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2021 Rule of Law Report
Country Chapter on the rule of law situation in France

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2021 Rule of Law Report
The rule of law situation in the European Union

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ABSTRACT

The French justice system continues to undergo a number of reforms aimed at improving its quality and efficiency. Long-standing initiatives to strengthen judicial independence, in particular by reinforcing the competences of the High Council for the Judiciary, have not advanced towards adoption, which would require a qualified majority of the votes cast by both chambers of Parliament. The resources devoted to the justice system received a significant increase. Projects aimed at achieving full digitalisation of the criminal procedure and some aspects of the civil procedure continue to advance. Two new draft laws to reinforce trust in the justice system cover issues such as the professional secrecy for lawyers, the creation of disciplinary courts for law professionals, and the broadcasting of hearings. The President of the Republic requested the High Council for the Judiciary to provide an opinion on ways to improve the regime for liability and protection of magistrates.

France has continued to strengthen its institutional framework for fighting and preventing corruption in the public and private sector. The specialised anti-corruption institutions, such as the High Authority for the Transparency of Public Life and the French Anti-corruption Agency, continue to perform their duties. Regulations for conflict of interest and the protection of whistleblowers are in place. While the lobbying legislation in place does not cover individuals initiating contact with senior officials, the Government has not put forward any proposal to this end yet. Assets declarations are disclosed and regularly verified. The National Financial Prosecutor was reorganised, and continues to show a robust record of convictions, also through public interest judicial agreements, including for high-rank officials and large-value cases. The human resources of the National Commission on Campaign Accounts and Political Financing appear insufficient compared to its workload. Specific public procurement actions were introduced in response to the COVID-19 pandemic.

France possesses a generally robust legal framework safeguarding media pluralism and freedom. An upcoming legislative change might result in an institutional reorganisation of the national media regulatory authority and creation of a single body in charge of audiovisual and digital communication. Journalists continue to be exposed to different types of threats. In view of the increase in attacks occurring during protests or demonstrations, the Government aims to implement measures to improve the communication between journalists and police forces during such events. French authorities envisaged a comprehensive recovery plan for media outlets to mitigate the impact of the COVID-19 pandemic as well as to support the transformation of the media sector.

Impact assessments and stakeholder consultations are frequent in the legislative process. However, the Government has significantly increased fast-track adoption procedures, limiting parliamentary debate on some sensitive draft laws. The emergency regime for the COVID-19 pandemic ended on 1 June 2021. Other measures affecting fundamental rights were reviewed by the Constitutional Council and the Council of State, which rejected a Government request to consider whether a ruling of the European Court of Justice could be in breach of the principle of conferral and the division of competences between the EU and its Member States. Independent authorities kept playing a very active role in safeguarding fundamental rights during the COVID-19 pandemic. The Defender of Rights acknowledged the need to improve the follow-up of its recommendations by national authorities. Recent legislation raises concerns as to its potential impact on the landscape for civil society. In particular, the new Law on Global Security received strong criticism from stakeholders and independent authorities, and the Constitutional Council declared some of its provisions unconstitutional, in particular the one aimed at protecting the anonymity of police officers on duty.

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, half of whose members are magistrates elected by their peers[1], plays an important role in safeguarding judicial independence. It nominates candidates for top judicial functions and, as regards the appointment of judges by the Minister of Justice, issues binding opinions[2]. The prosecution service is part of the judiciary, and falls under the authority of the Minister of Justice[3]. The latter can give general instructions on prosecution policy but is barred from giving instructions in individual cases[4]. France participates in the European Public Prosecutor's Office (EPPO). Lawyers are represented by various bar associations throughout France.

Independence

The level of perceived independence is average among both companies and the general public[5]. Among the general population, 57% consider the level of independence of courts to be 'fairly or very good', as well as 58% of businesses[6]. While the perceived level of independence has remained largely stable since 2016 for the general population, it has decreased among companies over the last year[7]. In both cases, the reason most often invoked for the perceived lack of judicial independence is related to interference or pressure from the Government and politicians[8].

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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. An additional judge completes this formation when acting as a disciplinary council. 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. An additional prosecutor completes this formation when acting as a disciplinary council. See also in that regard Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 27 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 Prosecutors are currently nominated by the Minister of Justice, following an advisory opinion of the Council.

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

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

5 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%).

6 While 5% of the general population and 7% of companies indicate that they perceive the level of judicial independence to be 'very good' and 52% of the general population and 51% of companies perceive it as 'fairly good', 29% of the general population and 26% of companies perceive the level of judicial independence to be 'fairly or very bad'. EU Justice Scoreboard 2021, Figures 48 & 50; Eurobarometer survey.

7 Figures 48 and 50, 2021 EU Justice Scoreboard.

8 Figures 49 and 51, 2021 EU Justice Scoreboard.

The long-standing constitutional reform to reinforce the competences of the High Council for the Judiciary has not advanced[9]. The constitutional reform[10] would in particular make the opinion of the High Council for the Judiciary on the nomination of candidate-prosecutors binding upon the executive, make the High Council the competent body to decide on disciplinary measures regarding prosecutors[11], put an end to the right of former Presidents of the Republic to become members of the Constitutional Council after their service and abolish the Court of Justice of the Republic[12]. A report on obstacles to judicial independence established by a parliamentary Commission of Inquiry on 2 September 2020[13] stressed the importance to carry out this constitutional reform. The report proposes to strengthen even further the role of the High Council, in particular by aligning fully the disciplinary and appointment rules for prosecutors with those applicable for judges[14] and by giving the High Council the power to act on its own initiative on any issue related to the independence of the judiciary[15]. For the draft constitutional law to advance towards adoption, the President would need to convene both chambers of Parliament in Congress[16] to vote on it, requiring a qualified majority of three fifths of the votes cast. The need to strengthen the disciplinary powers of the High Council was further highlighted in the context of administrative investigations ordered against three prosecutors of the National Financial Prosecutor's Office (PNF) by the Minister of Justice, which are currently pending and could lead to disciplinary procedures[17]. Three magistrates' trade unions filed a complaint against the Minister of Justice, invoking conflicts of interests related to his previous activity as a lawyer[18]. The Court of Justice of the Republic declared the complaint admissible and opened a judicial investigation on 13 January 2021. On 23 February 2021, the President of the Republic submitted to the High Council for the Judiciary a request for an opinion regarding both the liability and protection of magistrates. One of the aims is to make the system of

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9 2020 Rule of Law Report, Country Chapter on the rule of law situation in France, pp. 1-2.

10 The constitutional bill was tabled in the National Assembly on 29 August 2019.

11 Currently, the High Council for the Judiciary gives a non-binding opinion on appointments of prosecutors proposed and on disciplinary decisions by the Minister of Justice. However, in practice, the Minister of Justice always follows this opinion and the proposed change would enshrine this commitment in positive law.

