

LIBERTIES RULE OF LAW REPORT 2022

FRANCE



Foreword

This country report is part of the Liberties Rule of Law Report 2022, which is the third annual report on the state of rule of law in the European Union (EU) published by the Civil Liberties Union for Europe (Liberties). Liberties is a non-governmental organisation (NGO) promoting the civil liberties of everyone in the EU, and it is built on a network of national civil liberties NGOs from across the EU. Currently, we have member and partner organisations in Belgium, Bulgaria, the Czech Republic, Croatia, Estonia, France, Germany, Hungary, Ireland, Italy, Lithuania, the Netherlands, Poland, Romania, Slovakia, Slovenia, Spain and Sweden.

Liberties, together with its members and partner organisations, carries out advocacy, campaigning and public education activities to explain what the rule of law is, what the EU and national governments are doing to protect or harm it, and to gather public support to press leaders at EU and national level to fully respect, promote and protect our basic rights and values.

The 2022 Report was drafted by Liberties and its member and partner organisations and covers the situation in 2021. It is a ‘shadow report’ to the European Commission’s annual rule of law audit. As such, its purpose is to provide the European Commission with reliable information and analysis from the ground to feed its own rule of law reports and to provide an independent analysis of the state of the rule of law in the EU in its own right.

Liberties’ report represents the most in-depth reporting exercise carried out to date by an NGO network to map developments in a wide range of areas connected to the rule of law in the EU. The 2022 Report includes 17 country reports that follow a common structure mirroring and expanding on the priority areas and indicators identified by the European Commission for its annual rule of law monitoring cycle. Thirty-two member and partner organisations across the EU contributed to the compilation of these country reports.

Building on the country findings, the 2022 Report offers an overview of general trends on the rule of law in the EU and compiles a series of recommendations to national and EU policy makers, which suggest concrete actions the EU institutions and national governments need to take to address identified shortcomings.

[Download the full Liberties Rule of Law Report 2022 here](#)

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France

About the authors



VoxPublic is a non-profit organisation composed of a permanent team of four advocacy specialists based in Paris. It is governed by a seven-member executive board and receives support from an active community of volunteers and ‘VoxPublic Agora’ members.

The association was created in 2016 and ever since has been working on empowering French civil society organisations and citizen initiatives in their advocacy actions. VoxPublic thereby provides support and capacity-building to victims of discrimination and social injustices wishing to challenge decision-makers. The team shares its expertise on a voluntary basis and thereby aims to reinforce partners’ capacities in the fields of advocacy strategies and communication skills. VoxPublic also provides partners with operational support in terms of campaign building, networking, strategic document writing, as well as strategic social media use and media.

Key concerns

In the area of corruption interesting initiatives were taken by members of parliament, and the independent institution against corruption

made a compelling assessment of corruption risks and how to possibly address them. However, while a bill is pending before the parliament, the government has not to date taken any specific follow-up action.

The new ‘anti-separatism’ law – passed in July 2021 - includes several provisions which jeopardize freedom of information and freedom of expression, thus weakening media freedom. The law might also lead to severe restrictions on the right to freedom of association, insofar as it expands quite substantively the level of control over associations by the State, thereby producing a chilling effect on the work of civil society actors and a negative impact on civic space.

The state of health emergency introduced in the context of the COVID-19 public health crisis was maintained in France until June 2021, followed by a “period of exit from the state of emergency”. The considerable decision-making power afforded to the executive and the clear reduction of legislative and judicial powers which have resulted from this emergency regime have undermined the system of checks and balances, thus weakening the rule of law. The state of emergency in force in the framework of this public health crisis has immediately followed the state of emergency enacted in the framework of the state’s counter-terrorism measures, and civil society actors fear that the French democratic system will be weakened by a normalization

of extra-ordinary measures. Against the background of these worrying trends, VoxPublic set up the Watch Network – a network bringing together academics, lawyers, and representatives of associations and unions to monitor and report about rule of law threats during this unprecedented period.

The state’s failure to meet basic human rights obligations on several issues, which persists since decades, exacerbates social tensions and creates a system in which citizens feel excluded from society. These tensions are then used to justify the adoption by the state of new security measures that, in turn, gradually undermine the rule of law in France. This vicious circle is regularly denounced by the communities concerned and by many civil society actors.

State of play

N/A Justice system

- Anti-corruption framework
- ↓ Media environment and freedom of expression and of information
- ↓ Checks and balances
- ↓ Enabling framework for civil society
- ↓ Systemic human rights issues

Legend (versus 2020)

Regression: ↓

No progress: –

Progress: ↑

Anti-corruption framework –

Key recommendations

- Reform the national anti-corruption framework including through measures to reinforce protection of whistle-blowers.

