

ACTIVIZENSHIP

CIVIC SPACE WATCH REPORT 2021 | STORIES OF HOPE IN DARK TIMES

FRANCE

France is characterised by an associative sector that is strong, mature and growing, with high public trust. 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. Nevertheless, recent court rulings led to significant victories for civil society.

THE CIVIC SECTOR IS STRONG

But associative freedoms are under pressure

By Pierre Antoine Cazau, lawyer and Jerome Graefe, lawyer, Ligue des droits de l'Homme

77

FREEDOM OF ASSOCIATION IS RECOGNISED

In France there are nearly 1.5 million associations¹ and each year 70,000 new associations are formed.² They represent a budget of 113.3 billion euros, or 3.3% of GDP.³ They involve 1.8 million employees and 22 million volunteers.⁴ 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 action⁵ and 14% to raise awareness of certain issues among the population. In 2020, in most fields of

action, associations enjoyed more confidence than public authorities.⁶

In France, the law of 1901 recognises the freedom of every citizen to be a member of an association or not. 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 also the freedom to exercise fundamental rights, because freedom of association is consubstantial to the expression of many recognised rights and freedoms. Several measures have been taken in France to encourage associative life: in 2011⁷ by authorising minors aged 16 to form an

association, then in 2014⁸ and 2015⁹ by creating or renovating existing mechanisms to encourage the work of associations and finally in 2017¹⁰ by a law which aims to strengthen associative commitment, particularly among young people. Contrary to these measures, which aimed to strengthen associations, simplify their operations and encourage civic commitment, for several years now we have seen a decline in public freedoms in France, a restriction of the space for civil society.

A MOVEMENT TO ERODE CIVIL LIBERTIES IN FRANCE

Since 2015, when the state of emergency was implemented to combat terrorism, until today in times of health crisis, there has been a succession of liberticidal

¹ <https://injep.fr/wp-content/uploads/2019/07/Chiffres-cles-Vie-associative-2019.pdf>

² <https://www.associatheque.fr/fr/creer-association/chiffres-cles.html>

³ <https://www.associations.gouv.fr/les-associations-en-france.html#Les-chiffres>

⁴ <https://injep.fr/wp-content/uploads/2019/07/Chiffres-cles-Vie-associative-2019.pdf>

⁵ https://www.donenconfiance.org/offres/doc_inline_src/759/Observatoire_du_Don_en_Confiance_rapport_public-2019.pdf

⁶ https://www.donenconfiance.org/offres/doc_inline_src/759/Rapport+Viavoice.Don+en+confiance-Novembre2020.pdf

⁷ Loi du 28 juillet 2011 pour le développement de l'alternance et la sécurisation des parcours professionnels

⁸ Loi du 31 juillet 2014 relative à l'économie sociale et solidaire

⁹ Ordonnance du 23 juillet 2015 portant simplification du régime des associations et des fondations

¹⁰ Loi du 27 janvier 2017 relative à l'égalité et à la citoyenneté



THE AUTHORS

Pierre Antoine Cazau is a French lawyer, member of the Gironde Observatory of Public Liberties, co-author of the OGLP reports on police practices in Bordeaux, and new president of the Human Rights League of Bordeaux.

measures, with repeated infringements of rights leading to a decline in public and individual freedoms and a restriction of the space for civil society. Following the attacks, the repeated implementation of the State of Emergency for two years led to measures whose necessity and proportionality can be questioned. Between November 2015 and 5 May 2017 the authorities used emergency powers to sign 155 orders banning public gatherings, while also banning dozens of demonstrations under French common law. They also imposed 639 measures banning specific individuals from participating in public gatherings, of which 574 targeted people demonstrating against labour law reform.¹¹ Between 2016 and 2017,¹²

¹¹ <https://www.amnesty.org/fr/latest/press-release/2017/05/france-unchecked-clampdown-on-protests-under-guise-of-fighting-terrorism/>
¹² Loi n° 2016-339 du 22 mars 2016 relative à la prévention et à la lutte contre les incivilités, contre les atteintes à la sécurité publique et contre les actes terroristes dans les transports collectifs de voyageurs ; Loi n° 2016-731 du 3 juin 2016 renforçant la lutte contre le crime organisé, le terrorisme et leur financement, et améliorant l'efficacité et les garanties de la procédure pénale ; Loi n° 2016-987 du 21 juillet 2016 prorogeant l'application de la loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence et portant

numerous texts were passed extending the state of emergency and transposing the provisions of the state of exception into common law, but also adding security, intelligence, control, surveillance and sanction measures. 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.

In November 2018, the social movement of the Yellow Vests began, which was illustrated by an unprecedented degree of violence and repression, with nearly 2,448 people injured, 4 deaths, 353 head injuries, 30 people with eye injuries and 6 hands torn off.¹³ The disproportionate use of force against the demonstrators was denounced by the Défenseur des droits,¹⁴ the Commission nationale consultative des droits de l'Homme,¹⁵ the European Parliament,¹⁶ the Council of Europe¹⁷ and the United Nations.¹⁸ Excessive use of force has occurred during all types of

mesures de renforcement de la lutte antiterroriste ; Loi n° 2016-1767 du 19 décembre 2016 prorogeant l'application de la loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence ; Loi n° 2017-258 du 28 février 2017 relative à la sécurité publique ; Loi n° 2017-1154 du 11 juillet 2017 prorogeant l'application de la loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence ; Loi n° 2017-1510 du 30 octobre 2017 renforçant la sécurité intérieure et la lutte contre le terrorisme.

¹³ <https://www.mediapart.fr/studio/panoramique/allo-place-beauvau-cest-pour-un-bilan>

¹⁴ Rapport annuel 2018 Défenseur des droits

¹⁵ Déclaration sur les violences policières illégitimes 28 janvier 2020 CNCDH

¹⁶ Source : https://www.europarl.europa.eu/doceo/document/TA-8-2019-0127_FR.html

¹⁷ Source : <https://www.coe.int/fr/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>

¹⁸ Source : <https://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=24166&LangID=F>

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

demonstrations, high school students, women's rights, pensions, the climate movement during 2019, 2020, 2021, etc. These repressions have been widely highlighted via social networks, but also by the press and independent human rights observers, who have been subjected on numerous occasions to pressure, intimidation, attacks, obstructions, confiscation of materials when covering demonstrations, and even prosecutions by police forces, between 2018 and 2020.



