

# State of the Rule of Law in Europe in 2022



## Reports from National Human Rights Institutions

France



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## France

### *French National Consultative Commission on Human Rights*

#### **Independence and effectiveness of the NHRI**

The French National Consultative Commission on Human Rights evaluates the state of its independence and the level of its effectiveness as 'pleasing'.

No significant changes have taken place in the environment in which the Commission operates. The NHRI, however, calls for being more regularly consulted on any draft or proposals of legislative texts that could have an impact on human rights or IHL including in the framework of the health crisis.

#### **International accreditation status and SCA recommendations**

The French NHRI was last reaccredited with A-status by the Sub-Committee on Accreditation (SCA) in March 2019 (1). The SCA noted with appreciation the continuous efforts by the institution to implement the previous recommendations made by the SCA.

Regarding the mandate of the French NHRI, the SCA encouraged the NHRI to continue to broaden its activities in relation to its protection mandate and to advocate for amendments to its enabling law to make its broad protection mandate explicit. The SCA also recommended the institution to continue to strengthen its cooperation with the Défenseur des droits and with other national entities with responsibility for the promotion and protection of human rights.

In addition, the SCA was of the view that, in order to promote institutional independence, it would be preferable for the terms of all members of the CNCDH to be limited to one renewal and encouraged the institution to advocate for amendments to its Decree to address this issue.

Finally, the SCA reminded that, where an NHRI has been mandated with additional responsibilities, it must be provided with the adequate funding to effectively fulfil these duties. Thus, the SCA encouraged the institution to continue to advocate for adequate funding to effectively carry out the full extent of its mandate, especially in view of its expanding responsibilities.

## References

- (1) <https://www.ohchr.org/Documents/Countries/NHRI/GANHRI/SCA%20Report%20March%202019%20-%20EN%20.pdf>

## Regulatory framework

No change has occurred in the regulatory framework applicable to the CNCDH since the last review by the SCA.

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. The commission occupies a unique position in the French institutional landscape and contributes to the strengthening the rule of law.

The CNCDH continues operating without a constitutional basis but on legislative basis.

Awareness-raising is the main way in which the NHRI contributes to individuals' access to justice. The mandate of the commission, however, does not include complaints handling, providing legal assistance to individuals or strategic litigation before courts.

In addition, the CNCDH holds five specific mandates as independent national rapporteur:

- fight against racism, antisemitism and xenophobia
- fight against trafficking in human beings,
- implementation of the UN Guiding Principles on business and human rights
- fight against anti-LGBTI people hatred
- evaluation of public policy related to the effectiveness of the rights of people with disabilities.

Since December 3, 2020, the CNCDH has a new mandate as an independent national rapporteur on the evaluation of public policy related to the effectiveness of the rights of people with disabilities. As part of this new mandate, the CNCDH presented to the government its preliminary report entitled "Know, define, raise awareness, combat stereotypes and prejudices against people with disabilities" (Connaître, définir, sensibiliser, combattre les stéréotypes et les préjugés à l'égard des personnes handicapées).  
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The relevant state authorities have good awareness of the CNCDH mandate, independence and role.

The CNCDH has adequate access to policy makers and to information, particularly in the areas in which it operates as independent national rapporteur. The Commission has regular contacts with the administrations in charge of implementing these public policies and is regularly consulted on the development of national action plans.

The CNCDH, however, is not involved in all stages of legislation.

The addressees of the NHRI's recommendations are not legally obliged to provide timely and reasoned replies. However, even though there is no legal obligation, some administrations provide reasoned replies. For instance, this was the case for the CNCDH work on the situation of migrants in Calais and the opinions given on "online hate".

