

# **Legal environment and space of civil society organisations in supporting fundamental rights**

**France**

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**Contractor: IFDL**

**Author: Maria Romanova**

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# Five most significant civic space developments in 2020

## 1.1 Freedom of association

Following the beheading of Samuel Paty, a secondary school teacher who had shown his pupils caricatures of Mohammed during a lesson on freedom of expression, carried out by Abdouallakh Abouyezidovitch Anzorov on 16 October 2020 in Paris, the Council of Ministers, on the proposal of the Minister of the Interior, pronounced the disbanding of the group named 'Collectif Cheikh Yassine'.<sup>1</sup> The Cheikh Yassin group (named after the founder of Hamas killed by the Israeli army in 2004) had been created by Abdelhakim Sefrioui who had broadcast a video on Youtube in which he condemned the murdered teacher, describing him as a 'thug'. In the words of government spokesman Gabriel Attal, this group is 'implicated and linked to the attack' and 'for a long time the false face of an anti-republican ideology that spreads hatred.' Emmanuel Macron stressed at the Council of Ministers that 'the evil has been named: It is political Islamism, which methodically sustains the deconstruction of the Republic'. It is a 'security, educational and cultural battle, and a battle that will last'.<sup>2</sup> According to the decree of 21 October 2020 dissolving the 'Cheikh Yassine group', 'the 'Cheikh Yassine group must be regarded as inciting discrimination, hatred or violence against a person or a group of people because of their origin or their membership or non-membership of an ethnic group, a nation, a particular race or religion and as propagating ideas or theories tending towards justifying or encouraging such discrimination, hatred or violence' and 'as engaging, in or from France, in acts with a view to inciting acts of terrorism in France or abroad'.<sup>3</sup>

On 19 October 2020, the Ministry of the Interior ordered the closure for six months of the mosque at Pantin, which had posted on its Facebook page a video condemning Samuel Paty's lesson on the cartoons of Mohammed.<sup>4</sup> This decision

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<sup>1</sup> France, Council of Ministers (*Conseil des ministres*), Minutes (*Compte rendu*), 21 October 2020, available at:

[www.gouvernement.fr/conseil-des-ministres/2020-10-21](http://www.gouvernement.fr/conseil-des-ministres/2020-10-21)

<sup>2</sup> France, Council of Ministers disbands Cheikh Yassin group (*Le conseil des ministres dissout le collectif Cheikh Yassine*), *Le Figaro*, 21 October 2020, available at: [www.lefigaro.fr/politique/le-conseil-des-ministres-dissout-le-collectif-cheikh-yassine-20201021](http://www.lefigaro.fr/politique/le-conseil-des-ministres-dissout-le-collectif-cheikh-yassine-20201021)

<sup>3</sup> France, Decree for disbanding a grouping (*Décret portant la dissolution d'un groupement de fait*), NOR: INTD2028358D, 21 October 2020, available at: [www.legifrance.gouv.fr/jorf/id/JORFTEXT000042452373](http://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042452373)

<sup>4</sup> France, 'Attack at Conflans: Fifteen people in police custody, Darmanin calls for closure of the mosque at Pantin' (*Attentat de Conflans : quinze personnes en garde à vue, Darmanin demande la fermeture de la mosquée de Pantin*), *Le Monde*, 19 October 2020, available at: [www.lemonde.fr/police-justice/article/2020/10/19/darmanin-annonce-vouloir-dissoudre-plusieurs-associations-dont-le-ccif-et-barakacity-qualifiees-d-enemies-de-la-republique\\_6056551\\_1653578.html](http://www.lemonde.fr/police-justice/article/2020/10/19/darmanin-annonce-vouloir-dissoudre-plusieurs-associations-dont-le-ccif-et-barakacity-qualifiees-d-enemies-de-la-republique_6056551_1653578.html)

was upheld by the administrative court of Montreuil on 27 October, following an appeal by the Muslim federation of Pantin.<sup>5</sup>

On 28 October 2020, the Council of Ministers also announced, upon the proposal of the Minister of the Interior, the disbanding of the BarakaCity association<sup>6</sup> for propagating 'ideas advocating radical Islamism', diffusing and inviting 'the dissemination of hateful, discriminatory and violent ideas'.<sup>7</sup>

On 25 November 2020, the Council of State confirmed the disbanding of the BarakaCity association, as well as the closure of the Pantin mosque. In both cases, the Council of State judge rejected the applications for suspension.<sup>8</sup> BarakaCity's lawyers announced their intention to refer the matter to the European Court of Human Rights.<sup>9</sup>

Following the statement by the Minister of the Interior, Gérald Darmanin, on the future disbanding of the Collective against Islamophobia in France (*Collectif contre l'islamophobie en France* - CCIF), which following the murder of Samuel Paty he accused of being an 'Islamist laboratory against the Republic', the CCIF Board of Directors declared a voluntary disbanding on 29 October.<sup>10</sup> The disbanding was also announced on 2 December 2020 by the Committee of Ministers upon the proposal of the Minister of the Interior.<sup>11</sup>

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<sup>5</sup> France, Montreuil Administrative Court (*Tribunal administratif de Montreuil*), Decision No. 2011260, 27 October 2020, available at:

[www.dalloz-actualite.fr/sites/dalloz-actualite.fr/files/resources/2020/10/2011260\\_anonymisee.pdf](http://www.dalloz-actualite.fr/sites/dalloz-actualite.fr/files/resources/2020/10/2011260_anonymisee.pdf)

<sup>6</sup> France, Council of Ministers (*Conseil des ministres*), Minutes (*Compte rendu*), 28 October 2020, available at: [www.gouvernement.fr/conseil-des-ministres/2020-10-28](http://www.gouvernement.fr/conseil-des-ministres/2020-10-28)

<sup>7</sup> France, Decree for disbanding a grouping (*Décret portant la dissolution d'une association*), NOR: INTD2029095D, 28 October 2020, available at:

[www.legifrance.gouv.fr/jorf/id/JORFTEXT000042472236](http://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042472236)

<sup>8</sup> France, Council of State (*Conseil d'Etat*), Order (*Ordonnance*), n°445774, 445984, 25 November 2020, available at: [www.conseil-etat.fr/actualites/actualites/le-juge-des-referes-du-conseil-d-etat-rejette-la-demande-de-suspension-de-la-dissolution-de-l-association-barakacity](http://www.conseil-etat.fr/actualites/actualites/le-juge-des-referes-du-conseil-d-etat-rejette-la-demande-de-suspension-de-la-dissolution-de-l-association-barakacity);

France, Council of State (*Conseil d'Etat*), Order (*Ordonnance*), n°446303, 25 November 2020, available at: [www.conseil-etat.fr/actualites/actualites/le-juge-des-referes-du-conseil-d-etat-rejette-la-demande-de-suspension-de-la-fermeture-de-la-grande-mosquee-de-pantin](http://www.conseil-etat.fr/actualites/actualites/le-juge-des-referes-du-conseil-d-etat-rejette-la-demande-de-suspension-de-la-fermeture-de-la-grande-mosquee-de-pantin)

<sup>9</sup> France, The Council of State confirms the disbanding of BarakaCity and the closure of the mosque at Pantin (*Le Conseil d'Etat confirme la dissolution de BarakaCity et la fermeture de la mosquée de Pantin*), *Le Monde*, 25 November 2020, available at: [www.lemonde.fr/societe/article/2020/11/25/le-conseil-d-etat-confirme-la-dissolution-de-barakacity-et-la-fermeture-de-la-mosquee-de-pantin\\_6061089\\_3224.html](http://www.lemonde.fr/societe/article/2020/11/25/le-conseil-d-etat-confirme-la-dissolution-de-barakacity-et-la-fermeture-de-la-mosquee-de-pantin_6061089_3224.html)

