

France

French National Consultative Commission on Human Rights (CNCDH)

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The French NHRI was re-accredited with A status in March 2019. The SCA noted that the extension of the NHRI's mandate was not supported by the provision of a sufficient level of funding. Also, the SCA underlined the need for a clear limit to the members' term of mandate and an explicit broad protection mandate in the law. In this regard, the SCA welcomed the CNCDH's efforts in carrying out its protection mandate in practice. Finally, the SCA encouraged the NHRI to continue strengthening its cooperation with other national bodies.

Developments relevant for the independent and effective fulfilment of the NHRI's mandate

No significant changes took place in the environment in which the CNCDH operates. It however wishes to be more regularly consulted on any draft or proposal of legislative texts that could have an impact on human rights or IHL including during state of emergency.

Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

No change has occurred in the regulatory framework applicable to the CNCDH since the last review by the SCA. The CNCDH is accredited with Status A and fully complies with the three key Paris Principles, independence, pluralism and vigilance. This accreditation offers the guarantee that the CNCDH is a credible and independent actor, which provides reliable and concrete information to the human rights international monitoring mechanisms and takes a critical look at the way France respects its international human rights and international humanitarian law's (IHL) obligations.

The CNCDH's independence is enshrined in Act n°2007-292 of 5th March 2007. Legislative drafts and proposals concerning human rights and international humanitarian law are put

before or taken up by CNCDH. The institution's composition (64 individuals and representatives from civil society organisations) reflects the diversity of opinions expressed in France as regards human rights and IHL issues. The CNCDH is dedicated to respect for and the implementation of human rights and IHL in France and combats the violation of civil liberties and fundamental rights. Furthermore, the CNCDH holds four specific mandates as independent national rapporteur: Fight against racism; Fight against trafficking in human beings; Implementation of the UN Guiding Principles on business and human rights; and more recently Fight against anti-LGBTI people hatred. It thus occupies a unique position in the French institutional landscape and contributes to strengthen the rule of law.

References

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Human rights defenders and civil society space

Several infringements on human rights (or risks thereof) having a negative impact on civil society space and/or reducing human rights defender's activities occurred these last few years.

The CNCDH attaches great importance to safeguarding, and, if needed, extending, a **public space for debate and expression of opinions**, which is essential for democracy and rule of law. It notes with concern that France is regularly condemned by the ECHR for violations of Article 10 of the European Convention.

The CNCDH provides public authorities with independent advice when it seems that legislative drafts and proposals (or practices) violate freedom of expression. It has for instance done so regarding the law adopted in 2018 to address **fake-news** in digital time during election campaigns and alerted about the risks for the freedom of expression, the freedom of the press and the right to information. Likewise, the CNCDH expressed concern about the law proposal to transpose the EU Directive on **trade secrets**, since several dispositions violate the right to information and freedom of expression and weaken journalists and whistleblowers. The CNCDH pushes for a **better protection of whistleblowers**, in particular because of the prior duty to notify the employer of an

offence/act contrary to the public interest or the length of procedures to enjoy whistleblowers status.

The freedom of expression is however not absolute, as reminded the CNCDH in its *Opinion on the fight against online hate speech*, or regularly in its annual report on the fight against racism, xenophobia and anti-semitism.

The CNCDH is also concerned about significant restrictions of the **freedom of assembly and demonstration**, whereas demonstrations are inherent to democratic debate. Particularly worrisome is the use of the normative framework of the state of emergency declared after the terrorist attacks in 2015 to prevent demonstrations of ecologists or trade unionists.

In the context of the "*gilets jaunes*" demonstrations, the CNCDH alerted French authorities, and European and international human rights organs, such as UN Special Procedures or the Commissioner for Human Rights of the Council of Europe, about violations of freedom of assembly and violence committed against citizens and journalists in that context. Moreover, the CNCDH is concerned about the law adopted in 2019 to reinforce and guarantee public order during demonstrations. It alerted the Legislator, as well as the Constitutional Council, and denounced the extension of administrative police powers (preventive prohibition to demonstrate) and the creation of a new offence (concealment of the face during a demonstration and extension of additional penalties). Eventually, the first one was declared unconstitutional.

On another matter, despite positive developments in favor of the **help to migrants**, humanitarian assistance provided to them, especially at the border, can still be prosecuted.