THE AUTHORS

Jerome Graefe is a French lawyer engaged in several associations for the protection of the environment and human rights in France.

ORGANISATION

Ligue des droits de l'Homme

is an association founded in 1898. It is a free civic actor, independent of political parties, unions and associations. It claims to be a citizen, involved in political life, and participates in its debates. It fights against injustice, racism, sexism, anti-Semitism and discrimination of all kinds. It is interested in social citizenship and proposes measures for a strong and vibrant democracy in France and in Europe. It defends secularism against xenophobic instrumentalisation, freedoms, equal rights and fraternity as the basis of a fraternal society and, therefore, of solidarity.

REPEATED ATTACKS ON ASSOCIATIVE FREEDOMS

In a context of erosion of rights and tougher treatment by the public authorities of social movements carried and supported by associations, for several years there have been obstacles to associative freedoms. We will use the term “associative freedoms” to describe the various public freedoms that allow associations to carry out their mission, such as freedom of association, assembly, expression and demonstration. In March 2019, a coalition of associations met to set up an Observatory of associative freedoms,

THE TERM “ASSOCIATIVE FREEDOMS” DESCRIBES THE VARIOUS PUBLIC FREEDOMS THAT ALLOW ASSOCIATIONS TO CARRY OUT THEIR MISSION

which aims to systematically document attacks on associative freedoms.

A study revealed 100 cases of associations whose activities have been repressed, restricted or even hindered by the public authorities.¹⁹ 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. For example, 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.²⁰

The second type of hindrance consists of material obstacles, 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.²¹

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 that allowed it to act as such. The association lodged an appeal with the administrative court. The approval was finally granted without any justification being given.²²

FROM THE BEGINNING OF THE CRISIS, IT IS POSITIVE TO NOTE THAT A DIALOGUE WAS ESTABLISHED BETWEEN THE PUBLIC AUTHORITIES AND THE ASSOCIATIONS

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 and criminalisation of opponents.²³

This harassment and criminalisation of critical voices, which structures the functioning of democracy in France and contributes to the distrust of citizens, has once again put associative freedoms to the test, especially due to an accentuation in these times of health emergency.

¹⁹ https://www.lacoalition.fr/IMG/pdf/rapport_v2.pdf

²⁰ <https://www.lacoalition.fr/Proces-disqualification-ostracisation-coupure-de-subvention-le-maire-d-Hayange?view=liste&type=21>

²¹ <https://www.lacoalition.fr/Un-centre-de-sante-communautaire-menace-de-fermeture-par-la-prefecture-de-Haute?view=liste&type=18>

²² <https://www.lacoalition.fr/Suspension-d-agrement-pour-une-association-de-lutte-contre-la-corruption?view=liste&type=20>

²³ <https://www.lacoalition.fr/Harcelement-policier-et-judiciaire-contre-les-opposants-au-projet-d?view=liste>

DURING THIS STATE OF EMERGENCY, FEARS OF LASTING INFRINGEMENTS OF ASSOCIATIVE FREEDOMS HAVE INCREASED

ASSOCIATIVE FREEDOMS PUT TO THE TEST BY THE STATE OF HEALTH EMERGENCY

From the beginning of the crisis, it is positive to note that a dialogue was established between the public authorities and the associations. The associations were able to activate one or more financial solutions proposed by the public authorities, such as the solidarity fund, sectoral aid from the State, aid set up by the different departments and the municipalities, and other types of support such as delays in the payment of social and tax liabilities. However, in 2020, 61% of associations encountered difficulties with their applications. Concerning the state of the sector, a survey carried out in 2021²⁴ shows that a large proportion of associations have suffered the effects of the crisis. The health crisis will have led 40% of associations to close down and will have had a major impact on voluntary activity, making it impossible for many to carry out their activities. For the coming period, the associations are very concerned about membership, voluntary work and their finances. Indeed, the needs that are most often considered to be priorities are the confirmation of announced subsidies and exceptional financial aid in view of the emergency situation.

The coronavirus epidemic first caused restrictions on freedom of assembly, then, with the confinement of the entire

population, restrictions on freedom of movement and personal freedom, medical freedoms, freedom of trade and industry, cultural freedoms, freedom of worship, as well as violations of the right to a fair trial. During this state of emergency, fears of lasting infringements of associative freedoms have increased as 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.

A new law was tabled in parliament in June 2020 and adopted in December 2020, which aims to extend various measures to combat terrorism.²⁵ In addition, at the beginning of December 2020, decrees were issued to extend the police databases which already include almost 350,000 people.²⁶ They allow for the collection of data²⁷ of natural and now legal persons, but also “de facto” groups and their members, in case they can be a threat to public security. The files can now contain information such as lifestyle, online activities, political opinions, philosophical or religious beliefs or trade union membership. In practice,²⁸ the files could concern all persons who are checked or questioned during a demonstration.

²⁵ Loi n° 2020-1671 du 24 décembre 2020 relative à la prorogation des chapitres VI à X du titre II du livre II et de l'article L. 851-3 du code de la sécurité intérieure

²⁶ https://www.liberation.fr/france/2020/12/10/l-executif-lache-la-bride-aux-fichiers-de-renseignement-territorial_1808254/

²⁷ <https://www.laquadrature.net/2020/12/08/decrets-pasp-fichage-massif-des-militants-politiques/>;

Décret n° 2020-1511 du 2 décembre 2020 modifiant les dispositions du code de la sécurité intérieure relatives au traitement de données à caractère personnel dénommé «Prévention des atteintes à la sécurité publique» ; Décret n° 2020-1512 du 2 décembre 2020 modifiant les dispositions du code de la sécurité intérieure relatives au traitement de données à caractère personnel dénommé «Gestion de l'information et prévention des atteintes à la sécurité publique» ; Décret n° 2020-1510 du 2 décembre 2020 modifiant les dispositions du code de la sécurité intérieure relatives au traitement de données à caractère personnel dénommé «Enquêtes administratives liées à la sécurité publique»

²⁸ <https://www.interieur.gouv.fr/Publications/Securite-interieure/Prevention-des-atteintes-a-la-securite-publique-traitement-des-donnees-personnelles-des-mineurs>

The law for a global security preserving liberties was adopted in May 2021.²⁹ 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.