<sup>10</sup> France, The collective against Islamophobia in France takes the lead on the government by announcing its disbanding (*Le Collectif contre l'islamophobie en France prend les devants sur le gouvernement en annonçant sa dissolution*), *Le Monde*, 28 November 2020, available at: [www.lemonde.fr/societe/article/2020/11/27/le-collectif-contre-l-islamophobie-en-france-se-dissout-pour-eviter-sa-dissolution-par-le-gouvernement\\_6061417\\_3224.html](http://www.lemonde.fr/societe/article/2020/11/27/le-collectif-contre-l-islamophobie-en-france-se-dissout-pour-eviter-sa-dissolution-par-le-gouvernement_6061417_3224.html)

<sup>11</sup> France, Council of Ministers (*Conseil des ministres*), Minutes (*Compte rendu*), 2 December 2020, available at: [www.gouvernement.fr/conseil-des-ministres/2020-12-02](http://www.gouvernement.fr/conseil-des-ministres/2020-12-02); France, (*Décret portant la dissolution d'un groupement de fait*), NOR : INTD2033449D, 2 December 2020, available at: [www.legifrance.gouv.fr/jorf/id/JORFTEXT000042602019](http://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042602019)

At the legislative level, the status of associations could be affected as a result of the bill on consolidating the principles of the Republic presented on 9 December 2020 by the Minister of the Interior and the Minister delegated to the Minister of the Interior, responsible for citizenship.<sup>12</sup> This bill was presented as a 'structural element of the government's strategy to tackle separatism and violations of citizenship' and providing 'responses to the loss of identity and the development of radical Islam, an ideology which is hostile to the principles and values on which the Republic is founded'. 'The aim of this law is to enable the Republic to act against those who want to destabilise it in order to strengthen national cohesion. This law seeks to achieve individual emancipation from loss of identity.'<sup>13</sup>

In the opinion of the Public Defender of Rights, the bill, which indirectly targets a very specific section of the population, provides for very broad bans and penalties. She draws attention to 'the risk that certain provisions of the bill, concerning practically all constitutionally and conventionally guaranteed public rights and civil liberties, may weaken them, by weakening the republican principles themselves instead of consolidating and promoting them'.<sup>14</sup>

In the area of associations, the bill:

- aims to update the system of organisation of religious denominations resulting from the law of 9 December 1905. Under the current system, religious associations are formed freely. The bill provides that 'in order to benefit from the legislative or regulatory provisions specific to the category of religious associations, any association formed in accordance with the provisions [of the law of 9 December 1905] must first have its religious status certified by the government representative in the Department'.

The Council of State notes that this approval procedure is similar to an authorisation system and proposes to replace this system with a declaration procedure, making it possible to demonstrate religious status and benefit from the related tax advantages.<sup>15</sup>

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<sup>12</sup> France, Minister of the Interior (*Ministère de l'intérieur*), Bill on consolidating the principles of the Republic (*Projet de loi confortant le respect des principes de la République*), available at:

[www.assemblee-nationale.fr/dyn/15/textes/l15b3649\\_projet-loi](http://www.assemblee-nationale.fr/dyn/15/textes/l15b3649_projet-loi)

<sup>13</sup> France, Council of Ministers (*Conseil des ministres*), Minutes (*Compte rendu*), 9 October 2020, available at:

[www.gouvernement.fr/conseil-des-ministres/2020-12-09](http://www.gouvernement.fr/conseil-des-ministres/2020-12-09)

<sup>14</sup> France, Public Defender of Rights (*Défenseure des droits*), Opinion 21-01 (*Avis 21-01*), 12 January 2021, available at:

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

<sup>15</sup> France, Council of State (*Conseil d'Etat*), Opinion on a bill to consolidate respect for the principles of the Republic by everyone (*Avis sur un projet de loi confortant le respect, par tous, des principes de la République*), paragraphs 73 and 74, 7 December 2020, available at:

[www.legifrance.gouv.fr/contenu/Media/Files/autour-de-la-loi/legislatif-et-reglementaire/avis-du-ce/2020/avis\\_ce\\_intx2030083l\\_cm\\_9.12.2020.pdf](http://www.legifrance.gouv.fr/contenu/Media/Files/autour-de-la-loi/legislatif-et-reglementaire/avis-du-ce/2020/avis_ce_intx2030083l_cm_9.12.2020.pdf)

updates the grounds for the disbanding of associations: associations or groups that instigate 'violent acts against persons or property', <sup>16</sup>not only 'armed demonstrations in the street'<sup>17</sup>, will be disbanded. Two legal grounds for disbanding are also added, one for associations that 'incite' or 'act in a manner that undermines' human dignity and the other for associations that 'exert psychological or physical pressure on persons in order to persuade them to commit acts or abstain from acts that are extremely harmful to them'. The bill makes it possible to impute to an association, in order to disband it, the actions of its members, which are directly related to its activities, provided that its leaders, while being aware of the actions in question, failed to stop them.<sup>18</sup> The bill provides, in urgent cases, for the Minister of the Interior to suspend associations 'which may be' subject to winding-up proceedings for a period of up to three months.<sup>19</sup> Violation of a protective suspension measure would be punished with a one-year prison sentence and a fine of €15,000.<sup>20</sup>

In its opinion of 7 December 2020, the Council of State recommends that the violation of human dignity and psychological or physical pressure on individuals in order to seek actions or refraining from actions that are harmful to them should not be considered as grounds for legally justifying the administrative disbanding of associations or groups due to the risk of breaching respect for freedom of association.<sup>21</sup> In order to ensure a proportionate balance between safeguarding public order and freedom of association, the Council of State recommends that suspension may only be ordered against associations or groups 'which are the

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<sup>16</sup> France, 'Minister of the Interior (*Ministère de l'intérieur*), Bill on consolidating the principles of the Republic (*Projet de loi confortant le respect des principes de la République*), Article 8.4, available at:

[www.assemblee-nationale.fr/dyn/15/textes/l15b3649\\_projet-loi](http://www.assemblee-nationale.fr/dyn/15/textes/l15b3649_projet-loi)

<sup>17</sup> France, Code of internal security (*Code de sécurité intérieure*), Article L 212-1, available at : [www.legifrance.gouv.fr/loda/article\\_lc/LEGIARTI000025505191/2020-10-06](http://www.legifrance.gouv.fr/loda/article_lc/LEGIARTI000025505191/2020-10-06)

<sup>18</sup> France, 'Minister of the Interior (*Ministère de l'intérieur*), Bill on consolidating the principles of the Republic (*Projet de loi confortant le respect des principes de la République*), Article 8.13, available at:

[www.assemblee-nationale.fr/dyn/15/textes/l15b3649\\_projet-loi](http://www.assemblee-nationale.fr/dyn/15/textes/l15b3649_projet-loi)

<sup>19</sup> France, 'Minister of the Interior (*Ministère de l'intérieur*), Bill on consolidating the principles of the Republic (*Projet de loi confortant le respect des principes de la République*), Article 8.14, available at:

[www.assemblee-nationale.fr/dyn/15/textes/l15b3649\\_projet-loi](http://www.assemblee-nationale.fr/dyn/15/textes/l15b3649_projet-loi)

<sup>20</sup> France, 'Minister of the Interior (*Ministère de l'intérieur*), Bill on consolidating the principles of the Republic (*Projet de loi confortant le respect des principes de la République*), Article 8.15, available at:

