

Coronavirus pandemic in the EU – Fundamental Rights Implications

Country: France

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1 Measures taken by government/public authorities

1.1 Emergency laws/states of emergency, including enforcement actions

In the context of the current health crisis, the French authorities have taken measures aimed at countering the spread of the Covid-19 pandemic. The “Emergency Law” of 23 March declares a “state of health emergency”¹ for a 2-month period. The Article 7 of this text contains a sunset clause: all provisions of the Health Code relating to the state of health emergency will disappear on 1st April 2021. Furthermore, the Article L. 3131-13 of the Public Health Code stipulates that the extension of the emergency state beyond a month can only be authorised by law, after the opinion of the committee of scientists provided for in Article L. 3131-19. In application of this law several texts have been adopted. In particular, 25 ordinance were issued on 25 March to adapt the way institutions operate, as well as the rules applicable in different areas of public action.² They modify for example the rules applicable to criminal courts,³ and social and medico-social establishments.⁴

In an opinion of 28 April, entitled “State of health emergency and Rule of law”, the National Consultative Commission on Human Rights (CNCDH) questions the relevance of creating a state of health emergency in the light of its impact on democratic life and respect for individual and collective freedoms. It develops three essential points: the necessity and scope of this legal framework; the challenge of the balance of powers; and the weakening of control mechanisms. Among others, the independent body is concerned about the vagueness of the new concept of ‘state of health emergency’, which creates the risk of extensive application in any circumstances. It recalls that the “Emergency Law” empowers the Government to take ordinance measures likely to infringe rights and freedoms in very broad areas. The Commission also highlights the reduction of judicial control and stresses that the protection of public health order may prevail over the protection of rights and freedoms too often.⁵

1.2 Measures affecting the general population

1.2.1 Social distancing

- Measures

On 23 March, France ordered compulsory isolation for all citizens and put social distancing and hygiene measures – called “barriers” – in place.⁶ The nationwide lockdown was extended until the 11 May 2020.⁷ On 28 April, the Prime Minister confirmed that the lockdown would be lifted from 11 May for regions

¹ France, Emergency Law n° 2020-290 of 23 March 2020 to deal with the covid-19 epidemic, available at: <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041746313&dateTexte=20200507>

² France, Government, “Presentation of the first 25 ordinance taken under emergency law to deal with the COVID-19 epidemic”, 25 March 2020, available at:

www.justice.gouv.fr/art_pix/DP_presentation_des_25_premieres_ordonnances_25_03_2020.pdf

³ France, Ordinance n° 2020-303, 25 March 2020, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041755529&categorieLien=id

⁴ France, Ordinance n° 2020-313, 25 March 2020, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041755771&categorieLien=id

⁵ France, National Consultative Commission on Human Rights, “State of health emergency and Rule of law”, 28 April 2020, available at:

www.cncdh.fr/sites/default/files/avis_2020_-_2_-_200424_avis_etat_durgence_sanitaire_et_etat_de_droit.pdf

⁶ France, Decree n° 2020-293, 23 March 2020, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041746694&categorieLien=cid

This text was modified in several occasions.

⁷ France, Decree n° 2020-432 of 16 April 2020 supplementing the Decree n° 2020-293 of 23 March 2020, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000041804859&dateTexte=20200506

which meet some key criteria (“the spread of the virus has eased”; “hospital intensive care capacities are not stretched”; “local systems of testing and detecting contact cases are sufficient”).⁸

Until this date, people are only permitted to leave their homes under certain circumstances, including grocery shopping, outdoor exercise, medical appointments, and vital family reasons. They are required to print out a certificate stating the reason for leaving the house. Since 6 April, this form can also be filled out online at the Interior Ministry’s website.⁹ A QR code certifies the exact time of creation of the digital document. In this way, law enforcement officers are able to scan cell phones or tablets. People can now choose in accordance with their preference.

Moreover, France’s National Academy of Medicine (a legal entity in public law with special status, “placed under the protection of the President of the Republic”) announced on 5 April that the wearing of a ‘general public’ mask should be made compulsory for going out.¹⁰ Following this recommendation, the Prime Minister declared that when the isolation measures are lifted it will be compulsory to wear masks on all public transport, taxis, and school buses.¹¹ According to the President’s announcement on 13 April, it was also specified that the state foresees the distribution of face-masks to French citizens from 4 May.¹²

Meanwhile, in the southern Parisian suburb of Sceaux, a mayor’s decision ordering compulsory masks while outdoors has been sanctioned. On 9 April, the Administrative Court of Cergy-Pontoise ruled that this measure does not conform with the government’s strategy and violates the freedom of movement and the right to respect for personal freedom,¹³ a decision that the Council of State confirmed on 17 April.¹⁴

- Penalties

Penalties for non-compliance with confinement regulations are reassessed by the decree of 28 March 2020. While the first violation of the lockdown is still punishable by a €135 fine, a second breach registered within 15 days of the first one is now punished with a €200 fine which can be increased to €450 if not paid within 45 days. There are no changes for those breaking these rules over four times in 30 days: they risk a €3,700 fine and a maximum penalty of a six-month prison term.¹⁵

A total of 915,000 fines have been issued on 23 April since the entry into force of the containment strategy, according to statistics given to the media by the Interior Ministry.¹⁶ Several cases of

⁸ France, Government, “Presentation of the national deconfinement strategy”, 28 April 2020, available at: www.gouvernement.fr/partage/11518-discours-de-m-edouard-philippe-premier-ministre-presentation-de-la-strategie-nationale-de

⁹ France, Ministry of the Interior, “Implementation of a digital certificate”, 14 April 2020, available at: www.interieur.gouv.fr/fr/Actualites/Communiqués/Mise-a-disposition-d-un-dispositif-numerique-d-attestation-de-deplacement

¹⁰ France, National Academy of Medicine, “Covid-19: exit from confinement”, 5 April 2020, available at: www.academie-medecine.fr/communiqué-de-lacademie-covid-19-sortie-du-confinement/

¹¹ France, Government, “Presentation of the national deconfinement strategy”, 28 April 2020, available at: www.gouvernement.fr/partage/11518-discours-de-m-edouard-philippe-premier-ministre-presentation-de-la-strategie-nationale-de

¹² France, Presidency of the Republic, “Address to French citizens”, 13 April 2020, available at: www.elysee.fr/emmanuel-macron/2020/04/13/adresse-aux-francais-13-avril-2020

¹³ France, Administrative Court of Cergy-Pontoise (*Tribunal administratif de Cergy-Pontoise*), Decision n° 2003905, 9 April 2020, available at: http://cergy-pontoise.tribunal-administratif.fr/content/download/169914/1696837/version/1/file/2003905_anon.pdf

¹⁴ France, Council of State (*Conseil d’État*), Decision n° 440057, 17 April 2020, available at: www.conseil-etat.fr/ressources/decisions-contentieuses/dernieres-decisions-importantes/conseil-d-etat-17-avril-2020-port-d-un-masque-de-protection-commune-de-de-sceaux

¹⁵ France, Decree n° 2020-357 of 28 March 2020, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041763219&categorieLien=id

¹⁶ France, *Le Parisien*, 23 April 2020, available at: www.leparisien.fr/societe/coronavirus-la-baisse-des-hospitalisations-se-poursuit-en-france-suivez-notre-direct-23-04-2020-8304228.php

imprisonment have also been reported by the press. For example, in Bourges, a man was condemned to three months in prison. He had breached the confinement regulations eight times in ten days.¹⁷ Another man in Melun was sentenced to four months in prison for violating the rules fourteen times.¹⁸

- Concerns

Citizens have the possibility to contest the penalty within 90 days of reception on the website of a public institution: the National Agency for the automated processing of offences.¹⁹

However, concerns have arisen over police powers to issue fines for coronavirus rule breaches. On 27 March, 22 civil society organisations alerted the Interior Minister to the existence of several videos and testimonies alleging abusive checks and violence by law enforcement officials. They stress in particular that “police checks should not be abusive, violent, or discriminatory”.²⁰ A week later, several NGOs, unions and lawyers addressed a joint open letter to public authorities in which they denounce the methods used by the police and recommend respect for the rule of law when issuing fines.²¹

1.2.2 Education

- General measures

Since 16 March 2020 all kindergartens, schools and universities are closed. France plans to reopen schools gradually. Although more details will be laid out in the coming days, the Education Minister has reported that children would return in staggered year groups (the youngest would be the first to go back on 11 May; the following week would see the return of all older children in selected years at lower secondary schools) apart from those in the North-East of France, reopen for pupils in the first two years- Grades 6 and 7, with a maximum of 15 pupils allowed in each class. He also noted that “a pupil will never be exempt from obligatory schooling”.²²

- Measures related to the continuity of education for children from socioeconomically disadvantaged backgrounds

Currently, the issue of the effectiveness of distance learning is at the heart of the discussions. More specifically, the inequalities in access to education faced by children from socioeconomically

¹⁷ France, France bleu, “Three months in prison in Bourges for breaching the confinement”, 6 April 2020, available at: www.francebleu.fr/infos/faits-divers-justice/coronavirus-trois-mois-de-prison-ferme-a-bourges-pour-non-respect-du-confinement-1586192301