A new law relating to the prevention of acts of terrorism and intelligence was tabled in parliament in April 2021 and adopted at the end of July 2021.³⁰ It perpetuates and adapts certain counter-terrorism measures tested since the above-mentioned SILT law of 2017. In addition, the intelligence services will have new means of control, notably on an experimental basis to intercept satellite communications, but also the technique known as the algorithm is perpetuated. This technique allows automated

²⁹ LOI n° 2021-646 du 25 mai 2021 pour une sécurité globale préservant les libertés (1)

³⁰ loi du 30 juillet 2021 relative à la prévention d'actes de terrorisme et au renseignement

BY CONSIDERING THAT THE ASSOCIATIONS' OPINIONS CONSTITUTE ACTIONS AIMED AT PROVOKING ACTS OF TERRORISM, THE GOVERNMENT HAS SHOWN THAT NO ONE IS SAFE FROM PROSECUTION

²⁴ https://lemouvementassociatif.org/wp-content/uploads/2021/06/LMA_COVID19_enquete3_resultats-detailles.pdf

processing of connection and browsing data on the Internet, thanks to the cooperation of access providers, and this algorithmic surveillance is extended to connection addresses (URLs). The text facilitates the sharing of intelligence and information between intelligence services and administrative authorities. In July 2021,³¹ 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 lack of any legal framework, drones have been used to monitor public demonstrations, migrants and lockdown.

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 without public meetings and only by electronic consultations, on the grounds that this would delay economic recovery. This was the case for several projects contested by associations,³² 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 2020³³ with the law on accelerating and simplifying public action.

³¹ https://www.assemblee-nationale.fr/dyn/15/dossiers/reponsabilite_penale_securite_interieure

³² <https://reporterre.net/Le-gouvernement-profite-du-confinement-pour-imposer-des-projets-contestes>

³³ Loi du 7 décembre 2020 d'accélération et de simplification de l'action publique

"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."

ASSOCIATIVE FREEDOM UNDER GENERAL SURVEILLANCE

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. This text, which is intended to combat separatism and the development of radical Islamism, concerns a much broader field, since it covers practically all the public rights and freedoms guaranteed by the Constitution and the conventions: freedom of association, freedom of conscience and worship, freedom of assembly, expression, opinion and communication, freedom of the press, free administration of local authorities, freedom of education, freedom of marriage, freedom of enterprise and freedom of contract. The bill undermines many of the major republican freedoms. This is why the High Council for Associative Life,³⁴ the Defender of Rights,³⁵ the

³⁴ 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

³⁵ https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=20384

French Lawyers' Union,³⁶ the National Consultative Commission on Human Rights,^{37,38} the Conference of INGOs of the Council of Europe,³⁹ and the special rapporteurs of the United Nations⁴⁰ 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. Under the pretext of separatism, the bill impedes associative freedoms through several provisions that are binding on all associations.

It creates a new criminal offence punishing threats, violence or any act of intimidation against public service employees with the aim of evading the rules governing the operation of a public service. This offence may be applied to actions of civil disobedience as they are conscious and intentional public and collective infringements of a legal norm, normally using peaceful means.

The law creates a new offence of endangering the life of others by disseminating information relating in particular to the professional life of a person, making it possible to identify or locate him or her, with the aim of exposing him or her or the members of his or her family to a direct risk of harm to life, physical or psychological integrity, or to property, the penalties for which are increased when the person in question is a representative of public authority or entrusted with a public service mission. It cannot be ruled out that criminal law may be misused to suppress certain demonstrations or to cover up certain police operations. The vagueness of the definition of this offence provides a possibility for police forces to

³⁶ <http://lesaf.org/le-syndicat-des-avocats-de-france-passe-au-crible-le-projet-de-loi-confortant-le-respect-des-principes-de-la-republique/>

³⁷ https://www.cncdh.fr/sites/default/files/a_-2021-1-1-_pjl_principes_de_la_republique_janv_2021.pdf

³⁸ 2nd avis sur le projet de loi confortant les principes de la république (cncdh.fr)

³⁹ <https://rm.coe.int/avis-sur-le-projet-de-loi-confortant-le-respect-des-principes-de-la-re/1680a1f44b>

⁴⁰ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26047>

arrest and place people in police custody without the need of justification.⁴¹ Journalists and independent observers who document policing practices are at risk. The text extends the possibilities for dissolution of associations by decree of the President of the Republic. It modifies the law that allows the dissolution of associations that provoke armed demonstrations in the street, a measure of democratic protection, by allowing the dissolution of associations for violent acts against persons or property, thus becoming a measure for maintaining public order. There is a reversal in the philosophy of presidential power. 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?"⁴² 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. In December 2020⁴³ the Government dissolved the association

Collectif contre l'islamophobie en France because it had described as Islamophobic measures taken with the aim of preventing terrorist actions and preventing or combating acts punishable by law. By considering that the association's opinions constitute actions aimed at provoking acts of terrorism, the government has shown that no one is safe from prosecution. By extending the possibility of dissolution to associations whose actions contribute to discrimination, hatred or violence, 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 which opens the way to a risk of random

ALL THESE DEVELOPMENTS ARE TAKING PLACE IN THE CONTEXT OF A GENERAL DETERIORATION OF THE RULE OF LAW

application. 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 association's leadership must anticipate the effects of these acts on the social climate, which refers to a very broad spectrum of behaviour. The association leadership must therefore engage in prediction, since the text does not limit dissolutions to the hypotheses of tacit acceptance of violence, discrimination or hate speech. Thus, for associations in France such as the French Red Cross, which has more than 65,450 volunteers and 16,703 employees or the

Restos du cœur, which has 75,000 volunteers, the burden of control on the part of the association's leader is impossible to bear, and the risk of possible dissolution is permanent.

