

# FRANCE

By Ligue des droits de l'homme

## Summary:

France is characterised by **an associative sector that is strong, mature and growing**. A sizable part of associations deals with human rights and civil liberties issues. Associations are quite vocal on rights' violations, and active in advocacy towards policymakers. France also has **a strong associative and mobilisation culture**, with thousands of assemblies and protests, carried out peacefully every year, most often led by associations and trade unions. As a result, the **civil society is an integral pillar of checks and balances** and plays an **important role in protecting the rule of law** when it is under attack. While fundamental freedoms are protected by the law and generally respected, civil society and civil liberties have been put under increasing pressure since 2015, when the state of emergency was introduced in response to the terrorist attacks. In 2021, several legislative initiatives have **further restricted the legislative framework for civic freedoms**. In particular, **the law on "Strengthening republican values" imposes and generalises new constraints to all associations**, controlling their actions and their finances, and subjecting them to the risk of arbitrary and permanent sanctions and dissolution. Any association applying for a subsidy will be subject to a "contract of republican commitment". 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 the funding. It also extends the possibilities for dissolution of associations by decree of the President of the Republic. **The law on global security and the law creating a new offence of trespassing on airport runway** further restrict the right to peaceful assembly and protest. **The law on criminal responsibility and internal security** reintroduces the possibility of using airborne image capture devices for administrative purposes, such as drones, tethered balloons, planes and helicopters.

Types of pressures on associations include **attacks to the reputation of organisations, financial and regulatory constraints, SLAPPs, and, more rarely, physical harassment by police officers**. These often target working on **environmental issues, migration and anti-discrimination/anti-racism issues and issues linked to housing and urban development**. After the terrorist attacks in 2020, a leading civic organisation in the field of **anti-islamophobia Collectif contre l'islamophobie en France (CCIF) was dissolved by decree due to its work against discrimination**. A trend of repression against human rights defenders is characterised by **the systematic choice of the Public Prosecutor's Office to prosecute, place in police custody, charge fines, and open investigations or judicial information against migrants' rights defenders and environmental activists**. While the

*acquittal of Cédric Hérou in 2021 is a positive development, the lengthy trial has heavy personal costs for the defendant and a wider chilling effect of society at large.*

## Institutional landscape and safe space

### Freedom of expression and assembly threatened by emergency measures

The rights to freedom of expression and peaceful assembly are enshrined in international and European human rights instruments: the International Covenant on Civil and Political Rights (ICCPR, Articles 19 and 21), the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, Articles 10 and 11). They are also included in the Charter of Fundamental Rights of the European Union (Articles 11 and 12). Before the Charter came into force, the Court of Justice of the European Union (CJEU) had already enshrined the freedom to demonstrate as a fundamental right (CJEU 12 June 2003, case C-112/00, §60 to 90).

Articles 10 and 11 of the Declaration of the Rights of Man and of the Citizen (DDHC) enshrine freedom of expression. The Constitutional Council has also enshrined the right to collective expression of ideas and opinions (CC n°94-352 DC of 18 January 1995; CC n°2019-780DC of 4 April 2019).

Under French law, prefects or mayors who are responsible for receiving prior notification of demonstrations may sign an order prohibiting a specific demonstration if they consider that it is likely to disturb public order (Article L 211-4 of the Internal Security Code).

Restrictions on the right to freedom of peaceful assembly must only be imposed

for one of the specific purposes authorised by the law, must be limited to the measures necessary to achieve that purpose and must be proportionate to the objective pursued.

Since 14 November 2015, when the state of emergency was declared, prefects have been able to use their ordinary or emergency powers to ban public gatherings.

Under the state of emergency, and in contrast to ordinary law, failure to comply with an emergency measure, including the prohibition of a public gathering, constitutes an offence.

With the state of health emergency, a special policing power has also been conferred on the administrative authorities to restrict the freedom to demonstrate.

