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The honouring of membership obligations to the Council of Europe by France

Report[1]
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
Co-rapporteurs: Ms Yelyzaveta YASKO, Ukraine, Group of the European People's Party, and Ms Fiona O'LOUGHLIN, Ireland, Alliance of Liberals and Democrats for Europe

Summary

The Monitoring Committee of the Parliamentary Assembly took stock of the honouring of membership obligations to the Council of Europe by France. Emphasising France's long democratic tradition and its attachment to respecting human rights, the committee closely followed the innovative approaches to participatory democracy and how they related to mechanisms of representative democracy.

The committee considered many longstanding issues concerning the functioning of democratic institutions, the rule of law and human rights in France. A legislative and constitutional reform is required to reinforce the independence of the judiciary. Progress on the subject of the financing of political parties and of electoral campaigns and the means of fighting against corruption should be strengthened. Prison overpopulation is a systemic problem which requires other solutions than an increase in capacity. There should be improved transparency and information relating to the action of security forces. Freedom of information is well protected but the trend towards increased concentration in the media sector is of concern. The fight against violence against women has been the subject of significant efforts by the government, sufficient resources will be necessary to produce the intended impact.

1. Monitoring Committee decision. Reference to committee: Reference 4568 of 19 March 2021.

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A. Draft resolution[2]

1. As a founding member, the host country and one of the four major contributors to the Council of Europe, of which French is one of the two official languages, France has been very closely involved in the work of the Organisation from the outset and has ratified some 146 conventions.

2. In 2019, France was selected by the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) for a periodic review report on its compliance with the obligations imposed on every Council of Europe member State in the areas of democracy, rule of law and human rights. The Monitoring Committee is responsible for periodically preparing monitoring reports on compliance with the obligations of all member States which are not subject to specific monitoring procedures

3. France is a country with a longstanding democratic tradition which is committed to respect for human rights. Political pluralism is guaranteed and freedom of association, which is a constitutional principle, enables civil society organisations to play a very active role. Various independent administrative bodies play a key part in checks and balances. Human rights institutions do excellent work and are covered by a legislative framework that protects them and respects their independence.

4. The constitution of the Fifth Republic established a semi-presidential system, which is unique in Europe. The uniqueness of the French system lies both in the position and role of the President of the Republic, who is directly elected by the people and called on to play a central political role in all issues affecting the political life of the country, and also in the strict rules on the law-making and scrutiny powers of the two houses of parliament.

5. The functioning of democratic institutions has been marked by a succession of large-scale protest movements, sometimes accompanied by demands of an institutional nature. Debate is under way on these issues, focusing in particular on the introduction of direct or participatory democracy procedures such as joint-initiative or popular initiative referendums and citizens' conferences, and the arrangements for the use of the measures that enable the government to restrict the legislative process. Many citizens' conferences have been held by the government on a very wide range of issues, producing proposals that have been debated in parliament. A draft constitutional reform tabled on 29 August 2019 including provisions on citizen participation, was not pursued, mainly because of the health crisis linked to the Covid-19 pandemic and the lack of a political majority in favour of it. The idea of a fresh institutional reform has been put forward by the authorities and is currently the subject of consultation.

6. The Parliamentary Assembly is following with interest the experiments with participatory democracy being conducted in France and their link with the mechanisms of representative democracy. The Assembly refers to the interim opinion issued by the European Commission for Democracy through Law (Venice Commission) on Article 49.3 of the Constitution at the request of the Monitoring Committee, which found that the article allowed "significant interference by the executive in the powers and role of the legislature …". The Assembly will be interested to see the Venice Commission's final opinion and invites the government and political forces in France to take these considerations into account in the forthcoming institutional debates.

7. Street demonstrations have sometimes been marred by outbreaks of violence that in some cases reached worrying levels. The law enforcement strategy and the use of potentially dangerous weapons have been called into question, and a new blueprint for law enforcement has been published.

8. In this context, the Assembly refers to the "Memorandum on maintaining public order and freedom of assembly in the context of the "yellow vest" movement in France" published by the Commissioner for Human Rights of the Council of Europe on 26 February 2019, and takes note of the changes made to the law enforcement strategy since 2021. Nevertheless, the Assembly is concerned by the finding made again by the Commissioner for Human Rights in her statement of 24 March 2023 that "in the context of the social movement against the pension reform in France, the freedoms of expression and assembly are being exercised under worrying conditions," thereby corroborating the concerns voiced by the Defender of Rights, the National Consultative Committee on Human Rights and several civil society organisations.

9. The Assembly is particularly alarmed by the high number of people injured during demonstrations, especially the number of injuries with serious long-term consequences. In this connection, it regrets the fact that the official statistics do not provide a clear picture of the number of people injured or killed by law enforcement officers during demonstrations or the number of such officers sanctioned or having received

2. Draft resolution adopted unanimously by the committee on 13 September 2023.

criminal convictions for unlawful acts of violence committed during the demonstrations. Having such statistics would help dispel the feeling that unlawful violence by law enforcement officers goes unpunished. The Assembly therefore calls on the authorities to grant access to this information.

10. The Assembly believes that further thought should be given to law enforcement techniques in France, in particular by drawing on experience in other European countries in order to refocus law enforcement on the tasks of prevention and of supervising the exercise of the freedom to demonstrate, under an approach aimed at calming tensions and protecting individual freedoms.

11. In the absence of comprehensive statistics, the Assembly notes that in several cases where the use of weapons by law enforcement officers resulted in serious injuries or death, the courts have still not handed down rulings more than four years after the events. In many cases, no further action was taken on complaints lodged against law enforcement officers because it could not be established that the injury was caused by inappropriate use of force, or owing to the difficulty of identifying the officer who had fired the weapon. The Assembly therefore encourages the authorities to improve the criminal law treatment of cases of unlawful violence committed by law enforcement officers and to reform the police and gendarmerie inspectorates so as to improve perceptions of their independence and impartiality, while boosting the resources allocated to them.

