

## France

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*French National Consultative Commission on Human Rights (CNCDH)*

### 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.

### Human rights defenders and civil society space

Two new bills currently being debated in France raise serious concerns in view of their potential impact on civil society space.

A draft legislation known as the “**Global Security law**” (1), adopted in November 2020 by the National Assembly, was the object of a heated debate and criticized as providing a worrying basis for a securitarian State. The CNCDH drew attention (2) to some of the measures' severe impacts on fundamental rights and democratic values, in particular as regards the ban on disseminating images allowing the identification of law enforcement officers, which could lead to infringements of freedom of information (art. 24), and rules allowing for a widespread use of drones which opens up unprecedented surveillance prospects, especially during demonstrations (art. 22).

French civil society massively mobilised against the draft law, gathering in protests all over the country in late 2020 and early 2021. Protests eventually prompted the authorities to review some of the most controversial articles. In the meantime, the Council of State however banned the use of drones during demonstrations in Paris, as the practice has no satisfactory legal basis for now (3). The law n° 2021-646 *pour une sécurité globale préservant les libertés* (global security preserving freedoms) was promulgated on 25 May 2020, without the controversial article 24 censored by the Constitutional Council (4).

Another draft bill “to strengthen respect for Republican principles”, also known as the **anti-separatism law** (5), was announced by President Macron in October 2020 and has now been approved by the National Assembly and Senate, waiting for final approval in June 2021. The draft

law was first presented in December 2020 to respond to threats of fundamentalism, and has since been heavily criticized by various civil society actors (CSOs, academics, lawyers) as affecting essential components of civic space and seriously endangering freedom of assembly. The CNCDH published an opinion in this sense (6) while the Council of State has, on its side, noted in December that parts of the draft law raised sensitive questions of constitutional conformity (7).

The two legislative initiatives mentioned above are, in addition to their controversial content and impacts, following a fast-track procedure.

Apart from those problematic bills, other concerning trends impacting on civic space and human rights defenders were observed over the past year. The French authorities have for instance **targeted several CSOs allegedly opposing the 'Republican order' or linked to radical Islamism**. Civil society actors notably expressed concern at the dissolution (by decree) of the Collective Against Islamophobia in France (8), which was a member of the European Network Against Racism. This has led to some support from civil society and anti-discrimination associations. Muslim organisations have been in general regularly the target of attacks by extreme right and other mainstream political forces.

### *References*

- (1) [https://www.assemblee-nationale.fr/dyn/15/dossiers/securite\\_globale1](https://www.assemblee-nationale.fr/dyn/15/dossiers/securite_globale1)
- (2) CNCDH, Avis sur la proposition de loi relative à la sécurité globale - 26.11.2020 <https://www.cncdh.fr/fr/actualite/avis-sur-la-proposition-de-loi-relative-la-securite-globale>
- (3) <https://www.laquadrature.net/wp-content/uploads/sites/8/2020/12/4461551PR1.pdf>
- (4) <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043530276/>
- (5) <https://www.dalloz-actualite.fr/flash/projet-de-loi-confortant-respect-des-principes-de-republique>
- (6) CNCDH, Avis sur le projet de loi confortant le respect des Principes de la République – 04.02.2021 <https://www.cncdh.fr/fr/actualite/avis-sur-le-projet-de-loi-confortant-le-respect-des-principes-de-la-republique>
- (7) <https://www.conseil-etat.fr/ressources/avis-aux-pouvoirs-publics/derniers-avis-publies/avis-sur-un-projet-de-loi-confortant-le-respect-par-tous-des-principes-de-la-republique>

- (8) <https://www.ldh-france.org/dissolution-politique-du-ccif/>

## Checks and balances

The draft “**Global Security law**” referred to in the previous section provided dangerously extended powers to police forces. In addition to the problematic measures mentioned above, the draft text transfers some judicial police powers to municipal police officers, on subjects as sensitive as the use of narcotics. Moreover, the vague manner in which some of its provisions are written (e.g. on drones use) amplify the risks (1).