### The “security” state of emergency

The state of emergency was instituted by the law of 3 April 1955 and modified several times, notably by the law of 20 November 2015. It can be declared in all or part of the country either in the event of imminent danger resulting from serious attacks on public order, or in the event of a public disaster.

This exceptional regime makes it possible to strengthen the powers of the public authorities and to restrict certain public or individual freedoms. It authorises the Minister of the Interior and the prefects to decide, among other things, to ban demonstrations, to set up protective perimeters to ensure the security of a place or an event or to take individual measures to restrict the right to freedom of peaceful assembly.

In the aftermath of the attacks perpetrated in Paris on 13 November 2015, France declared a state of emergency which ended on 1 November 2017. During this time, the authorities have misused the emergency powers conferred on them, which were intended solely to combat terrorism, to maintain public order in the context of public gatherings.<sup>1</sup>

Intended to allow a controlled exit from the state of emergency regime under which France had been living for nearly two years, Law No. 2017-1510 of 30 October 2017 strengthening internal security and the fight against terrorism, known as the "SILT Law", introduced into ordinary law various measures inspired by the provisions of the Law of 3 April 1955 on the state of emergency. These measures were intended as an experiment and their implementation limited to the 31 December 2021.

The four measures considered to be the most sensitive in terms of respect for constitutionally guaranteed rights and freedoms are: protective perimeters, closure of places of worship, individual administrative control and surveillance measures (prohibition on travelling outside a geographically determined area that cannot be smaller than the territory of the municipality, obligation to report periodically to the police or gendarmerie

units, obligation to declare one's place of residence), and home visits.

These measures were extended by a law of 24 December 2020 until 31 July 2021. Act No. 2021-998 of 30 July 2021 on the prevention of acts of terrorism and intelligence perpetuates the four administrative police measures and completes the anti-terrorist measures stemming from the law strengthening internal security and the fight against terrorism of 30 October 2017.

The exceptional measures are therefore now permanently integrated into common law.

### **The state of health emergency**

Law No. 2020-290 of 23 March 2020 on the emergency response to the covid-19 epidemic created a new, long-term emergency regime: the state of health emergency. In order to guarantee public health, Law no. 2020-546 of 11 May 2020 allows the Prime Minister to "*limit or prohibit gatherings and meetings of any kind*" (Article L. 3131-15 6° I. of the Public Health Code).

The government has thus sought to erect obstacles to the freedom to demonstrate either by simply banning all demonstrations for a given period or by attempting to transform the declaration system into an authorisation system.

With regard to the ban on all demonstration for a given period, of all the provisions taken, Article 3 of the decree of 31 May 2020 stipulated that "*any gathering, meeting or activity other than professional on the public highway or in a public place, involving more than ten people at the same time, is prohibited throughout*

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<sup>1</sup> For additional information read: SHIFTING TOWARDS A PREVENTIVE APPROACH TO MAINTAINING PUBLIC ORDER - Restricting the right to demonstrate from exception to routine, By Arié Alimi, Ligue des droits de l'Homme: <http://civic-forum.eu/publication/view/activizanship-4>, Activizanship #4, p 56.

*the territory of the Republic*" and that no event involving more than 5,000 people could take place until 31 August 2020.

People then wanted to take part in a more or less concerted protest from their homes, by displaying banners on their balconies or on the front of their homes. They were visited by the police, who ordered them to remove their political messages, and some were taken into custody. On 1 May 2020, other people belonging to trade unions or associations wished to display protest signs in compliance with the criteria for exiting the premises but were fined. Similarly, volunteers from a humanitarian association distributing food were fined for displaying political slogans behind their table.

These provisions have been the subject of several interim measures and have led the Council of State to suspend the ban on demonstrations on the public highway, as this policing measure was deemed to be manifestly disproportionate (CE, ord., 13 June 2020, No. 440846, Ligue des droits de l'Homme, Confédération générale du travail).