¹⁸ France, Le Parisien, “Melun: first two cases of imprisonment for breaching the confinement”, 9 April 2020, available at: www.leparisien.fr/seine-et-marne-77/melun-deux-premiers-cas-de-prison-ferme-pour-non-respect-du-confinement-09-04-2020-8297208.php

¹⁹ France, National Agency for the automated processing of offences, available at: www.antai.gouv.fr/comment-contester?lang=fr

²⁰ France, NGOs joint press release, “Confinement measures: police checks must not be excessive, violent or discriminatory”, 27 March 2020, available at: www.ldh-france.org/mesures-de-confinement-les-contrôles-de-police-ne-doivent-etre-ni-abusifs-ni-violents-ni-discriminatoires/

²¹ France, NGOs joint press release, “In order to respect the rule of law in matters of fines”, 10 April 2020, available at: www.ldh-france.org/pour-un-respect-de-letat-de-droit-en-matiere-de-verbalisations-amendes/; France, Paris Observatory of public liberties, “Use of force, custody placement, searches, and new crime related to non-compliance with confinement rules”, 10 April 2020, available at: www.ldh-france.org/usage-de-la-force-placement-en-garde-a-vue-fouilles-et-nouveau-delit-lie-au-non-respect-du-confinement/

²² France, National Assembly, “Hearing of Jean-Michel Blanquer by the Cultural Affairs Committee”, 21 April 2020, available at: www.assemblee-nationale.fr/dyn/actualites-accueil-hub/audition-de-jean-michel-blanquer-par-la-commission-des-affaires-culturelles

disadvantaged backgrounds, which are compounded due to the pandemic, have raised concerns.²³ Several measures are taken in this respect, according to the Education Ministry:

- The Government launched on 20 April a plan of 15 million euros to “reinforce the continuity of education in working-class neighbourhoods”. This sum, which is “immediately available”, will be mainly used to buy and distribute hardware and connection material for pupils in need.²⁴
- The Government expressed its desire to increase in an unprecedented way the support given to the large associative actors specialised in tutoring and mentoring. Following the closure of schools, the organisations ‘Article 1’ and ‘Fédération des associations générales étudiantes’ (FAGE) for example launched an operation of school support to facilitate educational continuity for low-income pupils and children of health professionals. In order to orient new mentors and tutors towards these associations, the Government initiated a call for volunteers (with the objective to teach around 30,000 pupils until the end of July).²⁵ The ministry of National Education and Youth is being particularly attentive to support students with difficulties:
 - a partnership was signed with the French postal services to include homework sent by post ;
 - computers have been made available with the support of local authorities and businesses ;
 - teaching staff make personalised calls to pupils several times a week ;
 - a renewed initiative called "Learning Nation" has been launched and agreements have been developed with public sector audiovisual players allowing us to identify and broadcast programmes in line with the school curriculum.

The minister of National Education and Youth also intends to use the summer holiday period to meet the needs of children. The idea is to rely on summer camps, particularly to support those children who need support in acquisition of the basics.

- Finally, the progressive reopening of schools would be socially grounded, prioritising the least fortunate children to return to school first, according to the Education Minister.²⁶ On 26 April, the Public Defender of Rights insisted on the importance of “giving priority to disadvantaged children”.²⁷

²³ France, Presidency of the Republic, “Address to French citizens, 13 April 2020”, available at: www.elysee.fr/emmanuel-macron/2020/04/13/adresse-aux-francais-13-avril-2020

²⁴ France, Ministry of National Education, “Covid 19: Strengthening educational continuity in priority neighbourhoods”, 20 April 2020, available at: www.education.gouv.fr/covid-19-renforcer-la-continuite-educative-dans-les-quartiers-prioritaires-303462

²⁵ France, Ministry of National Education, “Covid 19: Strengthening educational continuity in priority neighbourhoods”, 20 April 2020, available at: www.education.gouv.fr/covid-19-renforcer-la-continuite-educative-dans-les-quartiers-prioritaires-303462

²⁶ France, Le Figaro, “Deconfinement: ‘Not all schools will be open on May 11’, warns Jean-Michel Blanquer”, 14 April 2020, available at: www.lefigaro.fr/flash-actu/blanquer-toutes-les-ecoles-ne-seront-pas-ouvertes-le-11-mai-20200414

²⁷ France, Europe 1, “Toubon on the reopening of schools: ‘Priority must be given to disadvantaged children’”, 26 April 2020, available at: www.europe1.fr/societe/toubon-sur-la-reouverture-des-ecoles-il-faut-donner-la-priorite-aux-enfants-defavorises-3964518?fbclid=IwAR121tm8cbEmNpxiPlrLOvGE_O8rJGCBnUX2EwymtZdz3ZOOM2UkiOpZK6k#utm_term=Autofeed&utm_medium=Social&xtor=CS1-16&utm_source=Twitter&Echobox=1587904493

1.2.3 Work

- ‘Essential workers’

All public places which are “not indispensable to the life of the Nation” are closed in France since 14 March.²⁸ Employees in “essential sectors” are encouraged “to maintain their activity, in compliance with health safety rules”, stated the President of the Republic.²⁹ Although the food industry, healthcare, waste management, energy, transport, telecoms, and a part of the local or national administration, have been given as examples of these sectors by the Minister of Economy, the expression is not explicitly defined.³⁰ The decree published on 23 March provides a list of establishments that may “continue to receive the public” including food shops, multi-store shops, pharmacies, opticians, funeral services, press distribution, retail sale of automotive fuel, shops related to vehicles and motorcycles, computers, construction material, financial activities.³¹

In his address to the nation on 13 April, the French President announced that the 'deconfinement' planned for the 11 May is intended to “allow as many people as possible to return to work, to restart our industry, our businesses and our services”. He added that certain sectors should remain closed after this date, such as “restaurants, cafes, cinemas, theatres, performance halls and museums”.³²

- Measures in the workplace

According to the Labour Ministry, legal obligations are imposed in the workplace. Employers must take preventive measures and ensure that they are adapted to the health crisis. They must also regularly reassess the risks. Specifically, they must review the circumstances in which employees may be exposed to the virus and implement the necessary measures to avoid or to limit the risk as far as possible. Several measures have to be respected by workers on site. Among others, the employer must ensure that soaps, gels and tissues are supplied and that rules of social distance (at least 1 metre) and barrier gestures are respected. Employees gathering in confined spaces should also be limited.³³

In this matter, on 14 April, a Court in Nanterre ordered Amazon to restrict its activities.³⁴ It judged in particular that a re-evaluation of the risks induced by the epidemic has been carried out by the company, but it was insufficient. The Versailles Court of Appeal upheld this order.³⁵

As regards personal protective equipment at work, several decisions by administrative courts and the Council of State have rejected requests for the distribution of face-masks for example to metal

²⁸ France, Decree of 14 March 2020, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041722917&categorieLien=id

²⁹ France, Le Figaro, “Coronavirus: Emmanuel Macron calls on companies and their employees to maintain their activity”, 19 March 2020, available at: www.lefigaro.fr/politique/coronavirus-emmanuel-macron-appelle-les-entreprises-et-leurs-salaries-a-poursuivre-leur-activite-20200319

³⁰ France tv Info, “What is an ‘essential’ economy sector?”, 18 March 2020, available at: www.francetvinfo.fr/sante/maladie/coronavirus/coronavirus-c-est-quoi-un-secteur-economique-essentiel_3873105.html

³¹ France, Decree n° 2020-293, 23 March 2020, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041746694&categorieLien=cid

³² France, Presidency of the Republic, “Address to French citizens”, 13 April 2020, available at: www.elysee.fr/emmanuel-macron/2020/04/13/adresse-aux-francais-13-avril-2020

³³ France, Minister of Labor, “Which measures must the employer take to protect the health of workers against the virus?”, 20 April 2020, available at: <https://travail-emploi.gouv.fr/le-ministere-en-action/coronavirus-covid-19/protger-les-travailleurs/article/quelles-mesures-l-employeur-doit-il-prendre-pour-protger-la-sante-de-ses>

³⁴ France, Nanterre Court of Justice, Decision n° 20/601, 14 April 2020, available at: www.leclubdesjuristes.com/wp-content/uploads/2020/04/TJ-Nanterre_Ordonnance-de-référé-du-14-avril-2020.pdf

³⁵ France, Ministry of Justice, Press release related to the Amazon France Logistic case, 24 April 2020, available at: www.cours-appel.justice.fr/sites/default/files/2020-04/Communique%20de%20presse%2024%20avril%202020%20-%20AMAZON.pdf

workers,³⁶ and volunteers caring for people in precarious situations.³⁷ The argument is generally based on the strategy adopted by the Government, consisting in ensuring the supply of masks available to health establishments, nursing homes, medico-social establishments, aid and care services at home and medical transport.