The CNCDH expressed concern over the fact that the measures provided for in this draft legislation will further deteriorate the relationship between the police and French citizens. Yet for years France has already been part of the bottom third of European Union states with regard to the **lack of confidence expressed by the population in its police** (2). The CNCDH issued over 20 recommendations to the authorities to address these matters, through structural reforms of the police system.

Another issue raised by many actors, including the CNCDH, relates to the **lack of sufficient consultation in the legislative processes**. This is partly due to the COVID-19 crisis and the state of emergency (more detailed in the dedicated section below), however it cannot entirely be linked to or justified by this special context.

As mentioned above, the two very controversial draft laws are being passed via a fast-track procedure. While these texts touch upon major fundamental freedoms and rights, they could not be debated according to high criteria of transparency and democracy required by the respect of the rule of law, which represents a very worrying trend in a country governed by the rule of law.

In the same vein, the CNCDH expressed concern over the current reform of juvenile criminal justice (adoption of a criminal code for minors), without any meaningful prior debate with the relevant actors (3). Instead, the government decided to pass the legislation by executive order through an accelerated procedure.

### References

- (1) CNCDH, Avis sur la proposition de loi relative à la sécurité globale (A - 2020 - 16)
- (2) CNCDH, Avis sur les rapports entre police et population : Rétablir la confiance entre la police et la population <https://www.cncdh.fr/fr/publications/avis-sur-les-rapports-entre-police-et-population-retablir-la-confiance-entre-la-police>
- (3) <https://www.cncdh.fr/fr/publications/justice-penale-des-mineurs-la-cncdh-sinquiete-dune-reforme-sans-debat-prealable>

## Functioning of justice systems

The **reform of juvenile criminal justice** mentioned above is also problematic as to its content. Indeed, while the CNCDH agrees with the updating of the legal basis for juvenile justice, the institution expressed serious concerns as to how the reform addresses the issue (1). The CNCDH has stressed, in particular, that the priority for the justice system must be that of protecting any child, including children who are criminal offenders, and has called for the reform to be integrally reviewed in that sense, including by: prioritising education over repression; setting up a specialised jurisdiction and justice system to deal with minors; introducing mandatory diminution of liability between 16 and 18 years, and a minimum age for criminal liability; as well as providing all necessary resources, human and financial, to support this transition.

Another area of concern regards the **security measures for those convicted of acts of terrorism**, which the CNCDH exposed as yet another demonstration of the state's current security-focused drift (2). Several parliamentarians recently made legislative proposals to create a specific security regime for those specific convicts. The CNCDH strongly denounced this text and the logic behind it, feeding on the French population's fear of terrorism to override respect for constitutional values and human rights.

The French justice system was moreover heavily **impacted in general by the current COVID-19 crisis**, as further developed in the dedicated section below.

### References

- (1) <https://www.cncdh.fr/fr/publications/les-droits-fondamentaux-et-linteret-superieur-de-lenfant-les-grands-oublies-de-la>
- (2) [https://www.cncdh.fr/sites/default/files/200623\\_cp\\_ppl\\_terro.pdf](https://www.cncdh.fr/sites/default/files/200623_cp_ppl_terro.pdf)

## Media pluralism and freedom of expression

The terrorist assassination of history professor Samuel Paty in October 2020 (following his lesson on freedom of expression, using the Charlie Hebdo's subversive cartoons of Muslim prophet Mahomet) had very important repercussions in a French society strongly attached to freedom of expression. This terrorist act was firmly condemned by French authorities. However, some civil society actors pointed out **France's own poor record regarding freedom of expression** (1), for instance stressing the numerous convictions for "contempt of public officials", a vaguely defined criminal offence. The European Court of Human Rights also ruled in June 2020 that France's criminal conviction of activists campaigning to boycott Israeli products violated their freedom of expression (2).

Several journalists raised their voices (3) after some were **denied access to sensitive sites by the police**, for instance while they were attempting to cover the eviction of refugees and migrants from an encampment. The French Council of State validated the police decision for a case that occurred in December 2020 (4). The CNCDH addressed that issue in February 2021 report (5), recommending inter alia that 'external observation by citizens or journalists not be hindered during camp evacuation operation' (cf para 19 of the report).