The maintenance of these attempted bans while the health situation was improving and the list of exemptions was growing, showed that the state of health emergency had moved away from the initial public health reason given to justify it, and that other considerations were guiding the executive power. A general and absolute ban on demonstrations was also an attack on trade union freedom in a context of great mistrust of the public authorities.

The law of 9 July 2020 organising the end of the state of health emergency no longer contained a general and absolute ban, as the Prime Minister could only, by decree, *"regulate gatherings of people, meetings and activities on the public highway and in places open to the public."* On this basis, decree no. 2020-1310 of 29 October 2020 no longer imposes a general ban on demonstrations of more than 5,000 people but requires organisers to send the declaration provided for in the internal security code to the departmental prefect, specifying, in addition, the measures they are implementing in order to guarantee compliance with the rules on hygiene and social distancing.

The prefect then has the power to prohibit the event if there is a risk of public order being undermined in accordance with ordinary law, but also if the proposed measures *"are not such as to allow compliance"* with the *"barrier"* measures. This new obligation demonstrates the public authorities' distrust of the exercise of the freedom to demonstrate, which is not required for other gatherings, particularly those of a professional nature.

With regard to the second attempt, which consisted in replacing the liberal regime of prior declaration with that of prior authorisation, the regulatory power issued a Decree No. 2020-724 on 14 June 2020 stipulating that *"processions, parades and gatherings of people, and, in general, all demonstrations on the public highway [...] are authorised by the departmental prefect."*

Once again, the unions referred the matter to the Council of State. The Council first suspended this provision, considering it to be neither necessary, nor appropriate, nor proportionate to the

objective of preserving health, and then annulled it by a judgment of 15 January 2021. The judge considered that the extension of regulatory power during a state of health emergency could not allow this power to subject a freedom to an authorisation regime and could only restrict it by necessary, proportionate and appropriate measures (CE 15-01-2021 Confédération générale du travail et autres n° 441265). It was necessary to multiply the number of legal actions to return to a declaration system, the only one capable of fully preserving the freedom to demonstrate.

In practice, these attacks by the regulatory power on the freedom to demonstrate have been translated on the ground in two ways. Firstly, by the multiplication of orders banning demonstrations by the prefects, as in Paris (orders of 15 April 2020 and 25 November 2020). Secondly, by repressing the exercise of the freedom to demonstrate, through a policy of massive ticketing.

In addition to this increased ticketing, disproportionate means of investigation were used to punish demonstrators, such as the requisition of surveillance camera recordings on the public highway in Millau.

In addition, it was found that the breach of the prohibition on the assembly of more than 10 persons was due to law-enforcement tactics of a regrouping and encirclement operation ("netting"). In addition to the irregularity of such manoeuvres, they are in complete contradiction with the most elementary sanitary measures, consisting of keeping certain distances, prescribed moreover by

the regime of the state of health emergency.

Lastly, although the demonstrations were not prohibited, no regulatory provision provided for the exemption of movement for this purpose, thus generating abusive fines. However, the Council of State was able to specify that the derogatory travel certificates were in fact optional and that any document justifying the travel was sufficient (CE 20 October 2020, n°440263). The organisers of demonstrations thus drew up derogatory certificates justifying participation in a demonstration, which were not duly taken into account by the police, once again abusing their power to issue fines.

The law on various health vigilance provisions published in the Journal officiel on 11 November 2021 extended the regime for exiting the state of health emergency until 31 July 2022. Thus, until 31 July 2022, the government can continue to take certain measures to limit gatherings and demonstrations, among other things.

### **Health emergency and fast-track procedure**

It should be noted that during the state of sanitary emergency, legislative texts, all of which were adopted under an accelerated procedure, and regulatory texts, which have no connection with the issue of health, were adopted, not without consequences for rights and freedoms (see below).