As if civil society were by nature separatist, the authorities are imposing new constraints on all associations, controlling their lives, their actions and their finances, and subjecting them to the risk of arbitrary and permanent sanctions and dissolution.

CRIMINALISATION OF SOLIDARITY

Another front that should be assessed in relation to civic space in France is the repression of activities assisting migrants. Many legal proceedings for facilitating illegal immigration have been opened against individuals or associations helping migrants and unaccompanied minors at risk in the Roya Valley located on the French side of the border with Italy. This offence is commonly referred to as "solidarity offence". 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.*"

After several convictions, in 2018 the French Constitutional Council, which is in charge of ensuring that the law complies with the constitution, has overturned several of these prosecutions by constitutionalising the principle of fraternity. In the words of this decision from 6 July 2018, "*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

⁴¹ Contributions extérieures – Décision n° 2021-823 DC du 13 août 2021, [Loi confortant le respect des principes de la République] (conseil-constitutionnel.fr)

⁴² <https://www.lefigaro.fr/choix-redaction/la-selection-figaro-live-les-videos-qu-il-ne-fallait-pas-rater-20210705>

⁴³ <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042602019>

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 compensation*” 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.

OBSTRUCTION OF SOLIDARITY

In addition to the criminalisation of solidarity, French institutions hinder solidarity and information on human rights violations provided by activists and observers. In Calais, where migrants are present in large numbers in the hope of crossing the sea to England, public authorities have taken measures to ban the distribution of meals. The mayor banned

ASSOCIATIONS CONTINUE TO CHALLENGE THEM IN COURT SOMETIMES OBTAINING SUBSTANTIAL VICTORIES

all gatherings in a large area, a measure that targets migrants as part, according to the mayor of “a marketing and tourism strategy aimed at improving the image of our city”. He had also banned the distribution of meals in 2017 before courts overturned his decision. Associations also have difficulties in helping the exiles and denounced in 2019 the same ill-treatment. They denounce inhuman and degrading treatment. The associations denounce the numerous police abuses and harassment of migrants. Journalists, for their part, are hindered to report on the dismantling of camps, particularly in Grande Synthe and Calais. The Council of state found that the obstruction was not disproportionate. However, the National Consultative Commission on Human Rights (CNCDH) recommended that no outside view of citizens or journalists should be obstructed during the evacuation of camps. These attacks on solidarity

and information actions are often less serious than the human rights violations suffered by the exiles themselves, but they contribute to preventing them from being denounced and to making them worse.

CONCLUSION

All these developments are taking place in the context of a general deterioration of the rule of law. We are witnessing the regression of standards and the development of mass surveillance tools without any real control mechanisms or accepted counter-powers. Nevertheless, associations continue to challenge them in court sometimes obtaining substantial victories. ■

Observatoires des pratiques policières is a network of local observatories to bear witness to the experience of demonstrators across France. These observatories play a fundamental role in the defence of freedom of peaceful assembly, documenting and denouncing repressive police practices and policies. Their important victory gained official recognition of the role that human rights observers play, like journalists, at protests, and the outlawing of heavy-handed police practices in the police rulebook provisions used in the context of protests via a State Council ruling.

HUMAN RIGHTS OBSERVERS ARE ESSENTIAL DURING PROTESTS

A victory against violent police practices

Interview with Nathalie Tehio, lawyer and member of Observatoire parisien des libertés publiques

Why were the observatories of police practices created?

In past few years, social movements that took to the streets their concern and protested have been met with suspicion, discontent, and violence from the authorities. The major trade union demonstrations in 2016 against the El Khomri law (labour law) clearly showed the change in the way police and gendarmerie forces carry interventions in the context of public demonstrations. Notably, we saw an increase in the number of demonstrators questioned by police officers during the demonstrations.

In November 2018, the right to protest was challenged more than ever by the disproportionate police violence against the “Yellow Vests” movement. The “crossroads” rallies and especially the Saturday demonstrations were subject



to brutal police interventions, with repression rapidly becoming repetitive and regularly disproportionate. The violent acts of some demonstrators were used to justify widespread deterrent measures. The number of serious injuries reached levels not seen in France for decades. By carrying out arrests for minor offences and preventing people from joining the demonstrations because they were wearing their bicycle or motorbike helmets, decision makers and police forces discouraged people from exercising their right to protest. In 2019, hiding one's face in a public space became a punishable offence in France. In certain cases, police forces prevented people wearing headscarves from entering a demonstration venue as they argued the garment could be used to hide the face. Additionally, the police have been given broad power. For example, in

the case of the offence of concealing of one's face during a demonstration, this is a preventive offence¹ for which the police have a wide margin of appreciation in

¹ If violence or damage is committed with the face covered, it is an aggravating circumstance of these offences, violence with the face concealed...Here, it

THESE POLICE OFFICERS WERE OFTEN MEMBERS OF TEAMS BASED IN WORKING-CLASS NEIGHBOURHOODS KNOWN FOR THEIR FREQUENT USE OF FORCE, OFTEN DISPROPORTIONATE AND SOMETIMES RACIST

DEMONSTRATIONS SEEM TO BE SEEN AS A CONFRONTATION WITH THOSE IN POWER RATHER THAN CONSUBSTANTIAL TO DEMOCRACY

choosing if the action will amount to a contravention. The accused will be able to justify themselves eventually, but they would have already been prevented from demonstrating and would have been registered in the police database and taken into custody. Thus, creating an impactful deterrent.

As a consequence of these actions there was an increase of tensions among the demonstrators. In addition to the multiplication of police deterrent actions, several factors accentuated the intensity of the violence exercised by police forces. First, police forces that were not trained to intervene in the context of demonstration were called in support as a result of a policy that decreased the number of trained officers. These police officers were often members of teams based in working-class neighbourhoods² known for their frequent use of force, often disproportionate and sometimes racist. These teams implement a doctrine of engagement opposed to the de-escalation techniques normally used in demonstrations

is an autonomous offence, punishable by one year's imprisonment, "except for legitimate reasons".