[www.assemblee-nationale.fr/dyn/15/textes/l15b3649\\_projet-loi](http://www.assemblee-nationale.fr/dyn/15/textes/l15b3649_projet-loi)

<sup>21</sup> France, Council of State (*Conseil d'Etat*), Opinion on a bill to consolidate respect for the principles of the Republic by everyone (*Avis sur un projet de loi confortant le respect, par tous, des principes de la République*), 7 December 2020, paragraphs 28 and 29, available at: [www.legifrance.gouv.fr/contenu/Media/Files/autour-de-la-loi/legislatif-et-reglementaire/avis-du-ce/2020/avis\\_ce\\_intx2030083l\\_cm\\_9.12.2020.pdf](http://www.legifrance.gouv.fr/contenu/Media/Files/autour-de-la-loi/legislatif-et-reglementaire/avis-du-ce/2020/avis_ce_intx2030083l_cm_9.12.2020.pdf)

subject' of winding-up proceedings, pending a possible decision to disband them. The suspension may concern 'all or part' of the association's activities.<sup>22</sup> However, the Public Defender of Rights recommends tightening the provision allowing the actions of its members to be imputed to an association, actions imputable to the association itself or its leaders on behalf of the association for the purpose of ordering its closure<sup>23</sup>

- prohibits any person convicted of an offence relating to terrorism from managing or administering a religious association for a period of ten years following the date on which the conviction takes place.<sup>24</sup>

The Council of State considered that this provision is justified by the particularly sensitive nature of religious activities.<sup>25</sup>

## **1.2 Financing of civil society work / Taxation / Charitable or public benefit status / Foreign Funding**

Law No. 2019-1479 of 28 December 2019 on finances for 2020<sup>26</sup> introduced the following measures:

- Revaluation of the commercial tax exemption threshold

Provided that they are non-profit making, associations are exempt from commercial taxes. They also enjoy concessions on their ancillary commercial activities. In effect, if these only represent an ancillary activity and the amounts collected in this way are below a certain threshold, which is revalued each year, this income can continue to benefit from the exemption from commercial taxes. The finance law for 2020 has raised the threshold from €63,690 to €72,000. This new threshold is applicable for exemption from corporate income tax for financial

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<sup>22</sup> France, Council of State (*Conseil d'Etat*), Opinion on a bill to consolidate respect for the principles of the Republic by everyone (*Avis sur un projet de loi confortant le respect, par tous, des principes de la République*), 7 December 2020, paragraph 31, available at: [www.legifrance.gouv.fr/contenu/Media/Files/autour-de-la-loi/legislatif-et-reglementaire/avis-du-ce/2020/avis\\_ce\\_intx2030083l\\_cm\\_9.12.2020.pdf](http://www.legifrance.gouv.fr/contenu/Media/Files/autour-de-la-loi/legislatif-et-reglementaire/avis-du-ce/2020/avis_ce_intx2030083l_cm_9.12.2020.pdf)

<sup>23</sup> France, Public Defender of Rights (*Défenseure des droits*), Opinion 21-01 (*Avis 21-01*), 12 January 2021, available at: [https://juridique.defenseurdesdroits.fr/doc\\_num.php?explnum\\_id=20384](https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=20384)

<sup>24</sup> France, 'Minister of the Interior (*Ministère de l'intérieur*), Bill on consolidating the principles of the Republic (*Projet de loi confortant le respect des principes de la République*), Article 43, available at: [www.assemblee-nationale.fr/dyn/15/textes/l15b3649\\_projet-loi](http://www.assemblee-nationale.fr/dyn/15/textes/l15b3649_projet-loi)

<sup>25</sup> France, Council of State (*Conseil d'Etat*), Opinion on a bill to consolidate respect for the principles of the Republic by everyone (*Avis sur un projet de loi confortant le respect, par tous, des principes de la République*), 7 December 2020, paragraph 98, available at: [www.legifrance.gouv.fr/contenu/Media/Files/autour-de-la-loi/legislatif-et-reglementaire/avis-du-ce/2020/avis\\_ce\\_intx2030083l\\_cm\\_9.12.2020.pdf](http://www.legifrance.gouv.fr/contenu/Media/Files/autour-de-la-loi/legislatif-et-reglementaire/avis-du-ce/2020/avis_ce_intx2030083l_cm_9.12.2020.pdf)

<sup>26</sup> France, Law No. 2019-1479 on finances for 2020 (*Loi n° 2019-1917 de finances pour 2020*), 28 December 2019, available at: [www.legifrance.gouv.fr/jorf/id/JORFTEXT000039683923/](http://www.legifrance.gouv.fr/jorf/id/JORFTEXT000039683923/)

periods ending on 31 December 2019. For the CET and VAT, it will take effect from 2020 if the new threshold has been complied with in 2019.

- A higher threshold for patronage of small businesses.

As a measure to encourage companies to donate to associations, the 'patronage' tax reduction system has seen its threshold mechanism further modified. For donations made from financial periods ending on 31 December 2020, the government confirms its support for small donors, but introduces a new limit for larger companies. For the first, the ceiling of €10,000 is increased to €20,000. For the second, donations exceeding €2 million are no longer eligible for a 60% tax reduction, but only a 40% tax reduction.

Some associations will, however, escape this second measure. The calculation of the €2 million ceiling will therefore not take into account donations made to organisations that help people who are experiencing difficulties in finding accommodation free of charge, provide them with free meals or, more importantly, provide them with basic necessities, the list of which will be established by decree. The surpluses carried forward in previous years will not be affected by this reduction in the tax rate.

The new ceiling applies to the cost-free provision of employees, whose value used to calculate the tax reduction is now limited to three times the amount of the Social Security threshold for each employee.

- Modifications for associations that employ people

The finance law for 2020 restores the apprenticeship tax exemption, in addition to the exemptions from vocational training contributions and tax on salaries from which non-profit-making organisations whose management is voluntary can benefit. This news is nevertheless tempered by the announcement of the abolition of these same exemptions from the training contribution and apprenticeship tax as of the transfer of their collection to the URSSAF, at the latest by 1 January 2022. The exemption from tax on wages is not affected.

The bill consolidating respect for the principles of the Republic presented on 9 December 2020:<sup>27</sup>

- proposes to make the awarding of subsidies conditional on the prior subscription of a Republican commitment contract, the breach of which would lead to the reimbursement of the subsidy, by enhancing the legal measures to take action against associations that pose a serious threat to public order and by giving the tax authorities more leverage to ensure that

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<sup>27</sup> France, 'Minister of the Interior (*Ministère de l'intérieur*), Bill on consolidating the principles of the Republic (*Projet de loi confortant le respect des principes de la République*), available at: [www.assemblee-nationale.fr/dyn/15/textes/l15b3649\\_projet-loi](http://www.assemblee-nationale.fr/dyn/15/textes/l15b3649_projet-loi)

only associations that meet the conditions laid down by law can benefit from the donations from the public and provide tax receipts.

This provision is criticised by the Public Defender of Rights, who considers that making the award of subsidies conditional on the signing of a 'Republican commitment contract' puts associations in a position where they are no longer simply asked not to commit an offence, but also to make a positive and explicit commitment, in their aims as well as in their organisation, to principles that are those of the public authorities, thereby running the risk of distorting the status of associations.<sup>28</sup>

- provides for new accounting reporting obligations for associations, in order to ensure 'greater transparency on their financial and asset situation, both for the government and for their members'. For the mixed associations which are subject to the law of 1 July 1901 and which partly practise a religion, the bill aligns their obligations, particularly administrative and accounting obligations, with those of religious associations and encourages them to distinguish their religious activities from the rest of their activities in order to ensure, in particular, the principle of not publicly subsidising religious activities. It also provides for a principle of declaration of foreign financing above a certain threshold and the possibility for the administrative authority to oppose this when a fundamental interest of society is at stake.

