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## **COMMISSION STAFF WORKING DOCUMENT**

### **2022 Rule of Law Report Country Chapter on the rule of law situation in France**

#### *Accompanying the document*

**Communication from the Commission to the European Parliament, the Council, the  
European Economic and Social Committee and the Committee of the Regions**

#### **2022 Rule of Law Report The rule of law situation in the European Union**

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## ABSTRACT

A comprehensive consultation process took place to identify further reforms needed to address potential issues affecting the French justice system. In this context, the judiciary, in particular the High Council for the Judiciary, made several calls for reforms, including on the accountability and protection of magistrates, and for an increase in human resources beyond the additional resources already allocated. The length of proceedings in the justice system increased, and the Ministry of Justice is evaluating further needs. The decision of the Minister of Justice to open administrative investigations against several magistrates for alleged violations of ethical obligations is being examined in Court. While some digital tools at the disposal of litigants and justice professionals continue being deployed successfully, the key ongoing projects to increase the digitalisation of civil and criminal justice have encountered difficulties in their implementation. As regards lawyers, the Law for trust in the justice system created new safeguards for professional secrecy, ethics and disciplinary procedures.

The conviction of high-level corruption cases continues to bring tangible results despite challenges linked to the limited resources as well as structural weaknesses. The national anticorruption plan for 2020-2022 continues to be implemented. Rules on conflict of interest are in place and a new law was adopted for the protection of whistleblowers. A regulation of lobbying is in place, but significant concerns remain in relation to the application of these rules to all types of lobbying actors. Asset declarations are disclosed and regularly verified. The human resources of the National Commission on Campaign Accounts and Political Financing continues to be insufficient compared to its workload. The measures introduced in public procurement during the COVID-19 pandemic remain in place.

France has a strong legal framework guaranteeing media freedom and pluralism, mainly due to safeguards stemming both from the Constitution and from legislation. A new independent authority - *Autorité de régulation de la communication audiovisuelle et numérique* (ARCOM) has been created from the merger of the *Conseil supérieur de l'audiovisuel* (CSA) and the online copyright authority, the *Haute autorité pour la diffusion des oeuvres et la protection des droits sur internet* (HADOPI), with increased powers over the entire field of audiovisual and digital content. Legal and structural safeguards ensure the independence of the French public service media. The Government has taken measures to address the increasing attacks and threats against journalists during protests or demonstrations. The persisting issue of horizontal and cross-media concentration has been examined by a Senate Commission of enquiry, which suggested a substantive revision of the existing legislation to preserve freedom of information. Challenges persist regarding the transparency of complex media ownership structures.

The practice of nationwide public consultations was further reinforced and extended to other fields, including the justice system. Accelerated procedures for the adoption of laws continued to be used regularly, including for laws with a significant impact on individual freedoms. The COVID-19 pandemic emergency regime has been extended until July 2022, while the Constitutional Council defined the limits of the executive and legislative powers in this context. Independent authorities issued opinions regarding the impact of laws adopted to manage crisis situations on individual freedoms. New laws have been adopted to improve the financial environment for civil society organisations. The Law on republican principles entered into force and a number of stakeholders raised concerns as regards its potential impact on the civic space.

## **RECOMMENDATIONS**

It is recommended to France to:

- Continue efforts to complete ongoing projects aimed at full digitalisation of civil and criminal court proceedings.
- Continue efforts to ensure adequate human resources for the justice system, including to improve its efficiency, taking into account European standards on resources for the justice system.
- Continue the effective investigation, prosecution and sanctioning of high-level corruption offences.
- Ensure that rules on lobbying activities are consistently applied to all relevant actors, including at top executive level.
- Enhance the transparency of media ownership, in particular regarding complex shareholding structures, building on the existing legal safeguards.

## **I. JUSTICE SYSTEM**

The justice system is composed of two autonomous branches of courts: ordinary courts with jurisdiction in civil and criminal cases on the one hand, and administrative courts on the other hand. Both branches consist of three levels of courts, with first instance courts, courts of appeal and an upper court (the Court of Cassation and the Council of State, respectively). The Council of State also has an advisory branch that provides opinions on draft legislation, and is tasked with the management of the administrative tribunals and courts of appeal. The High Council for the Judiciary, half of whose members are magistrates elected by their peers<sup>1</sup>, plays an important role in safeguarding judicial independence. It nominates candidates for top judicial functions and, as regards the appointment of judges by the Minister of Justice, issues binding opinions<sup>2</sup>. The prosecution service is part of the judiciary, and falls under the authority of the Minister of Justice<sup>3</sup>. The latter can give general instructions on prosecution policy but is barred from giving instructions in individual cases<sup>4</sup>. In addition, the Constitutional Council is competent to verify the constitutionality of laws. France participates in the European Public Prosecutor's Office (EPPO). Lawyers are represented by various bar associations throughout France.

### **Independence**

**The level of perceived judicial independence in France continues to be average among the general public and is now high among companies.** Overall, 56% of the general population and 61% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2022<sup>5</sup>. According to data in the 2022 EU Justice Scoreboard, no clear trend can be identified in the evolution of the perceived level of independence since 2016. The perceived judicial independence among the general public has slightly decreased in comparison with 2021 (57%), but it is higher than in 2016 (54%). The perceived judicial independence among companies has increased in comparison with 2021 (58%), as well as with 2016 (59%).

**The High Council for the Judiciary called for reforms to increase the accountability and protection of magistrates.** On 24 September 2021, the plenary of the High Council

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<sup>1</sup> The High Council for the Judiciary has two distinct formations. For the formation relating to judges, the High Council for the Judiciary is comprised of the President of the Court of Cassation, five judges, one public prosecutor, one member of the Council of State, one lawyer, and six other qualified members, who are not affiliated with the Parliament, the judiciary or the administrative order. An additional judge completes this formation when acting as a disciplinary council. For the formation relating to prosecutors, the High Council of the Judiciary is comprised of the General Prosecutor of the Court of Cassation, five public prosecutors, one judge, the same member of the Council of State as mentioned above, the same lawyer as mentioned above and the same six other qualified members as mentioned above. An additional prosecutor completes this formation when acting as a disciplinary council. See also in that regard Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, para. 27 which states that 'Not less than half the members of such councils [for the judiciary] should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary'.

<sup>2</sup> Prosecutors are currently nominated by the Minister of Justice, following an advisory opinion of the Council.

<sup>3</sup> Art. 5 of Ordinance 58-1270 of 22 December 1958.

<sup>4</sup> Art. 1 of Law 2013-669 of 25 July 2013 and Art. 30 of the Code of Criminal Procedure.

<sup>5</sup> Figures 50 and 52, 2022 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

submitted the opinion requested by the President of the Republic<sup>6</sup> on the liability and protection of magistrates. It made 30 proposals<sup>7</sup> around four objectives: putting ethics at the heart of the judicial function<sup>8</sup>, promoting the detection of disciplinary misconduct<sup>9</sup>, improving the conduct of disciplinary proceedings and the scale of sanctions<sup>10</sup>, and strengthening the personal and functional protection of magistrates<sup>11</sup>. Some proposals reiterate the need to adopt constitutional reforms initiated several times in the past but without success<sup>12</sup>. The proposed constitutional amendments would notably transfer the power to decide on disciplinary matters regarding prosecutors from the Minister of Justice to the High Council and align the conditions for the appointment of prosecutors with those applicable to judges, thus making the opinion of the High Council binding on the Minister of Justice<sup>13</sup>. On this aspect, the opinion of the High Council for the Judiciary converges with

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<sup>6</sup> The President of the Republic had requested the opinion on 17 February 2021 in his role as guarantor of the independence of the judiciary under Art. 65 of the Constitution. See 2021 Rule of Law Report, Country Chapter on the rule of law situation in France, pp. 3-4.

<sup>7</sup> High Council for the Judiciary, Opinion of 24 September 2021 on the accountability and protection of magistrates. See Annex I.

<sup>8</sup> To increase accountability, the opinion of the High Council proposes to remedy the lack of evaluation of senior magistrates, to create a regime preventing risks of conflicts of interest, and to grant the committee of admission of individual disciplinary applications the power to recall magistrates to their ethical obligations in case of objectionable conducts that do not qualify as disciplinary offences. The High Council also recommends the inclusion of a specific section on ethics in the evaluation grid of magistrates, which would entail a dedicated dialogue during the interview between the magistrate and his head of court.

<sup>9</sup> The High Council calls for a more formalised dialogue between the court presidents and the Directorate of Judicial Services of the Ministry of Justice, in order to prevent uncoordinated decisions undermining disciplinary proceedings. It also recommends allowing court presidents to refer matters directly to the Inspectorate-General of Justice for the purpose of initiating an administrative inquiry, whereas this competence currently lies only with the Minister of Justice. To address the inefficiencies of the individual complaints mechanism, it is proposed to endow the admissibility committee with investigative powers to take the most informed decision possible.

<sup>10</sup> To this aim, it is suggested to clarify the definition of disciplinary misconducts, broadly defined in Article 43 of Ordinance No. 58-1270 of 22 December 1958 on the organic law relating to the status of the judiciary, to explicitly mention a list of essential duties such as independence, impartiality, integrity, probity and loyalty. The High Council also recommends making the administrative investigation which may be brought by the Minister of Justice prior to disciplinary proceedings more transparent and limited in time, as the length of disciplinary proceedings creates uncertainty for the magistrates concerned. Finally, it is proposed to reform and complement the scale of sanctions to better fit the various shortcomings targeted, notably by including penalties prohibiting certain appointments, temporary exclusion from any office or temporary removal from judicial functions.

<sup>11</sup> As a priority, the High Council proposes to allow any magistrate seize it in case of breach of his or her independence, and to empower the Council to act of its own motion in such a case, in order to issue a recommendation to put an end to the violation. This recommendation would be made public and even published in the Official Journal in the most serious cases. This proposal echoes Recommendation CM/Rec (2010)12 of the Committee of Ministers of the Council of Europe of 17 November 2010, which provides: ‘where judges consider that their independence is threatened, they should be able to have recourse to a council for the judiciary or another independent authority [...]’. It is also proposed to introduce a 15-day deadline for the Minister of Justice to decide on a request for functional protection presented by a magistrate. A tacit refusal could be challenged before an administrative court, which could order to grant the requested protection. The Ministry of Justice would moreover be entrusted with taking all necessary steps to remove offensive and/or illegal publications on social media, including at the request of the magistrate concerned or a court president.

<sup>12</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 3.

