrisee-et-un-droit](http://www.cncddh.fr/fr/publications/lettre-de-la-presidente-sur-le-projet-de-loi-pour-une-immigration-maitrisee-et-un-droit), CNCDDH, *Avis sur le concept de pays tiers sûrs*, adopted on 19 December 2017, JORF no. 0299 of 23 December 2017, text no. 120; CNCDDH, *Avis sur la réforme du droit des étrangers*, adopted on 21 May 2015, JORF no. 0159 of 11 July 2015, text no. 94; CNCDDH, *Avis sur le projet de loi relatif à la réforme de l’asile*, adopted on 20 November 2014, JORF no. 0005 of 7 January 2015, text no. 57, CNCDDH, *Avis sur le régime d’asile européen commun*, adopted on 28 November 2013, JORF no. 0287 of 11 December 2013, text no. 82.

99. Mission carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018 – interview with France terre d’asile on 20 March 2018.

100. The association MAPEmonde is part of the MJC-Centre social du Briançonnais. This is a “resource centre for foreign nationals, professionals and local communities on housing foreign nationals, helping them to access legal information and advice and to settle into the département and to ensure they are recognised there”. There are five walk-in centres in the Hautes-Alpes département. Some 400 people were assisted in 2017, <http://mjc-cs-brianconnais.org/spip.php?article63>.

101. Report of the association “Refuge solidaire”, 28 July to 20 October 2017.

102. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 – meeting between associations.

103. Visit of the Nice immigration detention centre on 13 April 2018 – interview with Forum réfugiés-Cosi on 9 June 2018. Also on the subject of problems accessing legal information, the CNCDDH’s attention has been drawn to the rise in placements in immigration detention centres since 2015, which is making working conditions more difficult. Staff sometimes have to deal with situations for which they have not been trained.

To conclude, the CNCDDH bemoans the State's failure to act in providing migrants who have just crossed the border with a dignified reception; this is left solely up to the goodwill of citizens, sometimes against the State's wishes even. For allowing a period of rest, under humanly bearable conditions, combined with adequate information and appropriate support, is of the utmost importance to enable people traumatised by their experience to think about their next steps on their migratory journey, perhaps involving applying for asylum in France.

The CNCDDH would also like to highlight that the presence of these migrants in these areas does not pose a threat to public policy; this point has been said time and again during the interviews conducted, including with the State representatives and elected officials. The CNCDDH reached the same conclusion in the opinion it issued on the situation of migrants in Grande-Synthe<sup>104</sup>. This is the very clear confirmation, on the ground, of the findings of academic research according to which there is no correlation between crime rates and the presence of a high proportion of foreign nationals<sup>105</sup>.

During its missions, the CNCDDH has regrettably found there to be a blatant lack of communication and coordination between the associations and public authorities – with tensions running high between them at times even. This finding is all the more troubling since it further undermines the situation in which migrants find themselves. The CNCDDH would like to commend the hard work and dedication of the associations and individual citizens who help migrants along the Franco-Italian border. The wealth and diversity of initiatives are testament to strong grassroots-based advocacy, under difficult conditions, amid inadequate resources, pressure, intimidation and even restrictions imposed by the public authorities.

**Recommendation no.10:** The CNCDDH recommends that efforts on the part of the State, the competent local authorities and associations be coordinated more effectively in a bid to meet the basic needs of migrants on the Franco-Italian border and to find long-term solutions.

104. CNCDDH, *Avis sur la situation des migrants (1) à Grande-Synthe*, JORF no. 1 of 7 June 2016, text no. 46.

105. C. Adam, J.-F. Cauchie, M.-S. Devresse, F. Digneffe, D. Kaminski, *Crime, justice et lieux communs. Une introduction à la criminologie*, Larcier 2014, pp. 103-115; B. Bell, S. Machin and F. Fasani, "Crime and Immigration: Evidence from Large Immigrant Waves", IZA Discussions Papers no. 4996, June 2010; D. Bigo, "Sécurité et immigration: vers une gouvernabilité par l'inquiétude?", *Cultures & Conflits* no. 31-32 (1998), Para. 4; F. Brion (ed.), *Mon délit? Mon origine: criminalité et criminalisation de l'immigration (politique & histoire)*, De Boeck 2000; La Cimade, *Rapport d'observation. Etrangers en prison. A l'ombre du droit. Analyses et propositions pour mettre fin aux discriminations*, 2012, pp. 5-7; L. Mucchielli (ed.), "Délinquance et immigration: le sociologue face au sens commun", *Revue Hommes et migrations* no. 1241, January-February 2003 (updated on: 05/03/2008, <http://www.hommes-et-migrations.fr/index.php?/numeros/incrimines-discrimines/1618-Delinquance-et-immigration-le-sociologue-face-au-sens-commun>); L. Mucchielli, "Immigration et délinquance: réalités, amalgames et racismes", in: GISTI (ed.), *Immigration: un régime pénal d'exception*, Paris 2012; L. Mucchielli, "Délinquance et immigration: des préjugés à l'analyse", *L'Essor* no. 457, May 2013, pp. 16-17; E. Savona, *Migration and crime*, University of Trente 1997; C. Wihtol de Wenden, *La question migratoire au XXIème siècle*, op. cit., pp. 64-75.

## Part IV Solidarity: a crime or a duty?

The CNCDDH has been informed of a spate of intimidations, threats, arrests, legal proceedings and even convictions towards all those who, out of human generosity and expecting nothing in return, help migrants. It has also observed alarming parallels being drawn between facilitators showing solidarity and smugglers by State representatives, who accuse volunteers and associations if not of encouraging arrivals on French soil via the organisation of reception for migrants, then at the very least of acting as smugglers.

The CNCDDH can only express its deep shock at such words aimed at discrediting solidarity proponents, who speak out against smuggling incidentally. Accordingly, in the Briançon area, "outreach teams" who assist migrants lost in the mountainside have shared with the CNCDDH their joint wish not to be compared to smugglers' networks<sup>106</sup>. In a press release published on 4 December 2017, the associations Tous Migrants and Refuge solidaire also made a point of "denouncing any comparison between [their] respective efforts and the practices of 'smugglers' who exploit human distress for personal gain by offering or demanding a sum of money in return for the hazardous and perilous 'promise' of a crossing over the Franco-Italian border"<sup>107</sup>. On the ground, during its visit to the "Refuge" shelter, the CNCDDH saw that posters had been put up on the walls to inform migrants about the dishonest practices of smugglers and that the volunteers in Briançon were not working with them<sup>108</sup>. South of the Italian border, both French and Italian associations and volunteers warn migrants of the risks of agreeing to smugglers' proposals and the danger of certain routes<sup>109</sup>.

Pursuant to Article L. 622-1 of the CESEDA<sup>110</sup>, the crime of facilitating unauthorised entry, movement or residence of a foreign national<sup>111</sup> is punished. Exemptions on family and humanitarian grounds, applicable solely to assistance with residence, are stipulated in Article L. 622-4 of the CESEDA<sup>112</sup>. However, a twofold condition must be met to benefit from such an exemption: no "direct or indirect" compensation must be received and assistance must be restricted to the areas stipulated by the law. This overly restrictive condition incurs risks of unjustified legal proceedings and convictions<sup>113</sup>.

106. Mission carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018 – meeting between associations on 19 March 2018 (Tous migrants).

107. Tous Migrants, Press release: "Positionnement de Tous Migrants et du Collectif Refuge Solidaire au sujet des passeurs", 4 December 2017.

108. See the photo of the poster in the appendix.

109. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 – meeting between associations.

110. See appendix.

111. Articles L. 622-1 to L. 622-4 of the CESEDA.

112. See appendix.

113. Christine Lazerges, *Le délit de solidarité, une atteinte aux valeurs de la République RSC* – January – March 2018 p. 267; Danièle Lochak 2017. "La solidarité, un délit?". *Revue Projet*, 358(3): 56-62.

Strongly criticised by the CNCDH, which is calling for it to be repealed<sup>114</sup>, making a crime of showing solidarity runs counter to France's European and international obligations. The restrictions of Article L. 622-4 of the CESEDA run counter to European Directive 2002/90/EC of 28 November 2002, which provides for appropriate sanctions on any person who, solely for financial gain, intentionally facilitates residence<sup>115</sup>. These restrictions also run counter to Resolution 2059 of the Parliamentary Assembly of the Council of Europe, which underlines “*the need to end the threat of prosecution on charges of aiding and abetting irregular migration of people who rescue migrants*”<sup>116</sup>. This article runs counter to the recommendations of the European Commission against Racism and Intolerance (ECRI),<sup>117</sup> which recommends that the Governments of Member States “ensure that the provision of social and humanitarian assistance to irregularly present migrants in all areas of public and private services is not criminalised”. The “crime of solidarity” is also in breach of Article 12 of the United Nations Declaration on human rights defenders<sup>118</sup>.

Some regions make a particular point of pressing charges on the grounds of the “crime of solidarity”<sup>119</sup>, with a view to dissuading facilitators showing solidarity. During its missions, the CNCDH noted that pressure was greater in Alpes-Maritimes than in Hautes-Alpes. In the former département, the CNCDH's attention has been drawn to intimidations, threats, arrests, legal proceedings and convictions of facilitators<sup>120</sup>. The testimonies heard by the CNCDH and reality of law enforcement on the ground lay bare a firm resolve to crack down on shows of grassroots solidarity<sup>121</sup>. Nice regional court and the Aix-en-Provence Court of Appeal have adopted a tough stance in their interpretation of the provisions of the CESEDA<sup>122</sup>. In the Hautes-Alpes département, even though few legal proceedings and

114. CNCDH, *Avis sur le projet de loi portant diverses dispositions sur l'immigration*, adopted on 14 November 1996; CNCDH, *Avis portant sur l'assistance aux étrangers*, adopted on 26 March 1998; CNCDH, *Avis sur l'asile en France*, adopted on 6 July 2001; CNCDH, *Avis sur le projet de loi relatif à la maîtrise de l'immigration et au séjour des étrangers en France*, adopted on 15 May 2003; CNCDH, *Avis sur l'aide à l'entrée, à la circulation et au séjour irréguliers*, adopted on 19 November 2009; CNCDH, *Opinion “La solidarité n'est pas un délit”* adopted on 18 May 2017, JORF no. 0131 of 4 June 2017, no. 82.

115. Article 1 of Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence

116. Parliamentary Assembly of the Council of Europe, Resolution 2059 of 22 May 2015, “Criminalisation of irregular migrants: a crime without a victim”.

117. European Commission against Racism and Intolerance, General Policy Recommendation no. 16 adopted on 16 March 2016.

118. Resolution adopted by the General Assembly A/RES/53/144 adopting the Declaration on human rights defenders, 1998.

119. The GISTI (Information and Support Group for Immigrants) keeps an up-to-date list on its website of court rulings, hearings and proceedings: [www.gisti.org/spip.php?article5179](http://www.gisti.org/spip.php?article5179)

120. The mayor of Breil-sur-Roya was threatened with a summons before the court if he did not strike from the agenda of a municipal council session an item on emergency accommodation – Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDH on 12 & 13 April 2018 – meeting between associations on 13 April 2018 (Médecins de monde).