The Council of State considered that new accounting rules were intended to provide clarification and that a better knowledge of resources of foreign origin will help to increase the transparency of the management of religious associations and make it more difficult for foreign States or organisations linked to these States to interfere in the operation of an association.<sup>29</sup> It nevertheless proposed that the administration may only exercise its right to oppose the collection of foreign funds if the actions of the beneficiary association or one of the other persons involved demonstrate the existence of a real, present and sufficiently serious threat to adversely affecting a fundamental interest of society.<sup>30</sup>

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<sup>28</sup> France, Public Defender of Rights (*Défenseure des droits*), Opinion 21-01 (*Avis 21-01*), 12 January 2021, available at:

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

<sup>29</sup> France, Council of State (*Conseil d'Etat*), Opinion on a bill to consolidate respect for the principles of the Republic by everyone (*Avis sur un projet de loi confortant le respect, par tous, des principes de la République*), 7 December 2020, Paraphrased 80, available at: [legifrance.gouv.fr/contenu/Media/Files/autour-de-la-loi/legislatif-et-reglementaire/avis-du-ce/2020/avis\\_ce\\_intx2030083I\\_cm\\_9.12.2020.pdf](https://www.legifrance.gouv.fr/contenu/Media/Files/autour-de-la-loi/legislatif-et-reglementaire/avis-du-ce/2020/avis_ce_intx2030083I_cm_9.12.2020.pdf)

<sup>30</sup> France, Council of State (*Conseil d'Etat*), Opinion on a bill to consolidate respect for the principles of the Republic by everyone (*Avis sur un projet de loi confortant le respect, par tous, des principes de la République*), 7 December 2020,

Paraphrased 82, available at: [www.legifrance.gouv.fr/contenu/Media/Files/autour-de-la-loi/legislatif-et-reglementaire/avis-du-ce/2020/avis\\_ce\\_intx2030083I\\_cm\\_9.12.2020.pdf](https://www.legifrance.gouv.fr/contenu/Media/Files/autour-de-la-loi/legislatif-et-reglementaire/avis-du-ce/2020/avis_ce_intx2030083I_cm_9.12.2020.pdf)

### 1.3 Freedom of expression

On 20 March 2019, the bill to combat hate speech on the internet was submitted in the National Assembly by Laetitia Avia MP.<sup>31</sup> The obligations of the largest internet companies who provide services to France, regardless of where they are based, have been clarified. In particular, the bill required online sites to remove terrorist or child pornography content that had been reported to them by the administrative authority within one hour, and to remove 'manifestly illegal' hate content reported to them by any Internet user within 24 hours. The Bill would simplify the procedures for reporting illegal content and would require sites to provide the public with clear and detailed information on complaint procedures. It entrusted the CSA with the task of regulation, required the sites concerned to have a legal representative in France and increased the penalties applicable to existing obligations. Finally, it aligned the efforts against mirror sites with those against sites banned by administrative removal injunctions.

However, the Constitutional Council has censured many of the provisions of this new law. For terrorist or child pornography content, the Council considered in its decision of 18 June 2020<sup>32</sup>, that if the diffusion of pornographic images depicting minors or the incitement of terrorist acts or the condoning of such acts constitute abuses of the freedom of expression and communication, the determination of the illicit nature of the content in question is subject by law only to the discretion of the administration. The lodging of an appeal against the request for withdrawal is not suspensive and the one-hour time limit given to the publisher or host to remove or make inaccessible the content in question does not allow the publisher or host to secure a decision from a judge before being forced to withdraw it. As such, the Constitutional Council ruled that the legislator had violated the right to freedom of expression and communication in a way that was not appropriate, necessary or proportionate to the aim sought, and that the provisions in question were unconstitutional.

The Constitutional Council also recognised as unconstitutional the provisions of the new law which impose on certain operators of sites to remove or make inaccessible within 24 hours illegal content due to its hateful or illegally sexual nature, under penalty of a €250,000 fine. It considered that, taking into account the difficulties in assessing the manifestly unlawful nature of the content reported within the prescribed time-limit, the penalty incurred at the time of the first violation and the absence of any specific grounds for exemption from liability, the challenged provisions can only serve as an incentive for sites to withdraw content reported to them, whether or not it is manifestly unlawful. These provisions therefore impact on the exercise of freedom of expression and communication which is not necessary, appropriate, or proportionate.

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<sup>31</sup> France, Bill to Tackle Hate content on the internet (*La proposition de loi visant à lutter contre la haine sur internet*), available at: [www.assemblee-nationale.fr/dyn/15/dossiers/lutte\\_contre\\_haine\\_internet](http://www.assemblee-nationale.fr/dyn/15/dossiers/lutte_contre_haine_internet)

<sup>32</sup> France, Constitutional Council (*Conseil Constitutionnel*), Decision No. 2020-801 DC (*Décision n° 2020-801 DC*), 18 June 2020, available at: [www.legifrance.gouv.fr/jorf/id/JORFTEXT000042031998](http://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042031998)

Following the decision of the Constitutional Council, only the following provisions remain in the law of 24 June 2020<sup>33</sup> on tackling hate content on the internet:

- Reinforcing preventive actions against online hate content in national education;
- Reporting of illegal content;
- Creation of a monitoring centre on the diffusion of hate content online, attached to the High Council for Audio-visual Media;
- Limitation of the risks for individuals or legal entities who provide, even free of charge, for making available to the public by communication services to the public online, the storage of messages, signs, wording, images, sounds or messages of any nature provided by recipients of these services, to have their civil or criminal liability incurred as a result of the activities or information stored at the request of a user of these services. Henceforth, their civil liability cannot be invoked if they had no actual knowledge of the manifestly unlawful nature of the data or of facts and circumstances indicating such unlawfulness or if, from the moment they had such knowledge, they acted promptly to remove such data or to make access to it impossible. Similarly, they cannot be held criminally liable for information stored at the request of a recipient of these services if they had no actual knowledge of the manifestly unlawful nature of the activity or information or if, as soon as they became aware of it, they acted promptly to remove the information or make access to it impossible;
- An increase from €75,000 to €250,000 of the penalty for an individual or the manager of a legal entity exercising a technical activity, for failing to comply with certain obligations, for failing to retain certain information or for failing to comply with a request from a judicial authority to obtain communication of the aforementioned information.

As it stands, the law creates a specialised court and a specialised public prosecutor for crimes of sexual harassment distributed online which is of a racist nature or based on a person's sexual orientation.

The bill consolidating respect for the principles of the Republic presented on 9 December 2020:<sup>34</sup>

- Updates the provisions of the law of 9 December 1905 on the policing of religions and strengthens them to ensure that places of worship are not misused for other purposes, for example by becoming places of electoral

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<sup>33</sup> France, Law No. 2020-766 on tackling Hate Content on the Internet (*Loi n° 2020-766 visant à lutter contre les contenus haineux sur internet*), 24 June 2020, available at: [www.legifrance.gouv.fr/jorf/id/JORFTEXT000042031970](http://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042031970)

<sup>34</sup> France, 'Minister of the Interior (*Ministère de l'intérieur*), Bill on consolidating the principles of the Republic (*Projet de loi confortant le respect des principes de la République*), available at: [www.assemblee-nationale.fr/dyn/15/textes/l15b3649\\_projet-loi](http://www.assemblee-nationale.fr/dyn/15/textes/l15b3649_projet-loi)

activity. It ensures that these places cannot be used as relays for comments or theories that incite violence or hatred by toughening the penalties against those guilty of such comments or theories and by creating a system of temporary closure by the Prefect of places of worship in which such comments or ideas are spread.