## The regulatory environment for and implementation of civic freedoms

### **A dynamic associative landscape that has the trust of the population**

In France there are nearly 1.5 million associations<sup>2</sup> and each year 70,000 new associations are created.<sup>3</sup> They represent a budget of 113.3 billion euros, or 3.3% of GDP.<sup>4</sup> Within them, 1.8 million employees and 22 million volunteers are active.<sup>5</sup> Important social and economic fields are supported by associations, culture, sport, the medico-social system, economic development, tourism, education and research, the defence of rights, environmental protection, etc.<sup>6</sup> No field escapes the associative phenomenon. The important role of associations is recognised since almost one in two French people consider that associations serve to compensate for the shortcomings of public action, 15% to complement public action<sup>7</sup> and 14% to raise awareness of certain issues among the population. In 2020, in most fields of action, associations

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<sup>2</sup> <https://injep.fr/wp-content/uploads/2019/07/Chiffres-cles-Vie-associative-2019.pdf>

<sup>3</sup> <https://www.associatheque.fr/fr/creer-association/chiffres-cles.html>

<sup>4</sup> <https://www.associations.gouv.fr/les-associations-en-france.html#Les-chiffres>

<sup>5</sup> <https://injep.fr/wp-content/uploads/2019/07/Chiffres-cles-Vie-associative-2019.pdf>

<sup>6</sup> <https://www.data-asso.fr/dataviz/6045feb3505db833a2f7026b>

<sup>7</sup> [https://www.donenconfiance.org/offres/doc\\_inline\\_src/759/Observatoire\\_du\\_Don\\_en\\_Confiance\\_rapport\\_public-2019.pdf](https://www.donenconfiance.org/offres/doc_inline_src/759/Observatoire_du_Don_en_Confiance_rapport_public-2019.pdf)

enjoy more confidence than public authorities.<sup>8</sup>

### **Freedom of association is recognised but new laws affect civic space**

In France, the law of 1901 recognises the freedom of every citizen to be a member of an association or not. The freedom of association represents the two sides of a key piece of democracy, it is the freedom to associate in the strict sense, to physically form a group, to meet, to act in common. It is the freedom to exercise fundamental rights because freedom of association is consubstantial with the expression of many recognised rights and freedoms. Several measures have been taken in France to encourage associative activity, in 2011<sup>9</sup> by authorising minors aged 16 to form an association, then in 2014<sup>10</sup> and 2015<sup>11</sup> by creating or renovating existing mechanisms to encourage the work of associations and finally in 2017<sup>12</sup> by a text which aims to strengthen associative commitment, particularly among young people. However, contrary to these measures, which aimed to strengthen associations, simplify their operation and encourage commitment, for several years now a decline in public freedoms in France, restricting the space for civil society, has

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<sup>8</sup> [https://www.donenconfiance.org/offres/doc\\_inline\\_src/759/Rapport+Viavoice.Don+en+confiance-Novembre2020.pdf](https://www.donenconfiance.org/offres/doc_inline_src/759/Rapport+Viavoice.Don+en+confiance-Novembre2020.pdf)

<sup>9</sup> Loi du 28 juillet 2011 pour le développement de l'alternance et la sécurisation des parcours professionnels

<sup>10</sup> Loi du 31 juillet 2014 relative à l'économie sociale et solidaire

<sup>11</sup> Ordonnance du 23 juillet 2015 portant simplification du régime des associations et des fondations

<sup>12</sup> Loi du 27 janvier 2017 relative à l'égalité et à la citoyenneté

taken place in France. Associative freedoms are also affected.

- New bill to strengthen respect for the principles of the Republic and to combat separatism

In December 2020, the government initiated the accelerated procedure for the bill to strengthen respect for the principles of the Republic and to combat separatism, which was adopted in July 2021. This text, which is intended to combat separatism and the development of radical Islamism, imposes and generalises new constraints to all associations, controlling their actions and their finances, and subjecting them to the risk of arbitrary and permanent sanctions and dissolution.