12. The Assembly is concerned about the finding made in the report published in 2022 by the European Commission against Racism and Intolerance (ECRI) that little progress has been made to effectively prevent or take action against certain types of misconduct by law enforcement officers that disproportionately affect people perceived as having an immigrant background or belonging to minority groups. A forceful reminder of this problem came with the wave of riots that followed the fatal shooting of a teenager by a policeman during a road traffic check in June 2023. The Assembly therefore calls on the French authorities to open a wide-ranging debate about police practices and to take account of the recommendations by national and international institutions on the subject, in particular ECRI's recommendation that the authorities introduce without delay an effective system of recording identity checks by law enforcement officials, "as part of a policy aimed at strengthening mutual trust between them and the public and their contribution to preventing and combating all forms of discrimination."

13. The Assembly is concerned to note that the issue of mutual trust between law enforcement officials and the public is highly polarised, with statements by some political and trade union representatives sometimes veering towards hate speech. In this connection, the Assembly refers to ECRI's recommendation that "political figures on all sides take a firm and public stance against any racist or LGBTI-phobic hate speech, and respond with strong counter-speech."

14. The Assembly congratulates France on the inclusive and transparent process followed in discussing and analysing the legal system, which led to an initial series of proposed legislative and institutional reforms being debated in parliament. In particular, the Assembly welcomes the announcement of an unprecedented increase in the financial and human resources allocated to the judicial system. The Assembly encourages the French Government to move ahead with the reform process under way by tabling the constitutional bill necessary for completing the reforms of the judicial system recommended by the Venice Commission and the Council of Europe's Directorate General of Human Rights and Rule of Law in the joint opinion on the Superior Council of Magistracy and the status of the judiciary published on 13 June 2023 and invites the political forces represented in parliament to find ways of reaching a compromise for its adoption.

15. With regard to the Superior Council of Magistracy, the Assembly notes that the joint opinion recommends that France:

15.1. amend the first paragraph of Article 64 of the Constitution in order to clarify the primary role of the Superior Council of Magistracy as guarantor of the independence of the judiciary;

15.2. bring the Constitution into line with the consistent practice of the authorities and the case law of the European Court of Human Rights and do away with the possibility for the Minister of Justice to sit on the Superior Council of Magistracy;

15.3. modify the composition of the section of the Superior Council of Magistracy with jurisdiction over judges by increasing the number of judicial members.

16. With regard to the status of members of the judiciary, the Assembly points out that the joint opinion recommends:

16.1. assigning the Superior Council of Magistracy the power to modify appointment proposals made by the Minister of Justice;

16.2. proceeding with the legislative and constitutional reforms needed to align the appointments procedure for prosecutors and the disciplinary procedure for members of the prosecution service with the current procedure for judges;

16.3. shifting from the Minister of Justice to the Superior Council of Magistracy the power to initiate disciplinary proceedings *ex officio* and to request the Inspectorate General of the Justice System to carry out an investigation.

17. The Assembly is closely following the execution of the judgments of the European Court of Human Rights concerning France, in particular the series of judgments ordering it to put an end to a situation of systemic prison overcrowding that causes detention conditions in breach of Article 3 of the European Convention on Human Rights (ETS No. 5) which prohibits inhuman or degrading treatment or punishment.

18. The Assembly welcomes the many measures decided by the authorities to reduce prison overcrowding, in particular the announcements concerning the building of additional prison capacity, the efforts to improve the distribution of inmates between prisons and the efforts to raise judges' and prosecutors' awareness of possible alternatives to imprisonment. Nevertheless, it notes that the relevant national and international authorities believe that the programme to build new prison places will not provide a lasting solution within a reasonable timeframe, while the prison population statistics show that the situation is steadily worsening. The Assembly therefore refers to the decision adopted on 6 December 2022 by the Committee of Ministers of the Council of Europe, which, in view of the consistent recommendations of several competent national institutions and the urgency of the situation, "invited again the authorities to consider rapidly new legislative measures that would regulate the prison population in a more binding nature".

19. The Assembly notes with interest the conclusions of the recent parliamentary work stating that the judicial measures to limit the use of detention have failed to reduce prison overcrowding and that it is necessary to establish a binding mechanism for regulating the prison population, while proposing a method for implementing this solution gradually and without disrupting the execution of sentences. The Assembly therefore calls on the authorities to try out a binding mechanism for regulating the prison population, at least until such time as the other measures to reduce the prison population have an effect and make such a mechanism unnecessary.

20. Media freedom, freedom of opinion and freedom of expression are guaranteed effectively in France. Restrictions do exist, as strictly defined by law, in order to protect privacy and image rights and to prevent defamation, public insult, the condoning of terrorism, publication of fake news and hate speech. The conditions for working as a journalist are well protected. The Assembly welcomes the planned reform of civil procedure to improve the protection of journalists against vexatious proceedings.

21. The Assembly notes the concerns that exist because of the impact of the trend towards media concentration on pluralism of information. The Assembly is pleased to note the opening of the "États généraux de l'information" national consultation process and will follow its work with great interest. The Assembly encourages the French authorities to adjust the regulatory environment to the sweeping changes in the media sector so as to improve the transparency of media ownership and guarantee internal and external media pluralism.

22. The Assembly welcomes the advances in the regulation of political financing adopted since 2016, in particular the prohibition of loans from banks headquartered outside the European Union and the limit on the amount which natural persons may donate. In this connection, the Assembly refers to the recommendations by the Group of States against Corruption (GRECO) and the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE/ODIHR) aimed at improving the transparency of political financing.

23. The Assembly congratulates the French authorities on the efforts to combat violence against women, in particular the many measures announced since 2019, and on their unequivocal commitment in this area. The Assembly calls for these announcements to be given full effect by allocating the resources needed for implementing this policy.

B. Explanatory memorandum by Ms Yelyzaveta Yasko and Ms Fiona O'Loughlin, co-rapporteurs

1. Introduction

1. Under its terms of reference as defined in Resolution 1115 (1997) (as amended), the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) is required to carry out regular periodic reviews of compliance with the obligations entered into upon their accession to the Council of Europe by member States that are not already under a full monitoring procedure or in a post-monitoring dialogue. The periodic reports should be prepared and presented in accordance with Rule 26 of the Rules of Procedure.