12 This special court, composed of six members of the Senate, six members of the National Assembly and three judges of the Court of Cassation, is 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.

13 French Parliament, Commission of Inquiry (2020), Report on obstacles to judicial independence, https://www.assemblee-nationale.fr/dyn/15/rapports/cejustice/l15b3296_rapport-enquete.

14 Thus, the High Council would propose the appointments for heads of prosecution services, instead of only giving an opinion on proposals from the Minister of Justice.

15 Currently, under Art. 65 of the Constitution only the President may seize the Plenum of the High Council for an opinion in his role as guarantor of the independence of the Judiciary. This possibility is seldom used and the only way for the High Council to act on its own initiative on such matters is to issue communications, which are nevertheless devoid of legal value. The High Council issued several communications in 2020 and 2021, when it perceived threats to the independence of the judiciary or the authority of judicial decisions.

16 Under Art. 89 of the Constitution, the Congress is the name given to the body created when both houses of Parliament meet to vote on revisions to the Constitution or to listen to an address by the President.

17 Under Art. 58 and 59-1 of Order no. 58-1270 of 22 December 1958, the High Council only gives a non-binding opinion on whether or not to sanction prosecutors, and the final decision rests with the Minister of Justice. By decree of 23 October 2020, the Minister of Justice transferred to the Prime Minister the competence to act in cases in which he was previously involved as a lawyer, but this does not affect the initial decision to open the administrative investigations against the prosecutors, which are still pending.

18 Open letter from the *Syndicat de la Magistrature* and the *Union Syndicale des Magistrats*, published on 21 December 2020.

complaints by litigants more effective to better address cases of professional deficiencies by magistrates[19].

Two new draft laws aim at increasing trust in the justice system. On 14 April 2021, the Minister of Justice submitted to the Council of Ministers two draft laws to reinforce trust in the justice system, which would in particular improve the protection of professional secrecy for defence lawyers[20], create national disciplinary courts for law professionals, which would also be tasked with drafting a code of ethics, and widen the possibility to film and broadcast hearings[21] to promote the understanding of the justice system among the general public.

Quality

Several projects are being implemented to develop further the digitalisation of justice. Despite efforts to improve the level of digitalisation of the justice system[22], there is still room for improvement as regards procedural rules allowing digital technology in courts, use of digital technology and electronic communication tools by courts and prosecution services, as well as digital solutions to initiate, conduct and follow proceedings[23]. In criminal matters, a project called "digital criminal procedure" is following its course. Its aim is to digitalise all steps of the procedure, from the registration of a complaint or the finding of an offense to the delivery of the judgment and the filing of the court decision, as well as to ease access to the file for the parties and law professionals. The implementation of the various tools to digitalise communication between all actors in the criminal procedure as well as all documents in the file[24] started experimentally in 2019 in two courts and will be gradually extended to all courts[25]. In civil matters, the PORTALIS programme aims to replace all eight existing applications used in courts with a single digital tool and ultimately achieve full digitalisation of the civil procedure for both litigants and justice professionals, from the application until the service of the court decision on a secure portal. The first step was achieved with the launch of a website directed at litigants, which allows to them to lodge applications in some

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19 Since 2011, under Organic Law no. 2010-830 of 22 July 2010, citizens may refer the matter directly to the High Council if they consider themselves victims of disciplinary misconduct on the part of a magistrate. However, since this possibility exists, very few complaints were declared admissible and even fewer were referred to the disciplinary section. Thus, in 2019, of the 324 complaints registered, only 11 were declared admissible, of which 9 were rejected. Only one complaint was referred to the disciplinary section. Many complaints were declared manifestly inadmissible because the litigant was trying to challenge the judicial decision itself instead of alleging a professional deficiency or disciplinary misconduct.

20 The preliminary article of the Code of Criminal Procedure would be completed in order to affirm that "respect for the professional secrecy of the defense is guaranteed during the proceedings". Searches in a lawyer's office, wiretapping of his professional or private line and access to his detailed telephone bills would only be possible if the lawyer is suspected of having committed or attempted to commit an offense.

21 Currently, only trials of historical significance can be filmed. Under the draft law, dissemination of the recordings would only be possible when the case is finally judged. However, before the Council of State and the Court of Cassation, the public hearing could be broadcast live with prior consent of the parties.

22 2020 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 3.

23 See figures 40 to 45, 2021 EU Justice Scoreboard.

24 A so-called "Digital Criminal Office" will constitute the single access point to a series of applications designed *inter alia* to create and manage cases digitally and to transmit securely documents between the Ministry of Interior and the Ministry of Justice as well as to the parties' lawyers.

25 In the context of the country visit to France, the French authorities stated that the system should be operational in 30 departments out of 100 during the 1st quarter of 2022. Over the next 18 months, documents relating to emergency procedures, hearings and exchanges between all the actors involved in criminal proceedings will gradually be digitalised. Electronic signatures, access to file documents via digital tablets for lawyers, and the digitisation of requests to access documents will also be implemented.

civil matters since 4 January 2021[26]. Similarly, the possibility to submit requests for legal aid online, which started in pilot courts in March 2021 and will be gradually rolled out at national level, combined with new harmonised rules for calculating the applicants' resources[27], is expected to reduce significantly the time necessary to process such requests. The PORTALIS tool will be made operational in 2021 within the labour court, then extended to other courts by 2022.

The resources devoted to the justice system have further increased significantly in 2021[28]. Under the Finance Law for 2021[29], the Ministry of Justice is thus allocated a budget of 12.1 billion euros, or about 2% of total public expenditure, which represents an increase of 8% compared to the previous year (the highest year-on-year increase in over 20 years), including additional 127 million euros allocated to legal costs[30]. The Finance Law also creates 2,450 positions for the justice system, which represents an increase of around 3% for a total of around 90,000 positions. The budget for legal aid reached 585 million euros in 2021, a 10% increase allowing to improve the remuneration of lawyers under this regime, in particular for certain missions in criminal matters and mediation. A new guarantee of remuneration of the lawyer regardless of failures on the part of the applicant for legal aid was also created[31]. The bar associations consider that compensation for lawyers for legal aid remains largely insufficient and does not cover the lawyers' costs[32].