- Relaxing restrictions on working hours

In application of Article 11 of Law n° 2020-290, the public authorities adopted on 25 March an ordinance on emergency measures in relation to paid holidays, hours of work and rest days. With regard to holiday pay provisions, this law authorises employers to impose the taking of paid leave and to modify the dates of leave already taken. This action has to be exercised within 6 working days, and in respect of a one-day notice period. It is also subject to the conclusion of a company or branch agreement. In matters of derogation from working hours, the ordinance allows employers to alter the rules on hours of work and maximum daily working hours, weekly rest and Sunday rest. More precisely, in companies belonging to “sectors of activity particularly necessary for the security of the Nation and for the continuity of economic and social life” the maximum daily working time is increased to 12 hours (10 hours in normal times), the maximum daily working time for night work to 12 hours with compensatory rest (8 hours in normal times), and the working hours are increased to 60 hours/week (48 hours in normal times). These derogations are valid until 31 December 2020.³⁸

- Additional financial support

Beyond these measures, France intends to reward the effort of the staff mobilised in response to the Covid-19 epidemic. On 15 April, the Prime Minister announced several arrangements, incorporated into the amending finance bill.³⁹ Among them, hospital staff treating coronavirus patients during the pandemic will be awarded one-off and tax-free sums of €1,500 and other health workers €500. They will also receive a pay increase (tax-free) of 50% for their overtime hours (which represents on average an extra €600 per person). Other frontline staff, such as teachers who looked after the children of healthcare staff, police officers, prison officers, and border control agents, will also receive a grant of up to €1,000 each.⁴⁰ Moreover, bonuses were promised to those working in care homes without knowing for the moment either the amount or the terms of payment.⁴¹

In addition to the measures offered to support businesses at the beginning of the health crisis (*e.g.* postponements of social and tax payment deadlines and partial unemployment benefits),⁴² financial aid

³⁶ France, Council of State, Decision n° 440012, 18 April 2020, available at: https://www.legifrance.gouv.fr/affichJuriAdmin.do;jsessionid=2E525C7A0240B77C7DC5D35C6634E5F1.tplgfr37s_1?oldAction=rechJuriAdmin&idTexte=CETATEXT000041819174&fastReqId=1447142147&fastPos=14

³⁷ France, Council of State, Decision n° 439895, 9 April 2020, available at: www.legifrance.gouv.fr/affichJuriAdmin.do;jsessionid=3067611DBF604E6FF413B564A844BDB9.tplgfr33s_3?oldAction=rechJuriAdmin&idTexte=CETATEXT000041800431&fastReqId=1406917959&fastPos=22

³⁸ France, Ordinance n° 2020-323, 25 March 2020, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041755940&dateTexte=20200507

This text was amended by the Ordinance n° 2020-389, 1st April 2020, available at: www.legifrance.gouv.fr/affichTexte.do;jsessionid=38B29FD9624450681CEB199A098A92BF.tplgfr43s_2?cidTexte=JORFTEXT000041776922&dateTexte=20200402

³⁹ France, Prime Minister, “Statement by Mr. Édouard Philippe, Prime Minister at the end of the Council of Ministers”, 15 April 2020, available at:

www.gouvernement.fr/sites/default/files/document/document/2020/04/declaration_de_m._edouard_philippe_premier_ministre_a_l_issu_e_du_conseil_des_ministres_au_palais_de_leysee_-_15.04.2020.pdf

⁴⁰ France, Minister of Solidarity and Health, “Covid19: The Government announces an exceptional bonus for all hospital professionals”, 15 April 2020, available at: <https://solidarites-sante.gouv.fr/actualites/presse/communiqués-de-presse/article/prime-soignants>

⁴¹ France, Ministry of Solidarity and Health, “Covid19: The Government announces an exceptional bonus for all hospital professionals”, 15 April 2020, available at: <https://solidarites-sante.gouv.fr/actualites/presse/communiqués-de-presse/article/prime-soignants>

⁴² France, Government, “Coronavirus COVID-19: Business support measures”, 16 April 2020, available at:

has been provided for small businesses by a decree published on 30 March. Particularly, a lump sum of €1,500 can be attributed mainly to those affected by the economic and financial consequences of the Covid-19 virus.⁴³

- People in precarious work/situation

Furthermore, a decree adopted on 14 April introduces urgent measures to deal with the economic and social consequences of the epidemic for ‘precarious workers’, including intermittent performing artists and technicians and short-term contract workers. It defines *inter alia* the rules for temporary extension of the allowance for job seekers. It also indicates that the period of confinement will not be considered in the calculation of the reference period entitling intermittent workers to unemployment insurance. The purpose is to prevent these people, who cannot work during the current crisis, from being penalised.⁴⁴

In his address on 13 April, the President of the Republic also announced the payment of an “exceptional aid” for the poorest households.⁴⁵ Families who are recipients of the active solidarity income (RSA) or the specific solidarity allowance (ASS) will receive a one-off payment of €150 plus €100 per dependent child. Other low-income households will be allocated €100 per child. An estimated 4 million families will benefit from this aid, which will be paid automatically from 15 May in one lump sum.⁴⁶ Civil society organisations have welcomed the measure but found it too limited in a release dated 17 April. They regret, notably, the exclusion of many people in precarious situations (such as young persons who do not receive the active solidarity income).⁴⁷

1.2.4 Access to justice

- Measures

The courts in France are closed since 16 March except for the processing of “essential litigation”. The Ministry of Justice specifies that the criminal and civil emergency services of the courts, the detainment in decent conditions of detainees or the reception of minors entrusted to the judicial protection of youth, are maintained in a framework which prevents the spread of the virus.⁴⁸

Numerous ordinance were issued to adapt the French justice system to the context of the pandemic.⁴⁹ The main objectives pursued are the following: to adjust or suspend deadlines in order to respond to

www.gouvernement.fr/sites/default/files/contenu/piece-jointe/2020/03/brochure_fiches_pratiques_sur_les_mesures_de_soutien.pdf

⁴³ France, Decree n° 2020-371, 30 March 2020, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041768315&categorieLien=id

⁴⁴ France, Decree n° 2020-425, 14 April 2020, available at:

www.legifrance.gouv.fr/eli/decret/2020/4/14/MTRD2008788D/jo/texte

⁴⁵ France, Presidency of the Republic, “Address to the Nation”, 13 April 2020, available at : www.elysee.fr/emmanuel-macron/2020/04/13/adresse-aux-francais-13-avril-2020

⁴⁶ France, Ministry of Solidarity and Health, “Covid-19: the Government announces the payment of an exceptional solidarity aid to the poorest households”, 15 April 2020, available at: <https://solidarites-sante.gouv.fr/actualites/presse/communiqués-de-presse/article/covid-19-le-gouvernement-annonce-le-versement-d-une-aide-exceptionnelle-de>

⁴⁷ France, The Collective Alert, “Exceptional help for people in a precarious situation: welcomed but far too limited”, 17 April 2020, available at: www.ldh-france.org/aide-exceptionnelle-en-faveur-des-personnes-en-situation-de-precarite-un-geste-bienvenu-mais-trop-limite/?fbclid=IwAR1jWF2ETn3Ws7-ubQAIhNEMx9xbIvtNyIJ92bj263S0cEbeYeEr0uWyUKA

⁴⁸ France, Ministry of Justice, “Information Coronavirus COVID-19”, 8 April 2020, available at: www.justice.fr/info-coronavirus

⁴⁹ France, Ordinance n° 2020-427 of 15 April 2020; Ordinance n° 2020-405 of 8 April 2020; Ordinance n° 2020-304 of 25 March 2020; Ordinance n° 2020-305 of 25 March 2020; Ordinance n° 2020-306 of 25 March 2020; Ordinance n° 2020-341 of 27 March 2020, available at: www.justice.gouv.fr/le-ministere-de-la-justice-10017/covid-19-ordonnances-justice-33031.html

the lockdown imperatives; to avoid contact and the spread of the virus by using videoconferencing; to adapt the procedures for the execution of sentences.⁵⁰

To this end, several measures have been put in place. As such, the limitation periods for public action and the execution of sentences are suspended. The conditions for referral to the courts are relaxed by authorising dematerialised hearings and by expanding single-judge hearings. Furthermore, the maximum periods for placement in pre-trial detention are extended. The rules of criminal procedure applicable to persons in police custody, provisionally detained or under house arrest, are relaxed.⁵¹

- Concerns

The right of access to justice has been the subject of concern across the legal sector. Institutions, human rights groups and unions have criticised certain measures. In its opinion of 28 April, the National Consultative Commission for Human Rights is concerned about the new legal measures that put in place “justice in degraded mode” and calls for the “restoration of normal functioning of the justice system”.⁵² More specifically, the independent body considers that the industrial tribunal procedures, as well as some of the emergency procedures in commercial matters (e.g. over-indebtedness of individuals, credit consumption) should be considered as essential and should continue their activities. The institution also finds the automatic extension of the pre-trial detention of suspects whose cases have been postponed “unacceptable” given that this measure goes into force “without adversarial debate or individual examination of the situation by a judge”.⁵³ Furthermore, a magistrates’ union points out in a press release the dissonant practices between jurisdictions regarding this measure.⁵⁴ Although the legality of these provisions has been questioned by the French Lawyers Union, the Council of State ruled in a decision of 3 April the “absence of any serious and clearly unlawful breach of any fundamental freedom”.⁵⁵ France’s highest administrative court indicates that the «ordonnance» in question extended these periods, without making any other modification to the rules of the Code of Criminal Procedure which govern the placement and maintenance of pre-trial detention. It also notes that this text specified that these extensions apply only once during each procedure and that they are without prejudice to the possibility for the competent court to order at any time, *ex officio*, on request of the public prosecutor or on request of the interested party, the withdrawal of the measure.