Through its mandate as an NHRI, as well as its composition, the CNCDH contributes to the existence of a civil society space. It also provides a steady support to the activities of Human Rights defenders, amongst others through regular meetings with Human Rights defenders of other countries or the annual attribution of the Human Rights Prize "Liberty, Equality, Fraternity".

References

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- Loi n°2018-670 du 30 juillet 2018 *relative à la protection du secret des affaires*;
- Loi n°2019-290 du 10 avril 2019 *visant à renforcer et garantir le maintien de l'ordre public lors des manifestations*;
- CNCDH, Communiqué de presse du 25 mai 2018, *Lutte contre les fake news : des risques pour la liberté d'expression et le droit à l'information*;
- CNCDH, Communiqué de presse du 9 mai 2018, *Secret des affaires : la liberté d'expression et d'information doit rester le principe*;
- CNCDH, *Avis sur le projet de loi relatif à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique*, 26 mai 2016;
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- CNCDH, *Les droits de l'homme en France. Regards portés par les instances internationales*, 2017;
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- *Observations du secrétariat général de la CNCDH relative à la proposition de loi « visant à prévenir les violences lors des manifestations et à sanctionner leurs auteurs »*, 20 janvier 2019;
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Checks and balances

The system of the Fifth Republic is characterized by a strong role vested in the President of the Republic and the Government. They possess broad powers under the Constitution, reinforced in practice when presidential and parliamentary majorities are aligned which corresponds to the regular functioning of the political institutions. As a result, the President conducts in practice the national political agenda, with the Government lead by Prime Minister, and can count on a strong majority within the National Assembly. The executive thus remains predominant, which weakens the Parliament's role to make laws and to monitor the Government's action. This is still the case despite several constitutional

revisions aiming at strengthening the Parliament's powers, such as the large-scale reform of 2008.

With a strong majority within the National Assembly, the Government uses certain powers allowing it to ensure its predominance in the legislative process as the **accelerated legislative procedure**. A significant number of laws, **even large-scale reforms**, were adopted following the accelerated procedure, such as the Asylum and Immigration Law (2018), the Law of the Justice reform (2019) and more recently the draft bill on pension reform. The CNCDH deplored on many occasions the frequent use of this procedure regarding many bills, outside any emergency requirement, in several areas that have direct impact on public freedoms and human rights. This process **restricts significantly the parliamentary debate**, essential in a democracy.

More specifically, the lack of parliamentary control is prominent within the framework of the **fight against terrorism**. Several measures adopted in this context give significant powers to the executive. Despite the creation of a monitoring mechanism by the law of strengthening international security and the fight against terrorism, it does not grant the parliamentarians with enough prerogatives to exercise sufficient control, as required by a strong rule of law. In addition to its opinions adopted on this issue, the CNCDH held events to alert on the abuses in the context of terrorism. For instance, a seminar, co-organised by the CNCDH, was held on November 2019 on the impact of counter-terrorism policies on human rights.

The CNCDH monitors and regularly reports on the **execution and implementation of the ECHR's judgments**. A considerable number of judgments condemned France for the conditions of detention of prisoners and prison overcrowding. This year, the ECHR condemned the French State in the case JMB et autres (in which a third party-intervention was submitted by the CNCDH) for inhuman and degrading treatment and lack of effective remedy at the national level. Despite a decision already adopted in 2015 in this sense (Yengo), national authorities have not yet taken adequate measure to comply with the judgments of the Court to improve prisons conditions. For example, no effective measures were taken to resolve the overcrowding and there is a lack of legal provisions allowing prisoners to seize the judge to prevent the violation of human dignity. The CNCDH is vigilant to alert the Government and Parliament on that matter and to provide independent information to the Committee of Ministers.

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Functioning of justice systems

The last significant justice reform was undertaken by the **Law of March 23rd 2019**; part of a movement of rationalization initiated a few years ago that endangers fundamental human rights, in particular **access to justice and courts**, yet essential to the rule of law. The CNCDH alerted the parliamentarians that the budgetary and political policy choices made would compromise access to a high-quality system of justice.