Several measures relating to the functioning of the criminal justice system introduced during the COVID-19 pandemic were annulled. The Constitutional Council declared unconstitutional[33] the automatic prolongation of the duration of pre-trial detention instituted by an Order of 25 March 2020 and implemented during the lockdown until 11 May 2020, due to its automatic character and the absence of systematic judicial review of the necessity of the extension within a short deadline, having regard to the right to individual liberty. In a Decision of 5 March 2021, the Council of State also ruled that this automatic extension was contrary to the right to liberty enshrined in Art. 5 of the European Convention on Human Rights (ECHR) and that the possibility for the judge in lower criminal courts to impose the use of videoconferencing or communication by telephone infringes the right to a fair trial protected by Art. 6 of the ECHR. By Order of 27 November 2020, the Council of State had already suspended the use of videoconferencing without the consent of the accused for

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[26] On the webpage https://www.justice.fr/, litigants may also lodge an application online before certain courts, for instance in family matters. In the future, this possibility will be extended to all civil courts and litigants will be able to follow the procedure and receive all court documents online. The website also provides information on procedural rules and competent courts, explanatory notes and documents to be completed, as well as the contact details of law professionals such as lawyers.

[27] Since 1 January 2021, under decree no. 2020-1717 of 28 December 2020, the reference tax income is one of the criteria, along with assets and savings, for assessing the resources of natural persons.

[28] 2020 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 4.

[29] Law no. 2020-1721 of 29 December 2020 on finances for 2021.

[30] Legal costs are the total costs of a trial. They include not only costs directly related to the trial (e.g. bailiff's fees and expert's fees), but also legal fees.

[31] New Art. 19-1 of Law no. 91-647 of 10 July 1991 guarantees the appointed lawyer's compensation for certain missions carried out even if the applicant does not send the documents necessary to file the legal aid application or does not fulfil the conditions to benefit from legal aid.

[32] See contribution from the Délégation des Barreaux de France for the 2021 Rule of Law Report, p. 8. The unit value for compensation under legal aid was raised from 32 to 34 EUR, significantly below the 40 EUR mark suggested in a mission report submitted in August 2020 to the Minister of Justice on the future of the lawyer profession in France by former Minister of Justice Dominique Perben. Moreover, mediation must lead to an agreement for the lawyer to obtain compensation under legal aid.

[33] Decision no. 2020-878/879 QPC of 29 January 2021.

hearings before higher criminal courts, on the grounds that it constitutes seriously and manifestly unlawful interference with the rights of defence and the right to a fair trial.

Efficiency

Measures are being taken to mitigate the impact of the COVID-19 pandemic on the efficiency of civil and criminal courts, but overall concerns remain with the length of procedures. The emergency measures taken to deal with the health crisis, in particular between March and May 2020, led to a slowdown in the activity of the courts and an increase in their caseload. Thus, as of October 2020, civil courts saw their caseload increased by nearly 43,000 and lower criminal courts by 19,000 cases as compared to the end of 2019[34]. The estimated time needed to resolve litigious civil and commercial cases continued increasing, with an average time of 432 days in 2019[35]. On the other hand, the clearance rate for litigious civil and commercial cases improved slightly to 99.7% for 2019[36], but this figure precedes the effects of the pandemic. In order to address the challenges faced by criminal courts, a new law of 8 April 2021 to improve the efficiency of local justice and criminal proceedings extends the alternative measures to prosecution, extends the scope of measures applicable as part of a *composition pénale*[37] and permits out-of-court execution of community service.

II. ANTI-CORRUPTION FRAMEWORK

Authorities involved in the fight against corruption include the Anti-Corruption Agency (which prepares the multiannual anti-corruption plan and supports private and public legal persons on how to prevent and detect corruption), the High Authority for the Transparency of Public life (responsible for ensuring the integrity of public institutions and officials), and the Central Office for Combating Corruption and Tax Offences (a special police for the investigation of economic crimes, including corruption and money laundering). The National Financial Prosecutor is competent for the investigation of high-level corruption cases.

The perception among experts and business executives is that the level of corruption in the public sector remains relatively low. In the 2020 Corruption Perceptions Index by Transparency International, France scores 69/100 and ranks 8th in the European Union and 23th globally[38]. This perception has been relatively stable[39] over the past five years[40].

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34 Input from France for the 2021 Rule of Law Report, p. 24.

35 Figure 6, 2021 EU Justice Scoreboard.

36 Figure 11, 2021 EU Justice Scoreboard.

37 This alternative to prosecution created by the law of 23 June 1999 allows the public prosecutor to propose to a person admitting to having committed an offence one or more measures to be executed within a specified time limit.

38 Transparency International, Corruption Perceptions Index 2020, pp. 2-3. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

39 In 2015 the score was 70, while, in 2020, the score is 69. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

40 The Eurobarometer data on corruption perception and experience of citizens and businesses as reported last year is updated every second year. The latest data set is the Special Eurobarometer 502 (2020) and the Flash Eurobarometer 482 (2019).

The national anticorruption plan for 2020-2022 is being implemented. The plan focuses on the following actions[41]: i) optimising data analysis to improve understanding and detection of corruption; ii) training and awareness-raising for public employees; iii-a) supporting ministries to establish anti-corruption programmes; iii-b) support major municipalities and their establishments to establish anti-corruption programmes; iii-c) promoting integrity in sports organisations and events; iii-d) supporting businesses in implementing the French anti-corruption framework and encouraging them to make anti-corruption compliance a means of boosting their competitiveness; iii-e) enhancing corruption penalties; and iv) enhancing France's international action[42].

The prosecution and adjudication of corruption cases show positive results, including for cases involving high-ranking officials. National legislation criminalises all forms of corruption offences (active, passive, domestic and/or foreign bribery) in the public and private sector, including in the field of sports and influence peddling in the public sector. The Central Office for Combating Corruption and Tax Offences (OCLCIFF) is a special police for the investigation of economic crimes, including corruption and money laundering. The Office has 86 officials, divided into units for financial data analysis, research and collection of evidence[43]. In 2020, the office confiscated EUR 166 million in illegal assets[44]. However, recruiting, training (sometimes for three years) and retaining highly skilled human resources, in particular the financial data analysts and experienced investigators, represent a challenge for the Office[45].

The National Financial Prosecutor's Office has been reorganised in order to improve effectiveness, including through supplementary resources and increased independence. In 2020, the National Financial Prosecutor (PNF) has established a special squad for the research of evidence through open-source databanks[46]. In 2020, the PNF initiated 123 new cases, leading to 21 indictments, for an estimated aggregated value of EUR 2 billion, and with 65 individuals involved[47]. There have been a total of 12 public interest judicial agreements (CJIPs) concluded to date[48]. In response to the recommendations of the Group of States against Corruption of the Council of Europe (GRECO)[49], for 2021 the PNF envisages

41 Agence Française Anticorruption (AFA) (2020), Anticorruption Plan for 2020-2022, p. 13.

42 AFA, Activity Report, p. 11.

43 There are five cybercrime investigators, who search, collect and analyse digital data through a specific IT tool (called LION). Until January 2021, the OCLCIFF has treated 285 cases, including 138 cases of tax fraud, 55 cases of economic crimes, and 92 cases of corruption. Input from France for the 2021 Rule of Law Report.