121. Cédric Herrou, met in Nice, has been held in custody nine times and the subject of six searches, one preliminary charge and two convictions.

122. See, in particular, the cases of Cédric Herrou, sentenced by Aix-en-Provence Court of Appeal to a 4-month suspended prison term and a €1,000 fine (Aix-en-Provence Court of Appeal, 8 August 2017, no. 2017/568); and Pierre-Alain Mannoni, acquitted by the Court of First Instance but sentenced by the Aix-en-Provence Court of

convictions have been noted for the time being, people assisting migrants are, as some have reported to the CNCDH, often the target of acts of intimidation, such as hearings by the police, threats or other forms<sup>123</sup>. Since 2016, some forty people have been summoned by the Col de Montgenèvre border police<sup>124</sup>. Some citizens have stopped their advocacy work with migrants as a result, for fear of reprisals<sup>125</sup>.

It therefore looks as if the law on the crime of solidarity, initially enacted to fight against migrant trafficking and smugglers, is being twisted to become a tool for cracking down on citizens who are trying to help. And yet assistance for no financial benefit is to be distinguished from facilitation in order to obtain a financial benefit, as stressed by the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the 2000 United Nations Convention against Transnational Organized Crime, which does not criminalise assistance for no financial benefit. This perversion of the law is also noticeable in the terms of the sentences handed down<sup>126</sup>, which are less severe for facilitators with no financial benefit. In light of this fact, the Court of Cassation referred a Priority Preliminary Ruling on the Issue of Constitutionality (QPC) before the Constitutional Council<sup>127</sup> concerning Articles L. 622-1 and L. 622-4 of the CESEDA, grounded in the violation of the “constitutional principle of fraternity, the principle of necessity of criminal offences and penalties and the principles of legality of criminal offences and penalties as well as the principle of equality before the courts, guaranteed by Articles 8 and 9 respectively of the Declaration of the Rights of Man and the Citizen”. The CNCDH submitted observations to the Constitutional Council in which it calls for this criminal offence to be abolished, as it strikes the CNCDH as being at odds with the constitutional principles considered in the QPC.

Appeal to a 2-month suspended prison term (Aix en Provence Court of Appeal, 11 September 2017, no. 2017-568). The Aix-en-Provence Court of Appeal has also sentenced “grandpas and grandmas showing solidarity” to €800 suspended fines for transporting six migrants, link on 29 May 2018: [www.sudouest.fr/2017/12/13/quatre-retraites-condamnes-en-appel-pour-avoir-aide-des-migrants-4030926-6116.php](http://www.sudouest.fr/2017/12/13/quatre-retraites-condamnes-en-appel-pour-avoir-aide-des-migrants-4030926-6116.php); On the other hand, the prosecutor's office of Nice called for the acquittal of Martine Landry, an Amnesty International volunteer, charged with having “facilitated” the entry into France of two unaccompanied minors. The deliberation was expected on 13 July 2018.

123. Including seizure of vehicles, risks of job loss and so on.

124. Mission carried out in the Briançon area by the CNCDH on 19 & 20 March 2018 – meeting between associations on 19 March 2018 (Tous migrants).

125. Mission carried out in the Briançon area by the CNCDH on 19 & 20 March 2018 – meeting between associations on 19 March 2018 (Tous migrants).

126. For example, two smugglers were sentenced to six months in prison with a detention warrant and a five-year banishment from French territory, link on 5 June 2018: [www.leparisien.fr/faits-divers/hautes-alpes-deux-passeurs-condamnes-a-des-peines-de-prison-ferme-20-10-2017-7346130.php](http://www.leparisien.fr/faits-divers/hautes-alpes-deux-passeurs-condamnes-a-des-peines-de-prison-ferme-20-10-2017-7346130.php)

127. Referral of a QPC by a Cass. judgment, crim., no. 17-85-736, 9 May 2018; the question asked is as follows: “By enacting the combined provisions of Articles L. 622-1 and L. 622-4 of the [Ceseda] - insofar as, on the one hand, they consider it a punishable offence for any person to have facilitated or attempted to facilitate, by direct or indirect assistance, the unauthorised entry, movement or residence of a foreign national in France, even for purely humanitarian acts which have not given rise to any direct or indirect compensation and, on the other, they only provide a possible exemption on the grounds of a foreign national's unauthorised residence in France and not for assistance with entry and movement -, does the lawmaker undermine the constitutional principle of fraternity, the principle of necessity of criminal offences and penalties and the principles of legality of criminal offences and penalties as well as the principle of equality before the courts, guaranteed by Articles 8 and 9 respectively of the Declaration of the Rights of Man and the Citizen?”.

Furthermore, the CNCDDH is deeply shocked by the difference in judicial treatment between facilitators and the activists of the “Génération identitaire” movement – the latter having attempted to hinder the arrival of migrants at the Franco-Italian border<sup>128</sup>. As such, over a weekend in April 2018, these far-right activists went on a “migrant hunt” at the Col de Montgenèvre mountain pass by erecting a symbolic border. No proceedings were brought against them<sup>129</sup>. At the same time, three participants in a march in favour of migrants which foreign nationals joined in were taken into custody and charged with “*having facilitated or attempted to facilitate the unauthorised entry into France of more than twenty foreign nationals*”, with the aggravating circumstance of organised crime. They face up to ten years in prison and a €750,000 fine<sup>130</sup>. Note that, on 31 May 2018, the Gap criminal court lifted the judicial supervision and postponed the trial of these three participants until 8 November on the grounds that the QPC on the “crime of solidarity” was expected to be decided by the Constitutional Council over the summer of 2018.

Contrary to certain claims heard during the parliamentary debates on the bill “*for controlled immigration and an effective right of asylum*”, the crime of solidarity has not been abolished<sup>131</sup>, at least not in the version adopted at first reading at the National Assembly. The CNCDDH is dismayed that the amendment adopted does no more than lengthen the list of exemptions to facilitating the movement of foreign nationals, without abolishing the grounds on which facilitators are charged, namely “direct or indirect compensation”, and that, as such, the crime of solidarity has not been repealed<sup>132</sup>.

128. [www.mediapart.fr/journal/france/280418/migrants-dans-les-hautes-alpes-les-raisons-dun-deux-poids-deux-mesures](http://www.mediapart.fr/journal/france/280418/migrants-dans-les-hautes-alpes-les-raisons-dun-deux-poids-deux-mesures)

129. The Prefect of the Hautes-Alpes département cautioned the members of the “Génération identitaire” movement to cease their action at the border, link on 1 June 2018: [www.dici.fr/actu/2018/04/30/migrants-membres-de-generation-identitaire-mis-demeure-prefecture-de-stopper-leurs-agissements-1132255](http://www.dici.fr/actu/2018/04/30/migrants-membres-de-generation-identitaire-mis-demeure-prefecture-de-stopper-leurs-agissements-1132255); A circular was sent on 4 May 2018 to the courts by the Criminal Matters and Pardons Director at the Ministry of Justice, stating that there are two offences “concerning the hostile behaviour to the movement of migrants” which could have been cited to punish the Génération identitaire activists: interference in a public office (Article 433-12 of the Criminal Code) and practice of an activity or document use creating confusion with a public office (Article 433-13 of the Criminal Code), link on 1 June 2018: [www.mediapart.fr/journal/france/090518/hautes-alpes-les-identitaires-auraient-pu-etre-poursuivis](http://www.mediapart.fr/journal/france/090518/hautes-alpes-les-identitaires-auraient-pu-etre-poursuivis).

130. On 31 June 2018 the Gap criminal court lifted the judicial supervision in their regard; the date of their trial is set for 8 November 2018.

131. GISTI, NON ! Monsieur Collomb n’a pas assoupli le délit de solidarité I, 23 April 2018, link on 28 May 2018: [www.gisti.org/spip.php?article5900](http://www.gisti.org/spip.php?article5900)

132. See CNCDDH, *Avis sur le projet de loi “pour une immigration maîtrisée et un droit d’asile effectif”* as adopted by the Council of Ministers on 21 February 2018, adopted on 2 May 2018, JORF no. 0105 of 6 May 2018, text no. 28 particularly recommendation no. 35: “*the CNCDDH recommends rewriting Article L.622-1 of the CESEDA. In the new Article, only the act of facilitating unauthorised entry, movement or residence for financial gain should be punished. The Article could thus be written as follows: “Any person who has knowingly facilitated or attempted to facilitate the unauthorised entry, movement or residence of a foreign national in France, for financial gain, shall be handed down a five-year prison term and a €30,000 fine.” Article L.622-4 of the CESEDA should then be repealed.*”

**Recommendation no.11:** The CNCDDH recommends rewriting Article L.622-1 of the CESEDA and repealing Article L.622-4 of the CESEDA in order, at the very least, to comply with France’s international and European commitments.

**Recommendation no.12:** The CNCDDH recommends ending the intimidation, legal proceedings and convictions of facilitators with immediate effect and no longer hindering the work of associations that come to migrants’ aid.

**Recommendation no.13:** The CNCDDH renews its recommendation that the public authorities focus their resources and efforts on building capacities for receiving and supporting migrants, in a bid to guarantee that their fundamental rights are effective, instead of hounding to the point of harassment those who are coming to their aid<sup>133</sup>.

133. CNCDDH, *Opinion Mettre fin au délit de solidarité*, adopted on 18 May 2017, JORF no. 0131 of 4 June 2017, text no. 82.

## Part V

### The specific situation of unaccompanied minors

On the subject of unaccompanied minors, the CNCDDH would first of all like to give a reminder of the observations that it issued in an opinion submitted in 2014<sup>134</sup>, and particularly of the fact that these children must benefit from all of the rights granted to any child present on French soil, namely: the right for the foreign unaccompanied minor to a fair determination of his or her age, the right to be guaranteed a certain number of procedural rights, chief among which the right of access to the courts, the right to material conditions of reception, the right to education, the right to be protected from exploitation, abuse, trafficking and violence, and finally the right to health and social cover. The CNCDDH also underlines the fact that their status as minors must prevail over any other consideration and that their foremost fundamental right is to obtain protection from the authorities<sup>135</sup>.

During the visits and interviews it carried out, the CNCDDH confirmed that there was indeed a number of unaccompanied minors present at the Italian border, and that there were problems associated with their reception. It observed a certain number of violations of the young people's rights, even though there was an improvement in practices and proactive pledges to receive them better; but for all that, these words are still not being matched by the deeds on the ground.

