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Country Chapter on the rule of law situation in France

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2020 Rule of Law Report
The rule of law situation in the European Union

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ABSTRACT

A number of recent initiatives have been taken, aiming at improving the independence, quality and efficiency of the French justice system. In particular, a reform has been proposed to expand the competences of the High Council for the Judiciary, which would further strengthen judicial independence. The perceived level of judicial independence among companies is high and average among the general public. Other initiatives to improve the quality and efficiency of the justice system have also been taken, in particular regarding digitalisation and resources for the justice system. These measures could *inter alia* contribute to improving the efficiency of civil justice, which has deteriorated in recent years.

France has strengthened its institutional framework for fighting and preventing corruption in the public and private sector in the last years. New specialised anti-corruption institutions have been established, such as the High Authority for the Transparency of Public Life (HATVP) and the French Anti-corruption Agency (AFA). With the adoption of the Sapin II law in 2016, the HATVP has seen its mandate extended to the management of the lobbying register and will now also be in charge of the regulation of 'revolving doors'. The Sapin II law also introduced a comprehensive framework for whistle-blower protection. The system of assets declarations contains detailed information about previous and current activities and interests, which is published in open data format. The National Financial Prosecutor has established a good record on securing convictions in high-level cases of corruption and embezzlement of public funds.

France has a well-established legal and institutional framework supporting media pluralism. The audiovisual media regulator is independent and monitors closely the media market. The rules on media ownership transparency ensure that media ownership information is made available to the public. In addition, the impact of direct and indirect owners on competition is being assessed in case of media ownership developments. The allocation of state advertising is regulated and spread throughout different types of media. The political influence over the media is considered low, also because of safeguards relating to public officials and to members of the media regulator. Editorial independence enjoys a strong protection, but much of this protection only applies to contractual journalists. Moreover, recent years saw a surge of online and offline threats against journalists, including physical attacks.

The process for enacting laws includes impact assessments and frequent stakeholder consultations, and the Council of State contributes to ensuring the quality of legislation. The recent initiative on a Citizens Convention explores an innovative way of involving citizens in the legislative process. Several independent authorities, including the Defender of Rights and the National Consultative Commission on Protecting and Promoting Human Rights, contribute to safeguarding fundamental rights. The Constitutional Council, the Council of State and other independent authorities play a key role in the system of checks and balances.

I. JUSTICE SYSTEM

The justice system is composed of two autonomous branches of courts: ordinary courts with jurisdiction in civil and criminal cases on the one hand, and administrative courts on the other hand. Both branches consist of three levels of courts, with first instance courts, courts of appeal and an upper court (the Court of Cassation and the Council of State, respectively). The Council of State also has an advisory branch that provides opinions on draft legislation, and is tasked with the management of the administrative tribunals and courts of appeal. The Constitutional Council is competent to verify the constitutionality of laws. The High Council for the Judiciary, which is composed by a majority of magistrates elected by their peers,[1] plays an important role in safeguarding judicial independence. The prosecution service is part of the judiciary, and falls under the authority of the Minister of Justice.[2] The latter can give general instructions on prosecution policy but is barred from giving instructions in individual cases.[3] Lawyers are represented by various bar associations throughout France.

Independence

Reforms to further strengthen judicial independence have recently been proposed. The High Council for the Judiciary plays a key role in safeguarding judicial independence. It is competent to nominate candidates for a number of key positions,[4] while judges in general are nominated by the Minister of Justice following a binding opinion from the Council. Prosecutors are nominated by the Minister of Justice, following an opinion of the Council that is merely advisory. Members of the judiciary are subsequently appointed formally by the President of the Republic. A proposed constitutional reform[5] would make the opinion of the High Council on the nomination of candidate-prosecutors binding upon the executive, strengthening its role in the appointment process. Furthermore, the High Council is the competent body to decide on disciplinary measures regarding judges, while the Minister of Justice adopts disciplinary decisions regarding prosecutors upon a non-binding opinion of the High Council. The proposed reform would also make the High Council the competent body to decide on disciplinary measures regarding prosecutors. GRECO has welcomed these proposed constitutional changes.[6] In addition, the proposed reform would put an end to the right of former Presidents of the Republic to become members of the Constitutional Council after their service.[7] It would also abolish the Court of Justice of the Republic[8], which is