<sup>13</sup> In practice, the Minister of Justice always follows the non-binding opinion of the High Council on the appointment of prosecutors, but there is no obligation to do so under positive law.

recommendations from the Group of States against Corruption (GRECO)<sup>14</sup> and recent proposals by the National Conference of Prosecutors, which called for a reform of the statute of prosecutors to increase their independence<sup>15</sup>. In a decision of 14 September 2021, the Constitutional Council declared constitutional the provisions allowing general prosecutors to communicate specific reports relating to ongoing legal proceedings to the Minister of Justice, as the latter may not issue any instruction to public prosecutors in individual cases even when he or she requests or receives such specific reports<sup>16</sup>.

**In 2020<sup>17</sup>, the Minister of Justice decided, on the recommendation of his administration, to order administrative investigations<sup>18</sup> against several magistrates for alleged breaches of ethical obligations<sup>19</sup>, and this decision is currently being examined by the Court of Justice of the Republic (CJR).** Three magistrates' associations had filed a complaint against the Minister of Justice, alleging a conflict of interest related to his previous professional activity as a lawyer. The Minister of Justice transferred to the Prime Minister the competence to act in cases in which he was previously involved as a lawyer<sup>20</sup>. On 16 July 2021, following a hearing, the CJR<sup>21</sup> indicted the Minister of Justice for illegal taking of interest. The Minister of Justice was heard before the CJR and exercised his right to remain silent, as he considered that the investigation methods were not impartial<sup>22</sup>. The case is still pending<sup>23</sup>. The General

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<sup>14</sup> GRECO noted with concern the absence of progress on the constitutional reform that would have addressed its recommendation to align the appointment rules and disciplinary procedure for prosecutors with those applicable for judges. It highlighted the paramount importance of this matter and invited the French authorities to accelerate the procedure and give effect to this recommendation as soon as possible. See GRECO Fourth Evaluation Round - Addendum to the Second Compliance Report, pp. 10-11.

<sup>15</sup> In the first of its ten proposals for the future of criminal justice, adopted in November 2021, the National Conference of Prosecutors highlights the need for stronger safeguards as regards the appointment of prosecutors, by transferring this competence to the High Council of the Judiciary, to guarantee their independence.

<sup>16</sup> Decision No. 2021-927 QPC of 14 September 2021. The Constitutional Council considered that the contested provisions ensure an adequate balance between the principle of judicial independence and the competence of the Minister of Justice to determine the policy on criminal matters, for which he must have access to reliable and complete information on the functioning of justice.

<sup>17</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 3.

<sup>18</sup> According to the case law of the Council of State, the opening of an administrative enquiry, which is a preliminary step to disciplinary proceedings, is a decision with no negative impact on its addressee.

<sup>19</sup> Whilst the General Inspection of Justice concluded that the magistrates concerned had acted in accordance with the law, the Prime Minister, to whom the Minister of Justice reattributed the cases, seized, on the basis of the administrative investigation, the High Council for the Judiciary to assess whether the magistrates concerned had violated their duties. See press releases of the French Government of 17 April 2021 and 15 September 2021.

<sup>20</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 3.

<sup>21</sup> This special court, composed of six members of the Senate, six members of the National Assembly and three judges of the Court of Cassation, is competent to hear criminal cases relating to acts of members of the Government in the exercise of their functions. A constitutional reform tabled in Parliament on 29 August 2019, which was not adopted, envisaged to abolish the CJR and to transfer its competence to the Paris Court of Appeal. See 2021 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 3.

<sup>22</sup> The Minister issued the following statement: <https://www.lopinion.fr/politique/dupond-moretti-a-la-cour-de-justice-de-la-republique-tout-demontre-votre-determination-a-me-salir>. In a press release of 4 March 2022, the first President of the Court of Cassation regretted this statement, considering that it questioned the ethics of the investigating magistrates, and contributed to weakening the judicial authority.

<sup>23</sup> On 10 May 2022, the General Prosecutor requested to initiate the trial phase against the Minister of Justice. The investigation commission of the CJR will have to decide on whether to open the trial phase.

Prosecutor decided not to refer to the CJR a third complaint lodged by a magistrates' trade union regarding an investigation into the management of a Court of Appeal<sup>24</sup>.

**A Law for trust in the justice system introduced new safeguards for professional secrecy, ethics and disciplinary procedures concerning lawyers.** The new law<sup>25</sup> adopted in December 2021 supplements the Code of Criminal Procedure by reaffirming the protection of professional secrecy both for defence and counsel activities. In particular, a judge can order a search of premises of a law firm or of a lawyer's residence on the condition that there is a reasonable ground to suspect that the lawyer has committed or attempted to commit the offence which is the subject of the proceedings<sup>26</sup>. Furthermore, the magistrate carrying out the search must ensure that the investigation does not interfere with the free exercise of the profession of lawyer and that no document pertaining to the exercise of the rights of the defence and covered by the obligation of professional secrecy is seized. The most important proposals made by the National Council of Bars, and particularly the wish to extend the provisions on professional secrecy to the counsel activities of lawyers<sup>27</sup>, were included in the final version of the law. This is also in line with the preoccupations of lawyers at European level on the protection of professional secrecy. As regards disciplinary procedures, the new provisions offer more guarantees to the parties involved and leave more room for conciliation. The Disciplinary Board becomes a court, chaired by a judge in some cases<sup>28</sup>. With regard to claims brought by individuals, where the nature of the complaint so permits, a conciliation procedure may be organised between the parties, with the participation of at least one lawyer<sup>29</sup>. To prevent disciplinary offences, Article 42 of the law foresees the creation of a code of ethics for lawyers prepared by the National Council of Bars, thus maintaining the self-regulation of the profession as regards ethical duties.

## Quality

**The Court of Audit highlighted difficulties in the implementation of key projects to increase the digitalisation of civil and criminal justice.** Despite efforts to improve digitalisation of the justice system and some progress already made, room for improvement remains regarding the use of digital tools both within courts and the prosecution service<sup>30</sup> and in electronic communication with users<sup>31</sup>. In a report<sup>32</sup>, presented to the Senate on 26 January 2022, and based on an assessment of the situation in spring 2021, the Court of Audit describes the delays and strategic issues encountered in the implementation of the plan to

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<sup>24</sup> The investigation was ordered by the Prime Minister, to whom the Minister of Justice had re-assigned the cases. The Prosecutor General concluded there was no sufficient evidence in support of the conflict of interests alleged in the complaint to refer it to the CJR.

<sup>25</sup> Law n. 2021-1729 of 22 December 2021 for trust in the justice system.

<sup>26</sup> The search warrant may be appealed with suspensive effect within 24 hours by the Public Prosecutor, the lawyer or the representative of the Bar.

<sup>27</sup> Resolution of the General Assembly of the National Council of Bars of 17 September 2021.

<sup>28</sup> It will be so where disciplinary proceedings follow a complaint lodged by a third party or at the request of the lawyer. The recusal or removal of a member of the disciplinary court may be requested. Similarly, appeals against decisions of Regional Disciplinary Councils will be heard by the courts of appeal, with a panel composed of three judges and two members of the Bar Council.

<sup>29</sup> If conciliation fails, the complainant is informed without delay of the possibility of referring his complaint to the Prosecutor General at the Court of Appeal or of bringing the matter directly before a disciplinary court.

<sup>30</sup> Figure 43, 2022 EU Justice Scoreboard.

<sup>31</sup> Figures 42, 44, 45, 46, and 47, 2022 EU Justice Scoreboard.

<sup>32</sup> Court of Audit, Communication to the Finance Committee of the Senate, 'Improving the functioning of justice – stage point of the digital transformation plan of the Ministry of Justice'.

digitalise justice initiated in 2018 and makes a number of recommendations to make it more effective. The Court of Audit assesses that, at this stage, one year before the end of its implementation, the digital transformation plan started in 2018 brought mixed results and that not all objectives will be achieved<sup>33</sup>. In particular, the Court of Audit noted that the key projects for digitalisation of justice, namely the *Procédure pénale numérique* (digital criminal procedure), *Cassiopee*, which is central to the digital treatment of criminal procedures, and *Portalis*, an ambitious project to digitalise all stages of the civil procedure<sup>34</sup>, have accumulated delays and budget overruns. The Court of Audit suggests improving the governance of structuring projects<sup>35</sup> to avoid delays in their implementation. The Ministry of Justice endorsed in large part the findings of the report<sup>36</sup> and has already taken some measures to improve the governance of projects, for instance by systematising cost-benefit analyses. Since the analysis of the Court of Audit, other improvements have been made as regards the digital criminal procedure, for instance by relieving court officials of burdensome registration tasks and by allowing for digital communication with lawyers<sup>37</sup>. However, further steps remain to be taken to follow up on the Court of Audit's recommendations, in particular to centralise the overall monitoring of projects by reducing outsourcing, in particular project management functions, in order to retain control over the development of information systems.

**Digital tools at the disposal of litigants and justice professionals continue being deployed successfully.** As mentioned in the 2021 Rule of Law Report<sup>38</sup>, the deployment in legal aid offices of the Legal Aid Information System (SIAJ), which allows individuals to make a paperless application for legal aid, started in two pilot courts from March to October 2021 and is advancing at a steady pace. At the end of 2021, 30% of the courts were equipped, and it is planned that 90% of the courts will have the system implemented by mid-2022. It was reported that, in courts where SIAJ was already implemented, the time needed to process the legal aid application was on average reduced by two thirds<sup>39</sup>. As regards the online accessibility of court decisions, all judgments delivered publicly by the Court of Cassation, the Council of State, all administrative courts of first instance and appeal, as well as the courts of appeal for civil, commercial and social litigation are now accessible through open data<sup>40</sup>. Room for improvement still remains as regards the publication of other court

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<sup>33</sup> One of the impediments described for the timely implementation of the plan was the emergence of new needs in the area of information systems security. Similarly, several reforms adopted in the meantime had a strong impact on implementation of the plan, as they were adopted taking insufficient account of the Ministry of Justice's capacity to set up or adapt the information systems needed to implement them. According to the Court of Audit, this has led to delays between the date of entry into force of certain provisions and the introduction of the digital tools needed to manage them.

<sup>34</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in France, pp. 4-5.

<sup>35</sup> The recommendations included entrusting the operational responsibility for each of them to a single project manager mastering all parameters, in particular the budget, and involving end users in the various information systems steering bodies.

<sup>36</sup> Written contribution from the Ministry of Justice in the context of the country visit to France.

<sup>37</sup> Information received from the Ministry of Justice in the context of the country visit to France.

<sup>38</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 5.

<sup>39</sup> Information received from the Ministry of Justice in the context of the country visit to France.