#### A. Border crossings

The CNCDDH has learned of practices violating the rights of young people who are crossing the border, a situation which had first been observed back in 2016,<sup>136</sup> and then by a number of associations and agencies in 2017<sup>137</sup>. The CNCDDH condemns these practices which lift the lid on serious failings in the reception of unaccompanied minors – tantamount to an all-out abandonment of vulnerable persons. Furthermore, the claim that the unaccompanied

134. CNCDDH, *Avis sur la situation des mineurs isolés étrangers présents sur le territoire national. Etat des lieux un an après la circulaire du 31 mai 2013 relative aux modalités de prise en charge des jeunes isolés étrangers (dispositif national de mise à l'abri, d'évaluation et d'orientation)*, adopted on 26 June 2014, JORF no. 0156 of 8 July 2014, text no. 92.

135. Article 20 of the *International Convention on the Rights of the Child (CRC)*.

136. Press release from Unicef France dated 13 December 2016, link on 30 May 2018: [www.unicef.fr/contenu/espace-medias/enfants-non-accompagnes-la-protection-de-l-enfance-doit-s-exercer-aussi-la-frontiere-franco](http://www.unicef.fr/contenu/espace-medias/enfants-non-accompagnes-la-protection-de-l-enfance-doit-s-exercer-aussi-la-frontiere-franco)

137. Amnesty International report 2017/18, the state of the world's human rights; Forum réfugiés-Cosi, rapport annuel sur l'asile en France et en Europe, état des lieux 2017, June 2017; CGLPL, report of the visit from 4 to 8 September 2017 of the Menton border police premises (Alpes-Maritimes) – 2<sup>nd</sup> visit, control of migrants on the Franco-Italian border, 5 June 2018; Defender of Rights, decision no. 2018-100 of 25 April 2018.

minors are reportedly afforded a satisfactory reception in Italy is false and should not, in any event, exempt the French authorities from their responsibilities<sup>138</sup>.

To begin, the CNCDDH is strongly critical of the terms in which their situation is recognised at the border. To benefit from the rights associated with their special status, children must be recognised as minors and unaccompanied. First of all, as regards detection that a migrant is underage, it was explained to the CNCDDH that an initial assessment on “physical” criteria was carried out<sup>139</sup>. Whereas, in principle, a child's minor status must be declared at the border: they are questioned and asked to provide any document able to prove their age<sup>140</sup>. According to the Border Police, it is the young people's responsibility to prove their age, but there are often doubts over the age they do declare. The CNCDDH's attention has even been drawn to the authorities' practice of editing the date of birth mentioned on the refusal of entry forms<sup>141</sup>. Second, the children must be unaccompanied. And yet, the CNCDDH has received reports according to which this notion was given narrow interpretation and it was not uncommon for minors to be arbitrarily associated with adults with whom they have no connection<sup>142</sup>. The Border Police have described cases of minors refusing to leave the adults with whom they arrived<sup>143</sup>.

Upon crossing the border, although unaccompanied minors can, in the same way as adults, be refused entry under the above-mentioned refusal of entry procedure, this procedure must be grounded in special safeguards respecting the child's best interests, protected by the International Convention on the Rights of the Child (CRC)<sup>144</sup>. Accordingly, pursuant to Article L. 213-2 of the French Code for Entry and Residence of Foreigners and Right of Asylum (CESEDA), the right to one clear day must be automatically complied with in order to prevent any immediate return and, pursuant to Article L. 221-5 of the CESEDA,

138. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018; Amnesty International France, *Les petits cailloux de la solidarité*, 9 May 2018, link on 7 June 2018: <https://www.amnesty.fr/refugies-et-migrants/actualites/les-petits-cailloux-de-la-solidarite>, Intersos “Unaccompanied and Separated Children along Italy's northern border”, report 2017.

139. Mission carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018 – interview with Jean-Bernard Rouffignac, commanding police officer, Central Directorate of the French border police, 19 March 2018.

140. Three officials at the Montgenèvre Border Police are trained in detecting documentary fraud - Mission carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018 – interview with Jean-Bernard Rouffignac, commanding police officer, Central Directorate of the French border police, 19 March 2018.

141. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 – interview with Intersos. Other associations and two MPs have also reported these facts, link on 30 May 2018: [www.infomigrants.net/fr/post/8640/a-menton-la-police-francaise-est-accusee-de-modifier-les-dates-de-naissance-des-mineurs](http://www.infomigrants.net/fr/post/8640/a-menton-la-police-francaise-est-accusee-de-modifier-les-dates-de-naissance-des-mineurs) ; [www.politis.fr/articles/2018/04/visite-surprise-delus-a-la-police-aux-frontieres-de-menton-38617/](http://www.politis.fr/articles/2018/04/visite-surprise-delus-a-la-police-aux-frontieres-de-menton-38617/)

142. CGLPL, report of the visit from 4 to 8 September 2017 of the Menton border police premises (Alpes-Maritimes) – 2<sup>nd</sup> visit, control of migrants on the Franco-Italian border, 5 June 2018.

143. Missions carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018 and at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 – interview with Jean-Bernard Rouffignac, commanding police officer, Central Directorate of the French border police, 19 March 2018 and Cécile Bataille, police chief at the Alpes-Maritime Département-level Border Police Directorate, Jean-Philippe Nahon, superintendent of the Alpes-Maritimes Central Directorate of the French border police, 12 April 2018.

144. Article 3 of the *International Convention on the Rights of the Child (CRC)*.

the Public Prosecutor must promptly appoint an ad hoc administrator to enable the young person to exercise his or her rights – not least the right to apply for asylum. And yet, in the same way as for other rights which it should be possible to exercise at the border, the Border Police are of the opinion that these provisions do not apply where controls at internal borders have been reintroduced. Many minors have thus been returned without benefiting from one clear day or the appointment of an ad hoc administrator<sup>145</sup>.

Indeed, the CNCDDH has learned of practices aimed at sending minors directly back to Italy with no respect for the aforementioned safeguards<sup>146</sup>. For example, they were notified of a refusal of entry and the box stating that they “wished to return to Italy immediately” was pre-ticked. The refusal of entry was then forwarded to the Italian police, which prevented the youngsters from being able to lodge appeals. In response to this situation, associations lodged several appeals with Nice Administrative Court, which suspended the refusal of entry decisions of 19 young people, urged the Prefect to re-consider their requests to enter French territory and reiterated the obligation to notify the Public Prosecutor so that s/he can appoint an ad hoc administrator for each one of them without undue delay<sup>147</sup>. Since then, the associations have found that practices have improved and that the number of young people systematically sent back to Italy has fallen<sup>148</sup>. However, during the MPs’ visit to Menton-Garavan station and the Menton Border Police premises on 31 March 2018<sup>149</sup>, they found a document with the handwritten instruction “*if press turns up, no boarding of minors on trains for Ventimiglia*”, which suggests that young people were still being deported back to Italy after 23 February 2018.

Furthermore, in the Hautes-Alpes département, the CNCDDH was informed<sup>150</sup> that the Italian authorities were henceforth (no specific date was given) refusing to take back unaccompanied minors who had crossed the border, even though the French authorities considered this to be an obligation. Young people are therefore now authorised to enter French territory and are taken into care by the child welfare services. The associations met with in the Briançon area have also noticed a change in practices in this respect – even if they reckon that young people are still being returned<sup>151</sup>.

145. See section I. A. 1. on implementation of the refusal of entry procedure - See particularly the report from Action Briançon dated 9 & 10 January 2018 written by Myriam Laïdouni-Denis, EELV advisor “*Visite surprise de la PAF poste frontière Montgenèvre*”.

146. According to the Alpes-Maritimes Département-level Border Police Directorate, in 2017, 13,464 young people were refused entry, and in the first three months of 2018, 2,516 young people were counted.

147. Nice Administrative Court, 19 orders, 23 February 2018, especially no. 1800699.

148. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 – meeting between associations.

149. Report from the unannounced visit in Menton to Garavan station and the Border Police premises on Saturday 31 March 2018 by Myriam Laïdouni-Denis and André Rebelo

150. Mission carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018 – interview with Jean-Bernard Rouffignac, police commanding officer, Central Directorate of the French border police, and Cécile Bigot-Dekeyzer, Prefect of the Hautes-Alpes département.

151. Mission carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018 – interview with associations.

**Recommendation no.14:** The CNCDDH recommends ceasing any immediate return to Italy of young people, respecting the legal safeguards and ending practices aimed at editing the dates of birth on refusal of entry forms.

## B. The assessment period

Once young people have had their status established by the Border Police and are authorised to enter France, the Border Police contact the child welfare services with a view to the youth being taken into care. In the Hautes-Alpes département, the Border Police explained that the young people were only taken as far as Briançon. There, even though the Edith Seltzer Foundation, through a partnership with the State, has a few safe house places for taking them to the child welfare services, these are not nearly enough. What this means in practice is that volunteers have the responsibility of taking unaccompanied minors as far as the Département-level Council in Gap so that they can be taken into care. Since 1 January 2018, 93 young people had been received in this way<sup>152</sup>. In Alpes-Maritimes, an association<sup>153</sup> comes to pick up young people at the border.

Once under the care of child welfare services, the youth must be given safe accommodation during the assessment period and benefit from access to healthcare. In Hautes-Alpes, with the safe house scheme at saturation point and following a particularly fraught period<sup>154</sup>, the State created 155 dedicated accommodation places, out of a total 215 places département-wide. These places are managed by two associations, France terre d’asile and APPASE<sup>155</sup>, with the latter also responsible for places financed by the Département-level Council. The CNCDDH welcomes this initiative on the part of the State and Département-level Council, which has enabled more unaccompanied minors to be taken into care upon their arrival in France. It sounds a note of caution, however, over the precarious nature of the agreements signed<sup>156</sup>. Unfortunately, the young people only stay in these shelters for as long as it takes the child welfare services to assess their age. Youth workers have recently been recruited by the Département-level Council to shorten the time periods<sup>157</sup>. In Alpes-Maritimes, unaccompanied minors are taken into care as soon as they arrive in the département, with

152. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 – meeting between associations and Mission carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018 – interview with Jean-Bernard Rouffignac – Montgenèvre Border Police commanding officer.

153. The PAJE is an association, founded in 2002, which carries out social mediation, education and social work efforts across the Alpes-Maritimes département.

154. In the spring and summer of 2017, Hautes-Alpes Département-level Council decided to stop receiving unaccompanied minors for want of adequate funding; only meal tickets were handed out to youngsters (Source: Tous Migrants, “*L’accueil des exilés dans le Briançonnais*”, 19 March 2018).

155. Mission carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018 – meeting with the APPASE Director.

156. Mission carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018 – interviews with Augustin Mayolo, Director of the Association pour la promotion des actions sociales et éducatives (APPASE) and France terre d’asile.