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1 The High Council for the Judiciary has two distinct formations. For the formation relating to judges, the High Council for the Judiciary is comprised of the President of the Court of Cassation, five judges, one public prosecutor, one member of the Council of State, one lawyer, and six other qualified members, who are not affiliated with the Parliament, the judiciary or the administrative order. For the formation relating to prosecutors, the High Council of the Judiciary is comprised of the General Prosecutor of the Court of Cassation, five public prosecutors, one judge, the same member of the Council of State as mentioned above, the same lawyer as mentioned above and the same six other qualified members as mentioned above. See also in that regard para. 27 of Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, which states that '*Not less than half the members of such councils [for the judiciary] should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary*'.

2 Art. 5, Ordinance 58-1270 of 22 December 1958.

3 Art. 1, Law 2013-669 of 25 July 2013.

4 These include the First President of the Court of Cassation, the presidents of the Courts of Appeal and the presidents of first instance courts.

5 The proposed reform was introduced by President Macron in August 2019.

6 GRECO Fourth Evaluation Round – Second Compliance Report for France, p. 24.

7 There is currently one former President serving on the Constitutional Council.

competent to hear criminal cases relating to acts of members of the Government in the exercise of their functions. Instead, the Paris Court of Appeal would become competent to hear such cases. Besides these proposed reforms, other developments have taken place, such as the adoption of a new Compendium on the Judiciary's Ethical Obligations[9] by the High Council in January 2019. This Compendium recommends that active members of the judiciary do not request honorary distinctions for themselves, in order to avoid any suspicion by the general public as regards their independence.[10] In that regard, the Council of Europe had previously expressed concerns about the possibility to award official honorary decorations and distinctions to judges.[11]

The level of perceived independence among companies is high, and the level of perceived independence among the general public is average. Among the general population, 56% consider the level of independence of courts to be 'fairly or very good', as well as 68% of businesses.[12] While the perceived level of independence by companies has increased in recent years, it has remained largely stable since 2016 for the general population.[13]

Quality

Efforts are ongoing to further develop the digitalisation of the justice system. The availability of online information about the justice system for the general public is comprehensive,[14] and the possibility to transmit summons and monitor the stages of a proceeding online is widespread among the courts.[15] However, the possibility to submit a case via online means remains limited,[16] as do the categories of judgments that are published online.[17] In that sense, a recent decree[18] on making available judicial decisions to the public represents a next step in the digitalisation process. However, stakeholders have previously expressed criticism of the modalities of publication and stressed the need to ensure safety and privacy of members of the judiciary.[19] Additionally, the Programming Law for Justice 2018-2022[20] seeks to further digitalise legal procedures, and a process is ongoing to facilitate the online submission of requests for legal aid.

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8 This special court is composed of six members of the Senate, six members of the National Assembly and three judges of the Court of Cassation. One of the three judges of the Court of Cassation serves as its President.

9 High Council for the Judiciary (2019), Compendium on the Judiciary's Ethical Obligations.

10 High Council for the Judiciary (2019), Compendium on the Judiciary's Ethical Obligations, p. 9.

11 GRECO Fourth Evaluation Round – Second Compliance Report for France, p. 24.

12 While 5% of the general population and 3% of companies indicate that they perceive the level of judicial independence to be 'very good' and 51% of the general population and 65% of companies perceive it as 'fairly good', 31% of the general population and 27% of companies perceive the level of judicial independence to be 'fairly or very bad'. EU Justice Scoreboard 2020, Figures 44 & 46; Eurobarometer survey. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

13 Figures 44 and 46, 2020 EU Justice Scoreboard.

14 Figure 22, 2020 EU Justice Scoreboard.

15 Figure 27, 2020 EU Justice Scoreboard.

16 Figure 27, 2020 EU Justice Scoreboard.

17 Figure 28, 2020 EU Justice Scoreboard.

18 Decree 2020-797 of 29 June 2020.

19 See for example: *Syndicat de la Magistrature, lettre du 3 décembre 2019 adressée à Madame la garde des Sceaux.*

20 *Loi 2019-222 du 23 mars 2019 de programmation 2018-2022 et de réforme pour la justice*.