44 Notably: EUR 106 million from tax fraud cases (including a single case worth EUR 83 million), EUR 20 million from cases of economic crimes and EUR 38 million from cases of corruption). Input from France for the 2021 Rule of Law Report.

45 Information received in the context of the country visit to France.

46 Information received in the context of the country visit to France.

47 Involving for example a former President of the Republic, a former Minister, and mayors. Input from France for the 2021 Rule of Law Report.

48 Namely seven cases related to corruption, and five concerning tax fraud. Information received in the context of the country visit to France. Each case includes a fine for public interest, whose aggregated value (for the past twelve CJIPs) amounts to a bit more than EUR 3 billion. All fines have been paid. In addition, five cases included compliance programs, which are at the expenses of the implementing company, and under the supervision of the AFA, through compliance audits conducted for a period of three years. Input from France for the 2021 Rule of Law Report.

49 GRECO Fifth Evaluation Round - Evaluation Report, recommendations concerning the need to provide the National Financial Prosecutor's office with additional staff.

to hire additional prosecutors[50]. However, regarding the other recommendations of GRECO[51], no relevant actions were reported.

The Anti-Corruption Agency (AFA) prepares the multiannual anti-corruption plan and monitors the implementation of preventive measures in public (national or local) and private entities[52]. In September 2020, the AFA published a study analysing the anti-corruption programmes of private companies[53] and a practical guide for companies in the area of gifts and hospitality[54]. In 2021, after a public consultation[55], the AFA issued a second generation of recommendations[56] (the first set was issued in 2017), on developing and implementing a compliance mechanisms for legal persons[57]. The technical and financial resources available to the AFA are considered appropriate by its management[58]. While the officials working at the AFA have experience both in the public sector (mostly seconded investigators, prosecutors, but also financial data analysts) and in the private sector, the size and high turnover of its staff appear to be a challenge[59].

The High Authority for the Transparency of Public Life (HATVP) continues monitoring the implementation of the integrity rules for public officials, including those on asset disclosures[60]**.** The HATVP is responsible for ensuring the integrity of public institutions and officials. Its tasks includes the verifications of asset and interest declarations. In 2020, the HATVP received 17 713 declarations of interest and assets from public officials, and 825 from ministers and members of Parliament. While the declarations of officials and ministers are public, those of members of Parliament are available only on request[61]. The control performed in 2020 by the HATVP indicates that about 53% of declarations were compliant, 22% prompted minor clarification requests, and 25% had substantial deficiencies[62]. In 2020, ten files were transmitted to the National Financial Prosecutor's Office, for possible criminal follow-up. The HATVP advises institutional ethic

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50 The plan is to reach a total of 18 prosecutors, which will work with the existing supporing personnel, of six specialised assistants, and one legal assistant. Information received in the context of the country visit to France.

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

52 Law no. 2016-1691 on transparency, the fight against corruption and the modernization of economic life.

53 An anonymous online questionnaire addressed to all companies, regardless of their turnover, workforce and activities, has been sent to the professional federations for dissemination to their members. Information was collected from 2000 companies. AFA, National diagnosis on anti-corruption systems in companies.

54 AFA, Practical guide for companies in the area of gifts and hospitality.

55 A public consultation was conducted from 16 October to 16 November 2020, in which around 40 contributors participated, including 13 associations, seven business federations, ten law firms and consultants, five central administrations and two non-governmental organisations.

56 AFA, Recommendations, Official Journal of 12 January 2021.

57 The recommendations indicate good practices for implementing risk-assessment and mapping, with measures of corruption risk prevention, detection and remedial.

58 Information received in the context of the country visit to France.

59 This opinion was expressed by the Director of the AFA, during a hearing with representatives of the National Assembly, in April 2021 (video available at http://videos.assemblee-nationale.fr/video.10597957_60656dae755b9.lutte-contre-la-corruption--m-charles-duchaine-directeur-de-l-agence-francaise-anticorruption-1-avril-2021). On the other hand, the rotation of staff facilitates the dissemination of a culture of compliance between the public and the private sector. Information received in the context of the country visit to France.

60 2020 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 6.

61 See Rule of Law Report 2020.

62 Information received in the context of the country visit to France.

officials (*responsables déontologues*) supporting them in ethics training and education[63]. The HATVP also issues more general ethics guidelines, and it may sign agreements with NGOs, to promote transparency[64].

The HATVP has proposed to amend the lobbying legislation. The HATVP is responsible for the management of the lobbying register. In November 2020, the rate of declarations received was at 90% of registered lobbyists[65]. In 2020, the HATVP suggested that the lobbying legislation should be amended, as recommended by GRECO, in order to include lobbying individuals (and not only the organisations) initiating the contact with senior officials[66]. No proposal has been put forward by the Government to date[67]. In 2020, the HATVP's mandate was extended to oversee the implementation of the rules on incompatibilities and revolving doors[68]. On average, 10% of the controlled cases reveal an incompatibility. In 2020, the HATVP issued a decision of incompatibility for a former adviser to a ministerial cabinet[69].

The human resources of the National Commission on Campaign Accounts and Political Financing (CNCCFP) appear insufficient compared to its workload. The CNCCFP is the body that audits both political parties and electoral campaigns' accounting reports[70]. The election department comprises nine magistrates (seconded by the Court of Audit and other judiciary institutions), in addition to 58 assisting officials. In 2020, 2 200 cases were audited, with the support of 143 external advisers[71]. On average, up to 4% of the election campaigns' reports have a problem of accounting. The department for auditing political parties has six officials[72] and, given the workload, providing accurate and detailed accounting reports within the procedural deadline of six months from the election day remains a challenge.

The Ethics Commissioner of the National Assembly monitors the implementation of the ethics rules for Members of Parliament. Ethics rules for members of Parliament are

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63 In 2020, the HATVP has issued 150 specific opinions at the request of ethics officers. They are published on the webpage of the HATVP, https://www.hatvp.fr/consulter-les-deliberations-et-avis/.

64 Once the agreement is signed, the NGO can request the advice of the HATVP on matters related to conflict of interest and asset declarations, webpage of the HATVP, https://www.hatvp.fr/la-haute-autorite/la-diffusion-dune-culture-de-lintegrite/promouvoir-la-transparence/#:~:text=Pour%20solliciter%20l'agr%C3%A9ment%2C%20l,conditions%20requises%20pour%20%C3%AAtre%20agr%C3%A9%C3%A9. On the other hand, for an association to have judicial *locus standi* and intervene as civil party in a criminal procedure for a corruption case, it must be officially authorised by the Ministry of Justice.

65 Information received in the context of the country visit to France.

66 Greco Fifth Evaluation Round – Preventing Corruption and Promoting Integrity. Recommendation to modify the register for lobbying.

67 Information received in the context of the country visit to France.

68 The HATVP provides an opinion prior to the recruitment for a high-level public position of a person formerly employed in the private sector, which will determin the recruitment. 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. See 2020 Rule of Law Report.

