



FRANCE: Country Briefing

June 2021

GOVERNMENT MEASURES RISK LEADING TO FAST DETERIORATION OF CIVIC SPACE



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Government measures risk leading to fast deterioration of civic space

While fundamental freedoms are protected by the law and generally respected, civil liberties have been put under increasing pressure since 2015 following the state of emergency introduced in after the terrorist attacks¹.

Two laws (Loi pour une sécurité globale, Projet de loi confortant le respect des principes de la République) presented by the French Government at the end 2020 as well as the governmental decisions of dissolving associations and investigating university curricula are reinforcing a systemic threat to freedom of association, freedom of assembly, freedom of expression, freedom of beliefs and academic freedom in France. Attacks against organisations fighting discrimination of Muslim people and people considered Muslim have also multiplied in the last months.

To date, the Government is not engaging in meaningful dialogue with civic actors to address concerns expressed in all fora, including online protests and public demonstrations.

We call on European Institutions to act swiftly in raising concerns regarding restrictions to rights and civil liberties with regards to the draft bill, in particular:

- The European Commission should question publicly the provision restricting the right to associate and civil liberties included in the draft proposal, with no delay;
- The European Commission should open discussions with the French authorities on the current state of civic space and rule of law in the country and associate French civic actors in appropriate forms;
- The European Parliament LIBE Democracy, Rule of Law and Fundamental Rights Monitoring Group should held a hearing on the situation of civic space and rule of law in France;
- The European Parliament LIBE Committee should organise a Delegation to France.

¹ European Civic Forum, Activizanship #4, <http://civic-forum.eu/publication/view/activizen-ship-4#page=55>, 2019.

1. Draft bill strengthening republican values is conducive of restricting freedom of association

On 21 October 2020, the President presented a draft legislation “to Strengthen Republican Values”, also known as the Anti-Separatism law, claiming to be a response to the “threats to Islamic fundamentalism”. The law is following a fast-track procedure. The Council of State², the Ombudsman³ and the Human Rights Consultative body⁴ expressed publicly concerns. According to a large coalition of academics, lawyers and associations this is an unprecedented attack against freedom of association⁵.

In particular, article 6 of the amended draft text would oblige any recipient of public funding to commit to a “Contract of Republican Engagement”. Administrative authorities would have the power to assess an organisation’s compliance with « the principles of the French Republic » and organisations considered non-compliant would lose subsidies and public funding. Organisations could only appeal to the judiciary after they have lost funding. As stressed by the national platform “Le Mouvement Associatif” the “republican engagement contract” shifts the power of the judgement of compliance from the judicial authority to the administrative ones at local and national level with high risks of discretion⁶.

Among the requirements of this Contract, to be introduced by decree, the law mentions the obligation to “promote public order”. Civic actors believe such a vague definition open a large avenue for undue control and sanction on the sector. This Contract could for instance discourage associations to be involved in peaceful protests or civil disobedience actions, a common way to protest or express discontent⁷.

The bill would also extend grounds for dissolution with a limited role for the judiciary and it introduces controls on any foreign funding that cast a negative presumption on all civic organisations receiving funding from abroad⁸.

2 Conseil d’État, Avis sur un projet de loi confortant le respect, par tous, des principes de la République, <https://www.conseil-etat.fr/ressources/avis-aux-pouvoirs-publics/derniers-avis-publies/avis-sur-un-projet-de-loi-confortant-le-respect-par-tous-des-principes-de-la-republique>, 9 Dec. 2020.

3 Défenseur des droits, Avis du Défenseur des droits n°21-01, Avis 21-01 du 12 janvier 2021 relatif au projet de loi confortant le respect des principes de la République (defenseurdesdroits.fr), 12 Jan. 2021.

4 Commission nationale consultative des droits de l’homme , Second avis sur le projet de loi confortant le respect des principes de la République, 4 April 2021.

5 Collective statement, Loi séparatisme : une grave atteinte aux libertés associatives, https://www.liberation.fr/debats/2021/01/21/loi-separatisme-une-grave-atteinte-aux-libertes-associatives_1818075/, 21 Jan. 2021.

6 Mouvement Associatif, EXAMEN DU PROJET DE LOI PRINCIPES DE LA RÉPUBLIQUE : MOBILISATION DES ASSOCIATIONS, <https://lemouvementassociatif.org/examen-du-pjl-principes-de-la-republique-mobilisation-des-associations/>, 18 Jan. 2021.