Initiatives aim at increasing the resources for the justice system. While the total public expenditure on law courts in EUR per inhabitant is above average, the expenditure as a percentage of GDP is rather low.[21] The Programming Law for Justice 2018-2022 provides for a significant increase in the financial resources provided to the justice system, with a 24% difference between the 2017 budget of EUR 6.7 billion and the planned amount of EUR 8.3 billion in 2022. Additionally, a consultation between the Ministry of Justice and stakeholders is ongoing since July 2019 to develop a reliable workload measurement tool. The availability of such a tool would be beneficial for the optimal management of human and financial resources within the judiciary. As regards legal aid, the income threshold to be eligible for full legal aid is slightly below the Eurostat poverty threshold.[22] The Programming Law for Justice 2018-2022 introduces mandatory mediation for certain small claims cases,[23] which may have an impact on citizens' access to justice.

Certain measures relating to the functioning of the justice system were introduced during the COVID-19 pandemic. While these measures included the early release of certain categories of detainees, an automatic prolongation of the length of pre-trial detention was also introduced.[24] The measure faced strong criticism from stakeholders, who emphasised the risk to ensuring the fundamental right to liberty.[25] The Council of State has rejected a legal action contesting the legality of the prolongation of pre-trial detention.[26] The Court of Cassation ruled that the court that would normally have decided on the prolongation should rapidly review the validity of the prolongation decision.[27]

Efficiency

Civil justice faces some challenges with regards to its efficiency. The estimated time needed to resolve litigious civil and commercial cases has increased in recent years, with an average time of over 400 days in 2018.[28] Moreover, the clearance rate for litigious civil and commercial cases has decreased to 96% for 2018,[29] and there is a significant number of pending litigious civil and commercial cases.[30] The recent introduction of the provisional execution of first-instance court decisions aims to further foster the efficiency of the justice system. Furthermore, the recent merger of different types of first-instance courts into one form of "*tribunal judiciaire*" may also help achieve this objective,[31] although stakeholders have expressed some concerns about the impact of this reform on citizens' access to justice.[32]

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21 Figures 32 and 33, 2020 EU Justice Scoreboard.
22 Figure 23, 2020 EU Justice Scoreboard.
23 Art. 3, *Loi 2019-222 du 23 mars 2019*.
24 Art. 16, Ordinance 2020-303 of 25 March 2020.
25 See also criticising a lack of clarity: Magistrates Union (2020), Automatic extension of provisional detentions: after the scandal and the mess, nonchalance!
26 Decision no. 439877 of the Council of State of 3 April 2020. See also more recently: Constitutional Council decision 2020-851/852 of 3 July 2020.
27 Judgment no. 974 of the Court of Cassation of 26 May 2020 (20-81.910).
28 Figure 6, 2020 EU Justice Scoreboard. This number is lower at third instance, see Figure 7.
29 Figure 11, 2020 EU Justice Scoreboard.
30 Figure 14, 2020 EU Justice Scoreboard.
31 No courthouses were closed.
32 Information received in the context of the virtual country visit.

II. ANTI-CORRUPTION FRAMEWORK

France has the institutional and legislative framework broadly in place. Laws are in place to prevent and fight corruption in the private and public sector, including whistle-blowers protection, assets declaration, lobbying and 'revolving doors'. Authorities involved in the fight against corruption include the Anti-Corruption Agency, High Authority for the Transparency of Public life and the Central Office for Combating Corruption and Tax Offences. The National Financial Prosecutor is competent for the investigation of high level corruption cases.

France scores 69/100 on the latest Transparency Corruption Perception Index, ranking 9th in the European Union and 23rd globally[33]. Amongst French respondents, 70% perceive corruption widespread in their country (EU average 71%), while 10% of people feel personally affected by corruption in their daily lives. As regards businesses, 55% of companies consider corruption to be widespread (EU average 63%),[34] and 51% of companies consider that corruption is a problem when doing business (EU average 37%). 26% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average of 36%) while 43% of companies consider that people and businesses caught for bribing a senior official are appropriately punished (EU average 31%).[35]

National legislation criminalises all forms of active and passive corruption offences in the public and private sector. This includes corruption in the field of sports, as well as corruption and influence peddling in the public sector. In January 2020, France adopted its first multiannual national plan to fight corruption. Developed by the French Anti-Corruption Agency (AFA) in consultation with all the administrations and local authorities concerned, it covers the period 2020-2022. The national plan covers both the preventive and repressive dimensions of corruption and foresees strengthened preventive measures, as well as an increased effectiveness of international cooperation when it comes to fighting corruption. A public consultation is planned at the end of 2021, in order to involve civil society and all stakeholders in the evaluation of the first results of the national plan's actions.