### **References**

- <https://www.cncdh.fr/fr/publications/droits-des-personnes-handicapees-nouveau-mandat-de-rapporteur-national-independant>
- Connaître, définir, sensibiliser et combattre les stéréotypes et les préjugés à l'égard des personnes handicapées Rapport préliminaire, 2021.  
[https://www.cncdh.fr/sites/default/files/rapport\\_preliminaire\\_handicap\\_juillet\\_2021\\_-\\_format\\_a5\\_1.pdf](https://www.cncdh.fr/sites/default/files/rapport_preliminaire_handicap_juillet_2021_-_format_a5_1.pdf)

### **NHRI's recommendations to national and regional authorities**

The CNCDH would like to be consulted, or at least informed, on the preparation of legislative texts and public policies, in particular those that are directly related to human rights.

### **Human rights defenders and civil society space**

The CNCDH reports that some infringements on human rights (or risks of such) have occurred over the year and have had negative impact on civil society space and/or freedom of expression. The CNCDH attaches great importance to safeguarding, and, if needed, extending, the public space for debate and expression of opinions, which is essential for democracy and rule of law.

## Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities

The NHRI expresses concern over the adoption of the law « confortant le respect des principes de la République » (confirming the respect for Republic principles) on 24 August 2021.

The CNCDH adopted two critical opinions on the draft law "confirming the respect for Republic principles". The Commission considers that the text risks weakening republican principles instead of reinforcing them. While the purpose of better combating criminal fanaticism is legitimate, it cannot justify the implementation of disproportionate measures that undermine fundamental freedoms, which lie at the heart of the republican and democratic pact.

The law was adopted on 24 August 2021 without modification of the provisions contested by the CNCDH.

The NHRI is concerned that the creation of a "republican commitment contract" (contrat d'engagement républicain) for any association benefiting or wishing to benefit from State subsidies risks creating a general climate of mistrust towards associations. The CNCDH reaffirms that associations, have a fundamental role in promoting the values of the Republic.

In the extension of its previous work, the CNCDH expresses reservations on the provisions of the law aimed at "fighting against online hate and illegal content" which carries the risk of disproportionate infringement of fundamental rights and freedoms.

### References

- Loi n° 2021-1109 du 24 août 2021 confortant le respect des principes de la République.  
<https://www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000042635616/>
- CNCDH, Avis sur le projet de loi confortant le respect des Principes de la République, 28.01.2021. <https://www.cncdh.fr/fr/publications/avis-sur-le-projet-de-loi-confortant-le-respect-des-principes-de-la-republique>
- CNCDH, Second avis sur le projet de loi confortant le respect des principes de la République, 25.03.2021. <https://www.cncdh.fr/fr/publications/second-avis-sur-le-projet-de-loi-confortant-le-respect-des-principes-de-la-republique>

## Threats and attacks, including strategic litigation against public participation (SLAPPs)

The CNCDH warns on the new dissuasive measures put in place by the authorities to prevent the presence of observers, associations or journalists, at the time of evacuation operations of people exiled in Calais and Grande-Synthe. The disproportionate security perimeters imposed by the police which hinder the observation of dismantling operations by third parties.

### References

- CNCDH, Avis sur la situation des personnes exilées à Calais et Grande-Synthe, 11.02.2021.: <https://www.cncdh.fr/fr/actualite/avis-sur-la-situation-des-personnes-exilees-calais-et-grande-synthe>

## NHRI's role in promoting and protecting civil society space and human rights defenders

Through its mandate as well as its composition, the CNCDH contributes to the existence of a civil society space. It also provides steady support to the activities of Human Rights defenders, for instance CNCDH receives and holds meetings regularly with Human Rights defenders from foreign countries.

**French Republic's Human Rights Prize:** This prize is awarded each year on the 10th December to five laureates (NGOs and human rights defenders), regardless of their nationality. It recognizes the fundamental role of civil society in the promotion and protection of human rights all around the world (with themes including covid 19 and human rights; education or environment). The winners receive a financial contribution and the prize has a protective value.