² The BAC (brigades anti-criminalité), CSI (compagnies de sécurisation et d'intervention) and other police officers not specifically trained in maintaining order (e.g. in Paris, CI - compagnies d'intervention - and Brav-M - brigades de répression de l'action violente, motorised; elsewhere, CDI, compagnies départementales d'intervention) are the ones who cause the most serious injuries, and who needlessly increase tension. Observers saw these police officers put themselves in danger during arrests in the middle of demonstrators, forcing the companies dedicated to maintaining order to come and "recover" them, at the cost of using force.

which leads to the deplorable use of force mentioned above. Second, from 2018 in Paris, new intervention brigades travelling on motorbikes were hired. It resulted in increased violence, which was arguably encouraged by a certain degree of anonymity provided by the helmets and the absence of a visible identification number for police officers. Finally, the use of weapons of war, defensive ball launchers (LBDs), has had deleterious effects, since it permitted and encouraged their use, with insufficient or even non-existent supervision.

This violence shows that we are dealing with a systemic problem that questions the doctrine of engagement of the police forces, their training, and the conception that authorities have of demonstrations in a democracy. Demonstrations seem to be seen as a confrontation with those in power rather than consubstantial to democracy. The fact that the police contributes to ensuring the conditions for demonstrations that challenge a government's policy is an indicator of the quality of democracy. In recent years, we have seen, the systematisation of police interventions based on a 'preventive' approach to repression. This doctrine of preventive policing has fuelled tensions ultimately used by political authorities to discredit the demands made and to criminalise demonstrators via preventive offences.

THIS DOCTRINE OF PREVENTIVE POLICING HAS FUELLED TENSIONS ULTIMATELY USED BY POLITICAL AUTHORITIES TO DISCREDIT THE DEMANDS MADE

How did the first observatories appear? What missions did they set themselves?

We noticed that during large demonstrations, a significant part of government communication relied on highlighting clashes involving some demonstrators and denying the unnecessary or disproportionate nature of violence by police personnel. This led civil society organisations to fill the need to observe policing during demonstrations in order to report objectively and to document them accurately.

The creation of an observatory has generally taken the form of inter-association and trade union groups with members of the Ligue des droits de l'Homme and the Syndicat des avocats de France, but also, depending on the city, other national or local partners (Nantes, Bordeaux, Toulouse, Montpellier, Nice, Rennes, Seine-Saint-Denis, etc.).

These images help to counter the justification regularly put forward by authorities of a context that would explain police violence. They also help victims of violence to prove their side of the story in face of police statements. For example, observatories transmitted videos to the media showing the targeting of journalists by a police commissioner, or the unregulated firing of grenades resulting in mutilations.³ The observatories were able to report on police practices during demonstrations in general. This was done through reports that put specific facts into a global analysis framework. The Nantes and Montpellier observatories reported more specifically on police behaviour criminalising the activity of demonstrators arrested under false pretences.⁴

³ Arthur Carpentier - investigation by Le Monde - <https://www.bing.com/videos/search?q=le+monde+vid%3c%a90+commis-saire&docid=608018256571597709&mid=oF-C2583BFB475C9C909EoFC2583BFB475C-9C909E&view=detail&FORM=VIRE>

⁴ Nantes Observatory: "Exercise of policing in Nantes and respect for rights", report of May 2019; Montpellier: Report on the judicial repression of the yellow waistcoat movement, hearings of the



Finally, the observatories produced guides or legal tools to enable demonstrators to take ownership of their rights and defend themselves in the event of an arrest for instance.⁵

Can you show us the ‘back and forth’ between the kind of police behaviour that challenges the freedom to demonstrate and developments in legislation or in the political climate that in turn have a worrying influence on police practices?

One of the phenomena that explains these legal challenges to the freedom to demonstrate is the instrumentalisation of laws to validate illegal practices.

I will start with the misuse of anti-terrorism legislation to check bags around demonstrations, prior to the provisions introduced in the April 2019 Act. This law legalised the control of bags through requisitions issued by the Procureur de la République. Even though the

correctional court from 29 December 2018 to 18 March 2019 and second report, from 23 March 2019 to 29 October 2019

⁵ “Points droit”: Filming police officers and gendarmes; Wearing of personnel numbers by police officers and gendarmes; Removal of badges, acronyms and banners at the end of a demonstration; Interpellation of a person with a helmet before a demonstration; Demonstrator’s guide

Constitutional Council had specified that it was not possible to act in the field on the basis of weapons by destination (an object only becoming a weapon after use), we have seen all sorts of objects (helmets, masks, sometimes scarves, physiological serum, etc.) being confiscated and arrests made in the name of prevention.⁶ The directives issued jointly by the Ministries of Interior and Justice illustrate the instrumentalisation of justice in the service of an expansive conception of policing.⁷

Another misuse concerns the offense of “assembling”. An assemble in that sense

⁶ CC n°94-352 DC 18 janvier 1995, *Loi d’orientation et de programmation relative à la sécurité*, §18

⁷ Exemples : circulaires du ministre de l’intérieur du 21 avril 2021 INTJ2111626J et du ministre de la justice du 22 avril 2021, JUSD2112858C

CIVIL SOCIETY ORGANISATIONS FELT THE NEED TO OBSERVE POLICING DURING DEMONSTRATIONS IN ORDER TO REPORT OBJECTIVELY

is constituted by any gathering of people that may disturb public order.⁸ After two warnings issued by police forces such assemblies must disperse or individuals could face prosecution. The Court of Cassation specified that the offense of “assembling” is a political offence which would normally preclude its prosecution through a procedure of immediate appearance (an expeditious trial procedure).⁹ Despite this fact, the law of April 2019 made it possible to prosecute “assembling” through an immediate appearance procedure. Additionally, the same law created a new offence of concealing one’s face during a demonstration, which was the ground for several preventive arrests and police custody.

Instrumentalisation of laws encourages the police to multiply unauthorised behaviour with the expectation that these behaviours will be validated afterwards. It results in courts displaying more leniency during a trial including by taking into account in their interpretation of the texts the legalisation of police abuses by successive laws or ministerial instructions.