The Anti-Corruption Agency (AFA) has been established on 9 December 2016[36]. The AFA is headed by a magistrate appointed by decree of the President of the Republic for a non-renewable term of six years. His functions may only be terminated at his request or in the event of incapacity or serious misconduct. In the exercise of his control functions, the Director of the AFA may not receive or request instructions from any administrative or Government authority. The AFA prepares the multiannual anti-corruption plan and supports private and public legal persons on how to prevent and detect corruption.[37] It also monitors the quality of preventive systems in public bodies, both at the central state and the local levels, in public-interest non-profit organisations and foundations, and in public and private companies under its jurisdiction, as well as the adoption of compliance programmes under judicial decisions.[38]

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33 Transparency International (2019) Corruption Perceptions Index.
34 Special Eurobarometer 502 (2020).
35 Flash Eurobarometer 482 (2019).
36 Law 2016-1691 of 9 December 2016, known as "Sapin II".
37 The AFA also supports private and public legal persons on how to prevent and detect influence peddling, extortion by public officials, unlawful taking of interest, misappropriation of public funds and favouritism.
38 The controls exercised in execution of judicial decisions: a legal person is required to set up an anti-corruption compliance program under the control of the AFA: in application of the compliance program

The High Authority for the Transparency of Public Life (HATVP) is responsible for ensuring the integrity of public institutions. The missions of the independent authority, established in 2013, include controlling the completeness, accuracy and fairness of the declarations of assets and interests of mandate holders or public employees, reporting suspicious cases to the National Financial Prosecutor's Office[39] and providing ethical advice to public officials. Assets declarations are transmitted either to their appointing authority or to the HATVP. The interest declarations of officials and ministers are available in open data format, although those of members of Parliament are not publicly available.[40] In 2018, the HATVP received 5787 declarations of interest and assets. It estimates that officials comply with their declarative obligation at a rate of 99.82%. In 2018, it transmitted 30 cases to the public prosecutors' office.[41] The HATVP may also make proposals on possible improvements to the legal and institutional framework included in its annual reports. With the adoption of the Sapin II law[42] in 2016, the HATVP has seen its mandate extended to the management of the lobbying register. Since then, it is also in charge of the regulation of 'revolving doors'. In 2018,[43] the High Authority employed 52 agents, received 5,787 declarations of assets and interests and had a budget of EUR 5.5 million. Other institutions involved in the anti-corruption framework are: the National Commission on Campaign Accounts and Political Financing,[44] and the Ethics Commissioner of the National Assembly,[45] which was recently attributed with new missions[46] and is increasingly consulted by the members of Parliament.

While all police branches can investigate corruption crimes, a Central Office for Combating Corruption and Tax Offenses (OCLCIFF) is dedicated specifically to investigating corruption and bribery of foreign public officials. The Central Office (OCLCIFF) works under the direction of the National Financial Prosecutor's Office (PNF), an office highly specialised in the fight against corruption. In February 2020, the Ministry of Justice published a report on corruption-related cases in 2018. It indicates that such cases haves increased by 24% since 2013.[47] To meet the challenges that this increase brings, the financial police was reorganised in July 2019. A sub-directorate dedicated solely to financial crime has been created to bring together different departments in charge of these cases: the sub-directorate for the fight against financial crime. Within this new structure, the OCLCIFF is in charge of cases of corruption, embezzlement of public funds and tax fraud. The staff of OCLCIFF is made up of 90 agents in 2020.

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penalty provided for in article 131-39-2 of the Criminal Code, additional penalty likely to be imposed by a criminal court or in execution of a judicial agreement of public interest provided for in article 41-1-2 of the Code of Criminal Procedure.

39 *Parquet national financier*.

40 GRECO Fourth Evaluation Round – Corruption prevention in respect of members of parliament, judges and prosecutors: Second Compliance Report for France.