2. The order and frequency of the reports is decided upon by the committee in accordance with its internal working methods. Under the former procedure of selection by alphabetical order, a periodic review of France was adopted in 2017.[3] It acknowledged that "France is characterised by sound institutions with a democratic tradition based on the rule of law and has an excellent record with regard to fundamental freedoms" but expressed concerns about, *inter alia*, prison overcrowding, the increase in hate speech, the need to address significant shortcomings with regard to the prevention of corruption, and the need to carry out reforms of the prosecution service. In addition, the rapporteur "reiterated the concerns expressed in the opinion adopted by the Monitoring Committee on 3 September 2015 regarding the abuse of identity checks by the law-enforcement agencies as a means of crowd control during demonstrations, in clear violation of the legal provisions governing such checks" and "invited the authorities to look into this matter without delay." The committee decided to assess the implementation of these recommendations in its next cycle of periodical reviews.

3. Following the Monitoring Committee's reflection on the improvement of its working methods and impact, in 2019, the format of periodic reviews was changed substantially: the countries are now selected on substantive grounds (not in alphabetical order as before), and the reports are accompanied by specific resolutions and, in contrast to previous practice, presented separately from the Progress report. The objective of producing, over time, periodic reviews on all member States was maintained.[4] The substantive grounds on which the selection is based are the findings and conclusions of reports of other monitoring bodies of the Council of Europe; findings of the Parliamentary Assembly, in particular contained in resolutions and reports prepared by other committees of the Assembly; questions raised by members of the Monitoring Committee, international and national civil society and the media regarding the functioning of democratic institutions.

4. In conformity with these guidelines, the Monitoring Committee selected three countries on 6 March 2019, including France. We were appointed rapporteurs on 19 April 2021.

5. The preparation of the report was delayed for a number of reasons, including the Monitoring Committee's request to the Bureau to have the Committee on Rules of Procedure clarify the procedure for selecting the countries for the periodic reports; the French presidency of the Committee of Ministers; and the campaigns for the presidential and parliamentary elections in France.

6. For the preparation of the report, we took into account the findings and conclusions of the relevant institutions and monitoring mechanisms relating to the conventions of the Council of Europe to which France is a party. In particular, we drew on the reports prepared by the Commissioner for Human Rights, the Group of States against Corruption (GRECO), the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the European Commission against Racism and Intolerance (ECRI) and the Group of experts on action against violence against women and domestic violence (GREVIO). We studied judgments of the European Court of Human Rights with regard to areas covered by the present report and took into account the work of the Committee of Ministers in its supervisory function concerning the execution of the Court's judgments. We also consulted the recent annual reports on the state of democracy, human rights and the rule of law prepared by the Secretary General of the Council of Europe.

7. At our suggestion, the Monitoring Committee held two hearings. In April 2022, it heard Ms Claire Hédon, Defender of Rights of the French Republic, with whom it discussed the issues of combating discrimination and ethics in law enforcement agencies. In December 2022, the Committee held a hearing with Mr Ugo Bernalicis (La France Insoumise), chair of the parliamentary committee of inquiry into obstacles to the

3. Doc. 14213 Part 6.
4. See Resolution 2261 (2019) "The progress of the Assembly's monitoring procedure (January-December 2018)".

independence of the judiciary. We have had extensive contacts with national and international human rights organisations and representatives of civil society, including a series of online meetings on 28 September 2022 and 23 January 2023 with the National Consultative Committee on Human Rights (CNCDH) and the Defender of Rights services, which we regard as valuable sources of first-hand information about the situation in the country. Frequent reference is made to their reports in this memorandum.

8. We made two visits to Paris, on 15 and 16 September 2022 and 30 and 31 January 2023. During the first visit, we held meetings with representatives of civil society and the media, in particular the Observatoire international des prisons, Transparency International France, Amnesty International France and Reporters without Borders, who voiced their concerns in areas relevant to this report.

9. During our second visit, we initiated direct political dialogue with governmental authorities, independent administrative authorities and members of parliament regarding concerns identified in our discussions with civil society and in the reports by various monitoring bodies. We had valuable discussions with the Secretary of State for Europe, Ms Laurence Boone, and members of the Prime Minister's and Justice Minister's private offices. In parliament, we met Ms Valérie Rabault (Socialist party), Deputy Speaker of the National Assembly, the chairs of the legislation committees of the Senate (Mr François-Noël Buffet, Les Républicains) and the National Assembly (Mr Sacha Houlié, Renaissance), the chair of the Senate delegation for women's rights (Ms Annick Billon, Centrist Union) and representatives of the main political groups from the majority and the opposition. With regard to the judiciary, we held exchanges of views with representatives of the main union representing judges (Union Syndicale des Magistrats) and with members of the private office of the Minister of Justice. We also had very useful and instructive talks with the Supreme Authority for Transparency in Public Life (HATVP) and the Regulatory Authority for Audiovisual and Digital Communication (Arcom).

10. We sent a preliminary draft of this report to the authorities for comment. We received written contributions from the government, the chairpersons of the legislation committees of the Senate and the National Assembly, and from the Senate's Socialist, Ecologist and Republican Group. We would like to thank the authors of these contributions, which provided additional input for our preliminary draft report.

11. On our recommendation, the Monitoring Committee sent two requests for opinions to the European Commission for Democracy through Law (Venice Commission). The Venice Commission adopted an opinion[5] on the status of the judiciary and an interim opinion[6] on Article 49.3 of the Constitution on 9 and 10 June 2023. We welcome the excellent working relations between the Parliamentary Assembly of the Council of Europe and the Venice Commission, whose expert assessments have proved invaluable. Our report is based to a large extent on these opinions.[7]

12. We believe that the information gathered from such a variety of sources has provided us with a balanced overview and enabled us to prepare an objective report in which we endeavour to assess the functioning of democratic institutions and the human rights situation in France. Unlike full monitoring and post-monitoring reports, this report is not a comprehensive study but rather an analysis of developments in France in relation to the specific Council of Europe standards in the fields considered to be particularly significant for the functioning of democratic institutions.