157. Mission carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018 – interview with Cécile Bigot-Dekeyzer, Prefect of Hautes-Alpes.

accommodation provided either in a dedicated site or at a hotel depending on the number of arrivals. Places are available in two hotels in Nice city centre, but the Département-level Council is frustrated with how difficult it is to find places, especially in hotels (some 100 unaccompanied minors were housed in hotels in April 2018). Echoing the sentiments of the Defender of Rights<sup>158</sup>, the CNCDDH stresses that accommodation in hotels – whilst providing an emergency solution – is particularly inappropriate and can end up posing a danger to these children who are already in a very vulnerable state. The Département maintains that it provides ongoing support during this reception. The CNCDDH is pleased to note that the Département has set up a proactive policy for opening new sites and forged partnerships with a view to expanding the accommodation provision. In 2017, 791 young people were received<sup>159</sup>. Here again, age assessments are carried out by the child welfare service teams.

However, the CNCDDH is concerned about the terms governing age assessments which, in its view, do not seem to respect the young people's fundamental rights. Indeed, as elsewhere in France, the associations report a form of management stripped of any humanity, the priority being to cut assessment times to the detriment of protecting the young people<sup>160</sup>. The interviews, during which attendance by an interpreter is not always guaranteed, last between 30 and 45 minutes, which is not long enough to take the whole of the young person's account into consideration. For some young people need several interviews before they can feel comfortable and able to speak freely<sup>161</sup>. In this context, there is a tendency to reverse the burden of proof by child welfare services which, on the grounds that it is up to the young person to prove that s/he is underage, rejects a number of documents<sup>162</sup>. Some interpretations result in a child's age being wrongly challenged. The CNCDDH also reiterates its objection to bone tests being carried out<sup>163</sup>.

**Recommendation no.15:** The CNCDDH points out that the assessment must take place under dignified conditions and that the young person must be given the benefit of the doubt, without reversing the burden of proof.

158. Le Défenseur des droits réitère son opposition à l'hébergement hôtelier – Defender of Rights, opinion no. 17-10 of 11 October 2017, link on 30 May 2018:

[https://juridique.defenseurdesdroits.fr/doc\\_num.php?explnum\\_id=16825](https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=16825)

159. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 – interview with Auguste Vérola, Vice-President of Alpes-Maritimes Département-level Council, Christophe Di Fraja, Deputy Director for Children, Deputy General-Director for the Development of Human Solidarity.

160. Missions carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 and in the Briançon area by the CNCDDH on 19 & 20 March 2018 – meetings between associations.

161. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 – meeting between associations on 13 April 2018 (Mireille Damiano, lawyer and Tous citoyens).

162. Copies of civil status records are not accepted, so volunteers go to great lengths to retrieve the originals - Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 – meeting between associations on 13 April 2018 (Tous citoyens).

163. CNCDDH, *Avis sur la situation des mineurs isolés étrangers présents sur le territoire national. Etat des lieux un an après la circulaire du 31 mai 2013 relative aux modalités de prise en charge des jeunes isolés étrangers (dispositif national de mise à l'abri, d'évaluation et d'orientation)*, adopted on 26 June 2014, JORF no. 0156 of 8 July 2014, text no. 92.

**Recommendation no.16:** The CNCDDH calls for staff who assess the accounts of young people to be given better training (in law relating to youth, in migrants' pathways and in geopolitics) so that the latter can benefit from an in-depth assessment of their situation.

### C. The worrying situation of young people who lose their minor status

The CNCDDH is deeply concerned about the situation of young people who lose their minor status following the assessment. For when the decision not to recognise a child's minor status is notified by the Département-level Council, s/he must immediately leave the shelter – even though an appeal may have been lodged. In Alpes-Maritimes, between 25 and 50% of young people are assessed as adults<sup>164</sup>. The Département-level Council explained that the Border Police were informed before the young person lost his or her minor status. This results in the Border Police, from the decision to strip the young person of his or her minor status, coming to pick him or her up to notify him or her of the refusal of entry procedure, since the State is under no obligation to receive young people who have come of age. The young person is then returned directly to Italy, without being able to appeal<sup>165</sup>. In Hautes-Alpes, in 2017, the practice was different. Out of 1,243 assessments performed in 2017, 572 young people were recognised as being underage. Those who were not, benefited from one night in the emergency housing scheme, which then referred them to the Prefecture<sup>166</sup>. Le Secours catholique opened a day shelter in Gap for unaccompanied minors, particularly those who had lost their minor status<sup>167</sup>.

The CNCDDH questions the low number of appeals lodged against decisions not to recognise minor status<sup>168</sup> that are brought before the Youth Court Judge. It is the CNCDDH's opinion that the expeditious transfers back to Italy do not give young people time to lodge an appeal, and it therefore cannot condone this proven violation of the right to affective remedy.

**Recommendation no.17:** The CNCDDH recommends better care arrangements for young people stripped of their minor status, and that they be informed of their rights, particularly so that they can lodge an appeal.

164. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 – interview with Auguste Vérola, Vice-President of Alpes-Maritimes Département-level Council, Christophe Di Fraja, Deputy Director for Children, Deputy General-Director for the Development of Human Solidarity.

165. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 – meeting between associations on 13 April 2018 (Mireille Damiano, lawyer).

166. 4 youths stripped of their minor status were received through the 115 emergency shelter hotline and summoned to the Prefecture before being notified of an obligation to leave French territory (OQTF) in the emergency shelter [see APPASE response on this case below].

167. Mission carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018 – meeting between associations on 19 March 2018.

168. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 – interview with Auguste Vérola, Vice-President of Alpes-Maritimes Département-level Council, Christophe Di Fraja, Deputy Director for Children, Deputy General-Director for the Development of Human Solidarity.

## D. Integration of children under the care of social welfare services

Where a young person's minor status is upheld, the prosecutor's office issues a provisional placement order, enabling the latter to access the child protection system. During the interviews it held, the CNCDDH did note a willingness to integrate unaccompanied minors who have been recognised as such, but is dismayed to see that the reality on the ground does not always reflect the pledges made<sup>169</sup>. It gives a reminder that young people – if they are to develop meaningful plans for the future and prepare for adulthood – need to have access to acceptable accommodation, to education and to healthcare.

Regarding access to accommodation, a national platform refers young people to a département according to a distribution rule set annually, since départements do not always have sufficient reception capacities. Since the Hautes-Alpes département is under-resourced, young people are often subject to a provisional placement order in another département, particularly Bouches-du-Rhône, which is stretched to capacity as it is<sup>170</sup>. Insofar as no monitoring is carried out, the youngsters either loiter in Bouches-du-Rhône or often return to Hautes-Alpes with no option of shelter elsewhere<sup>171</sup>. In Alpes-Maritimes, the Département-level Council explained that it was trying to forge various partnerships in a bid to secure accommodation places. Accordingly, one agreement with the regional student service agency (CROUS) was signed to obtain 100 university residence rooms until August 2018<sup>172</sup>. The CNCDDH is pleased to note the Département-level Council's evident commitment to finding accommodation places, but also notes the tendency to place ever fewer unaccompanied minors in conventional foster care structures and in dedicated sites instead. It cautions that this must not result in the unaccompanied minors feeling stigmatised, or even marginalised, as they need, on the contrary, to be fully integrated into society.

Regarding access to education, in line with reports it has also received, the CNCDDH laments the overly tenuous links with the national education system and the refusals to school unaccompanied minors over 16 years of age (since Département-level Councils consider that education is only compulsory up to 16 years of age<sup>173</sup>). The CNCDDH contends

169. In Briançon, the Mayor bemoaned the difficulties encountered in securing care for unaccompanied minors - Mission carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018 – interview with Gérard Fromm, Mayor of Briançon.

170. Accordingly, Marseille Administrative Court has charged Bouches-du-Rhône Département-level Council with several counts for failing to provide the unaccompanied minors entrusted to it with sufficient care (Sources: *Le Monde*, «Mineurs isolés : le conseil départemental des Bouches-du-Rhône sourd à la justice», 4 June 2018; *La Marseillaise*, «Mineurs isolés : le non-sens de l'accueil du CD13 condamné», 24 February 2018; *Marsactu*, «Accueil des mineurs isolés : les Bouches-du-Rhône condamnées en bout de course», 18 December 2017).

171. Mission carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018 – meeting between associations on 19 March 2018.

172. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 – interview with Auguste Vérola, Vice-President of Alpes-Maritimes Département-level Council, Christophe Di Fraja, Deputy Director for Children, Deputy General-Director for the Development of Human Solidarity.

173. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 – interview with Auguste Vérola, Vice-President of Alpes-Maritimes Département-level Council, Christophe Di Fraja, Deputy Director for Children, Deputy General-Director for the Development of Human Solidarity.

that compulsory education from 6 to 16 years of age is a duty for both children and their legal guardians alike<sup>174</sup>. But the public authorities have a responsibility and a duty in this respect beyond this age range, in duly guaranteeing each and every child access to school, since schooling before the age of 6 and after the age of 16 is a right for any families and children who request it<sup>175</sup>. Moreover, the CNCDDH stresses the utmost importance of access to education and vocational training and points out that these young people are in swift need of French lessons to help them integrate better. This is why provision must be made for training and young adults support programmes. When asked about this, Alpes-Maritimes Département-level Council explained that 13 young adult support programmes had been signed on 31 December 2017 and that 11 were in progress (on 13 April 2018)<sup>176</sup>. In Hautes-Alpes, however, the Département-level Council said that young adult support programmes would not be awarded any longer for want of funding<sup>177</sup>. The CNCDDH recommends that the negotiations in progress between the State and départements succeed as soon as possible in achieving a fairer distribution of costs<sup>178</sup>. In the current situation, the CNCDDH is concerned about the very low number of young adult support programmes compared with the number of minors received. Just like other adolescents under the care of child welfare services, unaccompanied minors need to be enrolled on a young adult support programme until they reach the age of 21.

Lastly, the CNCDDH gives a reminder that unaccompanied minors must benefit from access to healthcare and medical follow-up in terms of physical needs and counselling grounded in individual needs. For it must be remembered that most unaccompanied foreign minors have gone through traumatic experiences. Many of them have gone through Libya where arrests, inhuman detention conditions, and even acts of torture, abuse or sexual assault are reported by associations at regular intervals<sup>179</sup>. In Hautes-Alpes, the associations interviewed described the difficulties in getting young people counselling<sup>180</sup>. In Alpes-Maritimes, integration within the child protection system seems to ensure satisfactory medical supervision, even if psychological supervision still falls short of what is needed<sup>181</sup>.

174. "Education is compulsory for French and foreign girls and boys between the ages of six and sixteen. This provision shall not preclude application of special recommendations calling for longer schooling" (Article L. 131-1 of the Education Code).

175. CNCDDH, *Opinion "Projet sur l'effectivité du droit à l'éducation dans les Outre-mer Regard particulier sur la Guyane et Mayotte (1)"*, JORF no. 0269 of 18 November 2017, text no. 77.

176. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 – interview with Auguste Vérola, Vice-President of Alpes-Maritimes Département-level Council, Christophe Di Fraja, Deputy Director for Children, Deputy General-Director for the Development of Human Solidarity.

177. Mission carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018 – interview with Jean-Marie Bernard, President of the Hautes-Alpes Département, and Jérôme Scholly, General Director of Services (DGS) on 20 March 2018.