<sup>40</sup> Art. 33 of Law of 23 March 2019 on programming 2018-2022 and reform for justice and Decree n 2020-797 of 29 June 2020, relating to the public availability of the decisions of the judicial and administrative jurisdictions, gave the *Conseil d'État* and the *Cour de cassation* the responsibility to ensure this availability. According to an Order of 28 April 2021, the online availability is scheduled to be ensured as follows: Council of State and Court of Cassation in September 2021; Administrative courts of appeal on March 2022; courts of appeal in civil, social and commercial matters in April 2022; administrative courts of first instance



judgments, particularly from lower court instances<sup>41</sup>, and work is ongoing on the adaptation of the pseudonymisation artificial intelligence engine, for the publication of judgements of courts of first instance in commercial, civil and labour matters as well as for criminal proceedings.

**The resources allocated to the justice system have been increased for the second year, and magistrates have called for further efforts to continue ensuring the quality of justice.** In 2020, the expenditure for the justice system was relatively low, in comparative terms, despite an increase compared to 2019<sup>42</sup>. In 2022, the budget dedicated to the justice system was further increased by 3.4% as compared with 2021, thus reaching EUR 3 849 million. The budget allocated to legal aid also grew from EUR 585 million in 2021 to EUR 615.2 million in 2022. In addition, 1 414 of the short-term contractual positions created in 2021, including assistant lawyers working under magistrates, will be made permanent<sup>43</sup>. However, the High Council for the Judiciary highlighted that the budget allocated by France to the justice system and the number of magistrates per inhabitant remains substantially lower than that of other European countries with a comparable GDP and called for additional regulatory safeguards to further stabilise the annual budget allocated to justice<sup>44</sup>. The High Council also recommends reforming the status and the missions of the team assisting the magistrates, which would allow judges and prosecutors to focus more on their judicial functions and therefore contribute to the quality of justice<sup>45</sup>. In an open letter published in a national newspaper, a large number of magistrates described the worsening working conditions in many courts, in particular because of the insufficient human resources and the comparatively excessive workload, forcing them to sacrifice quality for the sake of expediency<sup>46</sup>.

**A comprehensive consultation on the justice system took place to identify relevant issues and reforms needed to address them.** On 18 October 2021, the President of the Republic opened the Estates General of Justice<sup>47</sup>. The first president and the attorney general of the Court of Cassation had previously expressed concerns about a 'systematic questioning of

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in June 2022; labour courts, commercial courts, courts of first instance in civil matters and in all criminal proceedings between 2023 and 2025.

<sup>41</sup> Figures 48 and 49, 2022 EU Justice Scoreboard.

<sup>42</sup> In 2020, the General government total expenditure on law courts as a percentage of GDP was sixth lowest in the EU (data from Eurostat). Figure 35, 2022 EU Justice Scoreboard.

<sup>43</sup> Written contribution from the French authorities in the context of the country visit to France, pp. 5-6. The overall budget for justice, which includes the budget allocated to other items than the justice system, such as prisons, increased by 8% since 2021.

<sup>44</sup> Written contribution of the High Council for the Judiciary for the Estates General of Justice, 31 January 2021, pp. 27-29.

<sup>45</sup> The CSM recommends increasing the stability and professionalism of the magistrates' assistants, by harmonising their status and entrusting their training to the National Institute for the Magistracy. Magistrates would also be closely associated in their recruitment and appraisal. See written contribution of the High Council for the Judiciary for the Estates General of Justice, 31 January 2021, pp. 30-32.

<sup>46</sup> The open letter, published in newspaper *Le Monde*, was originally signed by 3 000 magistrates and around 100 registrars, and was later endorsed by more than 5 500 magistrates. Following its publication, the Minister of Justice met a group of various magistrates and committed to maintaining this direct dialogue.

<sup>47</sup> This nation-wide consultation directed both at the general public and justice professionals is directed by an independent committee entrusted with drafting a final report summarizing the relevant conclusions. The consultation process is described in more detail in section four below.

justice'<sup>48</sup>. This nationwide consultation, associating law professionals and the general public, is aimed at taking stock of the situation of justice and formulating concrete proposals to remedy any outstanding issues<sup>49</sup>. An online consultation took place and several conferences were organised. A final report was drafted by an independent committee, on the basis of the numerous contributions received and will be presented by the President of the Republic<sup>50</sup>.

**The Law for trust in the justice system reinforces the provisions for voluntary mediation as an alternative to court proceedings.** Article 45 of that law<sup>51</sup> establishes a National Mediation Council<sup>52</sup> whose main missions are to issue opinions and recommendations to the public authorities in the field of mediation, draft a compendium of ethics applicable to mediation, design national frameworks for the training of mediators, and make proposals on the conditions for the registration of mediators. The law also makes more effective the contracts establishing an agreement resulting from mediation, conciliation and participatory procedures in providing that, where they are countersigned by lawyers and authenticated by the registry of the competent court, transactions and other agreements reached during mediation, conciliation or participatory procedures become enforceable instruments. Promotion and incentives for using Alternative-Dispute Resolution methods are relatively developed, in comparative terms, but room for improvement remains<sup>53</sup>.

## **Efficiency**

**The length of court proceedings in civil, commercial and administrative cases, measured in disposition time, increased sharply over the last year, with the exception of administrative cases, where the situation remained stable<sup>54</sup>.** In particular, the estimated time needed to resolve litigious civil and commercial cases at first instance increased from 432 days in 2019 to 637 days in 2020, one of the highest values in the EU<sup>55</sup>. The number of pending court cases increased slightly but remained stable overall<sup>56</sup>. The clearance rate, showing how the court system deals with caseload, decreased considerably, in particular for litigious civil and commercial cases, where it diminished from close to 100% to below 93%<sup>57</sup>. As mentioned above, several judicial institutions have pointed to a need to recruit additional staff within the justice system, more particularly within courts<sup>58</sup> and prosecution services<sup>59</sup>, to

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<sup>48</sup> In particular, during a demonstration that took place on 19 May 2021 in front of the Parliament gathering law enforcement officers as well as some members of Parliament, the justice system was criticised for its alleged slowness and laxity, which was perceived by the judiciary as an attack on judicial independence.

<sup>49</sup> Press release of the Presidency of the Republic of 18 October 2021.

<sup>50</sup> See also Pillar IV below on the consultation process.

<sup>51</sup> Law n. 2021-1729 of 22 December 2021 for trust in the justice system.

<sup>52</sup> The National Mediation Council will be composed of qualified persons and representatives of associations involved in mediation, administrations, courts and the legal professions.

<sup>53</sup> Figure 29, 2022 EU Justice Scoreboard.

<sup>54</sup> Figures 6-10, 2022 EU Justice Scoreboard.

<sup>55</sup> Figure 7, 2022 EU Justice Scoreboard.

<sup>56</sup> Figures 14-16, 2022 EU Justice Scoreboard.

<sup>57</sup> Figures 11-13, 2022 EU Justice Scoreboard.

<sup>58</sup> Written contribution of the High Council for the Judiciary for the Estates General of Justice, 31 January 2021, pp. 29-33.

<sup>59</sup> In the second of its ten proposals for the future of criminal justice, adopted in November 2021, the National Conference of Prosecutors highlights that, as evaluated by the European Commission for the Efficiency of Justice (CEPEJ), the number of prosecutors per inhabitant in France is among the lowest in Europe, at 3 for 100 000 inhabitants, with a high caseload and number of competences.

be able to deal effectively and sustainably with the caseload<sup>60</sup>. To this end, the Ministry of Justice is currently developing a measuring tool to evaluate precisely the mid and long-term recruitment needs<sup>61</sup>. Moreover, 1914 contractual agents have been recruited to deal with the backlog of pending cases. The Ministry of Justice has reported that, from 2021 onwards, a significant decrease in the number of pending cases was recorded. In parallel, the National Conference of Presidents of Judicial Courts has developed and made public its own measuring tool designed to assess precisely the workload of judges by taking into account all their current attributions and missions<sup>62</sup>. From the first evaluation carried out by two thirds of courts on this basis, it is argued that 1 500 additional first instance judges would be necessary to deal sustainably with the current workload, and the measuring tool developed by the Ministry of Justice would allow to refine this assessment<sup>63</sup>.

## II. ANTI-CORRUPTION FRAMEWORK

Authorities involved in the fight against corruption include the French Anti-Corruption Agency (AFA, which prepares the multiannual anti-corruption plan and supports private and public legal persons on how to prevent and detect corruption), the High Authority for the Transparency of Public life (responsible for ensuring the integrity of public officials), and the Central Office for Combating Corruption and Tax Offences (a specialised police service for the investigation of economic crimes, including corruption and money laundering). The National Financial Prosecutor is competent for the investigation of high-level corruption cases.

**The perception of public sector corruption among experts and business executives is that the level of corruption in the public sector is relatively low.** In the 2021 Corruption Perceptions Index by Transparency International, France scores 71/100 and ranks 8<sup>th</sup> in the European Union and 22<sup>nd</sup> globally<sup>64</sup>. This perception has been relatively stable over the past five years<sup>65</sup>. The 2022 Special Eurobarometer on Corruption shows that 64% of respondents

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<sup>60</sup> Paras. 33 and 35 of Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, state that '[e]ach state should allocate adequate resources, facilities and equipment to the courts to enable them to function in accordance with the standards laid down in Article 6 of the Convention and to enable judges to work efficiently' and that '[a] sufficient number of judges and appropriately qualified support staff should be allocated to the courts'.

<sup>61</sup> Since 2019, the Ministry of Justice has been carrying out work aimed at better evaluating the activity of the courts in order to calculate the resulting need for the number of public prosecutors, by equipping itself with a national management tool based on a court case weighting system. This project is led by the Directorate of Judicial Services with the support of the General Inspectorate of Justice, in close consultation with the trade unions and public prosecutors. The objective is to assess precisely the workload implied by a case, by associating it with an average time necessary for its processing. See written contribution from the French authorities in the context of the country visit to France, pp. 4-5.

<sup>62</sup> This tool for managing the human resources of all courts (except the Paris Tribunal, which has its own assessment methods due to its specificities), requested on numerous occasions by the Court of Audit, will be reviewed annually. It is supplemented by a projection table of the needs for magistrates in each court. See National Conference of Presidents of Judicial Courts, press release of 16 February 2022.

<sup>63</sup> National Conference of Presidents of Judicial Courts, press release of 16 February 2022.