13. We would like to underscore the excellent co-operation during the preparation of this report with the members of the French delegation to the Assembly, representing both the governing coalition and the opposition.

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5. CDL-AD(2023)015, "Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Superior Council of Magistracy and the status of the judiciary as regards nominations, mutations, promotions and disciplinary procedures", adopted by the Venice Commission at its 135th Plenary Session (Venice, 9-10 June 2023).

6. CDL-AD(2023)024, "Interim opinion on Article 49.3 of the Constitution", adopted by the Venice Commission at its 135th Plenary Session (Venice, 9-10 June 2023).

7. A significant proportion of the comments received from members of parliament and the French authorities concerned the points made in these opinions, and we have not mentioned them where the developments to which they refer have been modified to incorporate the Venice Commission's conclusions.

2. Political context

14. French political debate is largely determined by the election of the President of the Republic by universal suffrage. Since 1981, these elections had always been won by a candidate from the Socialist Party or centre-right parties, and the second round traditionally pitted the candidates of these two formations against each other, with one exception – the presence of far-right candidate Jean-Marie Le Pen in the second round in 2002. The two rounds of the presidential election thus reflected the political divide between left and right.[8]

15. The 2017 presidential election was a turning point in the history of the Fifth Republic, with the two candidates in the second round, Emmanuel Macron and Marine Le Pen, challenging the traditional left-right divide. Emmanuel Macron was elected on 7 May 2017 with 66% of the votes, as against 33.9% for Marine Le Pen.

16. Most observers doubted that the new president would be able to win a majority in the National Assembly in the parliamentary elections due to be held several weeks later. When he set up his own party, "La République en marche," Emmanuel Macron only had the support of a few elected representatives, was not in receipt of any public party funding[9] and had only a limited number of local support networks. Nevertheless, the dynamic in favour of the presidents just elected held good. On a historically low turnout (48.7% in the first round, 42.6% in the second), the elections gave La République en Marche party an absolute majority of seats (308 members elected, the threshold being 289). Les Républicains won 112 seats; Modem, 42; the Socialist Party, 30; the UDI (centrist), 18; La France insoumise, 17; the Communist Party, 10; and the National Front, 8 seats.[10] Overall the elections saw an unprecedented turnover in National Assembly seats, and a sharp rise in the number of female members.[11]

17. Édouard Philippe, who was chosen by Emmanuel Macron to be Prime Minister, formed a government comprising political figures of the left and the right, as well as political newcomers from civil society.

18. The first measures taken by the new government included an ambitious institutional reform. Draft constitutional legislation sought to speed up the legislative process at the expense of the Senate, limit parliamentarians' power of amendment, strengthen parliament's powers of scrutiny and reinforce the role of the Superior Council of Magistracy and the criminal liability system for ministers. A draft organic law provided for a reduction in the number of members of parliament and restrictions on the simultaneous holding of different offices, while ordinary draft legislation sought to introduce a degree of proportional representation in parliamentary elections and adjust constituency boundaries accordingly. For lack of the necessary majority, the reform did not pass.

19. From autumn 2018, French political life was marked by various large-scale protest movements. In response to the publication of the report by the Intergovernmental Panel on Climate Change (IPCC) in October 2018, 130 000 people took part in a climate march. A protest movement of an unprecedented kind, known as the "gilets jaunes" (yellow vests), emerged in November that year. Wide-ranging and sometimes contradictory demands coalesced around Facebook groups protesting against an increase in fuel taxes, often expressing strong rejection of the government and calling for a change in the political system and greater social and economic justice. The movement took the form of the illegal blocking of roads and roundabouts, combined with demonstrations held every Saturday for over a year. According to the Ministry of the Interior, 282 000 people took part in the first yellow vest day of protest, followed by 160 000 and 136 000 on the subsequent Saturdays. The numbers then gradually declined.[12] In December 2019, 806 000 people demonstrated against a planned pension reform. That movement continued until the outbreak of the Covid-19 pandemic prompted the government to postpone discussion of the draft legislation.[13]

20. The demonstrations were sometimes marred by acts of violence and clashes with the police. In February 2019, the Commissioner for Human Rights of the Council of Europe held that the number and seriousness of the injuries inflicted on demonstrators raised "questions about the compatibility of the methods used in law enforcement operations with due regard for [human] rights".[14]

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8. See Michel Winock, "L'opposition gauche-droite dans la vie politique française", www.vie-publique.fr/parole-dexpert/268500-lopposition-gauche-droite-dans-la-vie-politique-francaise.
9. See section 3.3 Political financing, below.
10. Second round of the parliamentary elections: results / 2017 parliamentary elections / Election archives / Archives – Ministry of the Interior (interieur.gouv.fr).
11. More than 75% of those elected were first-time members and 38.8% of the members were women.
12. On 29 June 2019, after 33 weeks of protests, the movement saw its lowest turnout, with 5 769 demonstrators. Thereafter, the Ministry of the Interior stopped counting the number of people taking part in yellow vest demonstrations.
13. This bill was never revived after the lockdown measures were lifted but another pension reform bill was tabled and adopted in 2023, during the second parliamentary term.

21. In response to the "yellow vest" movement, the government announced measures to help people cope with rising costs and the holding of a wide-ranging consultation process, called the Great National Debate. Over a three-month period, more than 10 000 local initiative meetings were held, and 1.9 million contributions were posted on a dedicated online platform. A summary of the conclusions was presented and debated in the National Assembly and the Senate in April 2019, leading to the adoption of a series of measures focused primarily on taxation and the organisation and standard of public services.