According to the latest annual Transparency International’s Corruptions Perception Index, France ranked in the 23rd position with a score of 69. This score represents a regression of 2 points compared to the previous decade. The decline is due in part to the context of the COVID-19 health crisis, where considerable pressure has made it more difficult for many institutions to fight corruption.

The High Authority for the Transparency of Public Life (HATVP) has been denouncing the flaws in the control of political life, particularly concerning lobbying and illegal interest taking. To remedy, this the HATVP intends to make a more precise inventory of the activity of lobbies and shorten the timeframe by which lobbies must report their action from biannual to annual reporting. As for conflicts of interest affecting elected officials, it intends to clarify the definition of ‘taking interest’ in the Penal Code in order to penalize a wider range of fraudulent activities.¹

1 <https://www.latribune.fr/economie/france/plus-belle-la-politique-la-hatvp-veut-mieux-encadrer-les-lobbies-et-la-prise-illegale-d-interets-886031.html>

A mission to evaluate the Sapin II law (anti-corruption/transparency for political activities, passed in 2016) was also undertaken this year, with members of parliament (MPs) Raphaël Gauvain and Olivier Marleix as co-rapporteurs. The mission led to a list of 50 recommendations. While rapporteurs commend the effectiveness of the French Anti-Corruption Agency (AFA), they nevertheless believe that the system should be substantially reformed. According to their proposal, the AFA should be refocused on economic actors and placed under a semi-tutelage of the government, and the competences of the independent anticorruption authority be transferred to the HATVP which would become the High Authority for Probity (HAP). In their view, the range of entities to which the Sapin 2 law applies should also be extended. The report also recommends promoting further the use of the Judicial Agreement of Public Interest (CJIP), an alternative and faster procedure than a traditional court action to submit claims related to transparency, the fight against corruption and the modernization of economic life. Finally, it also recommends strengthening the protection measures in place for whistle-blowers and ensuring the efficient and transparent treatment of reports.²

Following the report led by the two deputies, a bill to strengthen the fight against corruption in France was filed on October 19th 2021 by

MP Raphaël Gauvain. While this bill does not address all the recommendations made in the report, particularly with respect to the protection of whistle-blowers, it contains a number of relevant measures and, if passed, would greatly strengthen the national anti-corruption framework.

A tribune³ in support of this bill was published on November 4th 2021, by a coalition of unions and associations including Anticor, a French association fighting against corruption. The tribune denounces the flaws of the Sapin II law and formulates 12 recommendations⁴ to address the identified issues. While parts of these recommendations are addressed in the above-mentioned bill of MP Raphaël Gauvain, the coalition draws attention to the fact that the bill does not take into account the shortcomings regarding the status of whistle-blowers. France cannot consider itself exemplary in its fight against corruption if it does not integrate a much better protection of whistle-blowers into its legal framework.

² <https://www.economie.gouv.fr/cedef/convention-judiciaire-interet-public-cjip>

³ https://www.lemonde.fr/idees/article/2021/11/04/proteger-l-alerte-et-le-lanceur-d-alerte-est-un-enjeu-de-societe-majeur_6100939_3232.html

⁴ <https://loi.mlalerte.org/propositions/>

Media environment and and freedom of expression and of information ↓

Key recommendations

- Repeal Article 36 of the Anti-Separatism law, or else provide guidance on their application to avoid any disproportionate impact on the exercise of the rights to freedom of expression and information

The law consolidating the respect for the principles of the Republic, the so-called ‘anti-separatism law’, which VoxPublic mentioned in its contribution to Liberties’ rule of law report 2020, was definitively adopted by the parliament on 23rd July 2021, incorporating some of the measures that had been rejected under the Global Security Bill. Despite numerous protests from associations and civil society and the referral to the Constitutional Council by more than 60 deputies, the decision rendered by the latter did not meet the expectations and fears of all these actors.

Article 36 greatly compromises the work of journalists and others trying to expose forms of police violence, as it provides that, “It is an offence to reveal, disseminate or transmit, by

any means, information relating to the private, family or professional life of a person that allows him or her to be identified or located for the purpose of exposing him or her or his or her family members to a direct risk of harm”, which then leads to “3 years’ imprisonment and a 45,000 euros fine.” This would result in ‘three years’ imprisonment and a fine of 45,000 euros” and “five years’ imprisonment and a fine of 75,000 euros” in the case of journalists.