<sup>64</sup> Transparency International (2022), Corruption Perceptions Index 2021, pp. 2-3. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

<sup>65</sup> In 2017 the score was 70, while in 2021 the score is 71. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

consider corruption as widespread in their country (EU average 68%) and 7% of respondents feel personally affected by corruption in their daily lives (EU average 24%)<sup>66</sup>. As regards businesses, 50% of companies consider that corruption is widespread (EU average 63%) and 31% consider that corruption is a problem when doing business (EU average 34%)<sup>67</sup>. Furthermore, 23% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 34%)<sup>68</sup>, while 37% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 29%)<sup>69</sup>.

**The national anti-corruption plan for 2020-2022 continues to be implemented.** The anti-corruption plan<sup>70</sup> sets eight objectives that include the prevention of corruption in the organisation of two major international sport events, whose preparation is underway<sup>71</sup>. The report on the final implementation of the anti-corruption plan is expected to be prepared by the Anti-Corruption Agency by the end of 2022, concurrently with the preparation of the next national anti-corruption plan (post-2022)<sup>72</sup>.

**Legislative steps have been taken to improve the legal anti-corruption framework**<sup>73</sup>. Following the recommendations indicated through the report delivered in July 2021 by the Law Commission of the Parliament<sup>74</sup>, a new draft anti-corruption law was tabled in Parliament in October 2021, with both preventive and repressive provisions, notably on

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<sup>66</sup> Special Eurobarometer 523 on Corruption (2022). The Eurobarometer data on citizens' corruption perception and experience is updated every second year. The previous data set is the Special Eurobarometer 502 (2020).

<sup>67</sup> Flash Eurobarometer 507 on Businesses' attitudes towards corruption in the EU (2022). The Eurobarometer data on business attitudes towards corruption as is updated every second year. The previous data set is the Flash Eurobarometer 482 (2019).

<sup>68</sup> Special Eurobarometer 523 on Corruption (2022).

<sup>69</sup> Flash Eurobarometer 507 on Businesses' attitudes towards corruption in the EU (2022).

<sup>70</sup> The plan focuses on the following actions: i) optimising data analysis to improve understanding and detection of corruption; ii) training and awareness-raising for public employees; iii-a) supporting ministries to establish anti-corruption programmes; iii-b) support major municipalities and their establishments to establish anti-corruption programmes; iii-c) promoting integrity in sports organisations and events; iii-d) supporting businesses in implementing the French anti-corruption framework and encouraging them to make anti-corruption compliance a means of boosting their competitiveness; iii-e) enhancing corruption penalties; and iv) enhancing France's international action. 2021 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 7.

<sup>71</sup> The Rugby World Cup in 2023 and the Paris Olympic and Paralympic Games in 2024. 2021 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 7. Input from France for the 2022 Rule of Law Report, p. 9.

<sup>72</sup> There are ongoing discussions between an inter-ministerial committee (led by the French Anti-Corruption Agency, AFA) and some stakeholders (including NGOs) on the actions to be included in the next national anticorruption plan. Information received in the context of the country visit to France from the AFA.

<sup>73</sup> Laws (including the Law 2016-1691 of 9 December 2016, on transparency, the fight against corruption and the modernisation of economic life, known as 'Sapin II') are in place in France to prevent and fight corruption in the private and public sector, including whistle-blowers protection, assets declaration, lobbying and 'revolving doors'. 2020 Rule of Law Report, Country Chapter on the rule of law situation in France, pp. 5-8.

<sup>74</sup> National Assembly, Law Commission, Information Report No. 4325, 7 July 2021, concluding the work of an information mission evaluating the impact of the Sapin 2 Act, presented by Mr Raphaël Gauvain and Mr Olivier Marleix, Rapporteurs, Deputies.

combating corruption, breach of integrity, negotiated settlements, and a register for lobbying<sup>75</sup>.

**The conviction of high-level corruption cases continues to bring tangible results despite challenges linked to the limited resources as well as structural weaknesses.** The Central Office for Combating Corruption and Tax Offences (OCLCIFF)<sup>76</sup> remains responsible for investigation of high-level corruption cases. The staff available to the office (78 officers) compared to the workload (250 ongoing cases) is a point of concern<sup>77</sup>. The National Financial Prosecutor's Office (PNF) issued forty convictions in 2021, approved 12 individual appearances on prior admission of guilt (CRPC)<sup>78</sup>, and concluded three judicial agreements of public interest (CJIPs) (for a combined amount of fines of nearly EUR 45 million), plus two other criminal compositions<sup>79</sup>. In the same year, the PNF recovered a total of EUR 173.1 million<sup>80</sup>. In August 2021, the Government adopted a simplification of the public interest judicial agreements<sup>81</sup>. Following a ministerial instruction to this end, the number of information feedbacks<sup>82</sup> decreased (from 3 834 in 2021, to 1 854 as of April 2022)<sup>83</sup>. Despite the fact that in 2021 the workforce of the PNF grew from 17 to the current 18 magistrates<sup>84</sup>, the recommendation of the GRECO on the PNF workforce needs to be further addressed<sup>85</sup>.

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<sup>75</sup> The bill n° 4586 for strengthening the fight against corruption. The proposed text confirms the role of the French Anti-Corruption Agency (AFA) in terms of administrative coordination and strategic programming, and transfers to the High Authority for the Transparency of Public Life (HATVP) the functions of advice and control of public actors currently completed by the Agency. The AFA would thus remain competent in matters of advice and control of economic actors. It also aims to improve the use and functioning of the judicial convention of public interest (CJIP). Finally, the draft text increases the obligations for both lobbyists and public decision-makers.

<sup>76</sup> OCLCIFF is a specialised police service for the investigation of economic crimes, including corruption and money laundering. 2021 Rule of Law Report, Country Chapter on the rule of law situation in France, p.7.

<sup>77</sup> Information received from the Central Office for Combating Corruption and Tax Offences (OCLCIFF) in the context of the country visit to France.

<sup>78</sup> *Comparution sur reconnaissance préalable de culpabilité* (CRPC) is a court hearing upon pre-trial guilty plea. CRPCs require companies and individuals to plead guilty in exchange for terminating a prosecution. 2021 National Financial Prosecutor's Office (PNF) annual report.

<sup>79</sup> The penal composition is a measure taken by the public prosecutor or his representative within the framework of *alternative* measures to prosecution, similar to a plea bargain. Input from France for the 2022 Rule of Law Report, pp.17-18.

<sup>80</sup> Since 2014, through a total of 17 CJIPs a total of EUR 10 178 billion were recuperated (including 9 concluded by the PNF, worth approximately EUR 2 billion). Input from France for the 2022 Rule of Law Report, p. 18.

<sup>81</sup> In order to contain corruption, several countries have developed more appropriate legal procedures, in particular plea-bargaining arrangements between the national prosecution authority and a company. In France, article 22 of Law no 2016-1691 of 9 December 2016 on 'transparency, combatting corruption and modernization of economic life' (commonly called 'Sapin II Law') introduced into French criminal law a new transactional procedure instrument, the Judicial Public Interest Agreement ('*convention judiciaire d'intérêt public*', CJIP). Decree No. 2021-1045 of August 4, 2021 adapting and simplifying the procedure applicable to the judicial agreement in the public interest and relating to the assignment of specialised assistants.

<sup>82</sup> The *remontée d'information* is a practice to deliver information feedback to the Ministry of Justice on specific cases followed by prosecutors.

<sup>83</sup> The information feedback is done after the conclusion of the case, in a sanitized manner, for informative and statistical purposes only. Information received in the context of the country visit to France from the National Financial Prosecutor.

<sup>84</sup> The staff is expected to reach 19 officers at the end of September 2022. Information received from the National Financial Prosecutor in the context of the country visit to France.

<sup>85</sup> GRECO recommended that the National Financial Prosecution Office be provided with additional resources, specifically in terms of staff. GRECO Fifth Evaluation Round - Compliance Report, p. 13.

Structural challenges affecting the criminal process of foreign bribery, including the operations of the PNF and of the French Anti-Corruption Agency (AFA) have to be addressed<sup>86</sup>. The bill adopted by the Parliament in November 2021<sup>87</sup>, has raised some criticism related to the effective investigation of foreign bribery<sup>88</sup>. Similarly, the legislative framework on the criminalisation of corporate liability associated to foreign bribery shows some deficiencies<sup>89</sup>.

**The Anti-Corruption Agency continues to issue integrity guidelines for entities in both the private and public sectors.** In 2021, the Anti-Corruption Agency continued to issue a series of subject-specific guidelines<sup>90</sup>, including in the private sector<sup>91</sup>, developed an awareness exercise on anti-corruption obligations<sup>92</sup>, signed institutional memoranda of understanding<sup>93</sup>, and delivered training to different stakeholders from the public and private sectors. Despite the decrease of personnel in 2021, the Agency considers the human resources available as sufficient overall<sup>94</sup>. Turnover, due to rotation of seconded positions, declined.

**The integrity of public officials continues to be monitored by the High Authority for the Transparency of Public Life (HATVP).** The HATVP continues advising on the integrity

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<sup>86</sup> Structural resource problems affect all stages of the criminal justice process. In particular, the limitation of the duration of preliminary investigations to two or three years (adopted by Parliament on 18 November 2021) or the proposed overhaul of the AFA and its remit (a Bill was introduced on 21 October 2021), constitute a serious cause for concern about furthering recent progress and represent as many risks of calling these into question. The Implementing the OECD Anti-Bribery Convention, Phase 4 Report, France, adopted in December 2021, indicates, at page 55, that in the opinion of the investigative judges, the creation of the PNF and the increase in the number of economic cases have not been accompanied by an increase in the resources allocated to the competent investigative judges. Additionally, the same OECD report indicates that “The limitation of the duration of preliminary investigations to two or three years (...) could result in the further transfer of a significant number of economic and financial cases to investigative judges, and thus further exacerbate this situation”.

<sup>87</sup> Bill on ‘confidence in the judiciary’, adopted by Parliament on 18 November 2021. The bill introduced a statutory limitation regime for preliminary investigations of foreign bribery and related offences (such as concealment or money laundering).

<sup>88</sup> It ‘appears to disregard the complex, multidimensional nature of foreign bribery investigations as well as the lack of resources for fighting white-collar crime in France’, Implementing the OECD Anti-Bribery Convention, Phase 4 Report, France, adopted in October 2021, p. 71.

<sup>89</sup> ‘Major difficulties remain, in particular in relation to the need to establish that the acts were committed by the corporate body or representative’. Implementing the OECD Anti-Bribery Convention, Phase 4 Report, France, adopted in December 2021.