178. Report of the working party on unaccompanied minors, involving the Government Inspectorate-General (IGA), Social Affairs Inspectorate-General (IGAS), Justice Inspectorate-General (IGJ) and Assembly of French Départements (ADF), submitted on 8 January 2018.

179. Secours catholique, rapport sur la traite des êtres humains dans les situations de conflits et post-conflits, July 2016.

180. Mission carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018 – meeting between associations on 19 March 2018.

181. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April

That said, the CNCDDH once again underscores the importance of continuity in this respect, and in terms of setting up counselling to help these young people to recover.

**Recommendation no.18:** The CNCDDH recommends effective integration of unaccompanied minors in the national education system. It particularly recommends making provision for intensive French lessons so that they can integrate as swiftly as possible.

**Recommendation no.19:** The CNCDDH recommends guaranteeing access to healthcare for any young person claiming to be underage and ensuring that a medico-psychological assessment is performed, with a scaling up of structures and resources.

## Part VI Protect victims of trafficking in human beings: a lack of detection, identification and protection at the Franco-Italian border

As the national rapporteur on human trafficking and exploitation, the CNCDDH reiterates that migration policy should never endanger the lives and safety of trafficking victims, nor hamper the application of protection and assistance measures stipulated by the Council of Europe Convention on Action against Trafficking in Human Beings<sup>182</sup>. Situations where crowds of vulnerable persons are crossing borders create or increase opportunities for migrant traffickers and human trafficking networks. Accordingly, various reports have confirmed the risks of migrants being exploited and the existence of networks harking from Italy<sup>183</sup>. During its missions, the CNCDDH has found that few measures seem to have been undertaken to identify and protect victims crossing the Franco-Italian border<sup>184</sup>, despite the probable cases detected by associations, on both sides of the border.

First of all, victims of trafficking in human beings must be identified according to specific indicators and a reference mechanism for identifying and supporting victims, pursuant to the European Directive of 5 April 2011 “on preventing and combating trafficking in human beings and protecting its victims”<sup>185</sup>. This identification calls for coordination between the State departments (police, justice, etc.), local authorities and associations so as to be tailored to the specifics on the ground. On the Franco-Italian border, identification must be particularly geared towards migration pathways. And yet the associations encountered<sup>186</sup> reported a number of barriers to the identification of victims, including language barriers, lack of suitable settings for holding interviews and lack of resources. To give an example, the systematic application of the refusal of entry procedure, with no in-depth interview, exposes victims returned to Italy to the risk of reprisals or being tracked down by the network of traffickers from which they may have been able to escape on arriving in France.

182. The Council of Europe Convention (Warsaw Convention) on Action against Trafficking in Human Beings, adopted in 2005, came into force on 1 February 2008. In May 2018, 47 States had ratified it (46 Council of Europe member states plus Belarus). The approach taken by this Convention, which is grounded in human rights, focuses on the victims and on the positive obligations incumbent upon States to prevent trafficking, protect victims, prosecute traffickers and establish partnerships to attain its goals.

183. The mission for Le Secours Catholique on the situation of unaccompanied minors at the Franco-Italian border, Trajectoires March 2017, which confirmed the existence of “a highly organised and discreet network”, describes trafficking endured by minors during their journey (unpaid work in construction for several months in Libya; girls held at individuals’ homes, reduced to slavery and subjected to sexual abuse) and concludes that “the presence of Nigerian girls suggests that the risks in Europe are high”; Also see “Un transit dangereux comble le manque d’informations sur les réfugiés et les personnes déplacées à Vintimille”, Refugee Rights, Data Project, August 2017.

184. The stakeholders interviewed never mentioned them unprompted.

185. See Article 11, Point 4 of Directive 2011/36/EU

186. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 - meetings between associations on 12 & 13 April 2018.

In this context, the authorities – and the Border Police in particular – have an instrumental role to play. When asked about their practices aimed at identifying trafficking victims<sup>187</sup>, the Alpes-Maritimes Border Police replied that awareness efforts had been carried out among the teams at the border so as to detect and then curb trafficking cases<sup>188</sup>. And yet, in practice, this matter does not seem to be given sufficient consideration.

Second, the CNCDDH is concerned about the shortcomings observed in support for victims of trafficking in human beings. Since such victims are not properly identified, they are not given effective protection or remedy options. Migrants who are victims of trafficking may therefore prefer to remain anonymous than to be identified and recorded formally. When asked about this, Nice Prefecture pointed to the high number of Nigerian women who had applied for asylum in 2017<sup>189</sup>. The CNCDDH gives a reminder that Nigerian women are a particularly vulnerable target group where trafficking in human beings is concerned<sup>190</sup>. They are typically referred by associations like Forum réfugiés-Cosi to the Les Lucioles service of the ALC association, which specialises in assisting trafficking victims. The CNCDDH reiterates that precedence must be given to securing the situation of victims, as well as to their assistance. Regularising their situation by automatically issuing a residence document is a key measure for guaranteeing their access to justice and to all of their rights and, crucially, to preventing the same acts being committed against them.

Third, the CNCDDH is particularly concerned about the situation of unaccompanied minors arriving in France. For some adults accompanying young people are often identified as family members, when in actual fact they may have ties with traffickers. Interviews to ascertain the age of young people do not enable any needs for protection to be detected, and those who are placed in inappropriate housing may risk being tracked down by the trafficker. Likewise, detection of needs where post-traumatic surveillance is concerned is insufficient<sup>191</sup>.

Finally, given that smugglers' networks are making a particular profit from migrants attempting to cross the border into France, by exploiting their vulnerability and poverty, roll-out of an uncompromising criminal policy cracking down on migrant trafficking is vital. And yet the CNCDDH has not observed any effective response on the part of the public authorities

187. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 and Mission carried out in the Briançon area by the CNCDDH on 19 & 20 March 2018.

188. Alpes-Maritimes Département-level Council explained that Mother and Child Protection (PMI) physicians were given training on this subject and that cooperation was ongoing with the Border Police whenever a case of trafficking in human beings was suspected - Mission carried out in the Roya Valley by the CNCDDH on 12 & 13 April 2018 – interview with Auguste Vérola, Vice-President of Alpes-Maritimes Département-level Council, Christophe Di Fraja, Deputy Director for Children, Deputy General-Director for the Development of Human Solidarity.

189. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018: according to the Prefecture, in 2017, 109 Nigerian women applied for asylum, 90% of whom were victims of prostitution.

190. Link on 9 June 2018 to the *Nice Matin* article [www.nicematin.com/faits-divers/a-nice-les-mamas-proxenetes-nigerianes-terrorisaient-leurs-protégées-186572](http://www.nicematin.com/faits-divers/a-nice-les-mamas-proxenetes-nigerianes-terrorisaient-leurs-protégées-186572)

191. Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018: interview with Médecins du Monde and Tous citoyens on 13 April 2018

in this regard. In-depth training for all institutional stakeholders, in liaison with civil society groups, would help to dismantle networks and give victims a way out and an opportunity to recover.

**Recommendation no.20:** The CNCDDH recommends that the various stakeholders working with migrants on either side of the border endeavour to identify potential victims of trafficking or exploitation on the basis of clearly defined criteria tailored to the specific characteristics of the pathways taken by the migrants present at the Franco-Italian border – young people in particular.

**Recommendation no.21:** Regarding unaccompanied minors, the CNCDDH recommends taking special protection measures for victims of trafficking, pursuant to the stipulations of Article 10-4 of the Council of Europe *Convention on Action against Trafficking in Human Beings* and the recommendations outlined in General Comment No. 6 (2005) of the UN Committee on the Rights of the Child.

**Recommendation no.22:** The CNCDDH recommends rolling out an uncompromising criminal policy cracking down on migrant trafficking as well as an appropriate reception policy. It also recommends better training on human trafficking issues for institutional stakeholders, including border police officials; this training should also be offered to associations and individuals working with migrants and children.

**Recommendation no.23:** The CNCDDH recommends that the French State swiftly launch its second National Action Plan against Trafficking in Human Beings by including within it meaningful resources for combating trafficking in human beings at France's land, maritime and airport borders.

The State needs to accept the reality of the serious violations to migrants' rights at the Italian border and overhaul its policy accordingly, as it is putting human beings in danger and this is unacceptable in our country. Police officers' and other personnel's belief that they are only required to apply the law, with no thought for the indignity imposed on migrants, concerns the CNCDDH. The hugely commendable mobilisation on the part of civil society and volunteers has helped to avoid the worst, by providing emergency solutions, but this should not let the State off the hook in terms of protecting and respecting fundamental rights. Moreover, the rise to power of anti-migrant political parties in Italy is an additional source of concern regarding the fate of people pinning their hopes on international protection. Against this backdrop, France must more than ever back its words up with deeds, both as regards respect for human rights and the principle of solidarity. The French State must urgently undertake the necessary measures at the Franco-Italian border to end the fundamental rights violations and inhuman practices observed.

## Summary of recommendations:

**Recommendation no.1:** The CNCDDH calls for the strictest compliance with the legal provisions. It draws attention to the intentionally narrow interpretations, or even misinterpretations at times, practised thereof, to the detriment of migrants. It particularly calls for a personal interview to be held, rights to be notified in a language that the foreign national can understand, an in-depth examination of the latter's situation and compliance with the right to one clear day. The CNCDDH upholds its disagreement with any new provision which, amid the adoption of the legislation "for controlled immigration and an effective right of asylum", would further undermine the legal situation of migrants turning up at the border.

**Recommendation no.2:** In light of the substandard conditions at the Border Police station of Menton Pont-Saint-Louis, the CNCDDH urges the public authorities to close the three prefabricated units located in the yard of this station with immediate effect. It also asks that the places in which foreign nationals are held pending their return to Italy be defined in legal terms so that the applicable procedures and rights can be respected.

**Recommendation no.3:** The CNCDDH calls on the French State to review its border control policy so that it does not endanger the lives of migrants.

**Recommendation no.4:** The CNCDDH recommends that migrants be systematically and effectively informed of their right to apply for asylum in France.

**Recommendation no.5:** The CNCDDH recommends more specific training for Border Police officials on asylum-related issues and the setup of objective procedures to monitor the compliance of these officials' conduct with the regulations in this area.

**Recommendation no.6:** The CNCDDH recommends guaranteeing and facilitating access to asylum application procedures in the Alpes-Maritimes and Hautes-Alpes départements. It particularly recommends opening an asylum intake unit (PADA) in the Hautes-Alpes département.

**Recommendation no.7:** The CNCDDH calls on the State to guarantee safe house accommodation at the border for migrants to enable them to rest for a few days. Such accommodation should not be subject to examination of the migrants' administrative situation<sup>192</sup>.

192. In Ventimiglia for example, one reception centre was opened but its entrance manned by police who took the fingerprints of the migrants given accommodation. This led to the centre being shut down - Mission carried out at the southern part of the border (Menton-Ventimiglia) by the CNCDDH on 12 & 13 April 2018 - meeting between associations on 12 April 2018 (Caritas).

