

EU 2020: DEMANDING ON DEMOCRACY

*Country & Trend Reports on Democratic
Records by Civil Liberties Organisations
Across the European Union*

FRANCE



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France // Vox Public



Key concerns

- Security bills threaten free speech and the operations of civil society organisations
- Protests are met with violent disruptions and arbitrary detentions
- A weaker role for civil society organisations in the fight against corruption

Corruption

Anti-corruption framework

France has a financial prosecutor's office which investigates cases of corruption and tax evasion.

A High Authority for the Transparency of Public Sphere was established in 2013 in the law. Ministers, parliamentarians, heads of public agencies and independent authorities must make a full declaration of interest and of assets failing which they can be sanctioned.

Associations which are fighting against corruption gained, by means of the 2013 law,

the possibility of requesting state approval to be able to become a civil party in lawsuits even if they are not directly victims of corruption. Three associations – Transparency International, Anticor and Sherpa – were granted this accreditation in 2015 and 2018.

The French law appears strong enough to prevent and fight corruption, but recent developments indicate how reluctant the government is to accept the critical role civil society organizations can play in the prevention of corruption.

Recently, the 3-year agreement granted to the association Anticor, which allowed it to be civil party in legal cases, was not renewed before its expiry date. Anticor sent its request for renewal of this agreement in October last year. But after four months, the government had not taken any decision. Instead of renewing the agreement, the government required Anticor to answer many questions, most of them without any link with the official criteria governing the granting of the « anticorruption » agreement. For the association Sherpa, the new agreement was also granted only very late in November 2019.

No specific measures were taken to our knowledge to address corruption risks in the context of the COVID-19 pandemic.

General transparency of public decision-making

Initially, in 2014 the National Assembly set up its own register of interest representatives. Law n ° 2016-1691 of 9 December 2016 relating to transparency, the fight against corruption and the modernization of economic life entrusted the High Authority for the transparency of public life (HATVP) with the creation in July, 2016 of a digital directory of lobbies. The register of the Assembly therefore disappeared and was replaced by this directory. As a result, the lobbyists have since then been required to register themselves in a digital directory in which they must provide information on their organization, their lobbying actions and the resources devoted to them.

If they fail to respect the reporting obligations, the maximum penalties they can incur in are imprisonment for one year and a 15,000 EUR fine. Article 18-9 of the law sanctions the lack of spontaneous transmission, or of transmission at the request of the HATVP, of information provided by article 18-3 of the law. Article 18-10 covers the reiteration of ignoring reporting obligations. After the first violation of reporting obligations, HATVP addresses the lobby a formal notice. In case of subsequent violations occurring over the following three years, the lobby incurs the aforementioned sanctions.¹

This directory aims to provide information to citizens on the relations between lobbyists and politicians. It permits to better understand the impact of lobbyists on the law and normative process.

Whistleblowers protection

Law No. 2016-1690 of 9 December 2016 relating to the competence of the French Ombudsman for the guidance and protection of whistleblowers provides that the latter is responsible for “directing to the competent authorities any person reporting an alert under the conditions set by law, to ensure the rights and freedoms of this person”.

Media environment and freedom of expression and of information

The bill called “Global Security Law” presented in the past fall, and in particular its article 24, represented a concerning development. The provision would have penalized any “malicious” dissemination of images of members of the security forces. This would have prevented journalists and others from filming the police in their interventions and may hamper the exposure of police violence. Following strenuous opposition and protests, the government dropped this provision as a way to “save” the law.

1 Le courrier des maires et des élus locaux, Le nouveau cadre juridique de la représentation d'intérêt, numéro 320, page 11 (February 2018).

Article 18 of the draft “Anti-separatism law” (officially “Bill to strengthen, the respect of republican principles”), on which discussions are ongoing at the Parliament level, would have a very similar effect to article 24 insofar as it represses “the fact of revealing, disseminating or transmitting, by any means whatsoever, information relating to the private, family or professional life of a person allowing him to be identified or located, with the aim of exposing one or the members of one family to an immediate risk of injury to life, physical or mental integrity, or property”. The provision provides for a penalty of “5 years in prison and a fine of 75,000 EUR when the victim is a public official”. This provision constitutes in essence a new version of the abovementioned article 24 of the Global Security Law, which provided for restricting the dissemination of images of police officers in intervention - more precisely, it punishes the fact of broadcasting such images.