### References

- (1) Amnesty <https://www.amnesty.org/en/latest/news/2020/11/france-is-not-the-free-speech-champion-it-says-it-is/>
- (2) <https://www.reuters.com/article/us-france-israel-court-idUSKBN2311CQ>
- (3) [https://www.lemonde.fr/idees/article/2021/01/26/il-est-urgent-de-garantir-la-liberte-citoyenne-d-informer-et-etre-informe\\_6067689\\_3232.html](https://www.lemonde.fr/idees/article/2021/01/26/il-est-urgent-de-garantir-la-liberte-citoyenne-d-informer-et-etre-informe_6067689_3232.html)

- (4) [https://www.coe.int/fr/web/media-freedom/detail-alert?p\\_p\\_id=sojdashboard\\_WAR\\_coesojportlet&p\\_p\\_lifecycle=2&p\\_p\\_cacheability=cacheLevelPage&p\\_p\\_col\\_id=column-4&p\\_p\\_col\\_pos=2&p\\_p\\_col\\_count=3&sojdashboard\\_WAR\\_coesojportlet\\_alertPK=90282251&sojdashboard\\_WAR\\_coesojportlet\\_cmd=get\\_pdf\\_one](https://www.coe.int/fr/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesojportlet&p_p_lifecycle=2&p_p_cacheability=cacheLevelPage&p_p_col_id=column-4&p_p_col_pos=2&p_p_col_count=3&sojdashboard_WAR_coesojportlet_alertPK=90282251&sojdashboard_WAR_coesojportlet_cmd=get_pdf_one)
- (5) CNCDH, Opinion on the situation of exiled persons in Calais and Grande-Synthe – 11.02.2021 Para n°21 recommendation n°5  
[https://www.cncdh.fr/sites/default/files/a\\_-\\_2021\\_-\\_3\\_-\\_en\\_-\\_situation\\_of\\_exiled\\_persons\\_in\\_calais\\_and\\_grande-synthe\\_febr\\_2021.pdf](https://www.cncdh.fr/sites/default/files/a_-_2021_-_3_-_en_-_situation_of_exiled_persons_in_calais_and_grande-synthe_febr_2021.pdf)

## Corruption

France was ranked 23 out of 180 countries in Transparency International 2020 Corruption Index, which is the same as in 2019. A few elements can however be evoked.

Transparency International highlighted France's adoption of a **new provision for returning stolen assets and proceeds of crime**, recognising "a step forward with room for improvement" (1). The new provisions create a restitution mechanism, by which illicitly acquired assets (with proceeds of corruption or embezzled public funds) that were confiscated by the French justice system, will be returned "as close as possible to the population of the foreign State concerned" to finance "cooperation and development actions".

In September 2020, the French National Assembly adopted an opinion on the **transposition the EU Whistleblowers Directive** (2), that will have to be effective by the end of 2021. The CNCDH issued several recommendations to the legislator in this context, in order to ensure a strengthened protection for whistleblowers in France (3).

### References

- (1) <https://www.transparency.org/en/press/france-adopts-new-provision-for-returning-stolen-assets-and-proceeds-of-crime-a-step-forward-with-room-for-improvement>
- (2) <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042393830>
- (3) [https://www.cncdh.fr/sites/default/files/avis\\_2020\\_-\\_11\\_-\\_avis\\_transposition\\_directive\\_lanceurs\\_dalerte.pdf](https://www.cncdh.fr/sites/default/files/avis_2020_-_11_-_avis_transposition_directive_lanceurs_dalerte.pdf)

## Impact of measures taken in response to COVID-19 on the national rule of law environment

### Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

Both the health crisis caused by COVID-19 pandemic and the French governmental response to it had massive and diverse impacts on human rights and the rule of law in the past year.