**Recommendation no.8:** In order to enable appropriate and comprehensive care delivery for all migrants, adults and children alike, in need, the CNCDDH recommends scaling up the human and material resources allocated to healthcare access centres for disadvantaged people (PASS). It also recommends setting up a scheme for providing care for mental health problems with assistance from interpreters or cultural mediators as well as specific training for health workers in this type of care.

**Recommendation no.9:** The CNCDDH recommends lending adequate and sustainable support to associations that inform and assist migrants in accessing legal advice.

**Recommendation no.10:** The CNCDDH recommends that efforts on the part of the State, the competent local authorities and associations be coordinated more effectively in a bid to meet the basic needs of migrants on the Franco-Italian border and to find long-term solutions.

**Recommendation no.11:** The CNCDDH recommends rewriting Article L.622-1 of the CESEDA and repealing Article L.622-4 of the CESEDA in order, at the very least, to comply with France's international and European commitments

**Recommendation no.12:** The CNCDDH recommends ending the intimidation, legal proceedings and convictions of facilitators with immediate effect and no longer hindering the work of associations that come to migrants' aid.

**Recommendation no.13:** The CNCDDH renews its recommendation that the public authorities focus their resources and efforts on building capacities for receiving and supporting migrants, in a bid to guarantee that their fundamental rights are effective, instead of hounding to the point of harassment those who are coming to their aid<sup>193</sup>.

**Recommendation no.14:** The CNCDDH recommends ceasing any immediate return to Italy of children, respecting the legal safeguards and ending practices aimed at editing the dates of birth on refusal of entry forms.

**Recommendation no.15:** The CNCDDH gives a reminder that the assessment must take place under dignified conditions and that the young person must be given the benefit of the doubt, without reversing the burden of proof.

**Recommendation no.16:** The CNCDDH calls for staff who assess the accounts of children to be given better training (in law relating to children, in migrants' pathways and in geopolitics) so that the latter can benefit from an in-depth assessment of their situation.

193. CNCDDH, *Mettre fin au délit de solidarité opinion*, adopted on 18 May 2017, JORF no. 0131 of 4 June 2017, text no. 82.

**Recommendation no.17:** The CNCDH recommends better care arrangements for young people stripped of their minor status, and that they be informed of their rights, particularly so that they can lodge an appeal.

**Recommendation no.18:** The CNCDH recommends effective integration of unaccompanied minors in the national education system. It particularly recommends making provision for intensive French lessons so that they can integrate as swiftly as possible.

**Recommendation no.19:** The CNCDH recommends guaranteeing access to healthcare for any young person claiming to be underage and ensuring that a medico-psychological assessment is performed, with a scaling up of structures and resources.

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**Recommendation no.23:** The CNCDH recommends that the French State swiftly launch its second National Action Plan against Trafficking in Human Beings by including within it meaningful resources for combating trafficking in human beings at France's land, maritime and airport borders.

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# APPENDICES

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## Textes légaux

### • Frontière

Article 78-2 du code de procédure pénale : « Les officiers de police judiciaire et, sur l'ordre et sous la responsabilité de ceux-ci, les agents de police judiciaire et agents de police judiciaire adjoints mentionnés aux articles 20 et 21-1° peuvent inviter à justifier, par tout moyen, de son identité toute personne à l'égard de laquelle existe une ou plusieurs raisons plausibles de soupçonner :

- qu'elle a commis ou tenté de commettre une infraction ;
- ou qu'elle se prépare à commettre un crime ou un délit ;
- ou qu'elle est susceptible de fournir des renseignements utiles à l'enquête en cas de crime ou de délit ;
- ou qu'elle a violé les obligations ou interdictions auxquelles elle est soumise dans le cadre d'un contrôle judiciaire, d'une mesure d'assignation à résidence avec surveillance électronique, d'une peine ou d'une mesure suivie par le juge de l'application des peines ;
- ou qu'elle fait l'objet de recherches ordonnées par une autorité judiciaire.

Sur réquisitions écrites du procureur de la République aux fins de recherche et de poursuite d'infractions qu'il précise, l'identité de toute personne peut être également contrôlée, selon les mêmes modalités, dans les lieux et pour une période de temps déterminés par ce magistrat. Le fait que le contrôle d'identité révèle des infractions autres que celles visées dans les réquisitions du procureur de la République ne constitue pas une cause de nullité des procédures incidentes.

L'identité de toute personne, quel que soit son comportement, peut également être contrôlée, selon les modalités prévues au premier alinéa, pour prévenir une atteinte à l'ordre public, notamment à la sécurité des personnes ou des biens.

Dans une zone comprise entre la frontière terrestre de la France avec les Etats parties à la convention signée à Schengen le 19 juin 1990 et une ligne tracée à 20 kilomètres en deçà, ainsi que dans les zones accessibles au public des ports, aéroports et gares ferroviaires ou routières ouverts au trafic international et désignés par arrêté et aux abords de ces gares, pour la prévention et la recherche des infractions liées à la criminalité transfrontalière, l'identité de toute personne peut également être contrôlée, selon les modalités prévues au premier alinéa, en vue de vérifier le respect des obligations de détention, de port et de présentation des titres et documents prévues par la loi. Lorsque ce contrôle a lieu à bord d'un train effectuant une liaison internationale, il peut être opéré sur la portion du trajet entre la frontière et le premier arrêt qui se situe au-delà des vingt kilomètres de la frontière. Toutefois, sur celles des lignes ferroviaires effectuant une liaison internationale et présentant des caractéristiques particulières de desserte, le contrôle peut également être opéré entre cet arrêt et un arrêt situé dans la limite des cinquante kilomètres suivants. Ces lignes et ces arrêts sont désignés par arrêté ministériel. Lorsqu'il existe une section autoroutière démarant

dans la zone mentionnée à la première phrase du présent alinéa et que le premier péage autoroutier se situe au-delà de la ligne des 20 kilomètres, le contrôle peut en outre avoir lieu jusqu'à ce premier péage sur les aires de stationnement ainsi que sur le lieu de ce péage et les aires de stationnement attenantes. Les péages concernés par cette disposition sont désignés par arrêté. Le fait que le contrôle d'identité révèle une infraction autre que celle de non-respect des obligations susvisées ne constitue pas une cause de nullité des procédures incidentes. Pour l'application du présent alinéa, le contrôle des obligations de détention, de port et de présentation des titres et documents prévus par la loi ne peut être pratiqué que pour une durée n'excédant pas douze heures consécutives dans un même lieu et ne peut consister en un contrôle systématique des personnes présentes ou circulant dans les zones ou lieux mentionnés au même alinéa.

Dans un rayon maximal de dix kilomètres autour des ports et aéroports constituant des points de passage frontaliers au sens de l'article 2 du règlement (UE) 2016/399 du Parlement européen et du Conseil du 9 mars 2016 concernant un code de l'Union relatif au régime de franchissement des frontières par les personnes (code frontières Schengen), désignés par arrêté en raison de l'importance de leur fréquentation et de leur vulnérabilité, l'identité de toute personne peut être contrôlée, pour la recherche et la prévention des infractions liées à la criminalité transfrontalière, selon les modalités prévues au premier alinéa du présent article, en vue de vérifier le respect des obligations de détention, de port et de présentation des titres et documents prévus par la loi. L'arrêté mentionné à la première phrase du présent alinéa fixe le rayon autour du point de passage frontalier dans la limite duquel les contrôles peuvent être effectués. Lorsqu'il existe une section autoroutière commençant dans la zone mentionnée à la même première phrase et que le premier péage autoroutier se situe au-delà des limites de cette zone, le contrôle peut en outre avoir lieu jusqu'à ce premier péage sur les aires de stationnement ainsi que sur le lieu de ce péage et les aires de stationnement attenantes. Les péages concernés par cette disposition sont désignés par arrêté. Le fait que le contrôle d'identité révèle une infraction autre que celle de non-respect des obligations susmentionnées ne constitue pas une cause de nullité des procédures incidentes. Pour l'application du présent alinéa, le contrôle des obligations de détention, de port et de présentation des titres et documents prévus par la loi ne peut être pratiqué que pour une durée n'excédant pas douze heures consécutives dans un même lieu et ne peut consister en un contrôle systématique des personnes présentes ou circulant dans les zones mentionnées au présent alinéa.

Dans une zone comprise entre les frontières terrestres ou le littoral du département de la Guyane et une ligne tracée à vingt kilomètres en-deçà, et sur une ligne tracée à cinq kilomètres de part et d'autre, ainsi que sur la route nationale 2 sur le territoire de la commune de Régina, l'identité de toute personne peut être contrôlée, selon les modalités prévues au premier alinéa, en vue de vérifier le respect des obligations de détention, de port et de présentation des titres et documents prévus par la loi.

L'identité de toute personne peut également être contrôlée, selon les modalités prévues au premier alinéa du présent article, en vue de vérifier le respect des obligations de détention, de port et de présentation des titres et documents prévus par la loi :

1° En Guadeloupe, dans une zone comprise entre le littoral et une ligne tracée à un kilomètre en deçà, ainsi que sur le territoire des communes que traversent les routes nationales 1, 2, 4, 5, 6, 9, 10 et 11 ;

2° A Mayotte, dans une zone comprise entre le littoral et une ligne tracée à un kilomètre en deçà ;

3° A Saint-Martin, dans une zone comprise entre le littoral et une ligne tracée à un kilomètre en deçà ;

4° A Saint-Barthélemy, dans une zone comprise entre le littoral et une ligne tracée à un kilomètre en deçà ;

5° En Martinique, dans une zone comprise entre le littoral et une ligne tracée à un kilomètre en deçà, ainsi que dans une zone d'un kilomètre de part et d'autre de la route nationale 1 qui traverse les communes de Sainte-Marie, La Trinité, Le Robert et Le Lamentin, de la route nationale 2 qui traverse les communes de Saint-Pierre, Le Carbet, Le Morne-Rouge, l'Ajoupa-Bouillon et Basse-Pointe, de la route nationale 3 qui traverse les communes de Le Morne-Rouge, l'Ajoupa-Bouillon, Basse-Pointe, Fonds-Saint-Denis et Fort-de-France, de la route nationale 5 qui traverse les communes de Le Lamentin, Ducos, Rivière-Salée, Sainte-Luce, Rivière-Pilote et Le Marin, de la route nationale 6 qui traverse les communes de Ducos, Le Lamentin, Le Robert, Le François et Le Vauclin, Rivière-Salée, Sainte-Luce, Rivière-Pilote et Le Marin et de la route départementale 1 qui traverse les communes de Le Robert, Le François et Le Vauclin »

## • Délit de solidarité

Article 622-1 du CESEDA : « Sous réserve des exemptions prévues à l'article L. 622-4, toute personne qui aura, par aide directe ou indirecte, facilité ou tenté de faciliter l'entrée, la circulation ou le séjour irréguliers, d'un étranger en France sera punie d'un emprisonnement de cinq ans et d'une amende de 30 000 Euros.