The bill undermines many of fundamental rights and freedoms guaranteed by the Constitution and international conventions (such as freedom of association, freedom of conscience and worship, freedom of assembly, expression, opinion and communication, freedom of the press) and significantly impacts civil society's ability to act within the rule of law framework. This is why the High Council for Associative Life,<sup>13</sup> the Defender of Rights,<sup>14</sup> the French Lawyers' Union,<sup>15</sup> the National Consultative Commission on Human Rights,<sup>16,17</sup> the

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<sup>13</sup>[https://www.associations.gouv.fr/IMG/pdf/avis\\_du\\_haut\\_conseil\\_a\\_la\\_vie\\_associative\\_concernant\\_le\\_projet\\_de\\_loi\\_confortant\\_les\\_principes\\_republicains.pdf](https://www.associations.gouv.fr/IMG/pdf/avis_du_haut_conseil_a_la_vie_associative_concernant_le_projet_de_loi_confortant_les_principes_republicains.pdf)

<sup>14</sup>[https://juridique.defenseurdesdroits.fr/doc\\_num.php?explnum\\_id=20384](https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=20384)

<sup>15</sup> <http://lesaf.org/le-syndicat-des-avocats-de-france-passe-au-crible-le-projet-de-loi-confortant-le-respect-des-principes-de-la-republique/>

<sup>16</sup> [https://www.cncdh.fr/sites/default/files/a\\_2021\\_1\\_pjl\\_principes\\_de\\_la\\_republique\\_janv\\_2021.pdf](https://www.cncdh.fr/sites/default/files/a_2021_1_pjl_principes_de_la_republique_janv_2021.pdf)

Conference of INGOs of the Council of Europe,<sup>18</sup> and the special rapporteurs of the United Nations<sup>19</sup> have all underlined the serious dangers that this text poses to freedoms. The Human Rights Defender notes a general tendency to strengthen the overall control of the social order.

In particular, the law imposes a new obligation on any association applying for a subsidy: to sign a "*contract of republican commitment*" by which it undertakes:

1. to respect the principles of liberty, equality, fraternity and human dignity, as well as the symbols of the Republic within the meaning of Article 2 of the Constitution;
2. not to call into question the secular character of the Republic;
3. to refrain from any action that undermines public order.

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 the 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 discretion. The risk

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<sup>17</sup> [2nd avis sur le projet de loi confortant les principes de la république \(cncdh.fr\)](https://www.cncdh.fr/2nd-avis-sur-le-projet-de-loi-confortant-les-principes-de-la-republique)

<sup>18</sup> <https://rm.coe.int/avis-sur-le-projet-de-loi-confortant-le-respect-des-principes-de-la-re/1680a1f44b>

<sup>19</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?Id=26047>



of arbitrariness that may affect its decisions is high. The obligation to “refrain from any action that undermines public order” is also considered too vague, conducive of undue control and sanction. This Contract could for instance discourage associations to be involved in peaceful protests or civil disobedience actions, a common way to protest or express discontent.

The law creates new criminal offences conducive of punishing peaceful protesters, journalists and independent observers who document policing practices.<sup>20</sup>

➤ The new regime for dissolution of associations

The above-mentioned bill extends the possibilities for dissolution of associations by decree of the President of the Republic with a limited role for the judiciary. The law replaces the terms “*armed street demonstrations*”, a measure of democratic protection, with “*violent acts against persons or property*”, thus seriously exposing associations to dissolution on the basis of minor offences.

For damage or deterioration of property or violence that may consist of an emotional shock, the President of the Republic could now decide to dissolve any association. In March 2021, Greenpeace activists painted a plane green to denounce the weakness of measures taken to reduce air traffic. The associations are being prosecuted for

damage to other people's property committed in a gathering. In July 2021, several Attac activists sprayed black paint on the windows of the Samaritaine to denounce the big fortunes that have become rich during the crisis. On the same day, a newspaper launched a poll “*Should Attac be dissolved?*”.<sup>21</sup> The President of the Republic now has the power to dissolve these two associations.