The Council of State recommends that 'incitement to discrimination' and 'incitement, facilitation or encouragement to commit crimes or offences' be removed from the bill as grounds for the closure of a place of worship because they are too general, and that the provision for the closure of a place of worship in which speeches, ideas or theories are made or circulated or activities that incite hatred or violence against persons or a group of persons be retained.<sup>35</sup>

- as regards the fight against hate speech and practices, the bill aims to improve the effectiveness of judicial measures taken against sites that carry illegal content, by creating an offence of endangering the life of others through the disclosure of information relating to a person's private, family or work life and by making the fast-track procedures for offences of incitement applicable in order to provide a swift response against such acts.

In addition, an independent Commission on relations between journalists and the police was set up on 7 December 2020 by the Prime Minister.. The Commission will be responsible for proposing measures to better reconcile the work of journalists and the police during demonstrations or law enforcement operations.<sup>36</sup>

#### **1.4 Freedom of peaceful assembly**

Since the beginning of the COVID 19 epidemic, gatherings have been increasingly restricted: a ban on gatherings of more than 5,000 people in closed areas was imposed on 29 February 2020;<sup>37</sup> of more than 1,000 people who are not essential to the continuity of national life since 8 March 2020;<sup>38</sup> any gathering, meeting or activity involving more than 100 people simultaneously in a closed or open place

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<sup>35</sup>France, Council of State (*Conseil d'Etat*), Opinion on a bill to consolidate respect for the principles of the Republic by everyone (*Avis sur un projet de loi confortant le respect, par tous, des principes de la République*), paragraphs 101 and 102, 7 December 2020, available at:

[www.legifrance.gouv.fr/contenu/Media/Files/autour-de-la-loi/legislatif-et-reglementaire/avis-du-ce/2020/avis\\_ce\\_intx2030083l\\_cm\\_9.12.2020.pdf](http://www.legifrance.gouv.fr/contenu/Media/Files/autour-de-la-loi/legislatif-et-reglementaire/avis-du-ce/2020/avis_ce_intx2030083l_cm_9.12.2020.pdf)

<sup>36</sup> France, Government (*Gouvernement*), Setting up of the Independent Commission on Relations between Journalists and the Police (*Mise en place de la Commission indépendante sur les relations entre journalistes et forces de l'ordre*), 7 December 2020, available at: [www.gouvernement.fr/partage/11939-mise-en-place-de-la-commission-independante-sur-les-relations-entre-journalistes-et-forces-de-lordre](http://www.gouvernement.fr/partage/11939-mise-en-place-de-la-commission-independante-sur-les-relations-entre-journalistes-et-forces-de-lordre)

<sup>37</sup> France, Government (*Gouvernement*), COVID 19 - Government actions (*COVID 19, Les actions du Gouvernement*), available at: [www.gouvernement.fr/info-coronavirus/les-actions-du-gouvernement](http://www.gouvernement.fr/info-coronavirus/les-actions-du-gouvernement)

<sup>38</sup> France, Government (*Gouvernement*), COVID 19 - Government actions (*COVID 19, Les actions du Gouvernement*), available at: [www.gouvernement.fr/info-coronavirus/les-actions-du-gouvernement](http://www.gouvernement.fr/info-coronavirus/les-actions-du-gouvernement)

since 23 March 2020;<sup>39</sup> a ban on gatherings, meetings or activities for other than professional purposes on the public road or in a public place involving more than ten people at the same time since 11 May 2020.<sup>40</sup>

According to the French National Consultative Commission on Human Rights (*Commission nationale consultative des droits de l'homme, CNCDH*), the ban on meetings 'is not proportionate to the circumstances, as it is not combined with sufficient safeguards to preserve forms of collective expression, ... in view of the number of participants and not the size of the place in question, or even maintaining a very broad ban on gatherings in public places'.<sup>41</sup>

In effect, despite the decree of 11 May 2020, demonstrations by yellow vest protesters, carers and others against racism and police violence have occurred repeatedly in France.

In particular, on 2 June 2020, as part of the demonstrations organised in the United States and other countries in reaction to the death of George Floyd, a rally was organised in Paris in response to the appeal of the committee supporting the family of Adama Traoré, who died following his arrest in 2016, despite the rally having been banned by the Prefecture of Police for health reasons.<sup>42</sup>

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<sup>39</sup> France, Government (*Gouvernement*), COVID 19 - Government actions (*COVID 19, Les actions du Gouvernement*), available at: [www.gouvernement.fr/info-coronavirus/les-actions-du-gouvernement](http://www.gouvernement.fr/info-coronavirus/les-actions-du-gouvernement); France, Decree No. 2020-293 prescribing the general measures necessary to deal with the covid-19 epidemic within the framework of the state of health emergency (*Décret n° 2020-293 prescrivant les mesures générales nécessaires pour faire face à l'épidémie de covid-19 dans le cadre de l'état d'urgence sanitaire*), 23 March 2020, available at: [www.legifrance.gouv.fr/loda/id/JORFTEXT000041746694/2021-01-24/](http://www.legifrance.gouv.fr/loda/id/JORFTEXT000041746694/2021-01-24/)

<sup>40</sup> France, Decree No. 2020-545 prescribing the general measures necessary to deal with the covid-19 epidemic within the framework of the state of health emergency (*Décret n° 2020-545 prescrivant les mesures générales nécessaires pour faire face à l'épidémie de covid-19 dans le cadre de l'état d'urgence sanitaire*), 11 May 2020, available at: [www.legifrance.gouv.fr/loda/id/JORFTEXT000041865329/](http://www.legifrance.gouv.fr/loda/id/JORFTEXT000041865329/2021-01-24/); France, Decree No. 2020-548 prescribing the general measures necessary to deal with the covid-19 epidemic within the framework of the state of health emergency (*Décret n° 2020-548 prescrivant les mesures générales nécessaires pour faire face à l'épidémie de covid-19 dans le cadre de l'état d'urgence sanitaire*), 11 May 2020, available at: [www.legifrance.gouv.fr/jorf/id/JORFTEXT000041865329/](http://www.legifrance.gouv.fr/jorf/id/JORFTEXT000041865329/); France, Decree No. 2020-663 prescribing the general measures necessary to deal with the covid-19 epidemic within the framework of the state of health emergency (*Décret n° 2020-663 prescrivant les mesures générales nécessaires pour faire face à l'épidémie de covid-19 dans le cadre de l'état d'urgence sanitaire*), 31 May 2020, available at: [www.legifrance.gouv.fr/loda/id/JORFTEXT000041939818/2021-01-24/](http://www.legifrance.gouv.fr/loda/id/JORFTEXT000041939818/2021-01-24/)

<sup>41</sup> France, CNCDH, Opinion, 'Extending the health state of emergency and civil liberties' (*Avis « Prorogation de l'état d'urgence sanitaire et libertés »*), 26 May 2020, available at: [www.cncdh.fr/sites/default/files/a\\_-\\_2020\\_-\\_6\\_-\\_prorogation\\_eus\\_et\\_libertes\\_mai\\_2020.pdf](http://www.cncdh.fr/sites/default/files/a_-_2020_-_6_-_prorogation_eus_et_libertes_mai_2020.pdf)