22. The May 2019 European Parliament elections saw low turnout, of 50.12%. The National Rally (RN) list came first (with 23.34% of the votes), followed by the list supported by Emmanuel Macron (22.42%) and the Green Party (13.48%). The traditional parties of the left and right once again recorded poor results.[15]

23. In October 2019, a Citizen Convention for the Climate was established on the initiative of the President of the Republic. This temporary assembly brought together 150 people drawn by lots, who were tasked with debating and agreeing a series of measures to bring about a reduction of at least 40% in greenhouse gas emissions, in a spirit of social justice. The convention ran for six months, with meetings on Saturdays, and produced 149 proposals. President Macron gave an undertaking that 146 of the 149 measures proposed by the convention would be submitted "unfiltered" either to a referendum, to a vote in parliament or for direct regulatory application. Parliament exercised its right of scrutiny and in 2021 adopted draft legislation that drew heavily on the work of the Convention. At the last meeting of the Convention, its members were invited to rate the government's follow-up on their proposals. In response to the question "What is your assessment of the government's response to the Convention's proposals?", the average score was 3.3/10, and in response to the question about the extent to which the convention had been useful in tackling climate change in France, 6/10. The average score in response to the question as to whether the use of citizen conventions was likely to improve democracy in the country was 7.7/10.

24. In response to the Covid pandemic, parliament passed a law authorising the government to declare a public health emergency.[16] The government imposed a lockdown on three occasions,[17] and introduced a "health pass" system, under which access to many public places was made subject to the presentation of proof of vaccination, a negative test result or a certificate of recovery. With the authorisation of parliament, the government legislated by decree in order to deal with the consequences of the epidemic.[18]

25. The Defender of Rights issued a very large number of decisions and opinions on the measures taken during the public health emergency and on various situations which called for urgent measures (prisoners and persons hospitalised without their consent, elderly people in care facilities, etc.). Under an order issued in May 2020, 13 500 prisoners were reported to have been freed early so as to prevent the spread of Covid-19 in prisons. Throughout the entire public health emergency, the government was required to report to parliament weekly on the measures taken.[19]

26. In autumn 2021, the start of the campaign for the 2022 presidential and parliamentary elections was marked by the strong media presence of the far-right commentator, Éric Zemmour, who had previously been convicted of "inciting racial discrimination" and "inciting hatred" towards Muslims and had a daily broadcast on the 24-hour news channel, CNews. The audiovisual regulator (CSA, now Arcom) had to ask the channel to count his speaking time in the same way as declared candidates or the government, and then ordered it to comply with its obligations in terms of pluralism.[20] According to the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE/ODIHR), "political discourse (…) was further dominated by the rise of populist political options on either end of the political spectrum, coupled with the far right shaping the early campaign narrative."[21]

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14. CommDH(2019)8, Memorandum on maintaining public order and freedom of assembly in the context of the "yellow vest" movement in France, 26 February 2019. See section 5.2 on maintaining public order.
15. The united right/centre list won 8.48% of the votes, and the Socialist Party list 6.19%.
16. Law of 23 March 2020.
17. From 17 March 2020 to 11 May 2020; from 30 October 2020 to 15 December 2020 and from 3 April 2021 to 3 May 2021.
18. By 17 June 2020, 67 orders had been issued in almost all areas of political, social and economic life.
19. The 50 information memorandums were published on the National Assembly's website.
20. According to Arcom, a very high proportion of contributions from the government and the left-wing opposition were broadcast between midnight and 6 am.
21. ODIHR, election assessment mission final report, presidential election, p. 12.

27. The start of Russia's military aggression against Ukraine on 24 February 2022 and the first weeks of the armed conflict dominated the news until the first round. As in 2017, Emmanuel Macron (27.85%) and Marine Le Pen (23.15%) came first, followed by Jean-Luc Mélenchon, the radical left candidate, with 21.95% of the votes, and Éric Zemmour, with 7.07%. None of the candidates from the traditional centre-left or centre-right parties passed the 5% threshold for reimbursement of campaign expenditure.

28. The campaign for the second round saw a call by the main candidates, except Éric Zemmour, not to vote for Ms Le Pen and the far right. On 24 April 2022, Emmanuel Macron won the election by a large majority, with 58.55% of the votes cast. He is the first President of the Republic to have been re-elected since the introduction of five-year terms in 2000[22] and will also be the first subject to the constitutional rule that no president can serve more than two consecutive terms. He will not therefore be able to stand for election in 2027.

29. On 16 May 2022, the President appointed Ms Élisabeth Borne Prime Minister, making her the second woman to hold the post in France after Édith Cresson (May 1991 – April 1992). Fifteen of the 28 members of her government belonged to the previous one. The ministers of the interior, justice and the economy and finance were kept in their posts.

30. The parliamentary elections were called for 12 and 19 June 2022. The parties of the left very quickly announced an electoral alliance,[23] under which they were able to field single candidates in a large number of constituencies. The various parties supporting Emmanuel Macron formed the "Ensemble" coalition and called on voters to give the President an absolute majority so that he could implement his manifesto.

31. The first round of the parliamentary elections saw historically low turnout (46.23 %). The "Ensemble" coalition (25.75%) and the left-wing alliance (25.66%) came in almost equal, with Ms Le Pen's National Rally in third place (18.68%). The results of the second round left the "Ensemble" coalition as the largest political force in the Assembly, but without an absolute majority (250 seats, as against 308 before). The left-wing alliance, with 149 members, became the second-largest bloc in the Assembly. The National Rally won 89 seats.

32. For the first time since the introduction of five-year terms, the President has only a relative majority in the National Assembly. The various groupings are highly polarised, which limits opportunities for agreements between parties.

33. Élisabeth Borne's government was reshuffled, with the ministers who were defeated in the elections being removed. The Prime Minister chose not to seek a vote of confidence in the Assembly after her general policy address but announced that she would strive for negotiated majorities on every bill. Over the first twelve months of the parliament, 29 bills were passed in this way. The state budget, financing for social security and a major pension reform, however, were passed without votes, with the aid of Article 49(3) of the Constitution, a mechanism which we will describe in section 3.1 on checks and balances.[24]

34. The bill aimed at changing the pension system, tabled in January 2023, was denounced by the trade unions and negotiations failed to secure the support of the opposition parties. Numerous protests, attracting sometimes more than a million people, were organised. In the National Assembly, the opposition parties tabled large numbers of amendments [25] in an effort to delay consideration of the bill, the key provisions of which were not debated in public. The bill was, however, debated and approved by the Senate. Lacking confidence in its ability to win the majority needed in the lower house to pass the bill, the government used Article 49(3) of the Constitution to push it through without a National Assembly vote. A motion of no-confidence that was tabled in response to this was defeated by 9 votes.