<sup>90</sup> Among others: Implementation of a corruption risk prevention system in the building and public works sector (February 2022); Practical guide for Associations and Foundations recognised as being of public utility (January 2022); Control the risk of impact of probity within associations and recognised foundations of public utility (January 2022); Prevention of conflicts of interest in the company (November 2021).

<sup>91</sup> Two practical guides for operators in the Ministry of Sport and sports federations were developed and are expected to be published in the course of 2022. Input from France for the 2022 Rule of Law Report, p. 13. Concerning the private sector, two corporations based in France were sanctioned in early 2022 for corruptive practices in the context of international public procurement. See World Bank (2022), Press release, World Bank Group Debars ADP International S.A., and World Bank (2022), Press release, World Bank Group sanctions Bouygues Bâtiment International.

<sup>92</sup> ‘In Search of Integrity’, the serious corruption prevention awareness game, <https://www.agence-francaise-anticorruption.gouv.fr/fr/decouvrez-en-quete-dintegrite-jeu-serieux-sensibilisation-prevention-corruption>.

<sup>93</sup> On February 2022, the Inter-ministerial Commission for the Coordination of Controls (CICC) and the French Anti-Corruption Agency signed a cooperation protocol relating to the implementation of the Recovery and Resilience Facility, the European component of the plan stimulus.

<sup>94</sup> As the experience and reputation of the Agency grows, it is easier to attract qualified new officers. Information received from AFA in the context of the country visit to France.

rules for public officials, including those on asset disclosure<sup>95</sup>. In 2021, from the 15 574 declarations of asset and interests received, it only examined 3 150 declarations, and transmitted 11 files to the Public Prosecutor Office for further analyses of possible crimes<sup>96</sup>. For the same year, the HATVP assessed around 19 000 reports on “revolving doors” (e.g. movement of professionals between the private and public sectors)<sup>97</sup>.

**While controls on the funds of politicians and political parties continue, a significant number of concerns remain as regard the application of rules on lobbying for all relevant actors, including at top executive level.** In 2021, the National Commission on Campaign Accounts and Political Financing (CNCCFP) examined in total approximately 8 200 financial statements from candidates to Senate or regional elections and rejected in total 582 financial statements<sup>98</sup>. The HATVP is responsible for the management of the lobbying register<sup>99</sup>. A GRECO recommendation on the disclosure of lobbying meetings with persons who are entrusted with top executive functions at national level remains unaddressed<sup>100</sup>. While there is a new draft anti-corruption law (see above, page 10), the existing concerns on the type of lobbying activities and lobbyists remain unaddressed<sup>101</sup>. The fact that the system requires the declaration of many lobbying activities (including those occurring at local level), creates a significant workload for the HATVP, which lacks human and technical resources<sup>102</sup>. In 2021, a number of politically exposed persons were sentenced for tax fraud<sup>103</sup>. In the first compliance report, adopted less than two years after the

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<sup>95</sup> 2020 and 2021 Rule of Law Reports, Country Chapter on the rule of law situation in France, p. 6 and p. 8 respectively.

<sup>96</sup> Written contribution from High Authority for the Transparency of Public Life (HATVP) in the context of the country visit.

<sup>97</sup> The results of the controls are the following: 10% of the cases were incompatible; 64% of the cases received an advice of compatibility, with condition; 24% of the cases received a simple advice. Decisions on compatibility are binding for three years. Information received in the context of the country visit to France from the High Authority for the Transparency of Public Life (HATVP).

<sup>98</sup> Starting with the Presidential election of April 2022, a new software (called FINPOL) is used to check the financial and interest statements of the 12 candidates, with publication of this assessment (except for personal sensitive data) expected one month after the elections. Information received in the context of the country visit to France from the National Commission on Campaign Accounts and Political Financing (CNCCFP).

<sup>99</sup> The HATVP provides an opinion prior to the recruitment for a high-level public position of a person formerly employed in the private sector, which will determine the recruitment. Before the appointment of any member of the Government and in relation to the person whose appointment is envisaged, the President of the Republic may request from the President of the HATVP information indicating, on the date of the request and taking into account the information available to the HATVP, whether this person is in a situation that may constitute a conflict of interest, as well as the measures necessary to prevent or take action immediately to end this conflict of interest. 2020 and 2021 Rule of Law Reports, Country Chapter on the rule of law situation in France, p. 6 and p. 9 respectively.

<sup>100</sup> GRECO Fifth Evaluation Round - Compliance Report, p. 8.

<sup>101</sup> The definition of lobbyist only includes entities, and not individuals. There is a risk that the current system might unfairly benefit large existing lobbying entities (which have well-established relationships with decision-makers), and disadvantage small or new lobbying entities (which must establish and initiate lobbying relationships with decision-makers). The proposal presented by the High Authority on this matter was not taken into consideration in the new draft law on post-Sapin II. Information received in the context of the country visit to France from the High Authority for the Transparency of Public Life (HATVP). 2021 Rule of Law Reports, Country Chapter on the rule of law situation in France, pp. 1 and 9.

<sup>102</sup> Currently the High Authority has a staff of 67 officers, a budget of EUR 9 million for 2022, and technical resources (like software used to check asset and lobbying declaration) are insufficient. Information received in the context of the country visit to France from the High Authority for the Transparency of Public Life (HATVP).

<sup>103</sup> Information received in the context of the country visit to France from the Ministry of Justice.

evaluation report, GRECO stated that nine recommendations were considered as partly implemented and that eight had not been implemented<sup>104</sup>. Therefore, progress will have to be made regarding codes of conduct (for persons who are entrusted with top executive functions at national level)<sup>105</sup>, on the verification and accessibility of declarations of assets (of the presidential candidate, of persons with top executive functions<sup>106</sup>, as well as those filed by members of the National Assembly and Senators)<sup>107</sup>, on conflicts of interests<sup>108</sup>, as well as on examination of cases of corruption affecting members of the Government<sup>109</sup>.

**Integrity rules for members of the Parliament and the Senate continue to be implemented.** In 2021, the Commission for Ethics of the National Assembly<sup>110</sup> issued 50 individual opinions, responded to about 443 requests for clarification on the use of funds during the presidential electoral campaign<sup>111</sup>, and verified financial statements of members of the Parliament (150 statements for the year 2020, and 50 for 2021), where only minor violations were found<sup>112</sup>. In 2021, only minor breaches of conflict of interest rules were identified. In January 2022, the Parliament adopted a new code of conduct, with amended provisions on lobbying activities<sup>113</sup>. The Ethics Committee of the Senate is the body responsible for ethics of Senators.<sup>114</sup>

**While integrity provisions are implemented across the public sector, the need to improve integrity-related security checks in the police and the disciplinary authority over judges remain.** Police staff receives targeted anti-corruption training and awareness material<sup>115</sup>. The national gendarmerie organises trainings on ethics for the military personnel at all levels<sup>116</sup>. A Deontology Action Plan, with anti-corruption measures, is being finalised by the Inspectorate General of the Gendarmerie<sup>117</sup>. Nevertheless, the GRECO recommendation to carry out security checks relating to the integrity of members of the National Police and the National Gendarmerie at regular intervals remains unaddressed<sup>118</sup>.

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<sup>104</sup> The GRECO report indicated that one recommendation had been implemented satisfactorily (recommendation about confidentiality of advisory procedures with ethics advisers/correspondents, and specific training for ethics advisers/correspondents). GRECO Fifth Evaluation Round - Compliance Report, p. 15.

<sup>105</sup> GRECO Fifth Evaluation Round - Compliance Report, p. 6.

<sup>106</sup> GRECO Fifth Evaluation Round - Compliance Report, pp. 9-10.

<sup>107</sup> GRECO Fourth Evaluation Round - Addendum to the Second Compliance Report, p. 7.

<sup>108</sup> To guarantee transparency on cases of conflict of interests for the Prime Minister.

<sup>109</sup> GRECO Fourth Evaluation Round - Addendum to the Second Compliance Report, pp. 11-12.

<sup>110</sup> Responsible to monitoring the implementation of the code of conduct for parliamentarians.

<sup>111</sup> The frequently asked questions and responses, are published in the National Assembly intranet, and are accessible to MPs. Information received in the context of the country visit to France from the Ethics Commissioner of the National Assembly.

<sup>112</sup> The violations found prompted to recover 2% of the public funds previously allocated to MPs. Information received in the context of the country visit to France from the Ethics Commissioner of the National Assembly.

<sup>113</sup> Code of Conduct of Deputies (New version resulting from the Bureau meeting of February 21, 2022). Lobbyists must inform the Members of the Parliament of the value of the gifts provided and cannot pay MPs advisers for lobbying activity. Information received in the context of the country visit to France from the Ethics Commissioner of the National Assembly.

<sup>114</sup> In accordance with the order No. 58-1100 of November 17, 1958 relating to the functioning of parliamentary assemblies.

<sup>115</sup> Input from France for the 2022 Rule of Law Report, p. 10.

<sup>116</sup> These actions will be probably used to reassess the previous recommendation from GRECO to improve the anticorruption training of law enforcement authorities, will have to be re-assessed.

<sup>117</sup> Input from the France for the 2022 Rule of Law Report, p. 10.

<sup>118</sup> GRECO Fifth Evaluation Round - Compliance Report, p. 15.



The national school of magistrates organises trainings on anti-corruption. Following a request from the President of the Republic<sup>119</sup>, in September 2021 the High Council of Magistrates (CSM) issued a series of proposals on ethics<sup>120</sup>. When members of the judiciary move to a new position, they must declare their assets and attend a meeting to discuss ethical conduct<sup>121</sup>. However, there is no information available on the functioning of this declaration system<sup>122</sup>. The GRECO recommendation calling to concentrate disciplinary authority over judges to within the Judicial Service Commission remains to be implemented<sup>123</sup>.

**A new law has been adopted for the protection of whistleblowers.** In March 2022, the Parliament adopted a new law on the protection of whistleblowers<sup>124</sup>, which transposes the EU Whistleblowing Directive into national law<sup>125</sup>. According to the new law, the Defender of Rights<sup>126</sup> will be assigned a central and referral role on the new provisions, including the report on the functioning of the whistleblowing system<sup>127</sup>. This legislative development will be used to reassess the previous GRECO recommendation to revise the protective regime for whistleblowers<sup>128</sup>. In 2021, the Defender of Rights treated 81 cases of whistleblowing<sup>129</sup>.

**The existing anti-corruption measures for public procurement in the time of COVID-19 pandemic continue to be implemented.** The specific guidelines issued in June 2020 by the Anti-Corruption Agency and the State Procurement Directorate continue to apply<sup>130</sup>.