Sous réserve des exemptions prévues à l'article L. 622-4, sera puni des mêmes peines celui qui, quelle que soit sa nationalité, aura commis le délit défini au premier alinéa du présent article alors qu'il se trouvait sur le territoire d'un Etat partie à la convention signée à Schengen le 19 juin 1990 autre que la France.

Sous réserve des exemptions prévues à l'article L. 622-4, sera puni des mêmes peines celui qui aura facilité ou tenté de faciliter l'entrée, la circulation ou le séjour irréguliers d'un étranger sur le territoire d'un autre Etat partie à la convention signée à Schengen le 19 juin 1990.

Sous réserve des exemptions prévues à l'article L. 622-4, sera puni de mêmes peines celui qui aura facilité ou tenté de faciliter l'entrée, la circulation ou le séjour irréguliers d'un étranger sur le territoire d'un Etat partie au protocole contre le trafic illicite de migrants par terre, air et mer, additionnel à la convention des Nations unies contre la criminalité transnationale organisée, signée à Palerme le 12 décembre 2000.

Les dispositions du précédent alinéa sont applicables en France à compter de la date de publication au Journal officiel de la République française de ce protocole. »

Article 622-4 du CESEDA : « Sans préjudice des articles L. 621-2, L. 623-1, L. 623-2 et L. 623-3, ne peut donner lieu à des poursuites pénales sur le fondement des articles L. 622-1 à L. 622-3 l'aide au séjour irrégulier d'un étranger lorsqu'elle est le fait :

1° Des ascendants ou descendants de l'étranger, de leur conjoint, des frères et soeurs de l'étranger ou de leur conjoint ;

2° Du conjoint de l'étranger, de la personne qui vit notoirement en situation maritale avec lui, ou des ascendants, descendants, frères et sœurs du conjoint de l'étranger ou de la personne qui vit notoirement en situation maritale avec lui ;

3° De toute personne physique ou morale, lorsque l'acte reproché n'a donné lieu à aucune contrepartie directe ou indirecte et consistait à fournir des conseils juridiques ou des prestations de restauration, d'hébergement ou de soins médicaux destinées à assurer des conditions de vie dignes et décentes à l'étranger, ou bien toute autre aide visant à préserver la dignité ou l'intégrité physique de celui-ci.

Les exceptions prévues aux 1° et 2° ne s'appliquent pas lorsque l'étranger bénéficiaire de l'aide au séjour irrégulier vit en état de polygamie ou lorsque cet étranger est le conjoint d'une personne polygame résidant en France avec le premier conjoint. »

## Refus d'entrée

### Col de Montgenèvre

<b>FRANCE</b>		N°
LIEU D'OU REPART LE NON ADMIS (MENTION A ENLEVER)		
PPA Col de		
<b>REFUS D'ENTRÉE</b>		
Le _____ à _____ : LIEU DE REDACTION _____, au point de passage frontalier de PPA Col de _____		
devant le soussigné		
s'est présenté :		
Nom :	Prénom :	
Alias :	Né :	
Sexe :		
Nationalité :	résidence à :	
Identifié au moyen de :	numéro :	
délivré à : par _____	le :	valable jusqu'au :
Démuni(e) d'un visa n° : de type : délivré par le :		
D'une durée de _____		
Pour les raisons suivantes :		
Nombre d'entrée : 1 Date limite de sortie :		
En provenance directement de l'Italie par la voie terrestre, via le col de LIEU D'INTERPELLATION _____ en date du _____ à _____ :		
Lequel a été informé qu'une décision de refus d'entrée a été prise à son encontre en vertu des articles L 211-1, L 211-3, L 212-2, L 213-1 et L 213-2 et R 213-1 du code de l'entrée et du séjour des étrangers et du droit d'asile (CESEDA),		
Accompagné de l'enfant :		

## I. LES MOTIFS

- (A) N'est pas détenteur de documents de voyage valables.
- (B) Est en possession d'un document de voyage faux, falsifié, ou altéré.
- (C) N'est pas détenteur d'un visa ou d'un permis de séjour valable.
- (D) Est en possession d'un visa ou d'un permis de séjour faux, falsifié ou altéré.
- (E) N'est pas détenteur du document approprié attestant du but et des conditions de séjour. Le document suivant n'a pas pu être produit :
- Document : Absence de document
- (F) A déjà séjourné 90 jours sur le territoire des États Membres appliquant intégralement l'acquis de Schengen au cours de la précédente période de 180 jours.
- (G) Ne dispose pas de moyen de subsistance suffisants correspondant à la période et aux modalités de séjour, au retour vers le pays d'origine ou de transit.
- (H) Est signalé aux fins de non-admission.
- dans le SIS.
- dans le fichier national (mesure d'expulsion, d'éloignement, d'interdiction du territoire, menace de trouble à l'ordre public).
- (I) Est considéré comme représentant un danger pour l'ordre public, la sécurité intérieure, la santé publique ou les relations internationales d'un ou de plusieurs États Membres de l'Union européenne.

Observations :

L'intéressé peut former un recours contre la décision de refus d'entrée conformément à ce qui est prévu par la législation nationale. Copie du présent acte est remise à l'intéressé.

## II. VOS DROITS

L'accès au territoire français vient de vous être refusé. La loi vous donne la possibilité d'avertir ou de faire avertir la personne chez laquelle vous avez indiqué vouloir vous rendre, votre consulat ou le conseil de votre choix.

Elle vous permet également, si vous le souhaitez, de disposer d'un délai d'un jour franc avant ce rapatriement. **Dispositions non valables aux frontières terrestres.**

Il vous appartient de prendre vous-même l'initiative de ces démarches. Nous vous mettons en mesure de les accomplir.

Vous êtes informé de la possibilité d'accéder à un poste téléphonique spécialement mis à votre libre disposition par l'Administration et dont l'emplacement dans les locaux du présent service de Quart vous est désigné, de telle sorte que vous êtes en mesure d'exercer vos droits.

Je ne veux pas repartir avant l'expiration d'un délai de 24 heures, à passer en zone d'attente, à compter de ce soir à minuit. **Dispositions non valables aux frontières terrestres.**

Je veux repartir le plus rapidement possible. **Dispositions non valables aux frontières terrestres.**

Signature de l'intéressé

Paraphes

## Refus d'entrée Menton

### III. VOS DEVOIRS

Aux termes de l'article L 624-1 du CESEDA, tout étranger qui se serait soustrait ou qui aura tenté de se soustraire à l'exécution d'une mesure de refus d'admission sera puni d'une peine de trois ans d'emprisonnement.

### IV. VOS RECOURS

Vous êtes informé qu'il vous est possible d'intenter un recours contre la décision de refus d'admission prise à votre rencontre devant le tribunal administratif territorialement compétent, dans un délai de deux mois à compter de cette décision. Ce délai ne fait pas obstacle à l'exécution de cette décision.

Fait à \_\_\_\_\_ 05100, le \_\_\_\_\_ à \_\_\_\_\_ :

Après notification en langue :

Qu'il comprend

Qu'il sait lire

Qu'il ne sait pas lire

Par le truchement de M

interprète en langue

Présent dans les locaux.

Par l'intermédiaire d'un moyen de télécommunication. L'interprète - traducteur étant inscrit sur une liste définie en Conseil d'État ou à un organisme d'interprétariat et de traduction agréé par l'administration en application des articles L 111-8, L 111-9, R 111-1 et suivants ainsi que l'article R 221-3 alinéa 2 du CESEDA.  
Interprète de la société inter service migrants interprétariat sis 251, rue du Faubourg Saint-Martin 75010 Paris (téléphone : 01-53-26-52-50)

Refusant de répondre ou d'indiquer une langue qu'il comprend, la procédure complète étant de ce fait effectuée en français (article L 111-7 et R 221-3 alinéa 2 du CESEDA).

Lecture faite par nous même

est invité à signer avec nous le présent, ainsi que l'ensemble des feuillets, dont

copie lui est remise.

L'intéressé

Le fonctionnaire de police

**FRANCE**

DDPAF des Alpes Maritimes  
SPAF de Menton

**REFUS D'ENTREE**

Le \_\_\_\_\_ à \_\_\_\_\_ H \_\_\_\_\_, au point de passage frontalier de \_\_\_\_\_

devant le(s) soussigné(s) \_\_\_\_\_

s'est présenté(e) :

Nom : \_\_\_\_\_ Prénom : \_\_\_\_\_

Né(e) le : \_\_\_\_\_ à \_\_\_\_\_

Sexe : \_\_\_\_\_

Nationalité : \_\_\_\_\_ résident à : \_\_\_\_\_

Identifié(e) au moyen de \_\_\_\_\_ numéro : \_\_\_\_\_

délivré à \_\_\_\_\_ par \_\_\_\_\_ le \_\_\_\_\_

muni(e) d'un visa n° \_\_\_\_\_ de type \_\_\_\_\_ délivré par : \_\_\_\_\_

d'une durée de \_\_\_\_\_ jours pour les raisons suivantes : \_\_\_\_\_

En provenance de \_\_\_\_\_ ITINÉRAIRE \_\_\_\_\_, arrivé par \_\_\_\_\_

(Indiquer le moyen de transport utilisé, par exemple le numéro de vol) lequel a été informé qu'une décision de refus d'entrée a été prise à son encontre en vertu des articles L 211-1, L 211-3, L 212-2, L 213-1 et L 213-2 et R 213-1 du code de l'entrée et du séjour des étrangers et du droit d'asile (CESEDA).