In **criminal matters**, access to an independent judge is undermined for both the victim and the perpetrator, in particular by the shortening of procedural timeframe ; the proliferation of rapid methods to bring cases before courts ; the increase of offences that can be tried by a single judge, thus undermining the principle of collegiality, essential for the

independence and impartiality of the judiciary ; or by the extension of the use of videoconferencing. Also concerning is the strengthening of the role of the public prosecutor (whose status does not meet Article 6 ECHR's requirements) and of investigative powers, which marginalizes judges, at the expense of the rights of the defense and the adversarial principle. Moreover, the objective to promote sentence adjustment to reduce prison overcrowding is unlikely to be achieved without the extension of the judge's role and the granting of more resources.

In **civil matters**, the simplification of procedures was accompanied by a decline in access to the courts, particularly for vulnerable persons, with the removal of certain local courts or because digital referral does not take the digital divide into account. The generalization of compulsory legal representation should have considered **access to legal aid and its cost**. Finally, the increasing use of **pre-trial amicable settlement methods** should be accompanied by the appropriate support, especially for persons in need.

Regarding the ongoing reform of the **juvenile criminal justice system**, the CNCDH expressed the opinion that the hardening of the criminal arsenal was not justified. The reform seeks to speed up procedures, without enough emphasis put on the importance of education, which should take priority over repression. The CNCDH issued several recommendations, including to ensure a specialized justice to respect the best interests of the child and expressed concern about the numbers of minors deprived of their liberty.

In a study about human rights in the **overseas territories**, the CNCDH stressed the difficulties faced by citizens to have access to resources to defend their rights, which impedes their access to law and justice. The lack of interpreters, law professionals and jurisdictions as well as their congestion are particularly worrisome.

The CNCDH also pays special attention to **asylum and migrants rights reforms** and considers that significant modifications of asylum procedure brought by the Law of September 10th2018 violate the asylum seekers' rights. This is the case, amongst others, with the development of accelerated proceedings, the reduction of the time to appeal before the National Court for Right of Asylum and the modification of the time-limit to apply for legal aid; which has an effect on the right to an effective remedy.

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Media pluralism

The press and the media in France are generally free. However, journalists are exposed to different threats preventing them from the normal exercise of their professional activities and inform the public. **Acts of violence committed by police forces against journalists** have increased considerably over the past year. This violence reached high levels especially during the coverage of the Yellow Vest protests (Gilets Jaunes) and the demonstrations on France's pensions reform. During those demonstrations, a number of journalists have been severely injured due to the excessive use of force by law enforcement officers (hand fractures, broken ribs and facial injuries). Moreover, cases of intimidation of journalists have even been reported.

Pressure and intimidations against journalists to reveal their sources were also reported. Several journalists have been summoned by French intelligence service in connection with their work. Most of these cases are related to investigations led by journalists on sensitive political subjects involving homeland security or national defense. For instance, in 2019, the General Directorate for Internal Security (DGSI) questioned and summoned journalists from Le Monde and Disclose because of articles on France's arms export to Saudi Arabia and United Arab Emirates or in the context of the Benalla affair.

On another note, a law was adopted in 2018 to address **fake-news** in digital time during election campaigns. The CNCDH recognized the legitimacy of preventing and fighting against attempts to manipulate public opinion during election period. However, the institution alerted on the lack of definition of the term “fake news” and criticized the new proceedings for interim relief (procédure de référé) that could be subject to political instrumentalization during election campaigns. Furthermore, prerogatives of the French Media Regulatory Authority (Conseil supérieur de l’audiovisuel– CSA) have considerably increased. Thereupon, the scope of the administrative police powers thus entrusted to the CSA is potentially dangerous and threatens to undermine many aspects of media pluralism.

The CNCDH is very committed to press pluralism and freedom of journalists. For instance, the institution welcomed a delegation of six journalists from Pakistan. A meeting was held on February 6 with the members of the CNCDH to discuss the human rights situation, media freedom and pluralism in both countries. At this moment, an opinion on freedom of press is currently under discussion at the CNCDH.

References

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Corruption

Corruption jeopardizes democracy, threatens the pre-eminence of the rule of law, disrupts the legislative process, the principles of legality and legal certainty, introduces a part of arbitrary in the decision process and has devastating impact on human rights. The CNCDH regularly addresses this issue.