The administrative procedures concerning foreigners have also been challenged in the courts. Specifically, the Lawyers’ Union and NGOs argued that the maintaining of the 48-hour deadline to appeal return decisions (“obligations to leave French territory”/OQTFs) when the person is subject to a detention measure as well as refusals to enter the country, undermines the effectiveness of their right

⁵⁰ France, Government, “Presentation of the first 25 ordinance taken under emergency law to deal with the COVID-19 epidemic”, 25 March 2020, available at:

www.justice.gouv.fr/art_pix/DP_presentation_des_25_premieres_ordonnances_25_03_2020.pdf

⁵¹ France, Ordinance n° 2020-303 of 25 March 2020, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041755529&dateTexte&categorieLien=id&fbclid=IwAR0S_nEoBq2e0CGMeNrOylsK75XtxVjwce_GVEulRmpw346lOG-wU5rNDA

⁵² France, National Consultative Commission on Human Rights, “Another emergency: the restoration of normal functioning of the justice system”, 28 April 2020, p. 4, available at: www.cncdh.fr/sites/default/files/avis_2020_-_4_-_200424_avis_urgence_fonctionnement_justice.pdf

⁵³ France, National Consultative Commission on Human Rights, “Another emergency: the restoration of normal functioning of the justice system”, 28 April 2020, p. 7, available at: www.cncdh.fr/sites/default/files/avis_2020_-_4_-_200424_avis_urgence_fonctionnement_justice.pdf

⁵⁴ France, Magistrates’ union, “Automatic extension of provisional detentions”, 8 April 2020, available at: www.syndicat-magistrature.org/IMG/pdf/cp_dp_art_16.pdf

⁵⁵ France, Council of State, Decision n° 439894, 3 April 2020, available at: www.legifrance.gouv.fr/affichJuriAdmin.do?jsessionid=46BD559911F200DDD92F30302486B74E.tplgfr41s_1?oldAction=rechExpJuriAdmin&idTexte=CETATEXT000041808380&fastReqId=1139299941&fastPos=142

to appeal. By a decision of 10 April, the Council of State rejected the request for a suspension of the relative ordinance.⁵⁶

1.2.5 Freedom of movement

- Extension of border controls

Targeted border controls are carried out with all neighbouring countries, according to the Ministry of the Interior.⁵⁷ On 2 April, France informed the European Commission of its decision to extend border controls until 30 October 2020. The “terrorist threat”, which justified the reintroduction of these controls since 13 November 2015, and the coronavirus pandemic are the main reasons for this measure.⁵⁸

- Authorised trips

People who travel to France from another Member state or a third country have to fill out a form. While all French citizens may enter the French territory, third-country nationals or citizens of the European Union have to declare the reason for their journey. For example, those who can enter the territory are those who have their permanent residence in France or in another country of the European Union, health professionals, freight carriers, including seafarers, and frontier workers at internal land borders.⁵⁹ Frontier workers working in a job in France which cannot be carried out remotely can go to their place of work. For each border crossing, they must be in possession of a travel certificate as well as a certificate from their employer.⁶⁰

- Situation of asylum seekers

There are no specific measures for the movement of asylum seekers. The Director of the Office for the Protection of Refugees and Stateless Persons (OFPRA) explained to the press that the number of arrivals is “much lower” in this time of crisis.⁶¹ ~~According to the NGOs, registrations of asylum applications are nevertheless practically suspended since 23 March in the Île-de-France region.~~⁶² On the 17th of March 2020, the national authorities decided to limit the registration of asylum applications to cases related to a particular emergency or reflecting a specific vulnerability. However at the same time, several important measures have been taken to allow all migrants, without consideration of their administrative situation, to benefit from accommodation and vouchers. On 21 April, the Administrative Court of Paris concluded “a serious and manifestly illegal infringement of the right to asylum” and enjoined the state to restore the system for recording requests in the Île-de-France region.⁶³ The Council of State confirmed

⁵⁶ France, Council of State, Decision n° 439903, 10 April 2020, available at:

www.legifrance.gouv.fr/affichJuriAdmin.do;jsessionid=7D1328A98453F07338427CE1EA3C32B4.tplgfr42s_1?oldAction=rechJuriAdmin&idTexte=CETATEXT000041807013&fastReqId=1937215983&fastPos=24

⁵⁷ France, Ministry of Interior, “Reinforcement of controls at the franco-german border”, 15 March 2020, available at:

www.interieur.gouv.fr/Actualites/Communiqués/Renforcement-des-contrôles-a-la-frontiere-franco-allemande

⁵⁸ Schengen Visa Info, “Temporary Internal Border Controls Reintroduced Across Schengen”, 8 April 2020, available at: www.schengenvisainfo.com/news/temporary-internal-border-controls-reintroduced-across-schengen/

⁵⁹ France, Government, “Information on Coronavirus”, 26 April 2020, available at: www.gouvernement.fr/info-coronavirus

⁶⁰ France, Ministry of Labour and Ministry of State for European Affairs, “Joint press release: Situation of the frontier workers”, 19 March 2020, available at: www.diplomatie.gouv.fr/fr/le-ministere-et-son-reseau/actualites-du-ministere/informations-coronavirus-covid-19/coronavirus-declarations-et-communiqués/article/communiqué-conjoint-covid-19-situation-des-travailleurs-frontaliers-19-03-20

⁶¹ France, Le Parisien, “Stopping processing asylum requests in Ile-de-France: the associations go to the administrative court”, 15 April 2020, available at: www.leparisien.fr/societe/demande-d-asile-a-l-arret-en-ile-de-france-les-associations-saisissent-le-tribunal-administratif-15-04-2020-8299986.php

⁶² France, Gisti, “Access to asylum requests has stopped in Ile-de-France”, 17 April 2020, available at: www.gisti.org/spip.php?article6363

⁶³ France, Administrative Court of Paris (*Tribunal administratif de Paris*), Decision n° 2006359/9, 21 April 2020, available at: <http://paris.tribunal-administratif.fr/content/download/170080/1698296/version/1/file/2006359.pdf>

this solution by its decision of 30 April.⁶⁴ Since May 11, there has been a gradual resumption of registration everywhere in France.

1.3 Impact of measures on particular groups

1.3.1 Homeless people

The health crisis has a serious impact on several fundamental rights of homeless people. Those who live on the streets, or in other precarious living conditions (informal camps and slums), are unable to self-isolate and consequently are at a higher risk of catching the virus. In addition, many of them have difficulties with access to food, hygiene and healthcare, as stated to the press by the NGO 'Médecins du Monde'.⁶⁵

- Housing

According to France's Ministry of Territorial Cohesion and Relations with Local Authorities, public authorities continue to take measures to provide homeless people with adequate emergency housing. In total, the state released 65 million euros in funding. More precisely, 177,800 accommodation places were open for this purpose on 25 April. More than 10,800 additional hotel places can be opened throughout France since the start of the health crisis, while the 'winter protection break' is extended until the 31st of May.⁶⁶

The National Consultative Commission on Human Rights reported on 21 April that 4 million people live in indecent housing or are homeless. The independent institution underlined that their situation is particularly critical and pointed out that social inequalities are exacerbated and aggravate the difficulties related to poor housing.⁶⁷

- Access to food and hygiene

A special service voucher system of distribution enables homeless people to buy food and hygiene products during the health crisis. This system, launched on 1st April and targeting nearly 65,000 people, was renewed on 19 April by the Housing Minister who decided to double the number of service vouchers destined for the most pressured regions. The vouchers, of €7 per day, are distributed by associations to homeless people and households.⁶⁸ The overall budget for this specific measure is more than 15 million euros.⁶⁹

In contrast, ninety-two NGOs and collectives warn that people living on the street, in squats or slums do not fully benefit from the Covid-19 prevention measures put in place by the Government and local

⁶⁴ France, Council of State, Decision n° 440250, 440253, 30 April 2020, available at: www.conseil-etat.fr/ressources/decisions-contentieuses/dernieres-decisions-importantes/conseil-d-etat-30-avril-enregistrement-des-demandes-d-asile-en-ile-de-france

⁶⁵ France, Radio France Internationale, "France's Covid-19 lockdown poses conundrum for homeless and migrants", 22 March 2020, available at: www.rfi.fr/en/france/20200322-france-covid-19-lockdown-poses-conundrum-for-homeless-and-migrants-where-do-they-go

⁶⁶ France, Ministry of Territorial Cohesion and Relations with Local Authorities, "Covid-19: emergency accommodation", 23 April 2020, available at: www.cohesion-territoires.gouv.fr/actualisation-plus-de-10800-places-dhotel-supplementaires-desormais-mobilisees-pour-les-sans-abri

⁶⁷ France, National Consultative Commission on Human Rights, "State of health emergency: a dramatic situation for poorly housed people", 21 April 2020, available at: www.cncdh.fr/sites/default/files/obscncdh.lettre3_0.pdf