Moreover, it is important to remember that France is the first European country in which journalists are most harassed, according to the 2021 annual report of the Council of Europe Platform for the Protection of Journalism and the Safety of Journalists.⁵ Reporters Without Borders (RSF) released a documentary on October 14th 2021, denouncing the frequent use of Strategic Lawsuit Against Public Participation (SLAPP) by businessman Vincent Bolloré to silence journalists who might investigate his industrial activities. These SLAPPs are a real threat to freedom of expression and information, but also to the rule of law. RSF has published 7 recommendations to face this danger.⁶

Checks and balances ↓

Key recommendations

- Conduct a careful assessment of the impact of the emergency re-

5 <https://rm.coe.int/embargo-version-annual-report-2021-wanted-real-action-for-media-freedom/1680a2440d>

6 <https://rsf.org/fr/actualites/le-systeme-b-le-documentaire-choc-de-rsf-sur-le-systeme-bolloré>

gime on the system of checks and balances and restore full parliamentary and judicial oversight over the executive

The COVID-19 pandemic and the associated health state of emergency in France has led to a strong questioning of the checks and balances between the executive and legislative branches. Legal scholars are alarmed that the executive has granted itself exorbitant powers, while parliamentary and judicial oversight mechanisms have failed to maintain a proper balance between managing the crisis and protecting the rule of law. Indeed, the government has granted itself wider powers during this period of crisis, notably through governance by ordinances, decrees, and orders. The vertical and sometimes chaotic management of the pandemic by the French executive has resulted in numerous infringements of fundamental rights and freedoms, marking a clear retreat from the rule of law. Following the creation of the Watch Network, in September 2021 VoxPublic published the report ‘15 Months of State of Health Emergency: What is the Outcome for the Rule of Law in France?’. The findings of this unique report point to a strong risk of trivialization of exceptional measures and, similarly to the anti-terrorist state of emergency (in force in France between November 2015 and October 2017), of their normalisation and integration in the ordinary legal framework. The Watch Network, which

seeks to foster a rule of law culture, remains active to this day.⁷

Enabling framework for civil society ↓

Key recommendations

- Repeal Articles 12 and 16-22 of the anti-separatism law, or else provide guidance on their application to avoid any disproportionate impact on the exercise of the rights to freedom of association

The adoption of the anti-separatism law has also greatly weakened the civil society framework.

In addition to the above-mentioned impact Article 36 has on freedom of assembly, Article 16 broadens the grounds for dissolution of an association, including associations, “that provoke armed demonstrations or violent acts against persons or property”. Associations such as Greenpeace or Attac, which often use spectacular non-violent actions to draw attention to their issues, see their freedom of expression greatly diminished by this. Article 16 also makes associations responsible for any comments and actions by any member, including comments made by volunteers on social networks.⁸

7 https://www.voxpublic.org/IMG/pdf/rapport_etat_d_urgence_sanitaire.pdf

8 https://www.assemblee-nationale.fr/dyn/15/textes/l15t0656_texte-adopte-seance

Furthermore, the provisions concerning the ‘contract of republican commitment’ and the new declarative obligations regarding private sponsorship add many additional restrictions and burdensome requirements negatively affecting freedom of association, including their access to funding.

Article 12 provides that associations wishing to obtain public financial aid must subscribe to this ‘republican commitment contract’. Article 13 prohibits associations that have not signed this contract from receiving young people for civic service. Finally, Article 15 makes the signing of this contract a condition for obtaining State agreement, and thus the financial or material benefits linked to this agreement.

These sanctions, among others economic in nature, can have the effect of muzzling associations which are particularly critical towards the authorities.

Articles 17 to 22 relate to changes in the granting of various tax benefits for associations and endowments, but also new reporting obligations and control powers for the tax authorities over associations’ resources and donors.⁹

The recent dissolution of the CCIF, an association fighting Islamophobia in France, on September 24th 2021 is symptomatic of the worrying reduction of associative freedoms in

France today and was followed by similar dissolutions such as that of the CRI (Coordination against Racism and Islamophobia). This dissolution was approved by the Council of State on the grounds that “to criticize without nuance” public policies or laws that are considered discriminatory is to push the victims of the alleged discrimination on the slope of radicalization and invite them to evade the laws of the Republic.¹⁰

Faced with the dangers of this law, the French coalition for associative freedoms continue to mobilize civil society actors (including associations, academics etcetera) alerting them about this reduction of their democratic space. The Observatory of Associative Freedoms - a project managed by the Coalition – will conduct an active monitoring of the consequences of this law. Coalition members will provide advice to associations that consider themselves unfairly sanctioned or penalized by the application of this law.¹¹