Another point is that the practices of police forces evolved towards a more confrontational approach. The encirclement and entrapment techniques have become ordinary police practices. The use of violence against peaceful demonstrators under the pretext of the absence of prior declaration has often been observed, whereas the European Court of Human Rights gives precedence in this case to the freedom of peaceful assembly.¹⁰ There were untimely summonses (orders to disperse), which were issued outside the

⁸ Article 431-2 Criminal Code: https://www.legifrance.gouv.fr/codes/article_lc/LEGIART1000025543347

⁹ Highest judicial jurisdiction. Crim. 28 mars 2017, n° 15-84.940, au Bull. crim. n°82. Participation to a mob: article 431-4 du code pénal. The procedure of immediate appearance cannot be chosen for a political offence.

¹⁰ https://echr.coe.int/Documents/Guide_Art_11_FRA.pdf



situation that could legally justify them.¹¹ Police officers or gendarmes confirmed to observers, off the record, that they had been ordered to shock demonstrators. We have seen demonstrations resulting in major damage that took place in front of police officers who did not intervene at the time, but brutally attack later when the perpetrators of the damage had already left. It was as if there had to be two images: violent demonstrators (giving

¹¹ See the report of the Parisian of the observatory of public freedoms: report towards the ombudsman on the demonstration of the 28 June 2019 on the Sully bridge

THE OBSERVATORIES PRODUCED GUIDES OR LEGAL TOOLS TO ENABLE DEMONSTRATORS TO TAKE OWNERSHIP OF THEIR RIGHTS AND DEFEND THEMSELVES

them time to develop their rampage) and police officers in action.

The impunity of police officers who commit violence is encouraged: the absence of an individual number,¹² is accepted by the hierarchy and accepted by the political authorities. Observers were able to document this non-compliance with the legislation.¹³ The wearing of a balaclava by police officers, allowing them to hide their faces, was also tolerated.

Additionally, not all demonstrations are treated in the same way: the presence in number of major media outlets or the absence of a stake for the government goes hand in hand with greater freedom in the conduct of the demonstration. It is noticeable that many high school student gatherings are dispersed immediately and violently, without necessity, as if young people had to be educated not to protest.¹⁴

¹² RIO : référentiel des identités et des origines. Voir le «Point droit» de l'Observatoire parisien pour les références textuelles.

¹³ Despite a recent ministerial instruction called «Schéma national du maintien de l'ordre», on 16 September 2020. See notes of the Parisian Observatory and the Toulouse Observatory.

¹⁴ The Human Rights Defender has taken up the issue of violence committed against high school students at the Lycée Colbert in Paris (10ème), for

There is also a tendency to lead public opinion to consider that protest demonstrations are intolerable disturbances of public order and justify the violent intervention of the police

The government seeks to control information gathered by journalists or independent observers but also images of police violence filmed by demonstrators. It demonstrated this by passing the Global Security law through an accelerated procedure.¹⁵ The Senate finally eliminated the provision allowing the use of images filmed by police officers for information purposes: the police would have given the press pre-formatted images. Then the Constitutional Council censured an article aiming to give the police the power to prevent the filming of law enforcement officers.¹⁶ The government also strengthened the surveillance of demonstrators: through drones and social media.¹⁷ A police state

example. The example of the “class that behaves itself” in Mantes-la-Jolie in 2018 is illustrative of this drift: the high school students were forced to kneel on their knees, hands on their heads, for several hours, while the police officer filming them made this comment.

¹⁵ See the open letter inter-observatories to members of parliament against the Global security law reminding that “police is a public force, the public character is the safeguard of the people” Analysis in the report of the Toulouse observatory on police practices «4 ans après».

¹⁶ CC 20 mai 2021, n°2021-817 DC, Loi pour une sécurité globale préservant les libertés. Sur l'article «24» de la proposition de loi, devenu 52, voir §158s.

¹⁷ The draft law on criminal responsibility and national security uses the text censored by the constitutional court: https://www.assemblee-nationale.fr/dyn/15/textes/l15b4387_projet-loi ; Décrets du 2 décembre 2020, n° 2020-1511 (PASP) ; n°2020-1512

THESE LEGAL CHALLENGES TO THE FREEDOM TO DEMONSTRATE IS THE INSTRUMENTALISATION OF LAWS TO VALIDATE ILLEGAL PRACTICES

is thus emerging, with increased surveillance, particularly digital, especially as the Council of State has refused to give full effect to the CJEU's decision on the ban on mass digital surveillance.¹⁸

Faced with these developments, the Paris Observatory submitted for discussion a key interpretation based on the theory of the “criminal law of the enemy”: the authorities would consider that they were facing an internal enemy, which would make acceptable a de facto derogation from the ordinary rules and guarantees, and ultimately the multiplication of exceptional practices.¹⁹

Have observers in the field experienced repression by the police? In what forms?

Police officers have deliberately hit observers or thrown grenades in their direction.²⁰ Complaints or referrals to the Human Rights Defender have been made. A female observer in Montpellier was also prosecuted, accused of “obstructing traffic” and of several offences related to her observation practice. Her role as an observer, making her a non-participant in the demonstration, was however perfectly identifiable. She was acquitted, but these prosecutions constitute real obstacles to the mission of citizen observers.²¹

(GIPASP) ; n°2020-1510 (Enquêtes administratives, EADS)

¹⁸ CE Ass. 21 avril 2021, n°393099, Rec. Lebon

¹⁹ See part 4 of the report on the kettling and other technical encirclement written by the Parisian observatory of public freedoms: “kettling is police technic that highlighted a vision of demonstrators as enemies”

²⁰ See the article in the Revue des droits de l'Homme by Anna Hertkorn et Alexandre Richard (members of the Parisian observatory) and the cited references: «Garantir la protection des observateurs indépendants et l'accomplissement de leurs missions», Actualités Droits et libertés, 26 avril 2021, §33s. Since the publishing of this article : https://actu.fr/occitanie/toulouse_31555/toulouse-un-observatoire-denonce-une-violence-unilaterale-des-forces-de-l-ordre-contre-les-manifestants_41468612.html and the rapport d'observation on the Paris demonstration of the 1st of may p.17s and the video: <https://twitter.com/ObsParisien/status/1389127074372362244>