**Generation Equality Forum:** During the event organised in Paris under the aegis of UN Women, the CNCDH held a panel on women human rights defenders on July 1, 2021. The purpose of this panel was to highlight the role of women human rights defenders in the promotion and protection of human rights and in the fight against impunity around the world. The panel was moderated by the former Special Rapporteur on the situation of human rights defenders and member of the CNCDH Michel Forst with the intervention of five female human rights defenders from different countries (Kyrgyzstan, Philippines, Uganda and Spain).

Furthermore, the CNCDH has addressed the issue of human rights defenders and civil society in many of its opinions and declarations. In its declaration on the situation of Afghan people adopted on September 30, 2021, the CNCDH stressed that human rights

defenders, as well as all Afghan people, exposed to risks of persecution by the Taliban regime and who wish to seek asylum in France, must be able to benefit from protection.

In its opinion on Climate Emergency and Human Rights adopted on May 27, 2021, the CNCDH dedicated a paragraph on Human rights defenders involved in the fight against climate change and the protection of environment. It stressed the importance of providing a safe and enabling environment for HRDs to operate freely and without any restriction. On the basis of the first report issued by the Observatoire des libertés associatives, the CNCDH noted that human rights defenders (and especially those concerned with the protection of the environment) find their activities hampered in France. The obstacles to activists and associations in France can take many forms. They can be, resource-related, judicial, administrative, police-related or physical. Two recommendations have been addressed to public authorities in this regard.

**Human Rights Treaty:** As part of its interaction with the treaty bodies, the CNCDH monitors France's international commitments. In this regard, the institution submitted a written contribution to the Human Rights Committee with a view to establishing a list of issues addressed to France. Considering that defenders of rights, and in particular those operating in the field of the environment, participate actively in the fight against climate change in France, the CNCDH recommended the Committee to focus on the measures taken by the public authorities aiming to ensure the protection of these rights defenders.

### *References*

- CNCDH, Prix des droits de l'homme de la République française « Liberté, égalité, fraternité », 2021 Edition, 10 December 2021: <https://www.cncdh.fr/fr/edition-prix/prix-des-droits-de-lhomme/prix-des-droits-de-lhomme-edition-2021>
- CNCDH, Déclaration sur la situation des personnes afghanes, 30.09.2021.: [https://www.cncdh.fr/sites/default/files/d\\_-\\_2021\\_-\\_6\\_-\\_situation\\_des\\_personnes\\_exilees\\_afghanes\\_sept\\_2021.pdf](https://www.cncdh.fr/sites/default/files/d_-_2021_-_6_-_situation_des_personnes_exilees_afghanes_sept_2021.pdf)
- CNCDH, Avis Urgence climatique et droits de l'homme, 27.05.2021.: <https://www.cncdh.fr/fr/publications/avis-urgence-climatique-et-droits-de-lhomme-2021-6>
- CNCDH, Contribution à la 132<sup>e</sup> session du Comité des droits de l'homme Groupe de travail de pré-session: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fIFR%2fFRA%2f45015&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fIFR%2fFRA%2f45015&Lang=en)

## NHRI's recommendations to national and regional authorities

The CNCDH recommends that the public authorities take all the necessary measures to protect human rights defenders and particularly those working in the field of environment and climate change. In order to increase the protection of human rights defenders, the CNCDH recommends that the French public authorities incorporate the definition of the defender of rights into the French legislative framework by transposing the 1998 Declaration on Human Rights Defenders.

Furthermore, The CNCDH recommends that observations by citizens or journalists are not obstructed during camp evacuation operations.

The CNCDH highlights that the President of the Republic has sought the implementation of a new initiative aimed at strengthening France's action in favour of human rights defenders, both abroad and in France. The Marianne initiative for human rights defenders was launched on 10 December 2021 with contributions from various parties: State, associations and NGOs, foundations, local authorities.

The CNCDH expresses willingness to be involved in the implementation of this initiative.