41 HATVP (2019), Activity report of 2018.

42 Law on Transparency, the Fight against Corruption and the Modernisation of Economic Life, which aims to reinforce transparency, fight corruption and modernize economic life. The measures adopted include the establishment of the High Authority for the Transparency of Public Life and Whistleblowers Protection.

43 HATVP (2019), Activity report of 2018.

44 *Commission nationale des comptes de campagne et du financement politique (CNCCFP)*.

45 *Déontologue de l'Assemblée nationale*,

46 National Assembly (2019), A new enthusiasm for parliamentary ethics: Annual report submitted to the President and to the Office of the National Assembly on 14 and 30 January 2019, in accordance with article 80-3 of the Rules of the National Assembly.

47 Ministry of Justice (2020), Breaches of integrity: statistical elements.

The work of the National Financial Prosecutor (PNF) has led to the prosecution and conviction of several high-level cases including politicians and representatives of international companies. The PNF reports to have developed close relations with its foreign counterparts and to have concluded several agreements following joint investigations through the use of legal conventions of public interest.[48] As of December 2019, the PNF had 582 files in its portfolio, 50% of which concerned breaches of integrity. As of 6 January 2020, the PNF had 17 magistrates, in addition to five specialised assistants and 15 registry officials. This has been considered insufficient and GRECO has advised that the National Financial Prosecutior's office be provided with additional staff. Furthermore, GRECO advised that its independence from the executive be ensured with additional guarantees on its transmission to the Government of information concerning ongoing proceedings against persons with top executive functions in order to preserve the integrity of investigations.[49]

Public interest judicial agreements (CJIP) provide an alternative to prosecution in France. This instrument can be implemented after a preliminary inquiry making it possible to prevent, through a compliance programme carried out under the control of the AFA, the repetition of corruption offences committed by a legal person. Eleven CJIPs have been concluded to date, including six on corruption.[50]

Companies of a certain size are under the obligation to set up anti-corruption programmes. Managers of companies and public establishments of an industrial or commercial nature with at least 500 employees and a turnover of more than EUR 100 million are under the obligation to put in place measures to prevent and detect acts of corruption or of trading in influence committed in France or abroad. This includes the commission of such acts in subsidiaries and controlled companies.[51] State administrations, local authorities and their public establishments and semi-public companies, as well as associations and foundations recognised as being of public utility are also required to implement measures to prevent and detect acts of corruption and other breaches of integrity.[52]

A consolidated regime for whistleblower protection has been put in place. Since 2007, several mechanisms have been put in place in specific sectors, including for corruption, damage to the environment and public health. With the adoption of the Sapin II law in 2016, a general regime has been established for the protection of whistleblowers in the public and private sectors.[53]

Provisions are broadly in place to regulate lobbying and 'revolving doors'. The High Authority for the Transparency of Public Life is tasked with assisting the public administration in the regulation of 'revolving doors'. The law on the transformation of the civil service[54] merges the Ethics Commission of the civil service[55] with the High Authority

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48 Law 2016-1691 of 9 December 2016, article 22 created, in article 41-1-2 of the Code of procedure criminal, a procedure which allows the public prosecutor to conclude a judicial agreement of public interest with a legal person challenged or under investigation for corruption, trading in influence, laundering of tax fraud or for related offenses.

49 GRECO Fifth Evaluation Round - Evaluation Report, para. 136.

50 In January 2020 a CJIP with Airbus has been concluded (bribery of foreign public officials and private briber) with a fine of EUR 2,083,137,455 paid to the state.

51 Art. 17, Law 2016-1691 of 9 December 2016.

52 The AFA is responsible for monitoring compliance with this obligation. Administrative sanctions, including penalties up to EUR 200,000 for natural persons and up to EUR 1 million for legal persons, are provided for in the event of default.