35. After the announcement of the adoption of the reform using the Article 49(3) mechanism, spontaneous protests occurred in several cities, sometimes involving violence. Cases of disproportionate use of force by the police were reported. The Commissioner for Human Rights stated on 23 March 2023: "In the context of the social movement against the pension reform in France, the freedoms of expression and assembly are being exercised under worrying conditions".[26] The CNCDH was also concerned about "certain acts by enforcement officers observed in particular since [the announcement of use of Article 49(3)]."[27] The Defender of Rights also shared her concern,[28] as well as United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Clément Nyaletsossi Voule.

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22. Presidential terms used to be for seven years.
23. "NUPES": Nouvelle Union Populaire Écologique et Sociale.
24. See section 3.1 Checks and balances, paragraphs 41 to 44, below.
25. 20 000 amendments were tabled, 13 000 of them by the "La France Insoumise" group.
26. Statement by the Commissioner for Human Rights (24 March 2023).

36. On 27 June 2023, a teenager was shot at close range by a police officer during a road traffic check, in circumstances that are currently under investigation This tragedy was the starting point for a week of unprecedented rioting and violence against the police and public buildings. According to a report by the Minister of the Interior, more than 2 500 buildings were damaged, including 273 belonging to the police, 105 town halls and 168 schools.[29] More than 1 200 sentences were handed down to the rioters – mostly young teenagers with no criminal record – including 742 prison sentences with an average length of imprisonment of 8.2 months.[30] The police officer who fired the fatal shot was charged with "deliberate homicide" and remanded in custody, which sparked outrage among some police unions, while representatives of judges and prosecutors deplored that "the public questioning of these [legal] decisions by the most senior members of the national police force and by the Minister of the Interior himself can only reinforce the concern of judges about the deterioration in the rule of law that such comments reveal".[31] The police inspectorate has been asked to conduct around twenty investigations into the actions of the national police force during these riots and protests.

3. Functioning of democratic institutions

3.1. Checks and balances

37. The Fifth Republic is described as a semi-presidential system.[32] The President of the Republic and head of State is elected for five years by direct universal suffrage. He or she appoints the Prime Minister and the members of the government on a proposal from the latter but does not have the power to dismiss them: the government is not accountable to the head of State. The President chairs the Council of Ministers, promulgates laws and is the Chief of the Armed Forces. He or she may dissolve the National Assembly and in the event of serious crises can temporarily exercise special powers.[33] The Prime Minister directs the work of the government, ensures the implementation of laws and exercises regulatory power.

38. The bicameral parliament comprises the National Assembly and the Senate. It examines and passes laws, scrutinises the action of government and assesses public policies. The 577 members of the National Assembly are elected for terms of five years by direct universal suffrage, in two-round single-member majority votes.[34] The Senate represents the territorial communities, with the 348 senators being elected by indirect suffrage by representatives of the latter.[35] They serve six-year terms, with half of the members being renewed every three years. The next election will be held on 24 September 2023.

39. The scope of statute law is determined by the Constitution. The right to initiate legislation is shared between members of parliament and the government, but members of parliament may not table bills or amendments whose enactment would result in either a diminution of public revenue or an increase in public expenditure. Bills are examined successively by the houses with a view to passing an identical text. In the event of disagreement between the two, matters can be referred to a joint committee of seven deputies and seven senators to seek a consensus. If no consensus can be reached, the government may leave the last word to the National Assembly. The Constitutional Council may be asked to rule on the conformity of legislation with the Constitution and fundamental rights and the administrative and the ordinary courts see to it that international agreements are observed.

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27. Statement by the CNCDH (24 March 2023).
28. Statement by the Defender of Rights (21 March 2023).
29. Hearing before the legislation committee of the Senate, 5 July 2023.
30. Interview of the ministry of justice on radio (RTL), 19 July 2023.
31. Common statement from national conferences of court presidents and general prosecutors, 28 July 2023. https://twitter.com/conf_nat_procs/status/1684860634515570688?s=20
32. See CDL-AD(2019)015, European Commission for Democracy through Law, Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: a checklist, paragraph 15.
33. Article 16 of the Constitution defines the scope of these special powers as follows: "Where the institutions of the Republic, the independence of the Nation, the integrity of its territory or the fulfilment of its international commitments are under serious and immediate threat, and where the proper functioning of the constitutional public authorities is interrupted, the President of the Republic shall take measures required by these circumstances, after formally consulting the Prime Minister, the Presidents of the Houses of Parliament and the Constitutional Council."
34. See 3.2 Voting system and turnout, below.
35. Senators are elected by *département* under a different voting system, depending on the population of the *département* and the number of senators. The electoral body comprises 160 000 grand electors, 95% of whom are municipal councillors. Towns with fewer than 10 000 inhabitants, which represent 50.3% of the population, make up 69% of the senatorial delegates. Small municipalities are therefore over-represented.

40. The government has many levers for intervening at all stages in the legislative procedure: it shares the right to initiate legislation and can have bills which it deems to be priorities placed on the houses' orders of business. It can require the house in which a bill is tabled to take a single vote on all or part of the legislation under debate and can request reopening of debate.

41. Under certain circumstances, the Constitution also allows legislation to be passed without discussion or votes in public session in the National Assembly pursuant to Article 49(3). During our visit to France, several politicians drew our attention to the effects of this procedure. Designed to overcome the government instability which prevailed during the Fourth Republic, this procedure has been used on numerous occasions by governments of all political persuasions.[36] The procedure has come in for criticism because of the restrictions on the rights of parliament which it involves and its scope was reduced with a constitutional reform in 2008: it may now only be used for votes on finance bills and one other government (or private member's) bill per session.