### *References*

- <https://www.elysee.fr/emmanuel-macron/2021/12/10/lancement-de-linitiative-marianne-pour-les-defenseurs-des-droits-de-lhomme-dans-le-monde>

## Checks and balances

The system of the Fifth Republic is characterized by a strong role of the President of the Republic and the Government. They possess broad powers under the Constitution which are reinforced in practice when presidential and parliamentary majorities align. This represents the regular functioning of the political institutions. As a result, the President conducts in practice the national political agenda together with the Government lead by the Prime Minister and can count on a strong majority within the National Assembly. The executive, thus, has the predominant power, which weakens the Parliament's role in the development of legislation and in the monitoring of the government's actions.

With a strong majority within the National Assembly, the Government uses certain powers which allow it to ensure its predominance in the legislative process. Such an example is the accelerated legislative procedure. A significant number of laws were adopted under the accelerated procedure in 2021 such as: the Law about the prevention of terrorism and intelligence (30.07.2021), the Law on trust in the judiciary (to be enacted very soon) and the Law on criminal responsibility and internal security (which addresses in particular the use of

drones) still in discussion in the Parliament. The CNCDH repeatedly expressed disapproval of the frequent use of this procedure in relation to many bills, outside any emergency requirement and in several areas that have direct impact on public freedoms and human rights. This process restricts significantly the parliamentary debate, essential in a democracy. In the context of the pandemic crisis, one law after another gives considerable powers to French public authorities in the health field in order to manage the health crisis and take measures to fight COVID 19

According to article 1 of the law of May 31, 2021, the Prime Minister may, in the interest of public health and for the sole purpose of combating the spread of COVID19, in particular: regulate or prohibit the movement of people, regulate access to means of public transport, to establishments open to the public, etc. (the PM could reinstate containment).

Article 1 of this law also gives the Prime Minister the power to make the presentation of a vaccination pass (since the law of January 22, 2022 before it was a health pass) concerning COVID19 the access of people aged 16 and over to certain places, establishments, services or events where activities are carried such leisure activities, restaurants, fairs, trains, etc.

With regard to the fight against terrorism, the CNCDH deplored on several occasions the inclusion in ordinary law of preventive measures that were part of the law relating to the state of emergency. These include individual monitoring and surveillance measures and home searches decided by the administrative authorities.

Initially introduced into ordinary law on an experimental basis (in November 2017), these measures were made permanent in the past year (the Law about the prevention of terrorism and intelligence, 30.07.2021). During a hearing with parliamentarians, the CNCDH reiterated its concern about these measures, especially given that their impact on human rights has not yet been independently assessed.

The CNCDH has also expressed concerns about an article in the draft law on the prevention of terrorism. This provision, which in fact is not related to terrorism, further restricts the access to public archives classified as "defence secrets". It aims to extend beyond the fifty-year deadline the communication of archives vaguely defined as relating to the "operational procedures" and "technical capacities" of many intelligence or security services.

In July 2021, the Constitutional Council expressed two reservations on the interpretation of this article. It ruled that it cannot apply to documents whose disclosure does not reveal information previously inaccessible to the public. The other reservation is related to the access to archives concerning nuclear or military installations. While these reservations are welcomed, they do not address all the concerns expressed by the CNCDH and historians.

In February 2021, the CNCDH issued an opinion on the relationship between the police and the population. Noting the growing mistrust by a part of the population towards the police, in a context marked by high-profile police violence, the CNCDH made a number of recommendations on restoring trust. In particular, it highlighted the need to further guarantee the independence of investigation mechanisms targeting police officers due to their words or behaviour.

Following a consultation with stakeholders (known as the “Beauvau of security”), the President of the Republic announced in September 2021 a number of reforms in the police system he did not, however, call into question the current system of police control.