²¹ See the analysis of Amnesty international regarding international law <https://www.amnesty.fr/personnes/camille-halut>

Obtaining full recognition of the legitimacy of the role of observation and being able to exercise it fully in the field is essential. This is why the Observatories have worked to ensure that international texts (UN / OSCE and Venice Commission) and the case law of the European Court of Human Rights concerning citizen observers are respected. The French Human Rights Defender has asked that they be considered in the field as journalists. The National Consultative Commission on Human Rights took up this recommendation in an opinion and a parliamentary commission of enquiry also noted it.²²

Finally, following an appeal by a member of the Paris Observatory, the Council of State annulled provisions that hindered the action of citizen observers by recognising their role.²³ This is a step forward and a potentially useful precedent for

²² Cf the previously cited article in the Revue des droits de l'Homme

²³ Article in the Revue des droits de l'Homme by Bérénice Checchi et Nassim Harket (members of the parisian observatory): «Schéma national du maintien de l'ordre : la sanction provisoire d'une doctrine ambiguë et imprécise. Retour sur la décision du Conseil d'Etat du 10 juin 2021», Actualités Droits et libertés, 5 juillet 2021. And : <https://www.facebook.com/obsparisien/> (11 juin)

THERE IS ALSO A TENDENCY TO LEAD PUBLIC OPINION TO CONSIDER THAT PROTEST DEMONSTRATIONS ARE INTOLERABLE DISTURBANCES OF PUBLIC ORDER AND JUSTIFY THE VIOLENT INTERVENTION OF THE POLICE

A POLICE STATE IS THUS EMERGING, WITH INCREASED SURVEILLANCE, PARTICULARLY DIGITAL, ESPECIALLY AS THE COUNCIL OF STATE HAS REFUSED TO GIVE FULL EFFECT TO THE CJEU'S DECISION ON THE BAN ON MASS DIGITAL SURVEILLANCE

other European countries that may be affected in the future.

Can you explain the referral to the Council of State against the doctrine of police engagement at demonstrations, its consequences and how were the observatories involved?

The referral to the Council of State was made by the Ligue des Droits de l'Homme, the National Union of Journalists, as well as by a member of the Parisian Observatory of Public Liberties, the French Lawyers' Union, the Magistrates' Union, the Association of Christians for the Abolition of Torture (ACAT) and the Union syndicale Solidaires, the General Confederation of Labour (CGT) and the National Union of Journalists CGT.

The referral concerned not only the protection of observers but also of journalists, particularly with regard to the possibility of wearing protective equipment, of remaining after a dispersal order and of positioning themselves freely for observation, subject only to the constraint that they should not directly interfere with the police. The Council of State

THE COUNCIL OF STATE ANNULLED PROVISIONS THAT HINDERED THE ACTION OF CITIZEN OBSERVERS BY RECOGNISING THEIR ROLE

annulled the contested provisions on the basis of these points.²⁴

The Council of State also prohibited the practice of the authorities to decide in a discretionary way which journalist would get accreditation to obtain privileged information. This is a welcome decision that no longer leaves the executive in control of restricting freedom of information, however, it validated the requirement of a press card to be a recipient of such information.

In addition, the appeal was lodged against the encirclements' techniques, based on the report produced by the Parisian Observatory of Public Liberties.²⁵ This report showed that this technique infringes on several freedoms, in particular the freedom of movement and the freedom to demonstrate. Crucially, it showed how this technique is contrary to the collective expression of opinions.²⁶ The

²⁴ CE 10 juin 2021, n°444849 et autres

²⁵ Report: "Controlling, repressing, intimidating: nasses and other police encirclement devices during Parisian demonstrations - spring 2019, autumn 2020". Part 1: Typology. Part 2: "The political dimension of encirclement practices: is the demonstration still possible when the police encircle the procession? Fabien Jobard, sociologist, and the magazine *Savoir/agir*, kindly authorised the Paris Observatory to reproduce an article comparing the French practice of the nasse with that of Germany, with an unambiguous conclusion: "This cross evolution of the political socialisation of police officers and the morphology of social movements make demonstrations in Germany a respected moment of collective expression, a world away from the fear that the very idea of going out to beat the cobblestones inspires in an increasing number of French people today.

²⁶ See the above-mentioned report on kittling and technical encirclement

Conseil of State did not prohibit the use of encirclement but set out criteria to ensure that it did not run counter to the freedom to demonstrate. The Council of State also laid down criteria that apply to non-hermetic enclosures. The European Court of Human Rights has admitted the use of the encirclement only three conditions: that it is the only means of preventing serious violence; that the aim is not to hinder freedom of demonstration; and that an exit door is left as soon as possible. These three conditions are not met by the engagement doctrine implemented in France.²⁷

What other legislative developments, political actions or legal decisions are needed to ensure the protection of freedom of demonstration at national and European level?

The development of "obstructionist" (or "preventive") offences that hinder the exercise of the freedom to demonstrate must be prevented. In particular the decisions taken prior to any demonstration

²⁷ See the article in the *Revue des droits de l'Homme* de Capucine Blouet, Nassim Harket, Sarah Hunet-Ciclaire, Vincent Louis, Alexandre Richard et Nathalie Tehio (members of the Parisian observatory): «La pratique de la nasse au regard du droit européen des droits de l'Homme», *Actualités Droits et Libertés* 24 mai 2021.