69 Information received in the context of the country visit to France.

70 For the latter, this means any funds received or spent during the electoral campaigns.

71 External advisers are to be selected from a permanent list of about 200 practitioners, with fiscal and audit background. Information received in the context of the country visit to France.

72 In 2019, around 511 accounts of political parties were audited, and findings show mostly minor formal irregularities. In case an irregularity is found, the Commission may either ask clarification to the auditee or, in case of any suspicions of crime or electoral fraud, forward the file to the prosecutors or the electoral judge, respectively. Information received in the context of the country visit to France.

included in the regulation of the National Assembly[73], as well as in a code of ethics[74]. Members of Parliament in a situation of conflict of interest are to inform the Bureau of the National Assembly and to withdraw from participating in a conflicting vote. Any donation, sponsorship and travel allowances received by a Member of Parliament must be declared and then published on the transparency page of the National Assembly. In case of suspicions of any breach of ethics rules, the Ethics Commissioner may bring a case to the attention of the President of the Assembly, who may then forward the file to the Bureau of the Assembly, for further consideration and possible action[75].

The Anti-Corruption Agency (AFA) issued recommendations on the development of mechanisms for whistleblowers. In light of the existing regulations for whistleblower protection[76], the recommendations issued in January 2021[77] aim at helping public and private sector entities to prevent and detect bribery, influence peddling, extortion by public officials, illegal taking of interest, misappropriation of public funds and favouritism. Whistleblowers can submit their complaints first through the channel existing within their company or their public administration and, under specific circumstances, the complaint may then be submitted to AFA[78]. The Defender of Rights provides support and advice to whistleblowers[79], including a guide. The Defender of Rights has one full-time officer for the counselling unit. Since 2017, on average the Defender of Rights has dealt with 80 whistleblower reports per year, while in 2020, a decrease of almost 20% was registered[80]. The lack of proper financial and legal support[81] is a challenge for the practical protection of whistleblowers.

Specific anti-corruption guidance was issued in the area of public procurement to mitigate risks during the COVID-19 pandemic. In June 2020, the Anti-Corruption Agency and the State Procurement Directorate (DAE) published guidelines on "Managing the risk of corruption in the public procurement cycle"[82]. For each phase of the public procurement, the guidelines indicate the associated risks of corruption, suggest mitigation measures, and give recommendations on how to develop organisational risk mapping and anticorruption codes of conduct.

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73 Articles 80 and following of the Regulation of the National Assembly.

74 Code of deontology of 2019.

75 The Bureau of the Assembly is a committee of 22 MPs, competent for the internal functioning of the National Assembly. Within the Bureau, there is a delegation of five members dedicated to the regulation of lobbying. Summaries of the meetings of the Bureau are published online at https://www2.assemblee-nationale.fr/15/le-bureau-de-l-assemblee-nationale.

76 As reported in the 2020 Rule of law report, 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.

77 AFA, Recommendations on the development of mechanisms for whistleblowers.

78 Written information received from the Ministry of Justice.

79 The advice aims at understanding the legalities of the whistleblowing procedures, or the requirements needed in order to acquire whistleblower protection.

80 The cases concern both the public and private sectors, equally. Information received in the context of the country visit to France.

81 Information received in the context of the country visit to France. See Opinion no. 20-12 of the Defender of Rights of 16 December 2020, Recommendation 13, and 2020 Annual Activity Report of the Defender of Rights, p. 89 "In order to break the isolation of whistleblowers, better protection and exemplary support measures must be provided, in particular by allowing them to benefit from direct financial aid through the creation of a support fund and the granting of legal aid without any means testing, based where appropriate, on a certification issued by the Defender of Rights' office".

82 AFA, Guidelines on managing the risk of corruption in the public procurement cycle.

III. MEDIA PLURALISM AND MEDIA FREEDOM

The French Constitution safeguards freedom of expression and information as well as pluralism and independence of the media. These principles are further enshrined in the sectoral legislation, enforced by the independent media regulator. The French media pluralism framework secures both 'external pluralism', defined in terms of the plurality of media actors as well as 'internal pluralism', defined in terms of equity and diversity of voices. French legal system also provides for specific rules concerning transparency of media ownership[83]. France has adopted several acts aiming to transpose the revised AVMSD and three additional decrees are still envisaged to complete the transposition process.

The national media regulator, *Conseil supérieur de l'audiovisuel* (CSA), will undergo institutional changes[84]. The Government has recently presented a proposal allowing the merger of the *Conseil supérieur de l'audiovisuel* (CSA) with *the Haute Autorité pour la Diffusion des Œuvres et la Protection des Droits sur Internet* (HADOPI), the intellectual property protection authority, in order to create a single body in charge of audiovisual and digital communication (ARCOM)[85]. This would result in attributing to ARCOM a set of competencies related to minors' protection online, disinformation, hate speech and online piracy. The CSA welcomed the Government's proposal outlining, however, some concerns related to the budget and the composition of the new body[86]. The proposal envisages that the ARCOM will be subject to the same independence guarantees as the CSA and the HADOPI. As in 2020, the 2021 Media Pluralism Monitor (MPM)[87] assessed the risks to the independence and effectiveness of the French media regulator at low level, highlighting that the authority possesses an autonomous budget, and its operation, including appointment of its members, is transparent.

The French Journalistic Council focuses on the compliance with deontological standards. The Council, composed of representatives of journalists, publishers and the public examines alleged breaches of journalistic standards in press articles (both texts and images, published offline and online) and in audiovisual news programs. Since its establishment in 2019, the Council has recorded almost 411 cases of breach and published 34 notices[88].

The CSA recommended initiating a reflection on the media ownership framework. On 22 March 2021, the CSA issued an opinion stating that the current anti-concentration framework is outdated in several aspects in light of the demographic, economic and technological developments in this sector[89]. The CSA suggested that the Government initiates an expert group to work on this issue. The French legal system provides for the obligation of the publication of all direct and ultimate owners of media outlets. The allocation of frequencies for audiovisual services is also dependent on the information on the owner of the service requesting it. Media ownership concentration is controlled by the Competition

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83 France ranks 34th in the 2021 Reporters Without Borders World Press Freedom Index (16th in the EU), the same position as last year, but four places higher compared to five years ago. See website of Reporters Without Borders, https://rsf.org/en/france.

84 French Ministry of Culture, Press release of 8 April 2021.

85 The institutional change was already considered in the context of the transposition process of the revised AVMSD.

86 Conseil supérieur de l'audiovisuel (2021), Opinion on the draft law on the protection of public access to cultural works in the digital age and the draft law on the protection of public access to cultural works.