### **III. MEDIA PLURALISM AND MEDIA FREEDOM**

The French legal framework concerning media pluralism is established by the Constitution and specific sectorial legislation, enforced by the independent media regulator. The Constitution protects freedom of expression and guarantees pluralism of the media. The Declaration of the Rights of People and of the Citizen recognises freedom of expression as a

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<sup>119</sup> Under Article 65 of the Constitution, on the double issue of the responsibility and the protection of magistrates.

<sup>120</sup> Proposals aim to: place ethics at the heart of the magistrate's function; promote the detection of disciplinary breaches; improving the conduct of disciplinary proceedings and the scale of sanctions; and strengthen the personal and functional protection of magistrates. Plenary formation of the Superior Council of the Judiciary, Opinion to the President of the Republic Referral of 17 February 2021, Submitted to the President of the Republic on 24 September 2021.

<sup>121</sup> On average, between one-third and one-fourth of the magistrates move every year. Information received in the context of the country visit to France from High Council of Magistrates (CSM).

<sup>122</sup> In 2021 there was a case of post-employment conflict of interest concerning a senior level magistrate. Information received in the context of the country visit to France from High Council of Magistrates (CSM).

<sup>123</sup> GRECO Fourth Evaluation Round - Addendum to the Second Compliance Report, p. 10.

<sup>124</sup> Law No. 2022-401 of March 21, 2022 aimed at improving the protection of whistleblowers.

<sup>125</sup> Directive (EU) 2019/1937 on the protection of persons who report breaches of Union Law.

<sup>126</sup> The Defender of Rights is the entity that provides support and advice to whistleblowers. 2021 Rule of Law Reports, Country Chapter on the rule of law situation in France, p. 10.

<sup>127</sup> Information received in the context of the country visit to France from the Defender of Rights.

<sup>128</sup> GRECO Fifth Evaluation Round - Compliance Report, p. 17.

<sup>129</sup> There is a surge of cases stemming from large corporations or public institutions. Information received from the Defender of Rights in the context of the country visit to France.

<sup>130</sup> For each phase of the public procurement, the guidelines (titled on 'Managing the risk of corruption in the public procurement cycle') indicate the associated risks of corruption, suggest mitigation measures, and give recommendations on how to develop organisational risk mapping and anticorruption codes of conduct. 2021 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 10.

fundamental right. Transparency on media ownership is guaranteed by specific legislation<sup>131</sup>. Legislation to transpose the Audiovisual Media Services Directive has been adopted<sup>132</sup>.

**The independent media regulator has been redesigned for a better regulation of the online sphere.** As of 1 January 2022<sup>133</sup>, the media regulator *Conseil supérieur de l'audiovisuel* (CSA) and the online copyright authority *Haute autorité pour la diffusion des oeuvres et la protection des droits sur internet* (HADOPI) have merged creating a new regulator with a broader scope of competence: the *Autorité de régulation de la communication audiovisuelle et numérique* (ARCOM). The aim of the reform is to create a unique national regulator with increased powers (including conciliation procedures and investigative powers) over the entire field of audiovisual and digital content. ARCOM is granted with wider competences regarding content creation and obligations, copyright, combating disinformation as well as harmful online content. The ARCOM board is composed of nine members, appointed every two years by five different authorities (from the executive, legislative and judiciary)<sup>134</sup> for a single, non-renewable term of six years. ARCOM's independence is guaranteed by the same safeguards as those in place for CSA and HADOPI<sup>135</sup>. The Media Pluralism Monitor (MPM 2022) considers the independence of the media regulator to be an area of very low risk<sup>136</sup>.

**There have been no changes in the legal framework regulating transparency of media ownership since the last Rule of Law report<sup>137</sup>; the issues related to horizontal and cross-media concentration persists.** France has in place legal safeguards to ensure transparency of media ownership, which is guaranteed by the Law on the Freedom of Communication, the Law to Support Confidence in the Digital Economy, and the Law on the Freedom of the Press<sup>138</sup>. These laws state that any editor of a broadcasting service or director of publications must keep certain information, including ownership, permanently available to the public<sup>139</sup>. The MPM 2022 registers a medium risk for the transparency of media ownership, pointing to the complexity of shareholding structures in the media sector<sup>140</sup>, and

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<sup>131</sup> Law No. 86-1067 of 30 September 1986 on the Freedom of Communication; Law No. 2004-575 of 21 June 2004 to support confidence in the digital economy, and Law of 29 July 1881 on the Freedom of the Press; these laws state that any editor of a broadcasting service or director of publication must keep certain information permanently available to the public, including ownership.

<sup>132</sup> The Decree transposing the AVMSD, decree No. 2021-793 was adopted on 22 June 2021. An additional decree, Decree No. 2021-1923 of 30 December 2021 on the procedure for the provisional suspension of the retransmission of certain audiovisual services, was adopted to complete the transposition of the AVMSD. France ranks 26th in the 2022 Reporters without Borders World Press Freedom Index compared to 34th in the previous year.

<sup>133</sup> Law no. 2021-1382 of 25 October 2021 relating to regulation and protection of access to cultural works in the digital age.

<sup>134</sup> The President is appointed by the President of the Republic. Three members are appointed by the President of the National Assembly, three by the President of the Senate, one by the Vice-President of the Council of State and one by the First President of the Court of Cassation.

<sup>135</sup> The law on the Freedom of Communication ensures the independence of CSA and its members. The CSA was established in 1989 as an independent administrative authority. General provisions are in place to minimise interference from the media sector and to prohibit taking instructions from other public authorities. See 2020 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 8.

<sup>136</sup> 2022 Media Pluralism Monitor, France, p. 16

<sup>137</sup> 2021 Rule of Law Reports, Country Chapter on the rule of law situation in France, p. 11

<sup>138</sup> Law No. 86-1067 of 30 September 1986; Law No. 2004-575 of 21 June 2004; Law of 29 July 1881.

<sup>139</sup> A draft law of 8 February 2022 on media independence envisages reinforcement of media ownership transparency measures in the press sector.

<sup>140</sup> 2022 Media Pluralism Monitor, France, pp. 18-19.

indicates a high degree of concentration in the French media landscape<sup>141</sup>. During the presidential elections campaign, Reporters Without Borders (RSF) issued several recommendations to candidates to reinforce media freedom and called for the revision of legislation on media concentration<sup>142</sup>. In November 2021 a Senate Commission of inquiry was established to examine media concentration in France and its impact on democracy. The final report of the Senate Commission was adopted on 31 March 2022<sup>143</sup>. The Senate Commission suggested a complete rewriting of the Law on the Freedom of Communication which it considered has become “obsolete”, and put forward 32 proposals. The proposals included the reinforcing of the guarantees of independence and ethics, prevention of conflicts of interest in large groups and limiting vertical concentration of media ownership.

**Authorisations and licensing in the media sector are regulated under the Law on Freedom to Communicate.** Authorisations for terrestrial television and radio broadcasting are granted by the media regulator (now ARCOM) following bid tenders and subject to the conclusion of an agreement with the media regulator, with the exception of the public national providers, France Télévisions and Radio France. The term of authorisations cannot exceed 10 years in principle but is subject to extensions and various derogations. Broadcasting services that are not subject to the authorisation – namely, those that are broadcast or distributed through a network that does not use frequencies allocated by the media regulator (cable, satellite, asymmetric digital subscriber line (ADSL), internet, telephony, etc.) – must nevertheless conclude a standard agreement or file a prior declaration with the regulator.

**Structural legal safeguards ensure the independence of French public service media.** The French public service media (France Télévisions) is regulated by the Law on Freedom to Communicate (Law Létard)<sup>144</sup>. The French state holds the entire capital of France Télévisions, which is subject to the legislation on public limited companies. According to the Law Létard, public service media must ensure pluralism of information and independence as well as diversity of opinion, respect for human rights and democratic principles. Furthermore, when broadcasting television news, the services of France Télévisions have an independent editorial line<sup>145</sup>. The MPM 2022 considers the independence of public service media governance to be an area of low risk<sup>146</sup>. The governing bodies of France Télévisions are the Board of Directors and its committees, the President, and the Programme Advisory Board. The appointment procedures for the management and the boards of the public service media, laid down by the Law on Freedom to Communicate, are transparent and balanced. The President is appointed for five years by ARCOM, by a majority of its members. This appointment is subject to a reasoned decision based on criteria of competence and experience. The Board of Directors comprises, in addition to the President, 14 members; five members are independent persons appointed by ARCOM for their competence, one of whom represents the consumer protection associations. There are also safeguards in place against arbitrary dismissals. The President of France Télévisions presents an annual report on the fulfilment of the remit’s terms and conditions to the committees responsible for cultural affairs and finance of the National Assembly and the Senate. ARCOM guarantees the

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<sup>141</sup> 2022 Media Pluralism Monitor, France, p. 19

<sup>142</sup> Reporters without Borders (2022), French presidential election – RSF’s ten proposals for journalistic freedom and independence.

<sup>143</sup> Final report by Senate Commission of inquiry on media concentration in France (2022).

<sup>144</sup> Law No. 86-1067 of 30 September 1986.

<sup>145</sup> Article 44 of Law No. 86-1067 of 30 September 1986.

<sup>146</sup> 2022 Media Pluralism Monitor, France, p. 29.

independence and impartiality of the public service media. In its annual activity report, ARCOM must present a report on France Télévisions's compliance with its obligations.

**Attacks on and threats to the physical safety of journalists continue but the Government has taken steps to strengthen their protection.** Since the 2021 Rule of Law Report, a significant number of alerts have been published for France on the Council of Europe's Platform to promote the protection of journalism and safety of journalists<sup>147</sup>. They related in particular to harassment, intimidation and attacks on physical safety and integrity of journalists. To address the tensions between the press and the police forces<sup>148</sup>, following the report submitted by the Independent Commission on Press and Law Enforcement Relations, a monthly liaison committee between the Ministry of the Interior and the press was established in January 2022 to enable permanent dialogue. In parallel, a working group was set up in July 2021 dedicated to the identification of journalists for security purpose, in the context of public street events<sup>149</sup>. It involved representatives of journalists and their employers, journalism associations and the Commission for the Identity Card of Professional Journalists (CCIJP)<sup>150</sup>. A new version of the National Law Enforcement Scheme (SNMO) was published on 16 December 2021, which recognises the special role of journalists during demonstrations. It also provides for the obligation to guarantee their security during demonstrations, including unauthorised or even prohibited demonstrations. Offences committed against journalists during demonstrations are subject to judicial proceedings, provided that they are detected or brought to the attention of the law enforcement authorities<sup>151</sup>. The MPM 2022 reports a medium risk with regard to the protection of the right to information, due to criticisms related to the extension of the scope of the law on the 'protection of trade secret'<sup>152</sup>.