<sup>42</sup> France, Demonstration against police violence: Castaner promises 'a penalty' for 'every offence' or racist word by the police. (*Manifestation contre les violences*)

On 13 June 2020, the summary proceedings judge of the Council of State suspended the general and absolute ban on demonstrations in public, considering that, except in special circumstances, the ban on demonstrations in public is only justified by the health risks when the 'barrier measures' cannot be respected or when the event is likely to bring together more than 5,000 people.<sup>43</sup> Following this suspension, the decree of 11 May 2020 was amended to provide that the ban would not apply to events in compliance with the 'barrier measures' authorised by the Prefect. The Council of State also suspended the decree introducing a prior authorisation for demonstrations as being a disproportionate violation of the freedom to demonstrate. The ban on gatherings of more than 5,000 people has been maintained in view of the health situation.<sup>44</sup>

The decree of 10 July 2020 provides that the organisers of gatherings, meetings or activities involving more than ten people at the same time must send to the Prefect of the Department a declaration specifying, in addition, the hygiene and social distancing measures implemented. The Prefect may prohibit them if these measures are not put in place.<sup>45</sup>

Nevertheless, since 16 October 2020, gatherings, meetings or activities in public places or in places open to the public where more than six people are present at the same time have been banned.<sup>46</sup>

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*policières : Castaner promet « une sanction » pour « chaque faute » ou mot raciste dans la police*), *Le Monde*, 3 June 2020, available at:

[www.lemonde.fr/societe/article/2020/06/03/au-lendemain-de-la-manifestation-interdite-contre-les-violences-policieres-la-classe-politique-divisee\\_6041639\\_3224.html](http://www.lemonde.fr/societe/article/2020/06/03/au-lendemain-de-la-manifestation-interdite-contre-les-violences-policieres-la-classe-politique-divisee_6041639_3224.html)

<sup>43</sup> France, Council of State (*Conseil d'État*), Order No. 440846, 440856, 441015 (*Ordonnance n° 440846, 440856, 441015*), 13 June 2020, available at: [www.conseil-etat.fr/ressources/decisions-contentieuses/dernieres-decisions-importantes/conseil-d-etat-13-juin-2020-manifestations-sur-la-voie-publique](http://www.conseil-etat.fr/ressources/decisions-contentieuses/dernieres-decisions-importantes/conseil-d-etat-13-juin-2020-manifestations-sur-la-voie-publique)

<sup>44</sup> France, Council of State (*Conseil d'État*), Order No. 441257, 441263, 441384 (*Ordonnance n° 441257, 441263, 441384*), 6 July 2020, available at: [www.conseil-etat.fr/ressources/decisions-contentieuses/dernieres-decisions-importantes/conseil-d-etat-6-juillet-2020-obligation-d-obtenir-une-autorisation-avant-d-organiser-une-manifestation](http://www.conseil-etat.fr/ressources/decisions-contentieuses/dernieres-decisions-importantes/conseil-d-etat-6-juillet-2020-obligation-d-obtenir-une-autorisation-avant-d-organiser-une-manifestation)

<sup>45</sup> France, Decree No. 2020-860 prescribing the general measures necessary to deal with the covid-19 epidemic within the areas where the health state of emergency has ended and those where it has been extended (*Décret n° 2020-860 prescrivant les mesures générales nécessaires pour faire face à l'épidémie de covid-19 dans les territoires sortis de l'état d'urgence sanitaire et dans ceux où il a été prorogé*), 10 July 2020, available at:

[www.legifrance.gouv.fr/jorf/id/JORFTEXT000042105897/](http://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042105897/)

<sup>46</sup> France, Decree No. 2020-1262 prescribing the general measures necessary to deal with the covid-19 epidemic within the framework of the health state of emergency (*Décret n° 2020-*

*1262 prescrivant les mesures générales nécessaires pour faire face à l'épidémie de covid-19 dans le cadre de l'état d'urgence sanitaire*), 16 October 2020, available at:

[www.legifrance.gouv.fr/jorf/id/JORFTEXT000042430554](http://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042430554); France, Decree No. 2020-1310

prescribing the general measures necessary to deal with the covid-19 epidemic within the framework of the health state of emergency (*Décret n° 2020-1310*

Article 4 of the decree of 29 October 2020 banned any movement of persons outside their place of residence except for the listed reasons. Participation in gatherings, meetings or activities in public places or in places open to the public that are not banned was introduced as a basis for authorising travel by decree No. 2020-1582 of 14 December 2020.<sup>47</sup>

In November and December 2020, several demonstrations took place in France to protest against the bill relating to universal security, the government bill consolidating respect for the principles of the Republic and the three decrees of 2 December 2020 modifying the provisions of the internal security code. These demonstrations had been the scene of violent clashes between police and demonstrators.<sup>48</sup>

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*rescrivant les mesures générales nécessaires pour faire face à l'épidémie de covid-19 dans le cadre de l'état d'urgence sanitaire*), 29 October 2020, available at :

[www.legifrance.gouv.fr/jorf/id/JORFTEXT000042475143](http://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042475143)

<sup>47</sup> France, Decree No. 2020-1310 prescribing the general measures necessary to deal with the covid-19 epidemic within the framework of the health state of emergency (*Décret n° 2020-1310*

*prescrivant les mesures générales nécessaires pour faire face à l'épidémie de covid-19 dans le cadre de l'état d'urgence sanitaire*), 29 October 2020, available at:

[www.legifrance.gouv.fr/jorf/id/JORFTEXT000042475143](http://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042475143)

<sup>48</sup> France, Tense demonstrations in Paris and the rest of France against the 'universal security' law (*Manifestations sous tension à Paris et dans le reste de la France contre la loi « sécurité globale »*), *Le Monde*, 12 December 2020, available at:

[www.lemonde.fr/societe/article/2020/12/12/manifestation-sous-tension-a-paris-contre-la-proposition-de-loi-securite-globale\\_6063178\\_3224.html](http://www.lemonde.fr/societe/article/2020/12/12/manifestation-sous-tension-a-paris-contre-la-proposition-de-loi-securite-globale_6063178_3224.html);

France, Associations and trade unions condemn 'arbitrary arrests' during the Paris demonstration against the Universal security law (*Des associations et des syndicats dénoncent des « arrestations arbitraires » lors de la manifestation parisienne contre la loi sécurité globale*), *Le Monde*, 13 December 2020, available at: [www.lemonde.fr/societe/article/2020/12/13/des-associations-et-des-syndicats-denoncent-des-arrestations-arbitraires-lors-de-la-manifestation-parisienne-contre-la-loi-securite-globale\\_6063252\\_3224.html](http://www.lemonde.fr/societe/article/2020/12/13/des-associations-et-des-syndicats-denoncent-des-arrestations-arbitraires-lors-de-la-manifestation-parisienne-contre-la-loi-securite-globale_6063252_3224.html);

France, Universal Security Law: the feeling of an impossible dialogue after the violence in the demonstration in Paris (*Loi « sécurité globale » : le sentiment d'un dialogue impossible après les violences dans la manifestation à Paris*), *Le Monde*, 5 December 2020, available at: [www.lemonde.fr/societe/article/2020/12/05/loi-securite-globale-a-paris-les-revendications-des-manifestants-eclipsees-par-les-violences\\_6062341\\_3224.html](http://www.lemonde.fr/societe/article/2020/12/05/loi-securite-globale-a-paris-les-revendications-des-manifestants-eclipsees-par-les-violences_6062341_3224.html);