87 Media Pluralism Monitor, country report for France, p. 12.

88 Website of the French Journalistic Council, https://cdjm.org/decisions/.

89 Conseil supérieur de l'audiovisuel (2021), Opinion on the draft law on the protection of public access to cultural works in the digital age and the draft law on the protection of public access to cultural works.

Authority, which should consult the CSA when audiovisual media or radio are concerned[90]. The 2021 MPM reports low risk to media ownership transparency, mentioning, however, that the multilayered ownership structure of numerous media conglomerates might create a certain degree of opacity. On the other hand, the 2021 MPM reports persisting high levels of horizontal and cross-media concentration[91].

French authorities allocated substantial financial support for media outlets. In 2020, in order to mitigate the economic impact of the COVID-19 pandemic, the French Government allocated EUR 106 million to guarantee the continuity of press distribution and support the most affected media actors - newsagents, overseas titles and publishers. All media workers, including freelancers, were eligible to short-time work compensation too. With regards to the long-term support, the comprehensive recovery plan envisages EUR 377 million over the next two years to support the digital and ecological transitions of the media sector[92]. This also includes a fund of EUR 18 million to support the journalists in the most precarious situation, such as freelancers, photojournalists and cartoonists[93]. The French Government also envisaged changes to the framework of financial support for newsagents, especially with regards to the application conditions and the methods of the financial aid calculation[94].

Journalists in France continue to be exposed to different types of threats. Attacks on journalists and media workers, both from the side of protestors and police forces, have been reported during protests and demonstrations[95]. In this context, the Government commissioned an independent report[96], which includes a set of proposals for measures geared at improving safety of journalists as well as their communication with police forces during protests and demonstrations[97]. The Council of State also declared illegal four provisions of the Plan of the Maintenance of the Order, which limited the operation of journalists during protests or demonstrations[98]. Worrying developments have been observed in relation to confidentiality of reporters' sources[99], threats of physical violence[100] or cases of online harassment,

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90 European Commission, Study on the implementation of the new provisions in the revised Audiovisual Media Services Directive.

91 For online media, the lack of thorough, standardized data prevents the establishment of any concentration rate. Media Pluralism Monitor, country report for France, p. 13.

92 French Ministry of Culture, Press release of 27 August 2020.

93 Website of European Federation of Journalists, https://europeanjournalists.org/blog/database/covid-19-what-financial-support-has-the-media-and-journalists-received-in-europe/.

94 Website of the French Ministry of Culture, https://www.culture.gouv.fr/Sites-thematiques/Presse/Aides-a-la-Presse/L-aide-a-la-modernisation-des-diffuseurs.

95 See: Website of Reporters Without Borders, https://rsf.org/en/france, https://rsf.org/en/news/cases-violence-against-french-reporters and Council of Europe, Platform to promote the protection of journalism and safety of journalists (2021), alert of 4 January 2021, Journalists Obstructed during Yellow Vest Demonstrations.

96 The report was submitted to the French prime minister on 3rd of May 2021. See Annex I.

97 The French authorities declared that the recommendations in the report would be implemented jointly by the interior and culture ministers.

98 Decision nr. 444849 of the Council of State of 10 June 2021.

99 The World Press Freedom Index reports that in 2020, at least two journalists were summoned for questioning by the IGPN (the police internal affairs department) for suspected complicity in a violation of police confidentiality. Reporters Without Borders raised its concerns in relation to the French press law which allows the police to invoke an "overriding requirement in the public interest" as a ground for opening an investigation aimed at identifying a journalist's source. See https://rsf.org/en/news/france-rsf-denounces-use-concealment-professional-secrecy-accusation-and-calls-its-removal.

100 On 25 September 2020 a stabbing attack took place outside the former headquarters of the French satirical magazine Charlie Hebdo. Before the attack, the perpetrator stated in a video that he was seeking vengeance against Charlie Hebdo. See: Council of Europe, Platform to promote the protection of journalism and safety of journalists (2020), alert of 16 December 2020, Two Media Workers Injured in Knife Attack.

especially of female journalists[101]. The Council of Europe's Platform to promote the protection of journalism and safety of journalists recorded fifteen alerts for France since October 2020, the majority of which concerned physical attacks, harassment and intimidation of journalists[102]. The 2021 MPM highlights that the frequent use of the state of emergency and a very broad definition of disinformation might also affect negatively the situation of journalists.

The Constitutional Council invalidated controversial provisions which could have affected the activities of journalists. Following the critical reception by the journalistic community of the draft law on "Global security", the Government proposed significant changes to the draft provision criminalising the dissemination of images showing the face or other identifying characteristics of a member of the national police or of the *gendarmerie* participating in a police operation. The legislative text, adopted in April 2021, included a new offence consisting in the malicious dissemination of the image of law enforcement officers in the exercise of their duties with the obvious intent to damage their physical or psychological integrity (Article 52.1). The Constitutional Council declared this article incompatible with the French Constitution, due to the lack of legal certainty stemming from the imprecise formulation of this provision. The decision of the Constitutional Council was welcomed by the media stakeholders[103]. The Government representatives declared willingness to propose a revised version of the article[104].

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 National 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 frequent in the legislative process, though not mandatory in all cases. The number of published impact assessments accompanying draft laws initiated by Government increased to 25[105] out of 61 draft laws in 2020, from a yearly average of nine. Involving stakeholders and the public is not mandatory for the development of new laws[106]; according to the Council of State, informal consultations, including meetings with stakeholders, and consultations through consultative committees are

[101] As confirmed by the 2021 MPM as well as by the discussions in the context of the country visit in France. Media Pluralism Monitor, country report for France, p. 13.

[102] While French authorities have responded to the majority of the alerts recorded in 2021, none of them have been qualified as resolved yet. See website of the Council of Europe, https://www.coe.int/en/web/media-freedom/france.

[103] See Le Monde (2021), Law "global security", The Constitutional Council censures ex-article 24, https://www.lemonde.fr/societe/article/2021/05/20/le-conseil-constitutionnel-censure-l-ex-article-24-de-la-proposition-de-loi-securite-globale_6080897_3224.html; The Local (2021), France's constitutional council rejects proposed law limiting filming of police officers, https://www.thelocal.fr/20210520/frances-constitutional-court-rejects-proposed-law-limiting-filming-of-police-officers/.

[104] *Ibid*.

[105] Input from France for the 2021 Rule of Law Report, p. 43. Under Art. 8 of organic law n°2009-403 of 15 April 2009, draft legislation originating from Government is subject to an impact assessment and submitted to the Council of State for an advisory opinion. Since 2015, an oral decision of the President of the Republic made the publication of this opinion possible in most cases.

[106] Except for labour legislation, for which a consultation process with trade unions is mandatory under Art. L1 of the Labour Code.

frequent[107]. After nine months of deliberations, the Citizens Convention for Climate[108] submitted their proposals to the Government, which published its draft law on climate on 10 February 2021[109]. Moreover, following a proposal of the Convention, the President committed to hold a referendum to introduce a climate clause in the Constitution[110].