#### **IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES**

France is a democratic republic with a semi-presidential system of government, with a President directly elected by the people and a Prime Minister who is accountable to Parliament. The bicameral Parliament consists of the National Assembly and the Senate. Legislative proposals can originate from the Government or from members of both Houses of Parliament. The Constitutional Council scrutinises the constitutionality of laws, before or after their adoption. Independent authorities play an important role in the system of checks and balances.

**The practice of nationwide public consultations was further reinforced and extended to other fields, including the justice system.** As mentioned above<sup>153</sup>, the Estates General of Justice were conceived as a structured and open democratic debate. Both the general public and law professionals could express their views on the reforms needed in the justice system.

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<sup>147</sup> Council of Europe, Platform to promote the protection of journalism and safety of journalists, France.

<sup>148</sup> See Alerts from the Council of Europe, Platform to promote the protection of journalism and safety of journalists, France, <https://fom.coe.int/en/alerte?years=2022&typeData=1&time=1653914309287>.

<sup>149</sup> Journalist can, by way of derogation, move freely within the security systems, position themselves behind the lines of the law enforcement forces. They must then be able to produce a press card or a certificate from their employer and position themselves in such a way that they cannot be confused with the participants in the attack and do not obstruct the action of the law enforcement authorities. See Input from France for the 2022 Rule of law Report, p.2

<sup>150</sup> Input from France for the 2022 Rule of Law Report, p. 2.

<sup>151</sup> Input from France for the 2022 Rule of Law Report, p. 2.

<sup>152</sup> MPM indicates that there have been several recent cases in which this 'package' was used to restrict access to information deemed of public interest. See 2022 Media Pluralism Monitor, France, p. 11

<sup>153</sup> See above p. 7.

An online consultation took place at national level<sup>154</sup>, and 266 events such as debates and conferences were organised throughout the country. In parallel, until the end of January 2022, seven thematic working groups involving more than 60 justice and law professionals (including magistrates, lawyers, registry staff and university professors) were set up<sup>155</sup>. The independent committee in charge of drafting the final report was entrusted with taking into account all the contributions gathered as part of this exercise to feed its evaluation. Furthermore, a new Citizens' Participation Platform<sup>156</sup> allows the public to have access to all information relating to non-compulsory citizen participation procedures carried out by the State and, where appropriate, express their interest in registering, as well as to consult citizens' contributions and the follow-up given to them, and thus to measure the impact of their participation on public policies. In 2021, three nation-wide consultations were co-developed and co-led by the Ministry for Relations with Parliament and Citizens' Participation and the Interministerial Centre for Citizens' Participation (CIPC), including on the topic of discrimination and in relation to the Conference on the Future of Europe. To ensure the follow-up of proposals made in the context of this conference, a citizens' monitoring committee, made up of 15 citizens who participated in the consultation, was created<sup>157</sup>.

**Accelerated procedures for the adoption of laws continued to be used regularly, including for laws with a significant impact on individual freedoms.** Out of 67 laws enacted between 1 July 2021 and 8 April 2022, 45 had been submitted to an accelerated procedure by the Government<sup>158</sup>. As already noted in the 2021 Rule of Law Report<sup>159</sup>, this procedure was repeatedly used for laws with an important impact on individual freedoms, such as the Law on the prevention of terrorism and intelligence<sup>160</sup>, the Law for trust in the justice system<sup>161</sup>, the Law on criminal responsibility and internal security<sup>162</sup> and the Law reinforcing the tools to manage the health crisis<sup>163</sup>. As regards the latter, the general assembly of the National Council of Bars issued a resolution disapproving the use of the accelerated procedure, which prevents a genuine debate and parliamentary scrutiny, to adopt a law

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<sup>154</sup> An online platform (<https://www.parlonsjustice.fr/>) was launched, with a questionnaire available in 3 versions (addressed respectively to the general public, to magistrates and officials of the Ministry of Justice, and to partner stakeholders) allowing approximately 40 000 people to express their views until 10 December 2021. The platform also included a space for collective participation, which allowed to collect 443 written contributions from 267 organisations (including magistrates' associations and courts). The summaries of all the written contributions were published on 27 January 2022 on the dedicated online platform.

<sup>155</sup> These workshops addressed, among others, the topics of simplification of criminal proceedings, simplification of civil justice, as well as the evolution of tasks and statuses. A convergence workshop composed of citizens, magistrates, ministry officials and justice stakeholders took place on 31 January 2022 to prioritise and deepen the analysis of the proposals resulting from the consultation.

<sup>156</sup> The platform, designed and operated by the Interministerial Centre for Citizens' Participation (CIPC), was launched on 29 November 2021 by the Minister for Relations with Parliament and Citizens' Participation. The CIPC is leading inter-ministerial coordination to feed the platform and ensure that citizens can monitor the implementation of the actions resulting from their participation.

<sup>157</sup> This committee is entrusted with promoting the proposals made by French citizens and to monitor how they have been taken into account. It will draft a collective report which will be made public when the Conference's Executive Committee delivers its conclusions at European level.

<sup>158</sup> Written contribution from the French authorities in the context of the country visit to France, p. 13.

<sup>159</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 14.

<sup>160</sup> Law No 2021-998 of 30 July 2021 on the prevention of acts of terrorism and intelligence.

<sup>161</sup> Law No 2021-1729 of 22 December 2021 for trust in the justice system.

<sup>162</sup> Law No 2022-52 of 24 January 2022 on criminal liability and internal security.

<sup>163</sup> Law No 2022-46 of January 22, 2022 reinforcing the tools for managing the health crisis and modifying the public health code.

impacting fundamental freedoms, in the absence of an imminent danger<sup>164</sup>. The National Advisory Commission on Human Rights (CNC DH)<sup>165</sup> reiterated its disapproval of the frequent use of this procedure outside strict emergency requirement and in areas with a direct impact on public freedoms and human rights, as it restricts significantly the parliamentary debate essential in a democracy<sup>166</sup>.

**The emergency regime to address the COVID-19 pandemic has been extended, with the Constitutional Council defining the limits of the executive and legislative powers.** The transitional regime for phasing out from the state of health emergency<sup>167</sup>, introduced by the law of 31 May 2021 until 30 September 2021, was initially extended until 15 November 2021<sup>168</sup> and then until 31 July 2022<sup>169</sup>. The Constitutional Council reviewed both laws before their promulgation, declared them partly unconstitutional and made important findings regarding the extent of the judicial scrutiny of such laws. In particular, in its decision<sup>170</sup> on the Law of 5 August 2021, the Constitutional Council rejected the claim that the deadlines set for Parliament to examine and amend the text were too short<sup>171</sup>, but also noted the limits to its constitutional power to review of the opportunity of adopting a law introducing such a regime<sup>172</sup>. On the substance, the Constitutional Council highlighted that the lawmaker's assessment was corroborated by opinions of a scientific committee required by law, and that the measures were surrounded by sufficient safeguards, with the exception of some provisions declared unconstitutional. As regards the Law of 10 November 2021, the Constitutional Council<sup>173</sup> validated the extension of the emergency regime until 31 July 2022, recalling fundamental principles imposed on the lawmaker<sup>174</sup> and the executive power<sup>175</sup> in such a context. On substance, the possibility for school heads to access the health data of students and several government authorisations to issue new ordinances were declared unconstitutional. In its 2021 Annual Study<sup>176</sup>, dedicated to the states of emergency, the

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<sup>164</sup> Resolution of 14 January 2022.

<sup>165</sup> The CNC DH is a national human rights institution accredited with an "A Status" by the GANHRI Sub-Committee on Accreditations, in compliance with the Paris Principles.

<sup>166</sup> Contribution from ENNHRI for the 2022 Rule of Law Report, p. 252.

<sup>167</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 14.

<sup>168</sup> Law of 5 August 2021 on managing the public health state of emergency.

<sup>169</sup> Law of 10 November 2021 on various health vigilance provisions, published in the Official Journal of 11 November 2021.

<sup>170</sup> Decision no. 2021-824 DC of 5 August 2021.

<sup>171</sup> At para. 10, the Constitutional Council notes that, "despite their particular brevity, the deadlines set in the National Assembly and then in the Senate for submitting amendments to bills in committee and in public session did not hinder the effective exercise by Members of Parliament of their right to amend, nor did they deprive of effect the requirements of clarity and sincerity of parliamentary debate".

<sup>172</sup> See para. 22 of the decision: "as the Constitutional Council does not have a general discretion that is similar to that of Parliament, it cannot call into question the legislator's evaluation of the existence of a public health catastrophe and of the risk that it could continue over the next two months".

<sup>173</sup> Decision no. 2021-828 DC of 9 November 2021.

<sup>174</sup> At para. 5 of its Decision, the Constitutional Council held that "the Constitution does not exclude the possibility for the legislator to provide for a state of health emergency regime. It is in its remit, within this framework, to ensure the reconciliation between this objective of constitutional value and the respect of the rights and freedoms recognized to all those who reside on the territory of the Republic".

<sup>175</sup> At para. 8, the Constitutional Council states that "for the implementation of the state of health emergency, measures may be taken by the regulatory power for the sole purpose of guaranteeing public health. They must be strictly proportionate to the health risks incurred and appropriate to the circumstances of time and place. They are terminated without delay when they are no longer necessary. Courts are responsible for ensuring that these measures are appropriate, necessary and proportionate to the purpose they pursue".

<sup>176</sup> Council of State (2021), 2021 Annual Study, *Les états d'urgence: la démocratie sous contraintes*, approved by the general assembly of the Council of State on 8 July 2021, see Annex I.

Council of State pointed out that the prolonged use of such regimes destabilises the institutional balance and the democratic institutions, and made 15 proposals to better define and organise the states of emergency.

**On 1 January 2022, France had 25 leading judgments of the European Court of Human Rights pending implementation**<sup>177</sup>. At that time, France's rate of leading judgments from the past 10 years that remained pending was at 28% and the average time that the judgments had been pending implementation was two years and 11 months<sup>178</sup>. The oldest leading judgment, pending implementation for 12 years, concerns the inaction of the authorities in the execution of judiciary measures of expulsion regarding illegally occupied lands<sup>179</sup>. On 1 July 2022, the number of leading judgments pending implementation has decreased to 24<sup>180</sup>.