### **References**

- CNCDH, Avis sur le projet de loi renforçant la sécurité intérieure et la lutte contre le terrorisme, 06.07.2021.: <https://www.cncdh.fr/fr/actualite/avis-sur-le-projet-de-loi-renforçant-la-securite-interieure-et-la-lutte-contre-le>
- CNCDH, Avis sur les rapports entre police et population : Rétablir la confiance entre la police et la population, 11.02.2021.: <https://www.cncdh.fr/fr/publications/avis-sur-les-rapports-entre-police-et-population-retablir-la-confiance-entre-la-police>
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- CNCDH, Hearing by the Law Commission, Senate, about the Draft law about the prevention of terrorism and intelligence, 27 May 2021.
- Conseil constitutionnel, Décision n° 2021-822 DC, 30.07.2021.: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043876142>
- Law n° 2021-998 of 30 July 2021 about the prevention of terrorism and intelligence: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043876100>

### **NHRIs as part of the system of checks and balances**

The CNCDH identified challenges to its engagement as part of the system of checks and balances. The main one is the adoption within a very short time frame of numerous draft laws with an impact on human rights without provision of information to the CNCDH on the matter.

## NHRI's recommendations to national and regional authorities

The CNCDH recommends to the French government:

- To increase the rights of the parliamentary opposition;
- To conduct more prominent consultations with the commission;
- To include the NHRI in the various supervisory bodies in sensitive areas (e.g. counter-terrorism, data protection, police supervision).

## Functioning of the justice system

The Commission judges the situation of the functioning of the justice system in France as 'balanced'. This marks a positive change in comparison to last year's report in which the CNCDH identified the situation as 'worrying'.

Last year the situation was marked by great challenges. Those were mainly linked to the sanitary crisis, which exacerbated existing difficulties in the judicial system, namely the managerial approach, the lack of financial means and of sufficient time to render judgments. The government launched the Justice General Assembly (Etats généraux de la justice) in October 2021 for a period of at least 4 months. It aims to provide new insights into the role of judges, detention conditions, consider ways to manage caseload flow as well as to restore the link between the citizens and the justice system. These discussions are taking place while legal professionals, and in particular judges, are increasingly expressing discomfort in their work and after having faced numerous suicides in their professional circles.

In addition to an important reform of the justice system in 2019 with the adoption of the Law of 23 March 2019, several new pieces of legislation related to the justice system have been adopted since then.

The reform of juvenile criminal justice came into force on 30 September 2021. It established a code of juvenile criminal justice and thus abolished the former text governing the specific rules applicable to juvenile delinquency. While the CNCDH agreed that a reform was necessary, it called for the drafting of a childhood code that would be the result of an interdisciplinary reflection and would integrate civil and criminal matters, in order to avoid incoherence between civil and criminal legislations, for example with regard to the notion of discernment (13 years old in criminal matter, 7 or 8 in civil matter). The age of criminal liability has been set at 13 years old, but this is only a presumption, which means that it can be assessed on a case-by-case basis and even lowered.

The bill on confidence in the judiciary system (loi pour la confiance dans l'institution judiciaire), was adopted by the French National Assembly on 18 November 2021, but a challenge has been brought against it before the Constitutional Council. The challenge is still pending. Its main goal is to restore the relationship of trust between citizens and the judicial system. It contains some provisions in this regard. For example, it reinforces to a certain extent the professional secrecy of lawyers (but not for all offences) and limits the duration of preliminary investigations. However, it does not incorporate in the Constitution the independence of the Public Prosecutor's office. Furthermore, the bill generalises the "departmental criminal courts" that have already been experimented for a year, in order to, amongst others, render quicker justice. The CNCDH fears a movement towards a general abolition of Criminal Courts for the same reason. Lastly, automatic sentence reductions are difficult to combine with the overcrowding of prisons as they are likely to increase the number of short sentences and make rehabilitation more difficult.