The use of fast-track and accelerated procedures, conceived for exceptional cases, has increased significantly[111]. In the last parliamentary session (2019-2020), 37 out of 58 laws were adopted under the accelerated procedure[112]. Since the beginning of the parliamentary term in the National Assembly, 57% of the laws were debated following this procedure. Thus, the accelerated procedure, originally conceived as an exception, is becoming the norm, even for laws with a significant impact on individual freedoms[113], which would therefore require an extensive parliamentary debate[114].

The emergency regime introduced in the context of the COVID-19 pandemic has been extended several times and ended on 1 June 2021. Established for two months by the law of 23 March 2020, the state of health emergency[115] was extended until 10 July 2020. Then, the law of 9 July 2020 set up a transitional regime from 11 July authorising the Government to take exceptional measures to deal with the epidemic until 31 October 2020. The national state of health emergency was again declared by decree as of 17 October 2020 and its extension was authorised by law twice, first until 16 February 2021 and then until 1 June 2021. It allowed the Government to adopt a range of measures by decree in order to address the pandemic. On 27 May 2021, the Parliament adopted a law on the management of the exit from the health crisis, which creates a transitional regime[116] applicable after the lifting of the state of health emergency, from 2 June to 30 September 2021. The Constitutional Council declared constitutional several provisions of the law contested by a group of deputies[117].

The highest courts were called to review measures affecting fundamental rights. The Constitutional Council reviewed the validity of the Law authorising the extension of the state of health emergency until 16 February 2021 and introducing measures to tackle the health

[107] See contribution from Council of State for the 2021 Rule of Law Report, p. 24. No specific figures are available.

[108] 2020 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 10. The Convention, established in October 2019, gathered 150 randomly selected citizens designed to be representative of the French public to discuss climate change and prepare draft laws to address it.

[109] The draft climate law includes 46 out of the 149 citizens' proposals, 17 of which only partially.

[110] The Government submitted a draft constitutional law to this aim on 20 January 2021.

[111] Art. 45, second paragraph, of the Constitution allows the Government to limit parliamentary debates to a single reading for each chamber of Parliament for a given text. This accelerated procedure also suppresses the obligation for six weeks to elapse before the first chamber and four weeks before the second chamber holds a public debate on the text.

[112] See contribution from Council of State for the 2021 Rule of Law Report, p. 25.

[113] See contribution of the European Civic Forum for the 2021 Rule of Law Report, p. 23.

[114] For instance, the Government submitted the draft law to reinforce the respect of the principles of the Republic to the accelerated legislative procedure. In two separate opinions, of 28 January 2021 and 25 March 2021 on this draft law, the National Consultative Commission on Human Rights (CNCDH) expressed regret that the parliamentary debate was shortened.

[115] The law of 23 March 2020 introduced a new emergency regime specifically tailored to health emergencies, and separate from the pre-existing emergency regimes. The state of health emergency is first declared by decree for a maximum duration of one month, and its extension beyond one month must be authorised by law, for a specified duration.

[116] Under this regime, the Prime Minister may limit free movement, the opening of establishments open to the public, as well as gatherings and demonstrations. Prefects will be able to take such measures locally.

[117] Constitutional Council, Decision no. 2021-819 DC of 31 May 2021.

crisis[118], and annulled the automatic prolongation of the duration of pre-trial detention[119]. From March 2020 to March 2021, the Council of State ruled in urgent proceedings on 647 applications challenging the Government's management of the pandemic and ordered measures or suspended acts of the public authorities in 51 cases. In particular, the Council of State suspended the mandatory use of videoconferencing during hearings in criminal proceedings[120], regulated the use of drones by the police to monitor demonstrations[121] and ruled that clients must be able to consult their lawyer even after curfew[122]. In 51 cases in which the application was formally rejected, the exchanges during the hearings still led the Government to take corrective measures[123], and the Council of State reminded the State of its duties or specified its obligations in about 130 cases. The Council of State has given other important rulings in relation with fundamental rights, including a judgment on data retention which raises concerns as regards its interplay with the legal order of the European Union[124]. In this last judgment, referring to the binding nature of rulings of the Court of Justice, the Council of State nevertheless rejected the request of the Government to consider whether a ruling from the European Court of Justice could be in breach of the principle of conferral and the division of competences between the Union and its Member States[125].

Independent authorities have played an active role in defending of fundamental rights throughout the COVID-19 pandemic. In 2020, the *Commission Nationale Consultative des Droits de l'Homme* (CNCDH)[126] published 18 opinions in the exercise of its mandate of scrutinising the authorities' compliance with fundamental rights standards, sometimes acting on its own initiative regarding draft laws for which it was not consulted by the Government and issuing specific recommendations to ensure compliance with constitutional principles and individual freedoms[127]. This approach of advocating for legislative amendments is in line with the recommendation from the GANHRI Sub-committee on Accreditation (SCA), which encouraged the CNCDH to continue to broaden its activities in relation to its protection mandate[128]. The Defender of Rights[129] also maintained the continuity of its activities. In

[118] By Decision no. 2020-808 DC of 13 November 2020, the Constitutional Council declared constitutional the extension of the state of health emergency until 16 February 2021, and authorised the measures taken under certain reservations.

[119] By Decision no. 2020-878/879 QPC of 29 January 2021, see above.

[120] Order of 27 November 2020 and Decision of 5 March 2021, see above.

[121] Order of 18 May 2020 and Decision of 22 December 2020 on the use of drones to monitor demonstrations in Paris.

[122] In a Decision of 3 March 2021, the Council of State held the view that failing to provide this exemption during the curfew constitutes a serious and manifestly unlawful breach of the fundamental freedom to exercise an effective remedy before a court.

[123] For instance by preparing reports on the impact of the lockdown measures on mental health, and clarifying the grounds for authorised travel.

[124] Decision of the Council of State of 21 April 2021, rendered following the judgment of the Court of Justice of the EU of 6 October 2020 in Case C-511/18, La Quadrature du Net e.a.

[125] However, the Council of State recalled that the Constitution remains the supreme norm within the national legal system, and that it must ensure that the application of EU law, as specified by the Court of Justice of the European Union, does not in practice jeopardize constitutional requirements which are not guaranteed in an equivalent manner by EU law (paras. 9 and 10 of the Decision).

[126] Assimilated to an independent administrative authority, the CNCDH is a National Human Rights Institution accredited with A-status by the Global Alliance of National Human Rights Institutions (GANHRI). It 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.

[127] In its opinions published ex officio on 28 January and 25 March 2021 on the successive versions of the draft law to reinforce the respect of the principles of the Republic, the CNCDH regrets not having been consulted during the preparation of the draft and formulates, in total, 35 recommendations, some of them addressing the precise wording of the law.