7 CIVICUS Monitor, WORSENING CRACKDOWN ON CIVIC SPACE BY MACRON’S GOVERNMENT TO PRESERVE ‘REPUBLICAN VALUES’, <https://monitor.civicus.org/updates/2021/03/04/worsening-crackdown-on-civic-space-by-macrons-government-to-preserve-republican-values/>, 4 Mar. 2021.

8 COE, The Expert Council on NGO Law is concerned about the restrictions by the Bill to strengthen respect for the principles of the Republic by all, 31 March 2021, The Expert Council on NGO Law is concerned about the restrictions by the Bill to strengthen respect for the principles of the Republic by all - Newsroom (coe.int).

2. Attacks against organisations fighting discrimination of Muslim people and people considered Muslim

In the last months, the stigmatisation by public authorities of organisation who defend the rights of Muslims became more widespread. Civil society organisations and trade unions have collectively stressed that the stigmatising statements by political forces “can only reinforce deleterious cleavages” in society and “feed the machines of hatred”⁹.

Recent worrying developments include:

- *Administrative dissolution of the Collectif contre l'Islamophobie en France (CCIF) and BarakaCity on grounds of incitement to hatred and terrorism.*

Dissolving an association is the “severest of punishments, and a curtailment of the right of freedom of association; it should only be undertaken after careful consideration...”¹⁰. Any decision to dissolve an association should be based on clear evidential legal grounds and not partisan considerations. French civic actors are questioning the lack of factual evidence presented by authorities¹¹. The dissolution came after a public smear campaign, with the Interior Minister labelling the organisations as “enemies of the Republic”. CCIF members received more than 12 thousand threats on social networks after the government’s announcement.

- *Targeting European funding of the NGO Alliance Citoyenne.*

After the petition and campaign initiated in 2019 by Alliance Citoyenne to lift the burkini ban in public swimming pools in Grenoble, public funds to the NGO were cut and the organisation was evicted from its premises in Villeurbanne¹². In 2020, the association saw its “service civique” (state allowance to associations) suspended after public work on Muslim women wearing headscarves. In March 2021, a letter leaked to the media showed that the French Minister of Interior requested to the European Commission to withdraw the funding of an EU project application granted to the association after the project proposal was assessed and approved on the basis of eligibility and selection criteria by the European Commission. Thanks to the swift response and broad mobilization from CSOs across Europe, the Commission has rejected the Minister’s complaint and confirmed the grant to the consortium for the project aimed at combating racism and discrimination¹³.

9 <http://civicspacewatch.eu/france-civil-society-and-trade-unions-against-obscurantism/>

10 European Centre for Not-for-profit Law, FRENCH GOVERNMENT PROPOSES TO DISSOLVE NGO CCIF, <https://ecnl.org/news/french-government-proposes-dissolve-ngo-ccif>, 3 Nov. 2020.

11 Civic Space Watch, FRANCE: CSOs react to Minister of Interior order of dissolution of an organisation working on islamophobia, <http://civicspacewatch.eu/france-minister-of-interior-threatening-to-close-down-anti-racist-civil-society-organisation/>, 22 Oct. 2020.

12 For more details on the case <https://www.leprogres.fr/rhone-69/2019/07/31/pro-burkini-le-collectif-alliancecitoyenne-prive-de-locaux-a-villeurbanne>.

13 Civic Space Watch, FRANCE: French Minister of Interior interferes with European Commission’s distribution of funding to local NGO (UPDATE), <https://civicspacewatch.eu/france-french-minister-of-in->

These attacks have also affected academic freedom. In February 2021, the French minister for higher education announced an investigation in universities because of the spread of a supposed “Islamism” in academic institutions¹⁴. In 2020, a provision of the bill reforming public research programming states that “academic freedoms are exercised with respect for the values of the Republic.” Education Ministry has already told universities to refrain from research on topics such as “Islamophobia” which it regards as academically “without foundation.” Introducing legal restrictions in the name of political considerations would be a breach of academic freedom¹⁵.

3. The Global Security Bill risks eroding freedom of assembly and expression in France

On 11 September, the Minister of Interior presented a national scheme for maintaining law and order. Civil society was not consulted. Civic actors stress that the new scheme confirms worrisome policing practices that developed in 2018 and 2019¹⁶, like the use of the flash ball and stinger grenades despite the concerns expressed by civil society and international organisations¹⁷. Additionally, the scheme does not provide effective protection to journalists and human rights observers present in public demonstrations to report on facts that occurs during the demos including breaches of the rule of law by law enforcement forces¹⁸.