Furthermore, the current legal framework allows for the dissolution of associations that either provoke discrimination, hatred or violence, or propagate ideas or theories that tend to justify or encourage such discrimination, hatred or violence, or that engage in actions to provoke acts of terrorism. This wording clearly distorts the required causal link between the association's behaviour and the infringement of the protected public interest, without it being determined.

Finally, the law makes associations liable for actions of their members when the leadership is aware of them and refrained from stopping them, thus investing them with a “policing” mission, a role which by nature is not devolve upon them. The associations' leadership must anticipate the effects of these acts on the social climate, which refers to a very broad spectrum of behaviour, and must therefore engage in prediction. If, as the Constitutional Council emphasises, it is only possible to hold associations and de facto groups responsible for the actions of their members when they have committed them in this capacity or when these

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<sup>20</sup> [Contributions extérieures - Décision n° 2021-823 DC du 13 août 2021, \[Loi confortant le respect des principes de la République\] \(conseil-constitutionnel.fr\)](#)

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<sup>21</sup> <https://www.lefigaro.fr/choix-redaction/la-selection-figaro-live-les-videos-qu-il-ne-fallait-pas-rater-20210705>

actions are directly linked to the activities of the association, it is still a question of creating a presumption of third-party liability. Presidents of associations will now have to prove that they were not aware of an act by one of their members or that they acted to prevent it. The legislator has not provided any procedural guarantees regarding the burden of proof.

The dissolution of an association was already a relatively easy exercise for a government. The new provisions of the law of 24 August 2021 will make it even easier.

➤ Law for a global security

The law for a global security preserving liberties, tabled in parliament in October 2020, was adopted in May 2021.<sup>22</sup> The Constitutional Council censured some of the provisions on the dissemination of police images, surveillance by drones and helicopters, and constant video surveillance of people in police custody or in administrative detention centres. However, it validated the extension of video surveillance powers to the municipal police and to railway services, the surveillance of building halls, the real-time transmission of images from pedestrian cameras or their use for national police officers, national gendarmerie soldiers and municipal police officers.

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<sup>22</sup> LOI n° 2021-646 du 25 mai 2021 pour une sécurité globale préservant les libertés (1)

➤ Law on criminal responsibility and internal security

In July 2021,<sup>23</sup> the accelerated procedure for a bill on criminal responsibility and internal security has been initiated, which reintroduces the possibility of using airborne image capture devices for administrative purposes, such as drones, tethered balloons, planes and helicopters. It should be noted that, despite any legal framework, drones have been used to monitor demonstrations on the public highway, migrants, confinement and deconfinement. Finally, it is worth noting that during this period, environmental participatory democracy has also declined. In April 2020, the government issued a decree to resume public enquiries into potentially environmentally damaging projects, despite containment, without public meetings and only by electronic means, on the grounds that this would delay economic recovery. This was the case for several projects contested by the associations,<sup>24</sup> such as a road widening and the expansion of the quarry that is to supply the construction site in the Allier, the future line 18 of the Grand Paris Express and the Larivot power plant in Guyana. Public participation, which is seen as a hindrance and a secondary right, suffered a further legislative setback in December 2020<sup>25</sup>

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<sup>23</sup> [https://www.assemblee-nationale.fr/dyn/15/dossiers/reponsabilite\\_penale\\_securite\\_interieure](https://www.assemblee-nationale.fr/dyn/15/dossiers/reponsabilite_penale_securite_interieure)

<sup>24</sup> <https://reporterre.net/Le-gouvernement-profite-du-confinement-pour-imposer-des-projets-contestes>

<sup>25</sup> Loi du 7 décembre 2020 d'accélération et de simplification de l'action publique

with the law on accelerating and simplifying public action.