53 Input from France for the 2020 Rule of Law Report, p. 20.

54 Law 2019-828 of 6 August 2019.

for the Transparency of Public Life (HATVP). The HATVP provides an opinion prior to the recruitment for a high-level public position of a person formerly employed in the private sector on which the recruitment will depend. Before the appointment of any member of the Government and in relation to the person whose appointment is envisaged, the President of the Republic may request from the President of the HATVP information indicating, on the date of the request and taking into account the information available to the HATVP, whether this person is in a situation that may constitute a conflict of interest, as well as the measures necessary to prevent or take action immediately to end this conflict of interest. France has an open register of lobbyists, while some organisations, such as religious ones, are excluded from the obligation to register. GRECO has noted however the need to ensure a full accuracy of the registry, as only those lobbying organisations initiating the contact with senior officials are required to be registered.[56] The HATVP provides information regarding interest groups recorded in the register set up after the adoption of the Sapin II law, in open data format.[57]

III. MEDIA PLURALISM

France has a tradition of freedom of expression and information as well as pluralism and independence of the media, which are enshrined in the constitution and guaranteed through specific sectoral legislation, enforced by the independent media regulator. The transparency of media ownership is defined by law. The same holds for independence of the media, which traditionally enjoys a strong protection.

The independence of the media regulator in France is guaranteed by law. The *Conseil Supérieur de l'Audiovisuel* (CSA) is an independent administrative authority established in 1989.[58] The seven members of the CSA are nominated by decree for a non-renewable, six-year mandate. Its president is nominated by the President of the Republic, and three members are nominated by each of the two Parliamentary chambers. A member can only be suspended or dismissed due to incompetence, unsuitability for the position fulfilled or due to other compelling reasons related to the person concerned. General provisions are in place to minimise interference from the media sector and to prohibit taking instructions from other public authorities.[59] While the budget of the regulator is confirmed by the Parliament, its financial and human resources are at the discretion of the regulator, underpinning its independent status. In order to ensure a proper and responsible use of resources, the regulator needs to present its financial report annually to the Government and to the Parliament. The CSA has the power to issue sanctions, which may be challenged in court. The statutory obligation to publish the agendas and decisions of the council meetings contributes to the high transparency of the CSA's activities. The risk to the independence of the CSA is very low according to the MPM 2020. In addition to the CSA, the French Journalistic Council[60] was established in 2019 with the aim of contributing to respect for deontological standards. It is a self-regulatory body, composed of representatives of journalists, publishers and the public. Based on a complaint or on its own initiative, the Council can offer mediation between the parties concerned or can issue opinions, where needed.

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55 *Commission de déontologie de la fonction publique.*
56 Greco Fifth Evaluation Round – Preventing Corruption and Promoting Integrity.
57 HATVP, public registry.
58 Law 89-25 of 17 January 1989.
59 Law 2017-55 of 20 January 2017.
60 *Conseil de déontologie journalistique et de médiation.*

The rules on transparency of media ownership require companies to make certain ownership information public. Companies are legally required to disclose their three largest owners to the public.[61] In addition, they are obliged to notify the CSA when the ownership or control in a radio or TV company reaches the threshold of 10% or more.[62] The CSA publishes the information on the capital structure of publishers on its website,[63] and is consulted by the competition authority in case of media ownership developments, for which it assesses both direct and indirect owners of the media.[64]

The allocation of state advertising is regulated by the Public Procurement Law and the Law on the Government Information Service.[65] According to the Media Pluralism Monitor (MPM) 2020, the allocation of state advertising is split throughout different types of media and the corresponding risk indicator on state regulation of resources and support to the media sector[66] shows minimal risk. The CSA is responsible for the enforcement of the political coverage rules in the audiovisual sector, ensuring a fair allocation of airtime during political debates. This information is shared, on a monthly basis, with both chambers of the Parliament guaranteeing a good level of transparency and control.

An established legal framework and the presence of a plurality of players minimise risks for political control over the media.[67] For example, legal provisions in this area relate to the declaration of conflict of interest for public officials[68] and related safety mechanisms within the CSA, which prohibit Council Members from holding a function in a media company.[69] Media are also obliged to have a deontological charter and to establish a committee for accuracy, independence, and pluralism of the information and programmes.[70] The MPM 2020 registers a low risk for political control over public or private media in France.