In the framework of this scheme, in November, a new “global security” law that risk eroding the right to information, respect for privacy, and freedom of peaceful assembly was tabled in the Parliament and pushed through on accelerated procedure. The draft bill allows the police and gendarme patrols to carry cameras and make use of drones

terior-interfere-with-european-commissions-distribution-of-funding-to-local-ngo/, 15 Apr. 2021.

14 Tribune, « Islamo-gauchisme » : « Nous, universitaires et chercheurs, demandons avec force la démission de Frédérique Vidal », https://www.lemonde.fr/idees/article/2021/02/20/islamo-gauchisme-nous-universitaires-et-chercheurs-demandons-avec-force-la-demission-de-frederique-vidal_6070663_3232.html, Le Monde, 20 Feb. 2021.

15 European Civic Forum, THE EUROPEAN CIVIC FORUM WARNS ABOUT RAPID DETERIORATION OF CIVIC SPACE AND THE RULE OF LAW IN FRANCE, <https://civic-forum.eu/statement/france-civic-space-and-rule-of-law>, 1 Dec. 2020.

16 Doctrine du maintien de l'ordre : “Un nouveau schéma, des vieilles pratiques”, dénoncent des ONG et syndicats, https://www.francetvinfo.fr/economie/transports/gilets-jaunes/tribune-doctrine-du-maintien-de-lordre-un-nouveau-schema-des-vieilles-pratiques-denoncent-des-ong-et-syndicats_4126175.html, FranceInfo, (4 Oct. 2020).

17 Council of Europe, Maintaining public order and freedom of assembly in the context of the “yellow vest” movement: recommendations by the Council of Europe Commissioner for Human Rights, <https://www.coe.int/en/web/commissioner/-/maintaining-public-order-and-freedom-of-assembly-in-the-context-of-the-yellow-vest-movement-recommendations-by-the-council-of-europe-commissioner-for->, (26 Feb. 2019); OHCHR, France: UN experts denounce severe rights restrictions on “gilets jaunes” protesters, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24166&LangID=E>, (14 Feb. 2019).

18 LDH, CONTESTATION DU NOUVEAU SCHÉMA NATIONAL DU MAINTIEN DE L'ORDRE PAR LES OBSERVATOIRES DES PRATIQUES POLICIÈRES/LIBERTÉS PUBLIQUES, <https://www.ldh-france.org/contestation-du-nouveau-schema-national-du-maintien-de-lordre-par-les-observatoires-des-pratiques-policieres/> (13 Oct. 2020); Amnesty International France, NOUVEAU SCHÉMA DU MAINTIEN DE L'ORDRE : UNE OCCASION MANQUÉE, <https://www.amnesty.fr/liberte-d-expression/actualites/schema-du-maintien-de-lordre-occasion-manquee>, (22 Sept. 2020).

to transmit the images of demonstrators and bystanders live to the command centre, images that can be analysed through facial recognition in real-time. Civil society raised concerns over its proportionality and worries that it will contribute to reinforce the “preventive” policing approach implemented in recent years¹⁹²⁰. Article 24 of the draft law (article 52 of the bill as passed by the National Assembly) was largely criticised for punishing the public and journalists from disseminating images of the face or any other identifying feature of law enforcement officers. It has been made clear that the provision intends to limit the use of images that are crucial for informing on police misconduct and ensuring justice to victims²¹. The law was adopted on 15 April 2021. On 20 May, the Constitutional Court, which received over 20 referrals from civic organisations and trade unions, found that numerous dispositions of the law were in contrast with the French Constitution including former article 24 and proceed with their annulment. Nevertheless, civil society remains concerned with several measures that remain in the law, such as the extension of the public surveillance tasks of private security guards in the fight against terrorism and the authorisation for police and gendarmes to be armed, off duty, in an establishment open to the public, thereby strengthening the phenomenon of militarisation of the public space²².

4. The Government restricts parliamentary debate and does not consult civic actors ahead of proposing laws directly affecting their capacity to act

Important laws affecting rights and freedoms (described above) are passed by the Government through fast-track procedures, thus restricting Parliamentary debate. Many provisions of the laws have a direct impact on the functioning of civic organisations, some detrimental to their capacity to act. It is even more concerning that the Government did not carry out serious consultations ahead of the Parliamentary process. To date, the Government is also not engaging in meaningful dialogue with civic actors to address concerns expressed in all fora, including online protests and public demonstrations.

19 Observatoire des libertés et du numérique, CONTRE LA LOI «SÉCURITÉ GLOBALE», DÉFENDONS LA LIBERTÉ DE MANIFESTER, <https://www.ldh-france.org/contre-la-loi-securite-globale-defendons-la-liberte-de-manifester/>, (12 Nov. 2020).