### **Harassment and attacks by public authorities**

A study revealed 100 cases of associations whose activities have been repressed, restricted or even hindered by the public authorities.<sup>26</sup> These cases cover a wide range of activities, from environmental protection to the fight against discrimination, from sport to culture, from the right to housing to solidarity, and this in all territories.

The report distinguishes between four types of obstacles to associative freedoms. The first is smear campaign of associative actors and reputational attacks.

The second, that of material hindrances, including cuts in subsidies and difficulties in accessing premises for meetings. In Toulouse, an association health centre in a working-class neighbourhood had its subsidy cut because, according to the authorities, it was "too militant" and was involved in too many legal proceedings concerning the refusal of state medical assistance to certain patients.<sup>27</sup> Since 2017, the Secours Populaire d'Hayange has been subject to several retaliatory measures by the new mayor, who accuses them of being 'infiltrated by the communist party and pro-migrants', cutting off the gas and electricity to their premises, multiplying eviction procedures

and removing the association from the municipal directory.<sup>28</sup>

Thirdly, there are the judicial obstacles, which include all the complaints, fines and lawsuits brought against association activists, and the administrative obstacles, such as the refusal of accreditation. Alongside Anticor and Transparency International France, Sherpa was the third association to be able to act as a civil party in corruption cases. This position allowed it not only to report potentially criminal acts to the public prosecutor's office, but also to revive buried cases. In 2018, without justification, the Minister of Justice did not renew the approval of the Ministry of Justice that allowed it to act. The association lodged an appeal with the administrative court. The approval was finally granted without any justification being given.<sup>29</sup>

Finally, obstacle linked with the actions of the police include physical repression of collective action, but also searches and arrests. In Bure in the Meuse region, opponents of the nuclear waste disposal centre project are subject to legal proceedings under the charge of "criminal association". The judicial investigation opened in 2017 has already cost more than a million euros and is leading to widespread surveillance of local collectives. Several local and national associations denounce the harassment

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<sup>26</sup>[https://www.lacoalition.fr/IMG/pdf/rapport\\_v2.pdf](https://www.lacoalition.fr/IMG/pdf/rapport_v2.pdf)

<sup>27</sup><https://www.lacoalition.fr/Un-centre-de-sante-communautaire-menace-de-fermeture-par-la-prefecture-de-Haute?view=liste&type=18>

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<sup>28</sup><https://www.lacoalition.fr/Proces-disqualification-ostracisation-coupure-de-subvention-le-maire-d-Hayange?view=liste&type=21>

<sup>29</sup><https://www.lacoalition.fr/Suspension-d-agrement-pour-une-association-de-lutte-contre-la-corruption?view=liste&type=20>

and criminalisation of opponents.<sup>30</sup> This phenomenon, which structures the functioning of democracy in France and contributes to the distrust of citizens, has once again put associative freedoms to the test, due to an accentuation in times of health emergency.

### **Dissolution of CCIF confirmed**

Accused by the Minister of the Interior of provocation to acts of terrorism, the Collectif contre l'islamophobie en France (CCIF), an association whose purpose was to fight by legal means discrimination against Muslim people, was dissolved by a decree of 2 December 2020. In September 2021, the Council of State approved the dissolution on the grounds that by fighting - legally - against anti-Muslim discrimination and hatred, the CCIF was itself guilty of discrimination and hatred. Thus, for the Council of State, "*criticising without nuance*" public policies or laws that are considered discriminatory, is to push the victims of the alleged discrimination down the slope of radicalisation and invite them to evade the laws of the Republic. On similar basis, the dissolution of the Coordination contre le racismisme et l'islamophobie (CRI) was pronounced by a decree of 20 October 2021.

### **Criminalisation of environmental defenders**

In France, the increase in repression against human rights defenders is characterised by the systematic choice of the Public Prosecutor's Office to prosecute, place in police custody, charge

finances, take fingerprints and open investigations or judicial information.