France, One hundred elected representatives announce their presence at the Paris demonstration against the 'Universal Security' law (*Cent élus annoncent leur présence à la manifestation parisienne contre la loi « Sécurité globale »*), *Le Monde*, 27 November 2020, available at : [www.lemonde.fr/politique/article/2020/11/27/cent-elus-exploquent-leur-presence-a-la-manifestation-parisienne-contre-la-loi-securite-globale\\_6061424\\_823448.html](http://www.lemonde.fr/politique/article/2020/11/27/cent-elus-exploquent-leur-presence-a-la-manifestation-parisienne-contre-la-loi-securite-globale_6061424_823448.html);

France, Between anger and guilt, those French people who give up demonstrating out of fear of violence (*Entre colère et culpabilité, ces Français qui renoncent à manifester par peur des violences*), *Le Monde*, 19 December 2020, available at: [www.lemonde.fr/police-justice/article/2020/12/19/j-ai-eu-peur-pour-ma-vie-face-a-l-escalade-de-la-violence-ils-ont-renonce-a-manifester\\_6063917\\_1653578.html](http://www.lemonde.fr/police-justice/article/2020/12/19/j-ai-eu-peur-pour-ma-vie-face-a-l-escalade-de-la-violence-ils-ont-renonce-a-manifester_6063917_1653578.html);

France, Demonstrations against the Universal Security law: 98 gendarmes and police officers injured (*Manifestations contre la loi « sécurité globale » : 98 gendarmes et policiers blessés*), *Le Monde*, 29 November 2020, available at: [www.lemonde.fr/societe/article/2020/11/29/manifestations-contre-la-loi-securite-globale-98-gendarmes-et-policiers-blesses\\_6061582\\_3224.html](http://www.lemonde.fr/societe/article/2020/11/29/manifestations-contre-la-loi-securite-globale-98-gendarmes-et-policiers-blesses_6061582_3224.html)

## 1.5 Data protection

The lockdown introduced on 17 March 2020 in France has given rise to the use of new surveillance technologies, in particular drones to call people in public places to order and also the use of STOPCOVID, an application for monitoring people's social interactions ('contact tracing').

In its opinion of 28 April 2020, the CNCDH underlined that 'it is no longer just data protection that is at stake, but many fundamental rights and freedoms: the freedom of movement, the freedom to demonstrate, to assemble, etc.. The feeling of being under constant surveillance risks obstructing the effective exercise of individual and collective rights and freedoms'.<sup>49</sup>

In its interim order issued on 18 May 2020, the Council of State considered that the purpose pursued by the use of drones was legitimate in the current circumstances. This use is only intended to give the police responsible for effectively enforcing health safety rules a general picture of the crowding in Paris by helping to detect, in specific sectors exclusively located on the road or in public places, gatherings of the public that contravene the restrictive measures in force during the period of lockdown. For example, it may be decided to deploy an operational unit to the area in question to disperse the gathering or to clear out places closed to the public in order to stop or prevent the disturbance of public order caused by a failure to comply with health safety rules. However, the Council of State urged the government to immediately cease the drone surveillance measures and to ensure compliance in Paris with the health security rules applicable during the lifting of lockdown, as there was a risk that they would be used in a manner that contravened the rules on the protection of personal data.<sup>50</sup>

However, in disregard of this order, the Prefecture of Police continued to use drones for the surveillance of public demonstrations in Paris. The Council of State, once again referred to in the case, considered that the contested surveillance measures were likely to violate freedom of demonstration and the Minister of the Interior did not provide any evidence to establish that the objective of guaranteeing public safety during gatherings of people in public places could not be fully achieved, in the current circumstances, without the use of drones. By its decision of 22 December 2020, the Council of State suspended implementation of the Prefect of Police's decision to continue using drones for administrative police purposes in connection with demonstrations or gatherings in public streets and ordered the Prefect of Police to cease carrying out surveillance measures using

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<sup>49</sup> France, CNCDH, Opinion on the electronic tracking of individuals (*Avis sur le suivi numérique des personnes*), 28 April 2020, available at: [www.cncdh.fr/sites/default/files/avis\\_2020\\_-\\_3\\_-\\_200424\\_avis\\_suivi\\_numerique\\_des\\_personnes.pdf](http://www.cncdh.fr/sites/default/files/avis_2020_-_3_-_200424_avis_suivi_numerique_des_personnes.pdf)

<sup>50</sup> France, Council of State (*Conseil d'État*), Order No. 440442, 440445 (*Ordonnance n° 440442, 440445*), 18 May 2020, available at: [www.conseil-etat.fr/ressources/decisions-contentieuses/dernieres-decisions-importantes/conseil-d-etat-18-mai-2020-surveillance-par-drones](http://www.conseil-etat.fr/ressources/decisions-contentieuses/dernieres-decisions-importantes/conseil-d-etat-18-mai-2020-surveillance-par-drones)

drones for such demonstrations or gatherings, until such time as a law has been passed authorising, for that purpose, the processing of personal data.<sup>51</sup>

At the end of an inspection procedure initiated in May 2020, on 12 January 2021, the French Data Protection Commission (*Commission Nationale de l'Informatique et des Libertés, CNIL*) called the Ministry of the Interior to order for having carried out flights of camera-equipped drones outside any legal framework.<sup>52</sup> The call to order measure was issued because the CNIL cannot impose fines on the Government.

The lack of a legal framework for the use of drones has been raised on several occasions by the Council of State and the CNIL. The bill on universal security tabled on 20 October 2020<sup>53</sup> defines the legal framework for the use of drones by law enforcement agencies, fire-fighters and firefighting mariners. The bill allows the use of drones to secure gatherings in the event of a risk of a serious disturbance to public order, prevention of acts of terrorism, surveillance of coastlines and border areas, and rescue of persons. The use of drones cannot be permanent; the inside of homes and entrance halls cannot be filmed; the public must be informed 'by any appropriate means'.

In addition, the bill on universal security provides for an extended list of services that can view CCTV images. The proposed rules governing the use of cameras by police officers and gendarmes provide that the images can be transmitted live to the command post if the safety of officers or property and persons is threatened. These images may be used to 'inform the public about the circumstances of the intervention'. A government amendment aims to authorise law enforcement and civil security services to have cameras in their vehicles to facilitate the detection of offences.

There is also a proposal to amend the law of 29 July 1881 on the freedom of the press, by imposing a penalty of one year's imprisonment and a fine of €45,000 for the release of the face or any identifying element of members of the forces of law and order during operations for malicious purposes.