The CNCDH issued a Report specifically on **state of emergency and rule of law** (1), stressing three main areas of concerns, needing to be closely assessed: the need and proportionality of the state of health emergency; the modification of the traditional balance of powers; and the weakened oversight system. Indeed the past year has seen a totally modified division of powers, which is a major component of the rule of law. Through the state of emergency, the executive has considerably extended powers, with a decreased parliamentary oversight and democratic consultation. A high number of regulations, often undermining basic rights and liberties, have been adopted through fast-track processes, at the initiatives of different ministries. The CNCDH expressed concern over the extent of these new powers, even more so after a law passed in March 2020, allowing the Government, as long as the State of Emergency will be in place (i.e at least until 1<sup>st</sup> June 2021), to legislate by order on very wide areas, likely to touch upon rights and freedoms.

The CNCDH also alerted on the worrying **impact of the current situation of the functioning of the justice system** (2). Most pressing concerns in that regard relate firstly to the breach of the continuity of public service, due to: access to a judge restricted to cases deemed "essential"; non-respect of the rights of the defendant; problems related to protection of minors at risk ('assistance

éducative'); extension of pre-trial detention; and poor enforcement of sentences. Secondly, concerns pertain to the risk of normalising the state of health emergency into the common procedural law.

The CNCDH monitored the adoption and application of COVID-19 related measures and their impacts on specific groups of the French population. To this purpose, the institution set up in March 2020 an Observatory of the state of health emergency and lockdown. The Observatory raises concern about threats to fundamental rights and freedoms, and provides recommendations to address problematic measures or practices. The Observatory issued documents focused on **specific groups or issues particularly affected by the crisis** (3): child protection, housing, people in poverty, access to healthcare, workers' protection, continuity of access to healthcare, right to education.

The CNCDH also issued various statements and opinions during the past year, alerting or advising on security-focused and liberty-threatening drifts (4).

## References

- (1) [https://www.cncdh.fr/sites/default/files/avis\\_2020\\_-\\_2\\_-\\_200424\\_avis\\_etat\\_durgence\\_sanitaire\\_et\\_etat\\_de\\_droit.pdf](https://www.cncdh.fr/sites/default/files/avis_2020_-_2_-_200424_avis_etat_durgence_sanitaire_et_etat_de_droit.pdf)
- (2) [https://www.cncdh.fr/sites/default/files/avis\\_2020\\_-\\_4\\_-\\_200424\\_avis\\_urgence\\_fonctionnement\\_justice.pdf](https://www.cncdh.fr/sites/default/files/avis_2020_-_4_-_200424_avis_urgence_fonctionnement_justice.pdf)
- (3) Communiqué de presse de lancement
- Lettre parue le 6 avril 2020 #1
- Lettre #2, parue le 15 avril 2020 - la protection de l'enfance
- Lettre #3, parue le 21 avril 2020 - le logement
- Lettre #4, parue le 24 avril 2020 - les personnes en situation de pauvreté
- Lettre #5, parue le 6 mai 2020 - l'accès aux soins
- Lettre #6, parue le 6 mai 2020 - protection des travailleurs
- Lettre #7, parue le 14 mai 2020 - continuité pour l'accès aux soins
- Lettre #8, parue le 4 juin - le droit à l'éducation
- (4) CNCDH opinions related to COVID-19 impacts:
  - Avis "Etat d'urgence sanitaire et Etat de droit", 28 avril 2020
  - Avis sur le suivi numérique des personnes, 28 avril 2020
  - Avis "Une autre urgence : rétablir le fonctionnement normal de la justice au plus vite", 28 avril 2020
  - Avis "Etat d'urgence sanitaire : le droit à l'éducation à l'aune de la Covid-19", 26 mai 2020
  - Avis "Prorogation de l'état d'urgence sanitaire et Libertés", 26 mai 2020
  - Déclaration relative au projet de loi organisant la sortie de l'état d'urgence sanitaire, 23 juin 2020
  - Déclaration sur l'état d'urgence sanitaire, novembre 2020
  - Déclaration sur les droits fondamentaux des travailleurs pendant l'état d'urgence sanitaire (D - 2021 - 1)