The editorial freedom of journalists is guaranteed by the application of the 'conscience clause'[71] and the 'termination clause'.[72] The relevant provision of the Labour Code allows journalists who have a contract with their employer to terminate their contract without notice if their work threatens their moral standards without losing social benefits. To a certain extent, this prevents editorial pressure on journalists. However, this safeguard does not apply to non-contractual journalists. Journalists have the statutory right not to reveal their sources. Derogations from this right exist for reasons of national security. Several stakeholders report that journalists face pressure and intimidation to reveal their sources.[73] Such behaviour could

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61 Law no. 86-1067 of 30 September 1986 as amended by Law no. 2004-669 of 9 July 2004.
62 Law no. 86-1067 of 30 September 1986 as amended by Law no. 2004-669 of 9 July 2004, Article 38.
63 CSA, Information on publishers.
64 It should be recalled in this regard that the revised AVMSD encourages Member States to adopt legislative measures providing that media service providers under their jurisdiction make accessible information concerning their ownership structure, including the beneficial owners.
65 Ordinance 2018-1074 of 26 November 2018 and Decree 2000-1027 of 18 October 2000.
66 The indicator "State regulation of resources and support to the media sector" includes direct and indirect aids, such as direct subsidies, tax and social security reductions.
67 2020 Media Pluralism Monitor.
68 Art. 9, Law 2017-55 of 20 January 2017.
69 Art. 5, Law 86-1067 of 30 September 1986.
70 *Comité relatif à l'honnêteté, à l'indépendance et au pluralisme de l'information et des programmes.*
71 Art. L7112-5 3°, Labour Code.
72 Art. L7112-5 1°, Labour Code.
73 European Network of National Human Rights Institutions – The rule of law in the European Union, p. 103.

affect the daily work of journalists and lead to a chilling effect.[74] Defamation is considered a criminal offence and imprisonment is among the possible sanctions (when defamation is related to racial or ethnic origin).

The legal framework provides measures for physical safety of journalists, but threats to journalists are increasing. The authorities indicate that there is no specific provision in the law concerning the safety of journalists and that journalists are protected as any other citizen.[75] In recent years, some cases of physical threats and attacks by state and non-state actors have been reported, especially during the various demonstrations in 2019.[76] This is coupled with an increased number of online attacks and threats, where perpetrators can easily remain anonymous. In 2019 and 2020, the Council of Europe's Platform to promote the protection of journalism and safety of journalists published 19 alerts concerning France. They related in particular to attacks on physical safety, harassment of journalists and defamation charges. In view of evidence of such attacks and the fact that the protection of journalistic sources is reported to be put "in danger" on several occasions,[77] the MPM 2020 registered a medium risk in the area of journalists' protection standards. Stakeholders also report concerns about an increase of attacks on journalists, in particular during demonstrations.

IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

France has a semi-presidential system of government, with a President directly elected by the people and a Prime Minister who is accountable to Parliament. The bicameral Parliament consists of the General Assembly and the Senate. Legislative proposals can originate from the Government or from members of both Houses of Parliament. The Constitutional Council scrutinises the constitutionality of laws, before or after their adoption. Independent authorities play an important role in the system of checks and balances.

Impact assessments and stakeholder consultations are frequently conducted in the legislative process. Draft legislation originating from the Government is subject to an impact assessment and submitted to the Council of State for an advisory opinion. Furthermore, the authorities regularly consult stakeholders in the preparation of legislation.[78] Such consultation is mandatory for legislation in certain fields.[79] Open consultations for the public at large may also be organised. Recently, a new Citizens Convention on Climate united 150 randomly selected citizens to discuss climate change and prepare draft laws to address it. Subsequently, the President decided to submit 146 out of the 149 proposals to the Government, to Parliament or to a referendum. This recent initiative provides an innovative way of engaging citizens in the legislative process.

Several independent authorities contribute to safeguarding fundamental rights. The independent *Commission Nationale Consultative des Droits de l'Homme* (CNCDH) is the National Human Rights Institution accredited with A-status by the Global Alliance of National Human Rights Institutions (GANHRI). The composition of the CNCDH ensures a

[74] Council of Europe, Platform to promote the protection of journalism and safety of journalists, Case No. 43/2019: "Three Journalists Summoned for Compromising National Defense Classification", Category "Other acts having chilling effects on media freedom".
[75] Information received in the context of the virtual country visit.
[76] Reporters without Borders, Country profile: France.
[77] 2020 Media Pluralism Monitor.
[78] OECD, Indicators of regulatory policy and governance 2019: France, p. 2.
[79] Art. 1, the Labour Code.