All these provisions of the draft law were criticised by the Public Defender of Rights, who pointed out in particular that 'the right to respect for private life may conflict with the public's right to information and freedom of expression guaranteed in particular by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms'. The Public Defender of

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<sup>51</sup> France, Council of State (*Conseil d'État*), Decision n°446155 (*Décision n°446155*), 22 December 2020, available at: [www.conseil-etat.fr/fr/arianeweb/CE/decision/2020-12-22/446155](http://www.conseil-etat.fr/fr/arianeweb/CE/decision/2020-12-22/446155)

<sup>52</sup> France, CNIL, Deliberation SAN-2021-003 (*Délibération SAN-2021-003*), 12 January 2021, available at: [www.cnil.fr/fr/drones-la-cnil-sanctionne-le-ministere-de-linterieur](http://www.cnil.fr/fr/drones-la-cnil-sanctionne-le-ministere-de-linterieur)

<sup>53</sup> France, Bill on universal security (*La proposition de loi relative à la sécurité globale*), available at: [www.assemblee-nationale.fr/dyn/15/dossiers/alt/securite\\_globale1](http://www.assemblee-nationale.fr/dyn/15/dossiers/alt/securite_globale1)

Rights considered that informing the public and publishing images and recordings relating to police interventions are legitimate.<sup>54</sup>

On 3 December 2020, five UN rapporteurs called on France to revise the bill on security, deeming it 'incompatible with international human rights law'.<sup>55</sup>

On 15 December 2020, the Commissioner for Human Rights of the Council of Europe sent a letter to the Senate criticising the ban and criminalisation of the malicious distribution of images of law enforcement officers as a violation of the right to freedom of expression, which includes the freedom to inform, and called for the law to be amended.<sup>56</sup>

While the bill on universal security is the subject of much debate, the government has authorised the extension of three police files: 'Administrative investigations related to public security' (EASP, important for access to certain professions); 'Prevention of breaches of public security' (PASP, used by the police) and 'Information management and prevention of breaches of public security' (GIPASP, used by the gendarmerie) by decrees No. 2020-1510,<sup>57</sup> 2020-1511<sup>58</sup> and 2020-1512 of 2 December 2020.<sup>59</sup>

The extension concerns the purposes of the data and the data collected. Until now, the three files have been concerned only with the safeguarding of public safety. From now on, stored personal data can also be used to prevent breaches of state security. The regulatory power is particularly aimed at the prevention of terrorism, and attacks on the integrity of the country or the institutions of the Republic. The PASP and GIPASP will no longer only contain information relating to individuals. Legal entities and groups will also be able to be included in the files. In addition and above all, the Ministry of the Interior authorises the collection of new information, including information on the state of health, political, philosophical or religious opinions, lifestyle habits and online activities. Finally, the file is extended to the entourage of the person mainly concerned.

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<sup>54</sup> France, Public Defender of rights (*Défenseur des droits*), Opinion 20-05 (*Avis 20-05*), 3 November 2020, available at:

[https://juridique.defenseurdesdroits.fr/doc\\_num.php?explnum\\_id=20175](https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=20175); France, Public Defender of rights (*Défenseur des droits*), Opinion 20-06 (*Avis 20-06*), 17 November 2020, available at:

[https://juridique.defenseurdesdroits.fr/doc\\_num.php?explnum\\_id=20210](https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=20210)

<sup>55</sup> OHCHR, France must revise bill on universal security – UN experts, 3 December 2020, available at:

[www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26560&LangID=e](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26560&LangID=e)

<sup>56</sup> Council of Europe, Commissioner for Human Rights, Letter to Senate, 15 December 2020, available at:

<https://rm.coe.int/lettre-au-senat-francais-concernant-la-proposition-de-loi-relative-a-l/1680a0bad2>

<sup>57</sup> France, Decree No. 2020-1510 (*Décret n°2020-1510*), 2 December 2020, available at: [www.legifrance.gouv.fr/loda/id/JORFTEXT000042607266/2021-01-25/](http://www.legifrance.gouv.fr/loda/id/JORFTEXT000042607266/2021-01-25/)

<sup>58</sup> France, Decree n°2020-1511 (*Décret n°2020-1511*), 2 December 2020, available at: [www.legifrance.gouv.fr/jorf/id/JORFTEXT000042607323](http://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042607323)

<sup>59</sup> France, Decree n°2020-1512 (*Décret n°2020-1512*), 2 December 2020, available at: [www.legifrance.gouv.fr/jorf/id/JORFTEXT000042607387](http://www.legifrance.gouv.fr/jorf/id/JORFTEXT000042607387)

The judge in charge of summary proceedings of the Council of State dismissed the appeals of associations and trade unions against the three decrees of 2 December 2020, considering that they limit the collection and access to the data concerned to what is strictly necessary for the prevention of attacks on public security or State security and do not disproportionately infringe on freedom of opinion, conscience and religion, or trade union freedom.<sup>60</sup>

## Example(s) of promising practice

The finance law for 2020<sup>61</sup> includes some fiscal measures in favour of associations which are sometimes limited:

- Revaluation of the commercial tax exemption threshold

The finance law for 2020<sup>59</sup> includes some fiscal measures in favour of associations which are sometimes limited: This new threshold is applicable for exemption from corporate income tax for financial periods ending on 31 December 2019. For the CET and VAT, it will take effect from 2020 if the new threshold has been complied with in 2019.

- A higher threshold for patronage of small businesses.

As a measure to encourage companies to donate to associations, the 'patronage' tax reduction system has seen its threshold mechanism further relaxed. For donations made from financial periods ending on 31 December 2020, raising the ceiling from 10,000 to €20,000.

- Modifications for associations that employ people

The finance law 2020 restores the apprenticeship tax exemption, in addition to the exemptions from vocational training contributions and tax on salaries from which non-profit-making organisations whose management is voluntary can benefit.

The bill to consolidate compliance with the principles of the Republic presented on 9 December 2020<sup>62</sup> grants new advantages to religious associations, such as the possibility of owning and administering real estate acquired free of charge, or

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<sup>60</sup> France, Council of State (*Conseil d'État*), Orders (*Ordonnances*), 4 January 2021, available at: [www.conseil-etat.fr/actualites/actualites/modification-des-dispositions-du-code-de-la-securite-interieure-relatives-au-traitement-de-donnees-a-caractere-personnel-decisions-en-refere-du-4](http://www.conseil-etat.fr/actualites/actualites/modification-des-dispositions-du-code-de-la-securite-interieure-relatives-au-traitement-de-donnees-a-caractere-personnel-decisions-en-refere-du-4)

<sup>61</sup> France, Law No. 2019-1479 on finances for 2020 (*Loi n° 2019-1917 de finances pour 2020*), 28 December 2019, available at: [www.legifrance.gouv.fr/jorf/id/JORFTEXT000039683923/](http://www.legifrance.gouv.fr/jorf/id/JORFTEXT000039683923/)

<sup>62</sup> France, 'Minister of the Interior (*Ministère de l'intérieur*)', Bill on consolidating the principles of the Republic (*Projet de loi confortant le respect des principes de la République*), available at: [www.assemblee-nationale.fr/dyn/15/textes/l15b3649\\_projet-loi](http://www.assemblee-nationale.fr/dyn/15/textes/l15b3649_projet-loi)

exemption from the right of first refusal for real estate received by way of donation.<sup>63</sup>

## Other developments

On 6 October 2020, the Observatory of Associative Freedoms released a report painting a picture of 'repressed citizenship'.<sup>64</sup> This in-depth analysis is based on a hundred or so recent cases of obstruction and repression against associations and citizen collectives. This report is the result of a collaborative effort between researchers, and national and local associations working in various fields of activity (defence of rights, ecology, social, culture, etc.), and members of the Coalition for freedom of associations.

100 cases of restrictions on freedom of association cited in the report include cases of associations whose activities have been suspended following a penalty of cutting a subsidy for criticizing an elected representative; activists prosecuted in court for solidarity actions; a neighbourhood association banned from access to communal spaces for meetings; political representatives stigmatising anti-racist or Muslim associations; environmental activists targeted by road checks and repeated fines.

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<sup>64</sup> France, Observatory of Associative Freedoms (*Observatoire des libertés associatives*), 'A repressed citizenship: 100 cases of restrictions on freedom of association, 12 avenues to protect them' (« *Une citoyenneté réprimée : 100 cas de restriction des libertés associatives, 12 pistes pour les protéger* »), 6 Octobre 2020, available at: [www.lacoalition.fr/IMG/pdf/rapport\\_v2.pdf](http://www.lacoalition.fr/IMG/pdf/rapport_v2.pdf)