Accompagné(e) des enfants : \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Pensabir

## List of persons interviewed

### Mission dans les Hautes-Alpes

Lundi 19 mars 2018

#### Rencontres institutionnelles :

- Rendez-vous avec le maire  
**Gérard FROMM**, maire de Briançon

- Rendez-vous avec la direction centrale de la police aux frontières (PAF)  
**Jean-Bernard ROUFFIGNAC**, commandant de police, Direction centrale de la police aux frontières

- Rendez-vous avec le député Joël Giraud  
**Joël GIRAUD**, député de la 2ème circonscription des Hautes-Alpes

Rencontre interassociative à la Maison des jeunes et de la culture du Briançonnais (MJC)  
**Daniel GILBERT**, président de la Maison des jeunes et de la culture  
**Luc MARCHELLO**, directeur de la Maison des jeunes et de la culture

- Table ronde sur la frontière  
**Pascaline CURTET**, La Cimade  
**Sylvia MASSARA**, bénévole italienne  
**Anne MOUTTE**, maraudeuse  
**Michel ROUSSEAU**, Tous migrants

- Table ronde sur l'accueil d'urgence  
**François ESTRANGIN**, La pastorale des migrants  
**Ariane JUNCA**, Médecins du Monde  
**Julie LAVILLE**, Cellule médicale du Refuge  
**Céline MONNET**, Secours catholique à Briançon  
**Philippe WYON**, Refuges solidaires

- Table ronde sur les MNA  
**Agnès ANTOINE**, Tous migrants  
**Anne CHAVANE**, RESF FCPE  
**Delphine DEFRADE**, La MAPEmonde  
**Benoît DUCOS**, Tous migrants  
**Agnès FREYERMUTH**, Secours catholique  
**Claire GONDRE**  
**Patrick MARSAUCH**, La Cimade de Gap

#### I. LES MOTIFS :

- (A) N'est pas détenteur de documents (s: voyage variables
  - (B) Est en possession d'un document de voyage faux, falsifié, contrefait
  - (C) N'est pas détenteur d'un visa ou d'un permis de séjour valide
  - (D) Est en possession d'un visa ou d'un permis de séjour faux, falsifié ou altéré
  - (E) N'est pas détenteur du ou des documents appropriés attestant du fait et des conditions de séjour. L(s) document(s) mentionné(s) n'a (nt) pas pu être produit(s) :
  - (F) A déjà séjourné (s) dans le territoire des États membres appliquant indifféremment l'acquis de Schengen au cours de la précédente période de 180 jours
  - (G) Ne dispose pas de moyens de subsistance suffisants correspondant à la période et aux modalités de séjour, au vu de ses ressources et de son statut
  - (H) Est signalé(e) aux fins de non-admission :
    - dans sa SIS
    - dans la base nationale (nomme d'urgence, d'éloignement, d'interdiction du territoire, sanses de trouble à l'ordre public)
  - (I) Est considéré(e) comme représentant un danger pour l'ordre public, la sécurité intérieure, la santé publique ou les relations internationales et/ou on de plusieurs États membres de l'Union européenne.
- Observations :

L'intervenant(e) peut émettre un retour positif ou négatif, la décision de refus, d'ordre conformément à ce qui est prévu par le Règlement sus-cité. Copie du présent état est renvoyé à l'intervenant(e).

#### II. VOS SIGNETS :

- L'ordre au territoire français vient de vous être refusé. La loi vous donne la possibilité d'obtenir ou de faire renouveler la permission d'entrée temporaire vous avez indiqué vouloir vous rendre, votre nomul ou le conseil de votre choix. Elle vous permet également, si vous le souhaitez, de disposer d'un délai d'un jour franc avant ce renouvellement.
- Il vous appartient de prendre vosarrangements l'issue de ces démarches. Nous vous mettrons en mesure de les accompagner.
- Je ne vous pas reporter devant l'expiration d'un délai de 24 heures, à passer en zone d'attente, à compter de ce jour à midi.
- Je vous raporte la plus rapidement possible.

Signature de l'intervenant

Cocher la case correspondante

Zonaire 2

Aux termes de l'article L.564-1 du CSSEDA, tout étranger qui se serait présenté au café sans tenir de se soumettre à l'exécution d'une ordonnance de refus d'admission sans point d'entrée de zone sans d'accompagnement.

#### III. VOS RECOMMANDATIONS :

Vous êtes informé(e) qu'il vous est possible d'obtenir un recours contre la décision de refus d'admission prise à votre égard devant le tribunal administratif territorialement compétent, dans un délai de deux mois à compter de cette décision. Ce délai se fait pas obstacle à l'exécution de cette décision.

Fait à \_\_\_\_\_ le \_\_\_\_\_ à \_\_\_\_\_

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Mardi 20 mars 2018

#### Rencontres institutionnelles

- Rendez-vous avec la préfète des Hautes-Alpes

**Cécile BIGOT-DEKEYZER**, préfète des Hautes-Alpes

- Visite du centre d'hébergement de mineurs primo-arrivants de Chorges

**Miléna ZAREV**, responsable du CADA de France Terre d'Asile à Gap

- Rendez-vous avec le président du département des Hautes-Alpes

**Jean-Marie BERNARD**, président du département des Hautes-Alpes

**Jérôme SCHOLLY**, directeur général des services (DGS) – 20 mars 2018

- Rencontre avec FTDA et l'APPASE

**Augustin MAYOLO**, directeur de l'association pour la promotion des actions sociales et éducatives (APPASE) - 20 mars 2018

## Mission dans les Alpes-Maritimes

Jeudi 12 avril 2018

#### Rencontres institutionnelles

- Préfecture des Alpes Maritimes

**Elizabeth BARKA**, directrice de la réglementation de l'intégration et des migrations

**Cécile BATAILLE**, capitaine de police de la direction départementale de la police aux frontières des Alpes-Maritimes

**Jean-Gabriel DELACROY**, sous-préfet, directeur de cabinet de Monsieur le préfet des Alpes-Maritimes

**Pierre MATHIEU**, Direction de la réglementation, l'intégration et des migrations, Adjoint au Chef du Bureau des Examens Spécialisés

**Jean-Philippe NAHON**, commissaire de la direction centrale de la police aux frontières des Alpes-Maritimes

**Stéphane REVERRE-GUEPRATTE**, directrice départementale adjointe de la cohésion sociale

**Eric ROSE**, directeur territorial de l'OFII

- Rencontre avec la DDPAF de Menton

Commandant divisionnaire **Hervé BLUTEAU**, chef de service

Capitaine **Jean-Marc BRANCA**, adjoint au coordonnateur des services de la DDPAF,

Commissaire **Jean-Philippe NAHON**, commissaire de la direction centrale de la police aux frontières des Alpes-Maritimes

#### Rencontre interassociative

**Agnès LEROLLE**, membre de la Coordination des acteurs locaux à la frontière franco-italienne pour les migrants (Caffim)

**Maurizio MARMO**, Caritas

**Elena PRESTT**, coordinatrice de Terre des Hommes, Field Officer

**Emilie PESSELIER**, chargée de mission à la frontière franco-italienne, Anafé

**Daniela ZITAROSA**, Intersos

Vendredi 13 avril 2018

#### Rencontres institutionnelles

- Visite du GUDA de la préfecture des Alpes-Maritimes

**Elizabeth BARKA**, directrice de la réglementation de l'intégration et des migrations

**Pierre MATHIEU**, Direction de la réglementation, l'intégration et des migrations, Adjoint au Chef du Bureau des Examens Spécialisés

**Eric ROSE**, directeur territorial de l'OFII

- Rendez-vous avec le Conseil départemental

**Auguste VEROLA**, vice-président du conseil départemental des Alpes-Maritimes

**Christophe DI FRAJA**, adjoint au directeur de l'enfance, DGA pour le développement des solidarités humaines

- Visite du CRA de Nice

**Jean-Philippe NAHON**, commissaire de la direction centrale de la police aux frontières des Alpes-Maritimes

**Capitaine PAVARD** – 13 avril 2018

### Rencontre interassociative

- Table ronde sur la frontière et le délit de solidarité

**Maeva BINIMELIS**, avocate, membre du SAF

**Gérard BONNET**, La Roya Citoyenne

**Catherine GROS**, La Roya Citoyenne

**Cédric HERROU**, président de Défends ta citoyenneté

**Martine LANDRY**, Amnesty International France

**Zia OLOUMI**, avocat

**Mireille DAMIANO**, avocate, membre du SAF

**Elisabeth Marque** et **Marie France Fenet**, La Cimade

- Table ronde sur l'accueil d'urgence et l'hébergement

**Maud BAGARIA**, Secours catholique – 13 avril 2018

**Philippe COLLET**, délégué à la pastorale des migrants de Nice

**Agnès GILLINO**, coordinatrice générale de Médecins du monde

**Anaïs LAMBERT**, Fondation de Nice

**Nicole SCHECK**, médiatrice sociale d'Habitat et citoyenneté

**Claude SEGUIN**, coordinateur de Welcome o6

- Table ronde sur les MNA

**Henri BUSQUET**, présent de la section de la ligue des droits de l'Homme de Nice – 13 avril 2018

**Souani COTTO**, Ligue des droits de l'Homme – 13 avril 2018

**Mireille DAMIANO**, avocate, membre du SAF

**David NAKACHE**, président de Tous citoyens – 13 avril 2018

**Michel RUHER**, ADN et RESF – 13 avril 2018

Entretien avec **Assane NDAW**, directeur adjoint du centre de rétention administrative de Nice, Forum réfugiés-Cosi

## Sigles et abréviations

ADA : Allocation pour demandeurs d'asile

AFP : Agence France Presse

ASE : Aide sociale à l'enfance

BEAA : Bureau européen d'appui en matière d'asile

CA : Cour d'appel

Cass. : Cour de cassation

CCNE : Comité consultatif national d'éthique

CE : Conseil d'Etat

CESDH : Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales

CESEDA : Code de l'entrée et de séjour des étrangers et du droit d'asile

CFS : Code frontières schengen

CGLPL : Contrôleur général des lieux de privation de liberté

CIDE : Convention internationale des droits de l'enfant

CNCDH : Commission nationale consultative des droits de l'homme

COP 21 : Conférence de Paris sur les changements climatiques (2015)

CPP : Code de procédure pénale

CRS : Compagnies républicaines de sécurité

DCPAF : Direction centrale de la police aux frontières

DDPAF : Direction départementale de la police aux frontières

ECRI : Commission européenne contre le racisme et l'intolérance

FTDA : France terre d'asile

GUDA : Guichet unique pour les demandeurs d'asile

HCR : Haut-Commissariat aux réfugiés – Agence des Nations unies pour les réfugiés

MJC : Maison des jeunes et de la culture

MNA : Mineur non-accompagné

OFII : Office français de l'immigration et de l'intégration

OFPRA : Office français de protection des réfugiés et apatrides

OIM : Organisation mondiale pour les migrations

OIT : Organisation internationale du travail

PADA : Plate-forme d'accueil pour les demandeurs d'asile

PAF : Police aux frontières

PASS : Permanence d'accès aux soins de santé

QPC : Question prioritaire de constitutionnalité

RAEC : Régime d'asile européen commun

TA : Tribunal administratif

TEH : Traite des êtres humains

TGI : Tribunal de grande instance

UE : Union européenne





Created in 1947 at the instigation of René Cassin, the **National Consultative Commission on Human Rights (CNC DH)** is the **French national institution responsible for promoting and protecting human rights with level 'A' accreditation from the United Nations.**

The CNC DH performs a three-pronged role that involves the following:

- enlightening the public decision-making process with regards to human rights;
- monitoring the effectiveness in France of rights protected by international human rights conventions;
- overseeing France's implementation of recommendations made by international committees.

The CNC DH is independent and operates based on the principle of the pluralism of ideas. This being the case, as the only institution that maintains continuous dialogue between civil society and French experts in the field of human rights, the Committee comprises 64 qualified individuals and representatives of non-governmental organisations with their roots in civil society.

The CNC DH has been an independent National Rapporteur on the fight against all forms of racism since 1990, on the fight against the trafficking and exploitation of human beings since 2014, on the fight against homophobia since 2018.

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