In the context of **moralization of public life** following cases of suspicion related to laundering of tax fraud by high political representatives, the CNCDH for instance called for strong symbolic measures to ensure the probity of public life in 2013. It addressed several recommendations, related to the creation of a public financial prosecutor, the lifting of the tax administration’s monopoly to initiate criminal proceedings and encouraged for more transparency regarding the elected representatives’ estate, as the Government introduced several draft laws in that context. Since then, a public financial prosecutor was created and the tax administration’s monopoly partially lifted. Regarding more specifically the CNCDH,

its members have to establish declarations of assets and interests for ethical and exemplarity purposes since 2016.

More recently, the CNCDH welcomed the adoption of the **Law on transparency, fight against corruption and modernization of economic life** since it strengthens the French legislative arsenal in that field and creates a general framework for the **protection of whistleblowers**. Before its adoption, it however suggested several amendments. For instance, the French Anti-Corruption Agency (AFA), attached to the Ministry of Justice and the Ministry of Budget, falls short of the UN Convention against corruption requirements and the GRECO's recommendations regarding independence, and should have the status of independent administrative authority.

The CNCDH also addressed recommendations to broaden the definition of interest representatives that try to influence public decision, or to guarantee more equity and transparency in lobbying activities. The effective protection of whistleblowers contributes to reinforce transparency and democratic responsibility since the freedom of expression and the right to seek and receive information are essential to the functioning of a genuine democracy. This law represents an important progress in that direction, but seems insufficient to ensure effective protection of whistleblowers. The CNCDH is currently working on the evaluation of its implementation, in the context of the transposition by France of EU whistleblower Directive 2019/1937, and will formulate propositions in order to improve it.

It may also be noted that the CNCDH plays a role in promoting and evaluating the fight against corruption by public and private businesses in its role as national independent rapporteur on **business and human rights**, as well as on **human trafficking**. Its first report on the implementation of the United Nations Guiding Principles on Business and Human Rights will soon be adopted.

The fight against corruption and, more globally, the promotion of the rule of law and confidence in institutions, is part of the **Sustainable Development Goals** that the CNCDH promotes, for instance in the context of business and human rights or in its publications underlying the links between development, environment and human rights.

References

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In-focus section on COVID-19 measures

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

A **State of Health Emergency** (SHE) was established on March 2020 to deal with the health crisis caused by the COVID-19 pandemic. This regime constitutes an exceptional measure within the French legal system and increases notably the power of the executive branch, on one hand, the prerogatives of the Prime Minister and the Minister of Health and, on the other, the competences assigned to the prefects. In this context, these authorities can take a series of measures to limit public freedoms. Moreover, the Government can take measures by ordinance that can directly affect a whole series of fundamental rights in vast and varied fields, especially economic and social rights.

As a result, this regime significantly alters the balance of power. The **role of the Parliament is considerably reduced** as the organ is mainly informed by the Government on the measures taken under the SHE. Its control is thereby drastically weakened as it can

intervene only to extend the SHE one month after its declaration by the Council of Ministers.

Moreover, the CNCDH considers that the **reduction of judicial review**, which is an essential component of the rule of law, is very alarming given the extent of the measures taken in the framework of the SHE. The institution especially deplores the adoption of the organic law that **suspends the constitutional review of laws** through priority preliminary ruling on constitutionality. Also, an ordinance adopted during this state of emergency closes some administrative courts, whose control is essential due to the extended powers of the executive branch. Moreover, the judicial activity has considerably been reduced, whereas the right to have access to justice is a pillar of the rule of law and justice an essential public service.

Most important challenges due to COVID-19 for the NHRI's functioning

Despite the lockdown, the CNCDH continues to fulfil its control and advisory missions in the field of human rights. The institution has been particularly active since the beginning of the declaration of the SHE. One of the first activities was the **establishment of an observatory on the SHE and the lockdown**. Its role is to control and monitor the application and the implementation of measures having an impact on human rights, to identify the violations of these rights and public freedoms and to provide recommendations to public authorities. To date, the Observatory issued four letters, including on child welfare, housing and persons living in poverty. The CNCDH follows the situation in the field thanks to its members and especially focuses on the most vulnerable people. Furthermore, the institution adopted three opinions related to the respect of human rights within the framework of the SHE: access to justice, digital tracking and rule of law. Finally, the CNCDH alerted national authorities at the highest level of risks of human rights violations in the context of the COVID-19 outbreak. The President of the CNCDH sent two letters to the Prime Minister concerning the bill establishing the SHU and the one extending it.

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