⁶⁸ France, Ministry of Territorial Cohesion and Relations with Local Authorities, "Access of precarious people to food and hygiene products", 20 April 2020, available at: www.cohesion-territoires.gouv.fr/acces-des-personnes-precaires-aux-produits-dalimentation-et-dhygiene-julien-denormandie-lance-une

⁶⁹ France, Ministry of Territorial Cohesion and Relations with Local Authorities, "Covid 19: Government mobilises more than 50 million euros for food aid and the essential needs of the most vulnerable people", 23 April 2020, available at: www.cohesion-territoires.gouv.fr/covid-19-le-gouvernement-mobilise-plus-de-50-millions-deuros-pour-laide-alimentaire-et-les-besoins

authorities. They also mention the increased difficulty of working in the field, due to the lack of protective equipment. On 9 April they joined forces to refer to seven United Nations Rapporteurs mainly in charge of extreme poverty issues, health, access to decent housing, food, clean water and sanitation.⁷⁰

- Tests for Covid-19 and face-masks

A lack of masks and tests for people who are homeless was denounced by the NGOs 'Fédération nationale droit au logement', 'Ligue des droits de l'homme' and others before justice. They recalled in particular that measures are required to protect staff and volunteers working with these persons and stressed that those accommodated in collective structures, or working there, should be tested for Covid-19 systematically. On 2 April, the Council of State rejected their request for tests on the grounds that these are carried out according to adjusted priority criteria. It also refused to order the state to distribute masks mainly on the grounds that a specific strategy has been put in place at the national level.⁷¹

- Punitive enforcement measures

At the end of March, several media outlets reported incidents in Paris, and other cities. Specifically, police are accused of issuing fines to homeless people for failing to comply with the coronavirus lockdown.⁷² In a circular of 31 March, the interministerial crisis unit (CIC) instructed the police who observe the presence of homeless people on the public highway not to issue any fine, the obligation of confinement cannot be fulfilled in this case.⁷³

1.3.2 Older people

The coronavirus pandemic raises challenges for older people in residential settings and those who live alone or receive care at home.

- Visits and protection measures

A first issue concerns visits and protection measures in Hospital Establishments for Dependent Senior Citizens (EHPAD), and in Long-Term Care Units (USLD). On 11 March 2020, all visits were suspended. At the end of March, the Government strongly recommended the directors of these establishments reinforce the protection measures (e.g. ban group activities or decide on individual confinement in the room).⁷⁴

In this matter, the Government sought the opinion of the National Consultative Ethics Committee (CCNE), an independent advisory council on bioethics. In its 30 March response, the body recalls several fundamental principles and highlights that any binding measure restricting freedoms must necessarily be limited in time, proportionate, and appropriate. It also suggests the maintaining of a physical space and organized reception for families and caregivers. In all cases, it stresses that tightened lockdown

⁷⁰ France, NGOs joint press release, "Covid-19: people living on the street, in squats or slums", 9 April 2020, available at: www.ldh-france.org/covid-19-personnes-vivant-a-la-rue-dans-des-squats-ou-des-bidonvilles/

⁷¹ France, Council of State, Decision n° 439763, 2 April 2020, available at: www.conseil-etat.fr/ressources/decisions-contentieuses/dernieres-decisions-importantes/conseil-d-etat-2-avril-2020-droit-au-logement

⁷² France, France 24, "French police accused of fining homeless people amid virus lockdown", 21 March 2020, available at: www.france24.com/en/20200321-french-police-accused-of-fining-homeless-people-amid-virus-lockdown

⁷³ France, Council of State, Decision n° 439763, 2 April 2020, available at: www.conseil-etat.fr/ressources/decisions-contentieuses/dernieres-decisions-importantes/conseil-d-etat-2-avril-2020-droit-au-logement

⁷⁴ France, Government, "Guidelines for the implementation of lockdown measures in medico-social establishments", 28 March 2020, available at: https://solidarites-sante.gouv.fr/IMG/pdf/covid-19_stade3_lignes_directrices_confinement_esms_paph_28032020.pdf

measures “cannot be decided in a general and non-contextualised manner, as the situation differs between institutions”.⁷⁵

On 19 April, the Health Minister announced that the residents of these establishments could again receive visits from their relatives. However, he indicated that the visiting right will be strictly supervised.⁷⁶

- Access to healthcare

A second point is related to their access to healthcare. In a decision of 15 April 2020, the Council of State ruled on the issue of the access of persons with a Covid-19 infection to care provided by health facilities. To this end, it considered recommendations from several specialised institutions that advocate the admission of these patients to a health facility when their state justifies it and underline the necessary respect for the principle of non-discrimination, which implies that decisions cannot rest only upon an age criterion. In conclusion, it judged that there is no serious and illegal breach of any fundamental freedom.⁷⁷

- Protection material

A third question regards the protection material available for working people in contact with the elderly. Although health professionals and home help services are among those who have access to face-masks,⁷⁸ worries have been expressed to the press by some health workers in relation to the consequences that the pandemic may have on older people. Thus, the president of the Association of Directors for the Elderly (AD-PA) bemoans the “lack of tests”,⁷⁹ while home helpers deplore their working conditions, often without masks, gloves or hand gel.⁸⁰

- Help at home

Finally, the Government launched on 22 March 2020 an online service to identify volunteers wanting to help the elderly, the isolated or the destitute. The support offered targets “four vital areas”: food and emergency aid; special childcare; contact with isolated vulnerable people; and local solidarity.⁸¹ For its part, the National Gendarmerie led the operation # ReplyPresent which consisted of carrying out, at the territorial level, various actions to reassure the population and maintain confidence through actions of solidarity. Thus, the gendarmes provided human and logistical support for elected officials, the most vulnerable populations and their associations, hospitals, pharmacies and health structures, schools welcoming the children of nursing staff, traders whose stores were allowed to remain open, or

⁷⁵ France, National Consultative Ethics Committee, “Response to the request from the Ministry of Health and Solidarity on the strengthening of protection measures in EHPADs and USLDs”, 30 March 2020, available at: https://solidarites-sante.gouv.fr/IMG/pdf/200330-ccne-avis_reforcement_des_mesures_de_protection_en_ehpad_et_usld.pdf

⁷⁶ France, Le Monde, “Coronavirus: in nursing homes or at home, the confinement of the elderly eased”, 20 April 2020, available at: www.lemonde.fr/societe/article/2020/04/20/coronavirus-dans-les-ehpad-ou-a-domicile-le-confinement-des-personnes-agees-allege_6037161_3224.html

⁷⁷ France, Council of State, Decision n° 439910, 15 April 2020, available at: www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000041807017&fastReqId=2029136998&fastPos=1

⁷⁸ France, Ministry of Solidarity and Health, “Covid-19: Strategy for the management and use of protective masks”, 13 April 2020, available at: <https://solidarites-sante.gouv.fr/actualites/presse/communiqués-de-presse/article/covid-19-strategie-de-gestion-et-d-utilisation-des-masques-de-protection>

⁷⁹ France, France tv Info, “There are people who will die of something other than coronavirus”, 13 April 2020, available at: www.francetvinfo.fr/sante/maladie/coronavirus/il-y-a-des-gens-qui-vont-mourir-d-autres-chose-que-du-coronavirus-les-ehpad-appellent-a-des-rencontres-entre-les-residents-et-leurs-familles_3913109.html

⁸⁰ France, Ouest France, “Home helps: ‘often without masks, always on the front line’”, 27 March 2020, available at: www.ouest-france.fr/leditiondusoir/data/87025/reader/reader.html#!preferred/1/package/87025/pub/123217/page/7

⁸¹ France, Government, “In the face of the Covid-19 epidemic the Government calls for the mobilization of a general solidarity”, 22 March 2020, available at: <https://covid19.reserve-civique.gouv.fr>

industrialists from the territories to help them in particular to preserve the safety of their sites and the integrity of their mobilized employees.⁸²

1.3.3 Detainees

The health crisis is also raising concerns particularly in prisons and detention centres, where the risk of infection with Covid-19 is very high.