42. With opinions sharply divided, and with the different political forces being asked to come up with proposals for institutional reform, we thought it appropriate to seek the opinion of the Venice Commission on this provision of the Constitution in the light of European constitutional standards. The Venice Commission adopted an interim opinion on 9 and 10 June 2023,[37] recommending that it be supplemented by a comparative analysis of member States constitutions and legislation.

43. The precise mechanism of Article 49(3) is described in paragraphs 25 to 38 of the interim opinion. At the end of this description, the Venice Commission notes that: "The activation of Article 49.3 therefore does not result in the obliteration but in a significant reduction of the parliament's control over the content of the law. (…) It is also a powerful tool against obstructionism. To assess whether the necessary balance of powers between parliament and the executive is maintained, it remains to be seen to what extent its use by the executive is constrained, i.e. what safeguards exist against its excessive use and to prevent its abuse."[38]

44. In this regard, the Commission "finds that removing the final vote of one chamber of parliament for the adoption of a statute represents a significant interference by the executive in the powers and role of the legislature, is seemingly unique in European comparative experience and is problematic. While acknowledging the necessity for the government to dispose of effective tools to carry out its programme, including in case of a minority government, by uniting the parliamentary majority and countering filibustering and boycott, the Commission is not persuaded that it would not be possible for the government to achieve the same goals by linking the question of confidence to the positive vote of the National Assembly, thereby preserving the formal requirement of adoption of the law by both chambers."[39]

45. While, in the view of the Venice Commission, the limitation of Article 49(3) to financial matters may be understandable, the provision whereby it may also be triggered "for one other Government or Private Member's bill per session" is deemed to be "excessively broad".[40] The Venice Commission further recommends that the practice whereby the Prime Minister triggers Article 49(3) only after the general discussion be made obligatory.[41]

46. While recourse to this procedure enables the government to push through legislation it considers essential to the pursuit of its political agenda, first and foremost the budget, its use for other reforms, often in response to a strategy of obstruction of parliamentary debate on the part of the opposition, can have the effect of further polarising the political landscape and hindering the search for compromise. Instead of focusing on the substance of the reform under discussion, attention shifts to the use of this procedure, with government and opposition blaming each other for lowering the standard of debate. The legitimacy of reforms adopted in this way, and confidence in institutions, could suffer as a result.

47. We hope that the conclusions reached by the Venice Commission in its final opinion will provide the basis for a peaceful debate based on objective information, and we invite all parties to the political debate in France – government authorities and political parties represented in parliament – to study them carefully and take them on board in future discussions on institutional reform.

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36. https://www.assemblee-nationale.fr/dyn/decouvrir-l-assemblee/engagements-de-responsabilite-du-gouvernement-et-motions-de-censure-depuis-1958
37. CDL-AD(2023)024, Interim opinion on Article 49.3 of the Constitution.
38. Ibid., paragraphs 37 and 38.
39. Ibid., paragraph 44.
40. Ibid., paragraph 46.
41. Ibid., paragraph 47.

48. The traditional mechanism for holding governments to account, namely no-confidence votes, can only be used in the National Assembly. The opposition must achieve an absolute majority of votes for it to pass. A government that only has a relative majority can therefore avoid being voted down if the various opposition groups do not agree on voting together, which has been the case since June 2022. Historically, only one no-confidence resolution has passed, in October 1962, following which the President of the Republic dissolved the National Assembly.

49. Individual members may use written questions to question the government publicly. There is also a weekly sitting for oral questions during which members can put questions to the government on any subject. The TV broadcast of the sitting and the spontaneity of the exchanges mean that the focus is on political questioning rather than public information.

50. Members of parliament can obtain more detailed information through committees of inquiry or information missions. These have extensive powers and can request communication of documents from government bodies or conduct on-the-spot investigations and also summon witnesses to testify under oath. Since 2008, each parliamentary group can set up one committee of inquiry set up every year, which it chairs or acts as rapporteur for.[42] During the 15th legislative term, 25 committees of inquiry were set up. Their discussions give rise to very detailed reports, including written minutes of the various hearings, and they make it possible to exercise detailed and uncompromising scrutiny over policies implemented or government action.

51. Parliament has extensive powers, therefore, to oversee the actions of the government, in particular since the 2008 constitutional reform. In practice, the effectiveness of these oversight procedures depends on the degree of autonomy that members of parliament enjoy in relation to the government and the President of the Republic.

3.2. Voting system and turnout

52. Voting methods at national level are not determined by the Constitution but by organic laws. They have been amended several times since the adoption of the 1958 Constitution and are the subject of debate.

53. The Senate consists of 348 senators who are elected for a term of six years, with half of the senators being required since 2011 to stand for election every three years. Senators are elected by indirect universal suffrage by some 162 000 “grand electors”. In each *département*, the senators are elected by an electoral college of grand electors made up of elected representatives from the constituency concerned: National Assembly members and senators, regional councillors, *département* councillors, municipal councillors, elected to office by universal suffrage.

54. The National Assembly is re-elected in its entirety every 5 years. Since 2002, parliamentary elections have followed the presidential election. The Assembly is made up of 577 members elected in two-round single-member majority votes. One member is elected in each constituency. In the first round, a candidate must secure an absolute majority of the votes cast, representing at least a quarter of registered voters, to be elected.[43] In constituencies where no member wins in the first round, a second round is held, in which candidates who received the votes of at least 12.5% of registered voters can stand.[44] Voter turnout therefore determines the number of candidates eligible to stand in the second round. Low turnout increases the likelihood of second-round duels. Candidates eligible to stand in the second round may choose to withdraw. On first-round election nights, it is customary for negotiations to take place between political parties with a view to having candidates withdraw or express support for other candidates.

55. The two-round single-member majority system facilitates the formation of parliamentary majorities by fostering alliances and amplifies the success in terms of numbers of seats of the party or alliance that has most votes. By encouraging the formation of alliances before the second round, it tends to crystallise conflicting positions and makes for a more polarised political landscape. Some people criticise its impact on the representation of small groupings and consider it partly to blame for voter abstention.