9 https://www.assemblee-nationale.fr/dyn/15/textes/l15t0656_texte-adopte-seance

10 <https://www.voxpublic.org/Dissolution-du-CCIF-Un-grave-coup-porte-a-la-liberte-d-association-en-France.html>

11 <https://www.lacoalition.fr/>

Disregard of human rights obligations and other systemic issues affecting the rule of law framework ↓

Key recommendations

- Take steps to ensure respect of Travellers' right to housing
- Adopt measures to ensure that the basic needs of exiles in informal settings can be met, including by halting evictions and confiscations in informal camps and initiating a constructive citizen dialogue with associations to allow them to distribute basic necessities
- Take concrete and effective measures to end systemic racial profiling

Systemic human rights violations

Violations of the rule of law across the spectrum of human rights were of great concern in 2021 in France.

Here are three examples of problematic situations which expose systemic human rights violations and the failure by the state to address them:

1. Basic rights of Travellers aren't respected

Travellers in France suffer continuous and severe violations of their right to housing. The State manages Travellers' housing through a system of 'reception areas' that do not respect the needs of communities. People find themselves confined to segregated spaces, often far from other homes, isolated from the most essential public services, and located in highly polluted and unsuitable areas. Moreover, evictions are very frequent, without sufficient time to prepare for them and without a solution for relocation. The families are then left in a situation of wandering and instability, as they are unable to access authorized areas that meet their needs. These systematic violations of the right to housing, and therefore of the rule of law, were made public in the report of the Observatory of the Rights of Itinerant Citizens on September 16th 2021 entitled, "Endless exclusion, the reality of the right to housing for 'Travellers' in France".¹²

The recent experimental implementation in seven 'départements' of new legislation, including provisions foreseeing fixed fines of up to €500 euros for the illegal occupation of someone else's land, is also denounced by Travellers as a discriminatory measure, especially since

¹² https://www.voxpublic.org/IMG/pdf/rapport_odci_1_exclusion_sans_fin_droit_au_logement_des_voyageurs.pdf

the communes do not respect their obligations in terms of reception areas.

2. Exiled people's basic rights are denied

The repression of exiles has also increased this year, particularly with regard to the exiles in the Calais region (North of France). If the situation in Calais has been deplorable for many years, the actions of the state against exiles and civil society organizations advocating for the defence of their rights have reached alarming heights in 2021. In October and November, a 38-day hunger strike by Ludovic Hollbein and Anaïs Vogel and a 25-day hunger strike by the priest Philippe Demeestère denounced this situation, calling for three simple measures: a halt to the evictions of camps during the winter truce, a halt to the confiscation and destruction of personal belongings, and a constructive citizen dialogue with associations to allow them to distribute basic necessities. To date, despite a large mobilization of civil society organisations in support of the cause, wide media coverage, and numerous appeals to the government and the President of the Republic, these three basic demands have not been met. On December 1st, following a shipwreck in the Channel that killed 27 exiles trying to reach England, many associations mobilized to demand a change in policy from the French authorities. Instead of intervening to urgently

improve the dramatic situation and prevent further tragedies, the government's response was to tighten repressive measures against people in Calais, both legislatively and in practice, notably by prohibiting the distribution of food to associations not mandated by the State and by reinforcing security measures.¹³

3. Black and Arab men routinely discriminated by French police

Amnesty International, Human Rights Watch, Maison Communautaire pour un Développement Solidaire, Open Society Justice Initiative, Pazapas Belleville, and REAJI have launched a class action lawsuit against the state for discriminatory ethnic profiling by the French police. Through this lawsuit, the judge could order the government to take concrete and effective measures to end systemic racial profiling.¹⁴

Recently, the case of abusive fines in Epinay-sous-Sénart confirms the fact that the issue of racial profiling is still far from being resolved and contributes daily to the undermining of the rule of law. About thirty teenagers and young people from visible minorities denounced the fines they are subject to imposed during the first lockdown period, which, according to them, are illegal, abusive, and discriminatory.¹⁵

13 <https://www.voxpublic.org/Greve-de-la-faim-a-Calais-pour-denoncer-la-maltraitance-des-exile-es.html>

14 <https://www.voxpublic.org/Action-de-groupe-contre-le-controle-aux-facies.html>

15 <https://www.bondyblog.fr/societe/police-justice/des-jeunes-surendettes-a-cause-des-amendes-du-couvre-feu-dans-les-quartiers/>

Contacts

VoxPublic

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The Civil Liberties Union for Europe

The Civil Liberties Union for Europe (Liberties) is a non-governmental organisation promoting the civil liberties of everyone in the European Union. We are headquartered in Berlin and have a presence in Brussels. Liberties is built on a network of 19 national civil liberties NGOs from across the EU.

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