- Reduction of detainees

As a consequence of the Minister of Justice's instructions, French prisons counted on April nearly 11,500 fewer detainees than since the beginning of March. The Minister said that average prison occupancy rate fell below 100% with 61,100 inmates on 23 April for 61,109 places. She also noted that this decrease is mainly explained by the reduction in criminal activity in the context of confinement and by the release of 5,300 people.⁸³ This latter measure benefits persons at the end of their sentences with the exception of those convicted of acts of terrorism, and accused of domestic or family violence.⁸⁴

- Detention conditions in prisons

Several rulings regarding measures adopted for prison facilities in response to the Covid-19 crisis were given by the Council of State. In particular, the French section of the International Prison Observatory (OIP) and other associations and unions criticised the inadequacy of public action to protect detainees. By its decision of 8 April, the Council of State judged that "in view of the measures taken to limit contact with the outside world and to reduce movement inside the establishments, the instructions and measures taken to ensure compliance with 'barrier gestures', the protocol relating to the reporting and detection of symptomatic cases", the absence of distribution of protective masks to all detained persons does not violate any fundamental liberty.⁸⁵ In another case, the National prison union 'Force ouvrière – Personnels de surveillance' demanded measures to ensure adequate protection of prison staff. The Council of State rejected the request, noting *inter alia* that a ministerial instruction of 31 March imposed the wearing of a surgical mask on all staff in both direct and prolonged contact with detained persons and that a stock of 260,000 masks has been allocated to the penitentiary administration.⁸⁶

According to some NGOs, such as the International Prison Observatory (OIP), the measures taken are not sufficient. "There are two, three and sometimes four inmates in one nine-square-metre cell", said a spokesperson of this association to the press. "These conditions make lockdown and social distancing impossible" and "prisoners don't have easy access to soap and water, and hydroalcoholic disinfectant gel is banned", he added.⁸⁷ The same source also mentions complaints of lawyers about the governmental ordinance that alter the legal procedures. They principally deplore the practical

⁸² France, National Gendarmerie, "Responding during the crisis", 24 April 2020, available at: <https://www.gendinfo.fr/actualites/2020/repondre-present-pendant-la-crise>

⁸³ France, Le Monde, "Average prison occupancy rate is less than 100%", 29 April 2020, available at: www.lemonde.fr/police-justice/article/2020/04/29/nicole-belloubet-le-taux-d-occupation-moyen-des-prisons-est-inferieur-a-100_6038109_1653578.html

⁸⁴ France, Government, "Presentation of the first 25 ordinance taken under emergency law to deal with the COVID-19 epidemic", 25 March 2020, available at: www.justice.gouv.fr/art_pix/DP_presentation_des_25_premieres_ordonnances_25_03_2020.pdf

⁸⁵ France, Council of State, Decision n° 439827, 8 April 2020, available at: www.legifrance.gouv.fr/affichJuriAdmin.do?idTexte=CETATEXT000041793749

⁸⁶ France, Council of State, Decision n° 439821, 8 April 2020, available at: www.conseil-etat.fr/ressources/decisions-contentieuses/dernieres-decisions-importantes/conseil-d-etat-8-avril-2020-personnels-penitentiaires

⁸⁷ France, France 24, "Coronavirus: France extends detention and suspends trials, raising rights concerns", 13 April 2020, available at: www.france24.com/en/20200413-coronavirus-france-extends-detentions-and-suspends-trials-raising-rights-concerns

difficulties accessing their clients, such as lack of equipment for video calls in some police stations or courts.⁸⁸

- Detention conditions in administrative detention centres (CRA)

The situation specifically regarding administrative detention centres, where migrants in an irregular situation are detained, remains a sensitive issue. On 27 March, the Council of State considered that circumstances at the time did not constitute a sufficiently serious infringement on the rights to life and health that could justify the temporary closure of all the CRAs.⁸⁹ Two weeks later though, on 15 April, the Administrative Court of Paris recognised the failings of the authorities and enjoined them to no longer admit entrants to the administrative detention center of Paris Vincennes, for the serving of detention measures.⁹⁰ Nevertheless, the Ministry of the Interior appealed to the Council of State against the Administrative Court order of 15 April. By order of 7 May, the Council of State overruled the judgment of the Administrative Court. The judge first noted that rearrangements had been made at the Vincennes CRA following the decision of the Administrative Court. The judge then noted that while no foreigner contaminated by covid-19 can be deported as long as he remains sick and contagious, the prescriptions for deportation, once cured, are not non-existent. Therefore the judge considered, contrary to what the applicants maintained, that the retention of foreigners tested positive was not without justification.⁹¹

In the same vein, the Public Defender of Rights published a new decision n° 2020-96 on 18 April. This institution noted that the health situation has continued to deteriorate and there is, in all French CRAs, an undeniable risk of contamination, for both detainees and staff. For this reason, it reiterates its recommendations for the closure of all CRAs and the release of all foreigners currently detained.⁹²

This position echoes the requests in March from multiple NGOs, members of the Observatory of Foreigners' Detention (Association of Lawyers for the Defense of the Rights of Foreigners, Ligue des droits de l'homme, La Cimade, The National Association for Border Assistance for Foreigners, etc.),⁹³ and national public authorities, including the Comptroller General of places of deprivation of liberty,⁹⁴ for closure of all the administrative detention centres, along with the recommendation of the Commissioner for Human Rights to release immigration detainees during the Covid-19 crisis.⁹⁵

⁸⁸ France, France 24, “Coronavirus: France extends detention and suspends trials, raising rights concerns”, 13 April 2020, available at: www.france24.com/en/20200413-coronavirus-france-extends-detentions-and-suspends-trials-raising-rights-concerns

⁸⁹ France, Council of State, Decision n° 439720, 27 March 2020, available at: www.conseil-etat.fr/ressources/decisions-contentieuses/dernieres-decisions-importantes/conseil-d-etat-27-mars-2020-demande-de-fermeture-temporaire-des-centres-de-retention-administrative-cra

⁹⁰ France, Administrative Court of Paris, Decision n° 2006287/9- 2006288/9- 2006289/9/9, 15 April 2020, available at: <http://paris.tribunal-administratif.fr/content/download/169991/1697545/version/1/file/2006287-2006288-2006289.pdf>

⁹¹ France, Council of State, Decision n° 440255, 7 May 2020, available at: <https://www.conseil-etat.fr/ressources/decisions-contentieuses/dernieres-decisions-importantes/conseil-d-etat-7-mai-2020-etrangers-atteints-du-covid-19-au-cra-de-vincennes>

⁹² France, Public Defender of Rights, Decision n° 2020-96, 18 April 2020, available at: www.defenseurdesdroits.fr/fr/communiquede-presse/2020/04/covid-19-le-defenseur-des-droits-recommande-a-nouveau-la-fermeture

⁹³ France, Observatory of foreigners' detention, “In the face of the health crisis, the administrative confinement of foreigners must immediately stop”, 18 March 2020, available at: <http://observatoireenfermement.blogspot.com>

⁹⁴ France, Comptroller General of places of deprivation of liberty, “Health conditions of prisons and administrative detention centers”, 17 March 2020, available at: www.cgpl.fr/2020/situation-sanitaire-des-prisons-et-centres-de-retention-administrative-le-cgpl-demande-la-prise-de-mesures-pour-la-protection-des-personnes-privees-de-liberte/

⁹⁵ France, Commissioner for Human Rights, “Commissioner calls for release of immigration detainees while Covid-19 crisis continues”, 26 March 2020, available at: www.coe.int/en/web/commissioner/-/commissioner-calls-for-release-of-immigration-detainees-while-covid-19-crisis-continues

2 User data - privacy and data protection

2.1 Arrangements between public authorities and other actors to allow collection, sharing and processing of user data

- Digital apps for tracing contact

The French Government foresees the use of ‘StopCovid’, a mobile application that aims to track citizens through their smartphones as part of efforts to stem the coronavirus spread, which is currently under development. More precisely, according to the National Commission for Data Protection (an independent French administrative regulatory body whose mission is to ensure that data privacy law is applied to the collection, storage, and use of personal data), this application would inform people who have been in contact with someone infected with the Covid-19 and who uses the same application. This tool would be based on Bluetooth to assess the proximity between two smartphones, and not on the use of location technology. It would also be voluntary and its implementation methods would aim to minimise any direct or indirect identification of the people who use it.⁹⁶ In his speech on 28 April at the National Assembly, the Prime Minister stated that he has received numerous questions about this type of instrument and stressed that “these questions must be debated (...). For the moment, given the uncertainties about this application, it would be difficult for me to tell you if it works, and how it will work precisely”.⁹⁷

The Government also announced that private companies (Capgemini, Dassault Systèmes, Lunabee Studio, Orange, Withings) and public institutions (French National Public Health Agency, National Information Systems Security Agency, National Institute for Research in Computer Science and Automation) would be part of the ‘StopCovid’ team intended to set up this mobile application.⁹⁸

Private companies have already developed digital apps for contact tracing. The French telecom operator Orange with five other French companies (Dassault, Sopra Steria, Capgemini, SIA Partners, Accenture) developed a contact tracing application called ‘STOPC19’ which uses Bluetooth. According to the press, the region of Ile-de-France has accepted to experiment with this app.⁹⁹ An international application named ‘Contact Tracer’ (by Daw Software LLC) analyses an individual’s interaction with people during the day and warns if they have been in contact with someone complaining about their health.¹⁰⁰

- Sharing and processing data for research purposes

A cooperation between Orange and the National Institute of Health and Medical Research (INSERM), a public scientific and technological institute which operates under the joint authority of the Ministries of Health and Research, was established at the end of March in light of the Coronavirus pandemic. The researchers can use anonymous and aggregated data from the telephone operator for “research

⁹⁶ France, Deliberation n° 2020-046 of 24 April 2020 giving an opinion on a mobile application project called ‘StopCovid’, available at:

www.cnil.fr/sites/default/files/atoms/files/deliberation_du_24_avril_2020_portant_avis_sur_un_projet_dapplication_mobile_st_opcovid.pdf

⁹⁷ France, Government, “Presentation of the national deconfinement strategy”, 28 April 2020, available at: www.gouvernement.fr/partage/11518-discours-de-m-edouard-philippe-premier-ministre-presentation-de-la-strategie-nationale-de