From 1 to 3 June 2021, a trial of seven environmental activists was held before the judicial court of Bar-le-Duc, charged in particular with criminal conspiracy concerning the demonstration of 15 August 2017 against the proposed radioactive waste burial centre at Bure, in Lorraine (the 'Cigéo' project).

The 'association de malfaiteurs' is classified as a "*crime against the nation, the State and public peace.*" This offence was created at the very end of the 19<sup>th</sup> century to reassure public opinion in the face of the emergence of the anarchist movement. This charge, in principle related to criminality, is now used against environmental activists in an attempt to discourage them from pursuing their actions and thus block political struggles.

On 13 December 2019, a surveillance system for environmental activists was set up with the Demeter cell, an agreement on the fight against 'agribashing' signed between the Ministry of the Interior, the gendarmerie and the two main agricultural unions, FNSEA and the Young Farmers. The creation of this cell aims to criminalise the expression of an opinion, which is in contradiction with the fundamental principle of freedom of opinion, another basic principle of the Republic.

With the law of 8 October 2021, the legal arsenal against climate activism is being expanded. Article 10 of the law aims to strengthen the criminalisation of civil disobedience by creating a new offence of trespassing on airport runways,

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<sup>30</sup><https://www.lacoalition.fr/Harcelement-policier-et-judiciaire-contre-les-opposants-au-projet-d?view=liste>

punishable by six months' imprisonment and a fine of 7500 euros.<sup>31</sup>

### **Criminalisation of solidarity**

Article L622-1 of the Code de l'Entrée et du séjour des étrangers et du Droit d'Asile states that (with some exceptions) "*any person who has, by direct or indirect action, facilitated or attempted to facilitate the illegal entry, movement, or residence of a foreign national in France is liable to five years' imprisonment and a 30,000 euro fine.*"

The Constitutional Council enshrined fraternity as a principle of constitutional value in its decision of 6 July 2018. In the words of this decision, "*it follows from the principle of fraternity the freedom to help one another, for humanitarian reasons, without consideration as to whether the assisted person is legally residing or not within the French territory.*" It thus considered that the absence of an exemption from the offence of aiding illegal residence on humanitarian grounds was not constitutional. However, aiding illegal entry into the territory remains criminally punishable. The legislator had to take into account this decision of the Constitutional Council and included an exemption for any act that did not give rise to "*any direct or indirect consideration*" and was carried out "*for an exclusively humanitarian purpose*" in the law in 2018. It extended the already existing exemptions to aiding residence and movement but did not extend it to aiding entry into the territory. Cédric Hérou, an

activist from the Roya valley who helped the migrants he was sheltering in his farm next to the border to enter the country, was thus prosecuted, leading to numerous court cases. After a conviction, appeal, and cassation, Cédric Hérou's trial was referred to the Lyon Court of Appeal, which acquitted him of the facts on 13 May 2020. However, the public prosecutor lodged a new appeal before the Court of Cassation, which rejected the appeal on 31 March 2021, thus ending all legal proceedings against him.

Despite the new jurisprudence, the French prosecutor's office continued to have a restrictive reading of the humanitarian exemption. Seven people were prosecuted for taking part in a demonstration in reaction to an anti-migrant action by the now disbanded far-right group Génération identitaire. During this demonstration, around 200 people had crossed the Alpine border from Italy into France in the presence of migrants. The "7 from Briançon" were prosecuted for allegedly helping the migrants to enter on that occasion. In December 2018, the criminal court of Gap had thus sentenced them in first instance, some of them to prison sentences. They were finally acquitted on appeal on 9 September 2021. Thus, despite the decision of the Constitutional Council to enshrine the principle of fraternity, the public prosecutor and certain courts continue to adopt a hostile attitude towards human rights activists, and only the interventions of the highest jurisdictional authorities have made it possible to put an end to these proceedings.

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<sup>31</sup><https://monitor.civicus.org/updates/2021/09/01/national-assembly-approves-controversial-separatism-bill-massive-protests-opposing-passsanitaire/>