diverse representation of organisations active in the field of human rights.[80] Its mandate includes scrutinising the authorities' compliance with fundamental rights standards and providing advice in this regard. The GANHRI Sub-committee on Accreditation (SCA) encouraged the CNCDH to continue to broaden its activities in relation to its protection mandate, including advocating for legislative amendments to make this mandate explicit.[81] The SCA also encouraged the CNCDH to continue to strengthen its cooperation with other national human rights entities such as the Defender of Rights. This constitutionally enshrined body is another key institution in the system of checks and balances, which is tasked with protecting citizens' rights in their relations with state authorities and can be seized by any natural or legal person. The Defender of Rights is competent to conduct investigations, mediate, issue recommendations and make proposals for legal reforms. Recently, the Defender expressed criticism on the authorities' lack of follow-up to a European Court of Human Rights judgment on the non-enforcement of a domestic judicial decision.[82]

An emergency regime was introduced in the context of the COVID-19 pandemic and measures adopted were subject to scrutiny of the courts. The law to tackle the COVID-19 pandemic adopted in March introduced a new emergency regime specifically tailored to health emergencies, and separate from the pre-existing emergency regimes.[83] The 'state of health emergency' allowed the Government to adopt a range of measures by decree in order to address the COVID-19 pandemic, such as limiting the free movement of the population. The CNCDH expressed criticism on a number of these measures,[84] and many of them were contested in the context of legal proceedings. The Constitutional Council and the Council of State censured a number of the measures, including the general obligation to obtain authorisation for demonstrations and certain provisions relating to the collection of data in light of COVID-19.[85] The Constitutional Council validated the law prolonging the state of health emergency.[86]

Recent initiatives aim to foster the landscape for civil society. While France is considered to have a narrowed civil society landscape,[87] the recent introduction of the digital tool 'Association Account'[88] seeks to facilitate the interaction between associations and the public authorities, in particular as regards applying for subsidies. The Government also seeks to foster the development of civil society associations through a dedicated fund.[89]

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80 The CNCDH is composed of 64 members: representatives of the main NGOs active in the field of human rights, representatives of the main trade union confederations and other experts.

81 GANHRI: SCA (2019), GANHRI Sub-Committee on Accreditation Report – March 2019.

82 Letter of 1 July 2019 by the Defender of Rights to the Council of Europe, Department for the Execution of Judgments of the European Court of Human Rights.

83 Articles 16 and 36, French Constitution, and Law 55-385 of 3 April 1955.

84 CNCDH (2020), Opinion on the state of health emergency and the rule of law; Defender of Rights (2020), Letter to the Presidents of the Senate and the National Assembly on the law extending the state of health emergency.

85 Decision 2020-800 DC of the Constitutional Council of 11 May and Decisions nos. 441257, 441263 and 441384 of the Council of State of 6 July 2020.

86 Even if certain of its provisions were censured, see Decision 2020-800 of the Constitutional Council of 11 May.

87 See the rating given by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

88 *Compte association*.

89 Input from France to the 2020 Rule of Law Report.

Annex I: List of sources in alphabetical order.*

* *The list of contributions received in the context of the consultation for the 2020 Rule of Law Report can be found at (COM website).*

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Virtual country visit to France in the context of the 2020 Rule of Law Report.

Annex II: Country visit to France

The Commission services held virtual meetings in May and June 2020 with:

- Anti-Corruption Agency
- Central Office for Combating Corruption and Tax Offenses
- High Authority for the Transparency of Public Life
- High Council for the Audiovisual
- High Council for the Judiciary
- Journalistic Ethics and Mediation Council
- Ministry of Justice
- National Consultative Commission on Human Rights
- National Council of Bar Associations
- National Financial Prosecutor
- National Journalists Union
- Reporters without Borders

* The Commission also met the following organisations in a number of horizontal meetings:

- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Conference of European Churches
- EuroCommerce
- European Center for Not-for-Profit Law
- European Centre for Press and Media Freedom
- European Civic Forum
- Free Press Unlimited
- Front Line Defenders
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights
- International Press Institute
- Lifelong learning Platform
- Open Society Justice Initiative/Open Society European Policy Institute
- Reporters without Borders
- Transparency International EU