⁹⁸ France, Orange, “The StopCovid project-team and the ecosystem of contributors are working together to develop a mobile contact tracing app for France”, 26 April 2020, available at: www.orange.com/en/Press-Room/press-releases/press-releases-2020/The-StopCovid-project-team-and-the-ecosystem-of-contributors-are-working-together-to-develop-a-mobile-contact-tracing-app-for-France

⁹⁹ France, La Banque des territoires, “StopCovid: CNIL requests for additional guarantees”, 27 April 2020, available at: www.banquedesterritoires.fr/stopcovid-la-cnil-demande-des-garanties-supplementaires?pk_campaign=Flux%20RSS&pk_kwd=2020-04-27&pk_source=Actualités%20Localtis&pk_medium=RSS

¹⁰⁰ See: <http://play.google.com/store/apps/details?id=com.dawsoftware.contacttracker>

purposes to better understand the spread of the virus and the impact of the lockdown”, as explained to the press by the Chief executive officer of Orange.¹⁰¹

On 6 April, it was reported by the media that Facebook would share anonymized data with research teams. In France, eleven universities will have access to this information, including data on average travel lengths, aggregated geolocations, and ‘social’ maps detailing the links between residents of different regions.¹⁰²

- Internet applications

Some governmental initiatives have started up to help patients with Covid-19 in their home environment. Specifically, one piece of software analyses the coronavirus symptoms,¹⁰³ and another one sends medical surveys to patients every day (used by two hospital groups in Paris).¹⁰⁴

2.2 Legal framework enabling collection, processing, sharing and storage of user data

- Existing legal framework

The primary text of the existing legal framework is Law 78-17 of 6 January 1978, on Data Processing, Data Files and Civil Liberties.¹⁰⁵ It has been amended on several occasions, especially by Law n° 2004-801 of 6 August 2004, Law n° 2018-493 of 20 June 2018 and «Ordonnance» n° 2018-1125 of 12 December 2018¹⁰⁶ which aimed to consolidate and bring French law into accordance with the General Data Protection Regulation (GDPR EU-2016/679), as well as the European Union Directive.¹⁰⁷ According to Article 4 of French law in particular, personal data must be collected and processed fairly, lawfully and in a transparent manner for specified, explicit, and legitimate purposes. They must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed. They should also be accurate and up-to-date. Data must be stored in a form that allows the identification of their subjects for a period no longer than is necessary for the purposes for which they were obtained. They must also be processed to ensure appropriate security.¹⁰⁸

¹⁰¹ France, Le Figaro, “How operators make themselves available for mobile data collection”, 2 April 2020, available at: www.lefigaro.fr/sciences/coronavirus-comment-les-operateurs-se-mettent-a-disposition-pour-le-recueil-des-donnees-mobiles-20200402

¹⁰² France, Le Monde, “Facebook would share anonymized data with research teams”, 6 April 2020, available at: www.lemonde.fr/pixels/article/2020/04/06/coronavirus-facebook-va-partager-des-donnees-anonymisees-avec-des-equipes-de-chercheurs_6035759_4408996.html

¹⁰³ See: <https://maladiecoronavirus.fr>

¹⁰⁴ See: www.service-public.fr/particuliers/actualites/A13927. Diverse private-company and more particular Health initiatives (apps) have also been undertaken to offer digital solutions in response to the COVID-19 (e.g. Exolis (www.exolis.fr/), Ambuliz (<https://covid.ambuliz.com/>)). For more details see:

<https://platform.ehealth-hub.eu/search?clinicalarea=CORONAVIRUS&organisation=eHealthSME&page=1>

¹⁰⁵ France, Law n° 78-17 of 6 January 1978 relating to data processing, files and freedoms, available at:

www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460

¹⁰⁶ France, «Ordonnance» n° 2018-1125 of 12 December 2018, available at:

https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=63DAC5115239761D2809CC5732F5EEF5.tplgfr28s_1?cidTexte=JORFTEXT000037800506&dateTexte=20181213

¹⁰⁷ France, Law n° 2004-801 of 6 August 2004 relating to the protection of individuals with regard to the processing of personal data, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000441676&categorieLien=id

France, Law n° 2018-493 of 20 June 2018 relating to the protection of personal data, available at: www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000037085952&categorieLien=id

¹⁰⁸ France, Le Figaro, “How operators make themselves available for mobile data collection”, 2 April 2020, available at: www.lefigaro.fr/sciences/coronavirus-comment-les-operateurs-se-mettent-a-disposition-pour-le-recueil-des-donnees-mobiles-20200402

Additionally, France has ratified the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, signed in Strasbourg in January 1981.

- Legislation under preparation

New legislation in this area is under preparation. In a press interview on 5 April, France's Interior Minister affirmed the Government's desire to "use all the information available to it to curb the epidemic".¹⁰⁹ This announcement foreshadows the emergence of a legal framework for the use of the 'StopCovid' application. The Prime Minister stated on 28 April that the project will be under discussion in Parliament and will be submitted to a vote when the application "works and before its implementation".¹¹⁰

According to the opinion of the National Commission for Data Protection, the 'public interest mission', under Article 6 of the GDPR and Article 5 of the 1978 Law, is the most appropriate legal basis for the use of a voluntary contact tracing system.¹¹¹

Moreover, a "draft law extending the state of health emergency and supplementing its provisions" is currently being examined by Parliament. Article 6 intends to establish information systems that would be put into place by the Health Minister. Personal health data relating to people affected by this virus or who have been in contact with infected people would be processed and shared, even without their consent. These data would be accessible to a number of stakeholders (the army health service, the territorial professional health communities, social and medico-social establishments, etc.). The main objectives of this provision would be the identification of people infected or at risk of being infected by Covid-19, the epidemiological surveillance at national and local levels and the research into ways of controlling the spread of coronavirus. A decree in Council of State would create these information systems and detail their implementation.¹¹²

- Legislative provisions not adopted

In France, the possibility of amending the current legal framework to oblige French telecommunication operators to share their customers' location data was discussed in the context of debates on the "Emergency Law" of 23 March 2020. More precisely, a provision had been proposed with the aim of "facilitating the procedures imposed on operators in the collection and processing of health and location data". It indicated that "any measure" taken for this purpose would be allowed for a period of six months following the publication of the law.¹¹³ This provision was ultimately not adopted. French authorities have rather opted for the creation of the 'StopCovid' application, which is under development.

¹⁰⁹ France 24, "Critics raise privacy concerns as France considers digital tracking to battle coronavirus", 9 April 2020, available at: www.france24.com/en/20200409-as-france-considers-digital-tracking-to-battle-coronavirus-critics-raise-privacy-concerns

¹¹⁰ France, Government, "Presentation of the national deconfinement strategy", 28 April 2020, available at: www.gouvernement.fr/partage/11518-discours-de-m-edouard-philippe-premier-ministre-presentation-de-la-strategie-nationale-de

¹¹¹ France, Deliberation n° 2020-046 of 24 April 2020 giving an opinion on a mobile application project called 'StopCovid', available at: www.cnil.fr/sites/default/files/atoms/files/deliberation_du_24_avril_2020_portant_avis_sur_un_projet_dapplication_mobile_st_opcovid.pdf

¹¹² France, Senate, "Draft Law extending the state of health emergency and supplementing its provisions", 4 May 2020, available at: www.senat.fr/leg/pjl19-417.html

¹¹³ France, Amendment n° COM-57 to the draft law "Facing the Covid-19 epidemic", 19 March 2020, available at: www.senat.fr/amendements/commissions/2019-2020/376/Amdt_COM-57.html?fbclid=IwAR0qq46sOIW1SlrEFuHpPsZq3Jfk4iyazd1t9ENgcKH04ZMEZJpHR-adCA

2.3 Privacy and data protection concerns and possible solutions

- Digital tracing

The potential use of applications for contact tracing and warning in response to the coronavirus pandemic has been subject to various concerns, guidelines and recommendations.