Following the rejection by the Constitutional Council of a few provisions in the draft "Global security law" (projet de loi pour la sécurité globale), the bill on criminal liability and internal security (Projet de loi relatif à la responsabilité pénale et à la sécurité intérieure) was drafted and adopted by the National Assembly on 18 November 2021. It creates a new crime of voluntary violence against police officers and a new legal framework for surveillance. The CNCDH reiterates its concerns regarding the weakness of this framework and the insufficient safeguards to avoid abuses.

After France was condemned by the ECtHR in 2020 on the topic of detention conditions and treatment of prisoners, the law of April 8th 2021 guaranteeing the right to respect for dignity in detention (Loi du 8 avril 2021 tendant à garantir le droit au respect de la dignité en détention) was adopted. It is aimed to offer to detainees the possibility to seize a judge in case of violation of their dignity. The CNCDH highlighted that this law fills a legal void but does not give an adequate answer to the main problem of prison overcrowding.

### **Role of the NHRI in contributing to the effective functioning of the justice system**

The CNCDH has drafted many reports related to the functioning of justice system. CNCDH reports from last year could apply to this year's reforms too.

### **References**

- CNCDH, Avis relatif à la lutte contre la haine en ligne, 08.07.2021. : <https://www.cncdh.fr/fr/publications/avis-sur-la-lutte-contre-la-haine-en-ligne-2021-9>

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- CNCDH, Avis sur le projet de loi de programmation 2018-2022 et de réforme de la justice tel que présenté en conseil des ministres le 20 avril 2018 - analyse des dispositions relatives à la procédure pénale et au droit des peines, 20.11.2018.: [https://www.cncdh.fr/sites/default/files/181120\\_avis\\_sur\\_la\\_lutte\\_sur\\_la\\_reforme\\_de\\_la\\_justice\\_penal\\_pour\\_mail.pdf](https://www.cncdh.fr/sites/default/files/181120_avis_sur_la_lutte_sur_la_reforme_de_la_justice_penal_pour_mail.pdf)
- Loi n° 2022-52 du 24 janvier 2022 relative à la responsabilité pénale et à la sécurité intérieure: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000045067923>
- Loi n° 2021-1729 du 22 décembre 2021 pour la confiance dans l'institution judiciaire : <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000044545992>
- The reform of juvenile criminal justice came into force on 30 September 2021.

- Loi du 24 août 2021 confortant le respect des principes de la République: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043964778>
- Loi du 25 mai 2021 pour une sécurité globale préservant les libertés: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043530276>
- Loi du 8 avril 2021 tendant à garantir le droit au respect de la dignité en détention: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043339226>

### **NHRI's recommendations to national and regional authorities**

Concerning criminal matters, the CNCDH recommends a reform of the Criminal Procedure Code with the aim of clarifying the role of each stakeholder, in order to protect the rights of all parties, simplifying and making the procedure more effective.

Also, the CNCDH recommends a reform of the status of the public prosecutor so that its independence is ensured in the constitution.

Despite an increasing budget, the CNCDH recommends that substantial budgetary resources are allocated to the judicial system as a whole, and not mainly to prisons.

### **Media freedom, pluralism and safety of journalists**

The law of 24 August 2021 reinforcing compliance with principles of the Republic (loi confortant le respect des principes de la République) introduces the summary trial procedure for crimes within the framework of the law of 29 July 1881 on freedom of the press (public incitement to hatred or violence, negationism, etc.). The CNCDH recalls that emergency procedures, in particular the summary trial, are not appropriate for litigation concerning abuses of freedom of expression. The CNCDH highlights that due to the complexity of the topic and the fundamental principles at stake, a specific treatment is required. The CNCDH recalls the importance of procedures that preserve the judge's intervention and guarantee more rights to the defence than in the emergency procedure.

The CNCDH also warns on the new dissuasive measures put in place by the authorities to prevent the presence of observers, especially journalists, at the time of evacuation operations of people exiled in Calais and Grande-Synthe. The security perimeters imposed by the police are disproportionate and hinder the observation of dismantling operations by third parties.