**Independent authorities expressed concerns regarding the impact of laws adopted to manage crisis situations on individual freedoms.** In an opinion of 20 July 2021, the Defender of Rights<sup>181</sup> expressed concerns on the potential impact of the laws on managing the health crisis on individual freedoms, and more particularly on the risks of discrimination and violations of children's rights and data protection rules. With regard to the fight against terrorism, the *Commission consultative des droits de l'homme* (CNCDH) criticised the inclusion in ordinary law of preventive measures<sup>182</sup> that were part of the law relating to the state of emergency. Initially introduced into ordinary law on an experimental basis<sup>183</sup>, these measures were made permanent by the Law on the prevention of terrorism and intelligence<sup>184</sup>. During a hearing with parliamentarians, the CNCDH reiterated its concern about these measures, especially given that their impact on human rights has not yet been assessed independently<sup>185</sup>. As regards the Law on Global Security<sup>186</sup>, which created concerns as regards the freedoms of expression and information and the right to freedom of peaceful assembly<sup>187</sup>, the independent authorities pointed out that there had been no opportunity to assess its actual impact on civil society, as there were no major demonstrations or other large scale events during which the measures foreseen for could be implemented<sup>188</sup>.

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<sup>177</sup> The adoption of necessary execution measures for a judgment by the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Europe. It is the Committee's practice to group cases against a State requiring similar execution measures, particularly general measures, and examine them jointly. The first case in the group is designated as the leading case as regards the supervision of the general measures and repetitive cases within the group can be closed when it is assessed that all possible individual measures needed to provide redress to the applicant have been taken.

<sup>178</sup> All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2022. See the contribution from the European Implementation Network for the 2022 Rule of Law Report, p. 42.

<sup>179</sup> Judgment of the European Court of Human Rights of 21 January 2010, *Barret and Sirjean v. France*, 13829/03, pending implementation since 2010.

<sup>180</sup> Data according to the online database of the Council of Europe (HUDOC).

<sup>181</sup> Defender of rights, opinion of 20 July 2021, [https://juridique.defenseurdesdroits.fr/doc\\_num.php?explnum\\_id=20864](https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=20864).

<sup>182</sup> These measures relate to individual monitoring, surveillance measures, and home searches ordered by the administrative authorities.

<sup>183</sup> By Law no. 2017-1510 of 30 October 2017 strengthening internal security and the fight against terrorism.

<sup>184</sup> Law no. 2021-998 of 30 July 2021 on the prevention of acts of terrorism and intelligence.

<sup>185</sup> Contribution from ENNHRI for the 2022 Rule of Law Report, p. 252.

<sup>186</sup> Law No. 2021-646 of 25 May 2021 for global security preserving freedoms.

<sup>187</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 16.

<sup>188</sup> Information received from the Defender of Rights and the *Commission consultative des droits de l'homme* in the context of the country visit to France.

**A criminal investigation was opened into use of surveillance spyware targeting in particular journalists.** It was reported that a number of French and French-based journalists and media company owners have been targeted by Pegasus and equivalent spyware surveillance software<sup>189</sup>. On 19 and 20 July 2021 respectively, the media company Mediapart and NGO Reporters without Borders (RSF) lodged criminal complaints before the Paris Prosecutors' Office<sup>190</sup>, which opened an investigation on charges of invasion of privacy, interception of correspondence, fraudulent access to a computer system and criminal association.

**The Law on republican principles, supplementing the regulation on the activities and funding of associations, entered into force and a number of stakeholders raised concerns as regards its potential impact on the civic space.** Under the Law on republican principles<sup>191</sup>, associations or foundations requesting public subsidies must subscribe and comply with a 'contract of republican commitment'<sup>192</sup>, under penalty of repaying the allocated subsidies<sup>193</sup>. Compliance with the 'contract' also becomes a condition for an association to be recognised as having a public utility. Moreover, the law extends the list of grounds for dissolution of associations by decree of the President of the Republic<sup>194</sup>. The Constitutional Council censured a provision allowing the provisional suspension of an association<sup>195</sup>. As to the financing of associations, in particular with a religious character, the law provides that it will be more closely monitored<sup>196</sup>. The law on republican principles also modified the conditions for creating and operating religious associations, which will have to declare themselves to the prefect every five years, and reinforced their accounting obligations<sup>197</sup>. A number of national and international stakeholders, including independent

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<sup>189</sup> See Le Figaro (2021), 'Pegasus case: the Paris prosecutor's office opens an investigation into the espionage of journalists'.

<sup>190</sup> 17 journalists from 7 countries joined RSF's complaint on 5 August 2021. See Reporters without Borders (2021), press release of 5 August 2021, 'NSO/Pegasus: 17 journalists from 7 countries join the complaints filed by RSF at the UN and before the French courts'.

<sup>191</sup> Law no. 2021-1109 of 24 August 2021 reinforcing respect for the principles of the Republic.

<sup>192</sup> Such contract refers to the commitment to respect secularism and other fundamental principles of the Republic, such as equality between men and women, human dignity and fraternity.

<sup>193</sup> In a reservation of interpretation, the Constitutional Council ruled that the withdrawal of the subsidy could not, without disproportionately affecting the freedom of association, lead to the restitution of sums paid for a period prior to the breach of the republican contract.

<sup>194</sup> The law replaces the terms 'armed street demonstrations' with the wider notion of 'violent acts against persons or property'. Furthermore, the dissolution of associations becomes possible not only if they provoke discrimination, hatred or violence, against a certain group of persons, but also if they engage in actions that contribute to such acts. Finally, associations may be held liable for acts committed by their members, acting in this capacity, or for acts directly related to their activities.

<sup>195</sup> The text voted by Parliament provided that, in the event of an emergency, the Minister of the Interior could pronounce the suspension of an association, pending its dissolution, for a maximum period of three months, renewable once. The Constitutional Council ruled that these provisions violated the freedom of association, as they allowed to suspend the activities of an association of which it is not yet established that they seriously disturb public order. See Decision no. 2021-823 DC of 13 August 2021.

<sup>196</sup> Endowment funds, a tool for financing patronage, will be more controlled by prefects. Tax authorities will be able to ensure that only associations that meet the conditions set out by law can benefit from public generosity and issue tax receipts.

<sup>197</sup> Such associations must declare foreign donations of more than EUR 10 000 and the transfer of the property of places of worship to a foreign state, and the prefect may object when a fundamental interest of society is at stake. As regards hybrid associations, which are governed general law on associations and exercise a religious activity, their obligations, in particular in terms of administrative and accounting, are aligned with those of religious associations (certification of their accounts in certain cases, separate accounting for



authorities, expressed criticism regarding the potential impact of the new provisions on the freedom of association and freedom of expression both before the adoption of the law<sup>198</sup> and after its entry into force<sup>199</sup>. More particularly, the CNCDH expressed preoccupations that the obligation to subscribe to a ‘contract of republican commitment’ risks creating a general climate of mistrust towards associations<sup>200</sup>. Overall, the civic space in France has been assessed as narrowed<sup>201</sup>.

**New laws have been adopted to improve the financial environment for civil society organisations.** The law favouring associative commitment<sup>202</sup> mitigates the financial liability of volunteer associative leaders in the event of mismanagement, by extending the ‘negligence exception’ provided for business managers<sup>203</sup>. Before that, personal assets of such volunteer leaders could be seized in the event of mismanagement. Furthermore, a law to improve the cash flow of associations<sup>204</sup> now allows for the keeping of the unspent surplus of a subsidy of more than EUR 23 000 under certain conditions. The new law also provides that the public authority is required to pay the subsidy within 60 days of the date of notification of the decision to award it, unless the administrative authority has set other payment dates or made the payment conditional on the occurrence of a specific event. In addition, the law allows associations of general interest or recognised as being of public utility to grant zero interest loans to other associations that are members of the same union or federation of associations. Finally, the law introduced the possibility for the *Caisse des dépôts* to pay a portion of the sums from accounts of associations that are no longer active for the benefit of the development of associative life<sup>205</sup>.

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religious activities, declaration of funds coming from abroad). The prefect may order an association whose purpose is in fact the exercise of a religion to declare itself as a religious association.

<sup>198</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 17.

<sup>199</sup> Contribution from the Civil Liberties Union for Europe for the 2022 Rule of Law Report, p. 178, and contribution from the *Ligue des droits de l’homme* on behalf of the European Civic Forum for the 2022 Rule of Law Report, p. 8.

<sup>200</sup> Contribution from ENNHRI for the 2022 Rule of Law Report, p. 248.

<sup>201</sup> 2021 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 16. See also rating given by CIVICUS. Ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

<sup>202</sup> Law no. 2021-874 of 1 July 2021 favouring associative commitment.

<sup>203</sup> This exception, enshrined in the Commercial Code, provides that in the event of simple negligence in the management of the company committed by the de jure or de facto manager, his liability for the insufficiency of assets cannot be engaged.

<sup>204</sup> Law 2021-875 of 1 July 2021 to improve the cash flow of associations.

<sup>205</sup> The *Caisse des dépôts* and its subsidiaries form a public group serving the general interest and economic development of France. It is responsible for the protection of popular savings, the financing of social housing, and the management of pension institutions.

## **Annex I: List of sources in alphabetical order\***

\* *The list of contributions received in the context of the consultation for the 2022 Rule of Law report can be found at [https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation\\_en](https://ec.europa.eu/info/publications/2022-rule-law-report-targeted-stakeholder-consultation_en).*

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## **Annex II: Country visit to France**

The Commission services held virtual meetings in March 2022 with:

- Agence France Presse
- Anti-Corruption Agency
- Central Office for Combating Corruption and Tax Offenses
- Council of State
- Defender of rights
- Delegation of the Bars of France
- Ethics Commissioner of the National Assembly
- France Télévisions
- High Authority for the Transparency of Public Life
- High Council for the Judiciary
- Journalistic Ethics and Mediation Council
- Ministry of Culture
- Ministry of Justice
- National Commission on Campaign Accounts and Political Financing
- National Consultative Commission on Human Rights
- National Council of Bar Associations
- National Financial Prosecutor
- National Journalists Union
- Radio France
- Regulatory Authority for Audiovisual and Digital Communication (ARCOM)
- Reporters without Borders
- Syndicat de la Magistrature
- Union Syndicale des Magistrats

\* The Commission also met the following organisations in a number of horizontal meetings:

- Amnesty International
- Article 19
- Civil Liberties Union for Europe
- Civil Society Europe
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy
- European Youth Forum
- Free Press Unlimited
- Human Rights Watch
- ILGA Europe
- International Federation for Human Rights (FIDH)
- International Press Institute
- Open Society European Policy Institute ( OSEPI)
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders
- Transparency International Europe