In its opinion of 24 April, the National Commission for Data Protection has pointed out the safeguards as well as the limits of the ‘StopCovid’ application.¹¹⁴

- Regarding the anonymity of data, the institution states that the user would only be identified by the central server by a pseudonym. It recognises therefore that the protection taken in this respect provides a high degree of guarantees to minimise the risk of re-identification of persons.
- Moreover, it welcomes the voluntary nature of the app and underlines that ‘volunteering’ also means that there should be no negative consequences attached to not downloading the application.
- It emphasises that the application has to be proportionate to the principal purpose.
- The Commission notes additionally that its effectiveness depends on the possibility of a sufficient proportion of the population to access the application. It recommends thereby that the impact of the system on the health strategy be studied on a regular basis, so that its effectiveness over time can be assessed.¹¹⁵

The National Academy of Medicine issued a release in this matter, in which it gives a favourable opinion for the use of smartphone apps to support a gradual lifting of lockdown measures, such as ‘StopCovid’.¹¹⁶ The body observes that “contact tracing can be useful and effective by actively involving the population in the fight against Covid-19, on a voluntary basis”. However, it highlights that this effectiveness presupposes compliance with a certain number of ethical and legal conditions:

- Wide communication must be provided, with precise, factual, understandable and fair information. This application should in no way be imposed, especially by employers.
- Freedom of choice for people to initiate or stop a tracing connection at any time must be respected and the data must be destroyed in the short term.
- The very simple ergonomics of tracing must be adapted to vulnerable persons, seniors, isolated and people in precarious situations.
- An automatic compensation mechanism should be provided in case of a sustained prejudice.¹¹⁷

The National Pilot Committee for Digital Ethics, created by the National Consultative Ethics Committee on the request of the Prime Minister, published on 7 April a first newsletter entitled “Reflections and

¹¹⁴ France, Deliberation n° 2020-046 of 24 April 2020 giving an opinion on a mobile application project called ‘StopCovid’, available at: www.cnil.fr/sites/default/files/atoms/files/deliberation_du_24_avril_2020_portant_avis_sur_un_projet_dapplication_mobile_st_opcovid.pdf

¹¹⁵ France, Deliberation n° 2020-046 of 24 April 2020 giving an opinion on a mobile application project called ‘StopCovid’, available at: www.cnil.fr/sites/default/files/atoms/files/deliberation_du_24_avril_2020_portant_avis_sur_un_projet_dapplication_mobile_st_opcovid.pdf

¹¹⁶ France, National Academy of Medicine, “The use of smartphones to monitor deconfinement for Covid-19 in France”, 22 April 2020, available at: www.academie-medecine.fr/communiquede-lacademie-nationale-de-medecine-lutilisation-de-smartphones-pour-le-suivi-du-deconfinement-du-covid-19-en-france/

¹¹⁷ France, National Academy of Medicine, “The use of smartphones to monitor the deconfinement of the Covid-19 in France”, 22 April 2020, available at: www.academie-medecine.fr/communiquede-lacademie-nationale-de-medecine-lutilisation-de-smartphones-pour-le-suivi-du-deconfinement-du-covid-19-en-france/

alert points on the digital ethical issues in acute health crisis situations”.¹¹⁸ Regarding ethical issues raised by the different types of digital tracking, the Committee especially recommends to:

- Guarantee free and informed consent of persons.
- Assess the necessity and proportionality of the measures at regular intervals.
- Define effectivity criteria and assess them regularly.
- Implement specific and appropriate methods to guarantee their safety and prevent any misuse.
- Enable individuals to report errors and to take legal proceedings for any damage incurred.¹¹⁹
- Guarantee regular, freely accessible, fair and transparent information on the design, coding and use of digital tracking methods.
- Organise continuous democratic checks on digital tracking measures.¹²⁰

Furthermore, a protocol, called ROBust and privacy-presERving proximity Tracing (ROBERT), has been proposed for the Pan European Privacy-Preserving Proximity Tracing (PEPP-PT) initiative.¹²¹ It is the result of a collaborative work between the French National Institute for Research in Computer Science and Automation (INRIA) and the German Fraunhofer AISEC. Its main goal is to “enable the development of contact tracing solutions which respect the European standards in data protection, privacy and security, within a global response to the pandemic”. It recommends, among others, that proximity tracing applications “should provide the most useful functionalities to limit the spread of the virus in a robust, secure, and reliable way” and notes that “another key factor influencing the adoption of these applications is to ensure the protection of the users’ privacy”. It concludes thereby that “these requirements are essential to justify the legitimacy of their deployment and their acceptability by citizens who should be free to install them as well as to uninstall them at any time”.¹²²

In a joint release dated 27 April, the NGO ‘Ligue des droits de l’homme’ and three unions warn about the risks of the ‘StopCovid’ application and call on all Parliamentarians to vote against “this false miracle solution, a real danger for public freedoms and human rights”.¹²³ In parallel, a group of researchers analysed the risks of this app and draw notably attention to the fact that although it is based on pseudonyms, data could be de-anonymised. Thus, they consider that “it is not an anonymous database as defined for example by the GDPR”.¹²⁴

- Use of search engines and platforms

In its newsletter of 7 April, the National Pilot Committee for Digital Ethics explains that search engines and digital platforms play a key role in bringing together volunteers and associations that provide solidarity actions, or companies that supply products. The flood of volunteer applicants on platforms

¹¹⁸ France, National Ethics Advisory Committee, “Reflections and warning points on digital ethics issues in situations of acute health crisis”, 7 April 2020, available at: www.ccne-ethique.fr/sites/default/files/publications/bulletin-1-ethique-du-numerique-covid19-2020-04-07.pdf

¹¹⁹ France, National Ethics Advisory Committee, “Reflections and warning points on digital ethics issues in situations of acute health crisis”, 7 April 2020, p. 12, available at: www.ccne-ethique.fr/sites/default/files/publications/bulletin-1-ethique-du-numerique-covid19-2020-04-07.pdf

¹²⁰ France, National Ethics Advisory Committee, “Reflections and warning points on digital ethics issues in situations of acute health crisis”, 7 April 2020, p. 13, available at: www.ccne-ethique.fr/sites/default/files/publications/bulletin-1-ethique-du-numerique-covid19-2020-04-07.pdf

¹²¹ France, ROBERT (ROBust and privacy-presERving proximity Tracing) protocol, 18 April 2020, available at: <https://github.com/ROBERT-proximity-tracing/documents>

¹²² France, ROBERT (ROBust and privacy-presERving proximity Tracing) protocol, 18 April 2020, available at: <https://github.com/ROBERT-proximity-tracing/documents>

¹²³ France, NGO and unions joint press release, “StopCovid application: No to digital tracing”, 28 April 2020, available at: www.ldh-france.org/application-stop-covid-non-au-tracage-numerique/?fbclid=IwAR1eSNywjMHDf47VIIzQi2Ld9qPa-HJ6P7bPtqSFRZ2nDTk32ys8XaJ43_8

¹²⁴ France, “Anonymous tracing, dangerous oxymoron Risk analysis for non-specialists”, 21 April 2020, available at: https://risques-tracage.fr/?fbclid=IwAR06IPeUBITcr-nsF0MDCs1J3zIjf6OopmLbRyoCZ_h67-ePsSyfZMzXuDM

generates personal data that can be exploited later for opportunistic commercial purposes. In consequence, it recommends digital platforms “delete the data collected about volunteers and recipients of support once the crisis is over” and suggests that the government services should “opt for sovereign digital solutions for logistics management”.¹²⁵

- Collection of personal data for scientific research purposes

The National Pilot Committee for Digital Ethics also warns that despite the utility of collection and processing of personal data to ensure effective monitoring of the crisis, and for scientific research purposes, this could create “the risk of disproportionate infringements of fundamental freedoms and of arbitrariness”. This is the reason why the institution finds it essential to “verify and guarantee that the collection and handling of data obey the principles of fairness, minimisation, proportionality and transparency laid down by the Charter of Fundamental Rights of the European Union and the GDPR” and recommends in particular ensuring that “preference is given to those measures that are the least intrusive and most consistent with individual freedoms (local storage, anonymization, controlled access to data, definition of the parties involved in data collection and processing, etc.)”.¹²⁶

- Digital movement permit

Worries have been expressed to the media about the new smartphone version of the permission form to be outdoors during the coronavirus lockdown.¹²⁷ In a press interview on 6 April, the Interior Minister underlined that the digital document can be filled out on the ministry’s website to avoid a risk of data piracy. He also stated that no personal data will be collected.¹²⁸

- Cyber-attacks

The Coronavirus pandemic has unleashed a wave of cyber-attacks. In response, the National Cybersecurity Agency of France (ANSSI) provides help to individuals who have discovered a security breach,¹²⁹ while the website <https://www.cybermalveillance.gouv.fr/> notably gives a reminder of the ‘good practices’ to be adopted, and encourages everyone to ensure their own cybersecurity (e.g. identify the origin of the messages, use strong passwords, etc.).

¹²⁵ France, National Ethics Advisory Committee, “Reflections and warning points on digital ethics issues in situations of acute health crisis”, 7 April 2020, p. 9, available at: www.ccne-ethique.fr/sites/default/files/publications/bulletin-1-ethique-du-numerique-covid19-2020-04-07.pdf

¹²⁶ France, National Ethics Advisory Committee, “Reflections and warning points on digital ethics issues in situations of acute health crisis”, 7 April 2020, p. 12-13, available at: www.ccne-ethique.fr/sites/default/files/publications/bulletin-1-ethique-du-numerique-covid19-2020-04-07.pdf

¹²⁷ France, Ministry of the Interior, “Provision of a digital movement certificate”, 14 April 2020, available at: www.interieur.gouv.fr/fr/Actualites/Communiqués/Mise-a-disposition-d-un-dispositif-numerique-d-attestation-de-deplacement

¹²⁸ France, Radio France international, “France issues digital lockdown permission form amid fears of data harvesting”, 6 April 2020, available at: www.rfi.fr/en/france/20200406-france-issues-digital-covid-19-lockdown-permission-form-amid-fears-of-data-harvesting-coronavirus-civil-liberties

¹²⁹ France, National Information Systems Security Agency, available at: www.ssi.gouv.fr/en-cas-d-incident/vous-souhaitez-declarer-une-faible-de-securite-ou-une-vulnerabilite/