Civil society organisations are also worried about Article 8 of the draft “Anti-Separatism law”, which broadens the conditions for pronouncing the dissolution of an association. Previously, this was possible as a sanction to the holding of “armed demonstrations in the street”. From now on, dissolution will be imposed for “violent acts against people and property”. Many organizations such as Attac and Greenpeace do engage in spectacular public actions to raise awareness and attract attention of the public opinion. Against this background, the law is an obvious attack on freedom of speech and the actions of some civil society organisations.

Another article of this draft “Anti-Separatism law” considers that the content of certain comments on social networks, even when published by simple followers, and not by members of the association, could justify the dissolution of the latter. If the Parliament votes this bill (the vote is expected to take place in the 1st semester of 2021), and if the Constitutional Council does not censor it, this provision would become a serious threat to freedom of expression in France.

Other issues related to checks and balances

Independent authorities

The French independent authorities – French Ombudsman (“Rights Defender”), Consultative commission for human rights (CNCDH) and the General Controller of Places of Deprivation of Liberty – are genuinely independent institutions.

The CNCDH is a consultative for the Prime minister. It is composed of representatives of human rights organizations, academics and experts. The government may consult its members every time it needs an advice on decisions which may impact human rights and the rule of law. However, in reality, the government requests very rarely the opinion of this Commission.

Enabling framework for civil society

In October, a Coalition of French associations released the first report “Repressed citizenship”² to denounce more than 100 cases of attacks against associations (financial sanctions, judicial proceedings, administrative sanctions...). The Coalition for Association Freedoms issued a list of 12 recommendations in order to enlarge and protect the civic space CSOs need to implement their activities.

Freedom of association

So far, the right to create an association in France remains secured. The problem is how the State or local authorities try to limit the critical activities of civil society organisations.

In December 2020, the government approved the above-mentioned draft “Anti-separatism law”. This law, if it is voted by the Parliament (1st semester 2021) will have harsh consequences on freedom of association, opinion, expression and demonstration. The bill includes also several articles introducing new types of control over civil society organizations, with the risk to reinforce administrative and political arbitrariness. This bill will weaken sustainably the entire French associative fabric.

Unilaterally substituting the long-time negotiated “reciprocal engagement contract” (agreed between the State, the local authorities and associations in 2014) by a “Republican Engagement Contract” (CER), written by the executive power, with antagonistic interpretations, breaks with the spirit of a respectful and trusting dialogue with the associative sector. Each association benefiting of public subsidies or of an agreement with a specific Ministry, will be required to sign the CER. If this contract was not honoured, the grants would be withdrawn from them, and they would have to repay the money received previously. This economic sanction can have the effect of muzzling associations which are particularly critical towards the authorities.

Freedom of assembly

An investigation published on 8 February 2021 by the NGO Amnesty International³ shows that “arrests” by the police of demonstrators who marched in Paris on 12 December 2020 to protest against the draft “Global security law” constituted “arbitrary detentions”.

In its report, Amnesty International affirms that “dozens of demonstrators were victims of arbitrary detentions” during this demonstration, which constitutes “a violation of the

2 Vox Public, « A Repressed Citizenship », an inventory of the barriers against associative actions in France (October 2020).

3 Amnesty International, Climate of total insecurity: arbitrary arrests of peaceful demonstrators on 12 December 2020 in Paris (February 2021).

right to liberty and security of the person”. Some people victims of “arbitrary detentions” have decided to take legal action against the Paris police chief Didier Lallement, who is now subject of 40 complaints against him.⁴

The Minister of Interior, Gérald Darmanin, commented on the arrests on social networks. He suggested that the 142 people arrested were among the hundreds of “thugs” present in this demonstration. This position is at odds with the impartiality the highest level of the hierarchy of law enforcement is expected to maintain. Such behavior is likely to encourage the repetition of arbitrary arrests and detentions of demonstrators, rather than ensuring respect for the right to freedom of peaceful assembly. This is problematic as nearly 80% of these arrests did not ultimately lead to any prosecution and were therefore unfounded. These practices violate the right to freedom of peaceful assembly: they prevent those arrested from participating in protests. This also constitutes violations of the right to liberty and security of persons. The French authorities must stop intimidating protesters and change all laws that undermine the right to peaceful assembly.

4 France Info, Sécurité globale : Amnesty International dénonce des « arrestations arbitraires » lors d’une manifestation à Paris (February 2021).