THERE SHOULD BE A BAN ON THE USE OF SO-CALLED "NON-LETHAL" WEAPONS IN DEMONSTRATIONS, SUCH AS LBDS, OFFENSIVE GRENADES AND EVEN DISENCRYPTION GRENADES



such as arbitrary placement in police custody.²⁸ For example, the offence of planning to participate voluntarily in a group formed with a view to committing violence or damage.²⁹

Additionally, the notion of "gathering" should be precisely defined, in a way that protects freedom to demonstrate, so it does not allow the police and gendarmes to arbitrarily decide when to disperse, including by using force. The prefect's power to authorise the route of a demonstration must also be redefined. Indeed, the threat of a demonstration ban order is gradually transforming the declaration system into a request for authorisation. The prefect must be required to give his answer within a period of time that allow an appeal to be made. There should be a ban on the use of so-called "non-lethal" weapons in demonstrations, such as LBDS, offensive grenades and even disencryption grenades. These weapons cause mutilation because the conditions in which they should be used are incompatible with the demonstrations' settings. The use of tear gas should be strictly regulated.³⁰

²⁸ Expression of professeur Olivier CAHN : «Construction d'un maintien de l'ordre (il) légaliste», *Revue de sciences criminelles*, 2020.1069. The expression means that these offences were created more to enable the police to arrest people than to actually punish offenders.

²⁹ Article 222-14-2 of the criminal code. See part 4 of the above-mentioned report on demonstrators-enemies, p.10

³⁰ See the report of the Association toxicologie-chimie (ATC) by Alexander Samuel and André Picot in June 2020 on the long-term harmful effects

Certain arrest techniques must be totally banned: the belly-hold or the chokehold, in particular.

Police training must be reinforced, both in terms of techniques learned and applicable law. Only specially trained police officers should be allowed to intervene in demonstrations.³¹ Assuming that the Austin judgment of the European Court of Human Rights on the closed-circuit system is not reformed, compliance with the conditions laid down must at least be taught and imposed.³²

INSTRUMENTALISATION OF LAWS ENCOURAGES THE POLICE TO MULTIPLY UNAUTHORISED BEHAVIOUR WITH THE EXPECTATION THAT THESE BEHAVIOURS WILL BE VALIDATED AFTERWARDS

The identification of police officers, in particular by the legible wearing of their personnel number in readable print must be imposed.

of CS tear gas. Dispersion is often accompanied by a gas cloud, even without violence from the demonstrators (see for example the observation note of the demonstration of 17 November 2020 in Paris and the use of gas against a line of demonstrators wanting to leave the demonstration).

³¹ BAC, CSI, CDI, CI, and Brav-M (see note 2). The technique of “de-escalation”, which requires flexibility, communication with demonstrators and a certain tolerance towards minor damage, is ignored and if the national policing plan creates “ELI” (liaison and information teams), it does not change the doctrine of interpellation by cutting off the procession violently if necessary, thus endangering the police officers dedicated to this function. In Toulouse or Paris, they do not yet seem to operate.

³² Analysis of French law in the light of this judgment in the above-mentioned article in the *Revue des droits de l’Homme*, note 36.

Finally, investigations should be carried out by an independent body, not by an authority under the Ministry of the Interior made of police officers. The current police inspectorate has discredited itself with biased investigations into police violence.³³ For instance, the recordings of surveillance cameras in public spaces are almost never seized in time to be able to view the images after a demonstration;³⁴ the weapons used are not always seized, which makes it impossible to demonstrate the involvement of a particular weapon, and thus to find the author of the shooting.³⁵ The lack of independence of the police inspection service means that it must be abolished in any case, in favour of other types of control.³⁶

In the reflection of the observatories, do you think that the European Union could play a positive role on issues related to the freedom of demonstration?

It would be good if the European Union could produce, perhaps with the support of the Fundamental Rights Agency, a practice guide for the respect of the right to demonstrate. The annual monitoring

³³ For example, see the case of the death of Steve Maia Caniço in Nantes: the IGPN (national police inspectorate) claimed that his drowning in the Loire had no connection with the police operation to disperse participants in a concert on the evening of the Fête de la Musique. The examining magistrate entrusted the investigations to other police officers who, by using the victim’s telephone, showed that the operation and the fact that he had fallen into the water, like a number of other people, were pushed into the Loire at night and that there were no protective barriers.

³⁴ The recordings are only kept for 30 days, but the lawyers are experiencing the impossibility of obtaining them despite complaints to the IGPN.

³⁵ See the case of the death of Zineb Redouane, hit by a MP7 tear gas grenade with a 100 metre delay propulsion device (DPR100), while she was closing her windows on the 4th floor of a building in Marseille located 30 metres from the shooter. Five cougar lances were used but the CRS commander refused to hand them over to investigators. Independent journalists conducted a counter-investigation: <https://disclose.ngo/fr/article/mort-de-zineb-redouane-les-preuves-dune-bavure>

³⁶ For example, Senator Sophie Taillé-Polian proposed giving this power of investigation to the deontologist of the Defender of Rights: <http://www.senat.fr/leg/exposes-des-motifs/pp120-184-expose.html>

INVESTIGATIONS SHOULD BE CARRIED OUT BY AN INDEPENDENT BODY, NOT BY AN AUTHORITY UNDER THE MINISTRY OF THE INTERIOR

exercise on the rule of law should have a broad approach which implies including the observation of police violence (unnecessary or disproportionate use of force) and making judgements on its illegitimacy. The use of weapons, whether in demonstrations or during security operations on the territory, should also be subject to analysis, comparison and judgement. Weapons such as LBDs and grenades should be banned. States should be required to explain the circumstances that led to the serious injury or death of people and prove that an independent investigation was carried out.³⁷

France should be pressured to participate in the EU-supported Godiac research programme to find new ways of calming relations between demonstrators and police during political demonstrations.³⁸ The EU’s contributions should be based on existing human rights standards set by the UN, OSCE and the Venice Commission. ■

The interview was carried out 2 September 2021. Read the full interview on Civic Space Watch: <https://civicspacewatch.eu/human-rights-observers-are-essential-during-protests/>

³⁷ In France, the lack of transparency regarding serious injuries, mutilations or deaths during demonstrations led the journalist David Dufresne (grand prize at the 2019 International Journalism Awards) to create a website to document them: <http://www.davduf.net/alloplacebeauvau>

³⁸ Good practice for dialogue and communication as strategic principles for policing political manifestations in Europe: <https://bulletin.cepol.europa.eu/index.php/bulletin/article/view/48>