[128] GANHRI Sub-Committee on Accreditation Report – March 2019.

2020, it processed in total 96,894 complaints and 69,705 calls, representing a 10% increase from the previous year, and issued 234 recommendations[130]. However, in order to strengthen the rights of those who seize it, the Defender of Rights acknowledged the need to improve the follow-up of its recommendations by national authorities, noting that only 56% received an answer in 2019, 31% of which were refusals[131]. The Defender of Rights also issued two opinions on the legal regime of the state of health emergency in order to ensure that the legislative and regulatory measures taken to fight the pandemic respect the rights and freedoms of individuals and guarantee equal treatment[132].

Recent legislation raises concerns as to its potential impact on the landscape for civil society. France is still considered to have a narrowed civil society landscape[133], and restrictions imposed during the pandemic to public gatherings[134], in particular their implementation by local authorities, have generated further concerns in this respect[135]. The new Law on Global Security, adopted by Parliament on 15 April 2021, received considerable criticism from various stakeholders[136] and independent authorities[137] for its potential impact on the freedoms of expression and of information and the right to protest. It provides the possibility, for police patrols, to carry cameras and use drones to transmit the images of demonstrators and bystanders live to a command centre, and created a new offence consisting in the malicious dissemination of the image of law enforcement officers in the exercise of their duties with the obvious intent to damage their physical or psychological integrity[138].

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[129] This constitutionally enshrined body tasked with protecting citizens' rights in their relations with state authorities can be seized by any natural or legal person. It is competent to conduct investigations, mediate, issue recommendations and propose legislative reforms.

[130] Under Art. 25 of Organic Law no. 2011-333 of 29 March 2011, when seized, the Defender of Rights may make any recommendation to the authorities or persons concerned, who must inform of the follow-up given to the recommendations. In the absence of information or if the follow-up is not satisfactory, the Defender of Rights may order the accused person to take, within a specified period, the necessary measures. When this injunction has not been followed up, the Defender of Rights draws up a special report, which is communicated to the person concerned. The Defender of Rights publishes this report and, where applicable, the response of the person concerned.

[131] See 2020 Annual Activity Report of the Defender of Rights, p. 20.

[132] Opinion 20-03, of 27 April 2020, relating to the implementation of the state of health emergency to deal with the covid-19 pandemic, as well as orders and decrees taken for its application, and opinion 20-10, of 3 December 2020, on the legal regime of the state of health emergency.

[133] As noted in the 2020 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 11. See the rating given by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

[134] Some of these measures were successfully challenged in court. By Decision of 13 June 2020, the Council of State ruled that the blanket ban on demonstrations gathering more than ten people imposed by a decree of 31 May 2021 was not justified by the current health situation when the safety measures could be respected or when the event was unlikely to bring together more than 5,000 people. On 21 June, a new decree allowed prefects to authorise public gatherings if the organisers were able to ensure compliance with the safety measures. By Decision of 6 July 2020, the Council of State suspended the requirement for authorisation as a disproportionate infringement of the right to demonstrate.

[135] For instance, prefects invoked the risk of disturbance of public order or the state of a health emergency to impose bans or restrictions against demonstrations against the draft law on global security, but their orders were suspended by courts. See contribution of the European Civic Forum for the 2021 Rule of Law Report, p. 25.

[136] For instance, on 12 November 2020, the *Observatoire des libertés et du numérique* issued a communication which gathered signatures from numerous organisations including the *Ligue des droits de l'Homme*, La Quadrature du Net, the *Syndicat des avocats de France* and the *Syndicat de la Magistrature.*

[137] See Defender of Rights, Opinion 20-06, of 17 November 2020, on the text adopted by the Law Commission on the draft law on global security, and CNCDH, Opinion of 26 November 2020, on the proposition of law on global security.

[138] See Section III.

This new offence was strongly criticised for its impact on the right to information, considering the importance of reports from witnesses other than professional journalists[139]. To address these concerns, the Prime Minister decided to submit the law in its entirety to the Constitutional Council. The latter declared unconstitutional several provisions, including the article creating the abovementioned new offence, and formulated reservations as regard other provisions[140]. A draft law to "reinforce respect for the republican principles", submitted to Parliament on 9 December 2020, was also criticised for the restrictions it might impose on the freedom of association and of expression[141]. In particular, the provisions instituting control of foreign funding of religious associations above a certain threshold, extending of the grounds for dissolution of associations, including for acts committed by its members, as well as imposing an obligation to sign a broadly defined "contract of republican commitment" on association requesting subsidies generate concerns both at national[142] and European level[143].

[139] See opinion of the Defender of Rights *supra*, p. 5, and opinion of the CNCDH *supra*, pp. 6-7.
[140] Decision No. 2021-817 DC of the Constitutional Council of 20 May 2021.
[141] See contribution of the European Civic Forum for the 2021 Rule of Law Report, pp. 26-27. Amnesty International also expressed concerns on this draft law in a communication of 29 March 2021.
[142] See Defender of Rights, Opinion 21-01, of 12 January 2021 on the draft law to reinforce the respect of the principles of the Republic and CNCDH of 25 March 2021, Second opinion on the draft law to reinforce the respect of the principles of the Republic, as well as the joint letter addressed by a large number of associations and trade unions to senators on 7 April 2021, https://www.ldh-france.org/wp-content/uploads/2021/04/Lettre-aux-senatrices-et-senateurs-avec-les-derniers-signataires.pdf.
[143] See opinion of the Expert Council on NGO Law of the Conference of NGOs of the Council of Europe of 31 March 2021 on the compatibility with the European standards of the bill to ensure respect for the principles of the republic by all.

Annex I: List of sources in alphabetical order*

** The list of contributions received in the context of the consultation for the 2021 Rule of Law report can be found at at https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2021-rule-law-report-targeted-stakeholder-consultation.*

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Annex II: Country visit to France

The Commission services held virtual meetings in April 2021 with:

- Agence France Presse
- Anti-Corruption Agency
- Central Office for Combating Corruption and Tax Offenses
- Council of State
- Defender of rights
- Delegation of the Bars of France
- Ethics Commissioner of the National Assembly
- 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
- Syndicat de la Magistrature
- Union syndicale des magistrats

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

- Amnesty International
- Center for Reproductive Rights
- CIVICUS
- 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
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Front Line Defenders
- Human Rights House Foundation
- Human Rights Watch
- ILGA-Europe
- International Commission of Jurists
- International Federation for Human Rights
- International Planned Parenthood Federation European Network (IPPF EN)
- International Press Institute
- Netherlands Helsinki Committee
- Open Society European Policy Institute
- Philanthropy Advocacy
- Protection International
- Reporters without Borders

- Transparency International EU