20 For more information on the preventive approach to policing assemblies in France, see: Arié Alimi, SHIFTING TOWARDS A PREVENTIVE APPROACH TO MANTAINING PUBLIC ORDER - Restricting the right to demonstrate from exception to routine, Activizanship #4, European Civic Forum, <http://civic-forum.eu/publication/view/activizanship-4>, pp. 56- 60, (Dec. 2019).

21 Amnesty International France, POURQUOI LA PROPOSITION DE LOI « SÉCURITÉ GLOBALE » EST DANGEREUSE POUR NOS LIBERTÉS, <https://www.amnesty.fr/actualites/pourquoi-la-proposition-de-loi-securite-globaleest-dangereuse-pour-nos-libertes>, (12 Nov. 2020).

22 Civic Space watch, FRANCE: “Global Security” Law: the Constitutional Council censures ex-Article 24 aimed at punishing the dissemination of images of police officers, <https://civicspacewatch.eu/france-global-security-law-the-constitutional-council-censures-ex-article-24-aimed-at-punishing-the-dissemination-of-images-of-police-officers/>, 21 May 2021.

5. Arbitrary arrests and disproportionate force during public demonstrations curtail the right to protest

The right to peaceful assembly and to protest are crucial means for political participation, and they gain special importance at times when far-reaching decisions are taken impacting people's socio-economic rights. Additionally, freedom of assembly is especially important to give visibility to matters of general interest in contexts where usual channels for dialogue between authorities and civil society are not functioning well.

The right to peaceful assembly in France has been severely restricted since 2015 through legislative measures, violent police behaviours and "preventive" judiciary actions. In 2019, the law dubbed «anti-rioters» has provided the authorities with the power to search, with a Prosecutor request, bags and cars in and around demonstrations. It also outlawed the covering of faces during public demonstrations. Authorities are allowed to detain protesters on the basis of suspicion of "participation in a group formed in preparation for violence against people or destruction or damage to property", a measure that has been reportedly used against peaceful protesters and journalists covering protests, often preventively on the path to the demonstration on the basis of carrying protective equipment.

Disproportionate and often unjustified police violence, including direct firing of tear gas grenades and flash ball, have also caused serious injuries (loss of eye, fractured skull and jaw) to hundreds of protesters.

In 2020, this was also the case. According to the Amnesty International French authorities used "illegal tactics" such as arrests and detention of protesters on dubious grounds "to crush protests and silence critics of the dangerous 'Global Security Bill'"²³.

6. The COVID-19 poses challenges for civic freedoms

The COVID-19 health emergency also contributed to restricting civic space and civil liberties. Many measures taken by public authorities at local and national levels during the COVID-19 pandemic forced civic actors to repeatedly challenge breaches to the French legal framework in the Constitutional Court, the Council of State and other relevant institutions. These infringements include 1) vague wording of COVID-19 regulations and disproportionate sanctions for non-compliance; 2) heavy-handed policing to enforce the rules, including targeting critical voices and associations providing relief to migrants; 3) banning of freedom of assembly during the phase-down of the lockdown; 4) and expansion of undue surveillance. The success of many of these appeals demonstrate that the situation is extremely worrisome²⁴.

23 Amnesty International, France: Authorities silence dissent against controversial global security bill, <https://www.amnesty.org/en/latest/news/2021/02/france-authorities-silence-dissent-against-controversial-global-security-bill/>, 8 Feb. 2021.

24 For more information on the challenges posed by the COVID-19 pandemic to liberties in the country check out the ECF response to the 2021 Rule of Law consultation of the European Commission Rule-of-Law-2021-ECF-2.pdf (civic-forum.eu) and the annual report on civic space Activizanship #5 https://civic-forum.eu/wp-content/uploads/2020/11/INT_ACTIVIZEN5_BAF.pdf.

The European Civic Forum (ECF) is a pan-European network of more than 100 associations and NGOs in 28 countries standing for a Europe grounded on solidarity, human rights and civic participation. The ECF powers the Civic Space Watch (civicspacewatch.eu), the platform collecting findings and analyses from actors in Europe on the conditions for civil society to operate, capturing national and trans-European trends in civic space in the European Union.

The elements presented in this briefing by the ECF rely on resources collected on the Civic Space Watch and inputs of French civic actors, in particular those provided by our members, the Ligue des droits de l'Homme (LDH) and Le Mouvement Associatif.