56. While French democratic institutions have proven their ability to adapt to a very wide range of political scenarios without the governability of the country being called into question, they are nevertheless sometimes cited among the causes of public mistrust of politics. 67% of French people believe that democracy in their

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42. “Fact-finding missions” operate along similar lines but are less formal and the persons heard do not testify under oath.
43. Only five candidates met these requirements in 2022.
44. If only one candidate satisfies this requirement, the second-best placed candidate also goes forward to the second round.

country does not work well.[45] In the case of the National Assembly, one in two people believe that the absence of an absolute majority does not have a significant impact on the functioning of democracy, 55% believe that the government does not make enough concessions to opposition groups and 71% believe that the opposition should be able to vote with the government and pass laws that are close to its positions. 70% of respondents prefer the situation in which there is a relative majority in the Assembly because it forces the government to take account of opposition views and seek compromises.[46]

57. Possibilities for reform have been discussed at length and several experiments have been carried out. The introduction of a mixed voting system for National Assembly members, some of whom would be elected by proportional voting, was one of the proposals put forward by President Macron. The holding of a great national debate and thematic consultation processes[47] reflects attempts to institutionalise participatory democracy. However, there are concerns in some quarters about the effects of such innovations on voter turnout. In this connection, a study on the causes of voter abstention revealed a paradox: "It is not easy for voters to know what to make of things. On the one hand, people seek to mobilise them at election time, remind them of the importance of representative assemblies and maintain that voters' choices are the source of public decision making. On the other hand, however, the authorities themselves are showing great interest in non-electoral methods of appointing representatives or even *de facto* lawmakers. For instance, (…) the Citizen Convention for the Climate, members of which were drawn by lots, (…) seemed to have powers that parliamentarians were lacking. That could be seen as the expression of a kind of downgrading of the electoral process and preference for a non-electoral method of appointing deliberative assemblies, including by giving the impression that the drawing by lots was going to guide the work of elected representatives. Universal suffrage and the function of law makers could end up being devalued, if not disqualified."[48]

58. During the 2022 presidential election campaign, Emmanuel Macron announced the setting up of a cross-party commission to submit a draft constitutional reform to parliament. The launch has been announced for spring 2023.

3.3. Political financing

59. In its Recommendation 1516 (2001), the Assembly laid down some principles on which political party financing should be based. These principles guided GRECO in its third evaluation round, which was devoted in part to the financing of political parties.[49] It was launched in 2009 and closed in 2017. The many compliance reports highlighted hesitations on the part of the French authorities, in particular regarding the issue of the transparency of party funding. At the end of the procedure, five of GRECO's 11 specific recommendations on party funding had been only partly implemented. In this connection, although the evaluation round was closed following the publication of no less than six compliance reports, GRECO encouraged the country to redouble its efforts to pursue the relevant reforms.[50]

60. Political financing encompasses the work of political parties and election campaigns. Funding is mixed: some comes from private donations and some from public sources consisting of direct grants, tax deductions and the reimbursement of a proportion of campaign costs. Party and election campaign funding is governed by the law of 11 March 1988 on financial transparency in political life supplemented by the law of 15 September 2017 on trust in political life. The accounts of political parties and groups are published in detail in open data format on the website of the National Commission for Campaign Accounts and Political Funding (CNCCFP).[51]

61. In its initial findings,[52] GRECO called for greater attention to be paid to the arrangements applicable to private donations. These may only be made by natural persons and donations by legal persons are prohibited, except for those made by political parties for campaigning candidates. At present, a natural person can only make a donation to a party or candidate if he or she is French or resident in France, and the list of donations

45. IPSOS/Sopra Steria survey, ("Les Fractures françaises"), 10th edition, September 2022.
46. *Ibid.*, pages 124 to 132.
47. For instance on health, security and justice ("*Grenelle de la santé*", "*Beauvau de la sécurité*", "*États généraux de la justice*").
48. Fondapol, fact-finding mission to identify the reasons for voter abstention and measures to boost voter turnout, report for the National Assembly, p. 11.
49. Greco Eval III Rep (2008) 5E, Evaluation Report on France – Transparency of Party Funding (Theme II), 19 February 2009.
50. See Addendum to the Second Compliance Report on France, GrecoRC3(2017)9, 28 September 2017.
51. The CNCCFP is the independent administrative authority which exercises oversight of campaign finances and ensures that political parties comply with their annual accounting obligations.
52. Greco Eval III Rep (2008) 5E, 19 February 2009.

and donors is sent – in confidence – to the CNCCFP. As of 2017,[53] loans granted by natural persons must be for a maximum of five years, and the CNCCFP receives a copy of the contract. With regard to legal entities, only banks headquartered in the European Union may grant loans.

62. GRECO called on France to make reforms to improve transparency in this area, but this recommendation has only been partly implemented. On the one hand, there should be greater transparency regarding investment by political parties in election campaigns,[54] and, on the other, the identity of the biggest private donors should be disclosed. The OSCE/ODIHR makes a similar assessment in its report on the 2022 parliamentary elections, in which it writes: "Campaign finance regulations are comprehensive and set modest campaign spending limits contributing to an even level playing field for all candidates. A number of recent legal amendments addressed some prior ODIHR recommendations (…). However, other ODIHR recommendations related to disclosure of large donors' identity and publication of detailed financial reports remain unaddressed."[55]

63. In this connection, GRECO regretted to note "that the authorities do not appear to share the concerns expressed in the Evaluation Report concerning the identity of donors, information on whom is available to the supervisory body but not to the public. This (…) is an important element of any policy on the transparency of party and election campaign funding. The matter has clearly not received any attention."[56] The ODIHR recommends: "While balancing privacy concerns, in order to enhance transparency in campaign financing, further information on contestants' financing and campaign expenditures should be available in the public domain."[57]

64. The fact that private donations represent a vital share of political financing and, according to some recent studies, that their distribution can generate bias in favour of certain parties make it all the more important to have transparency in this area.[58] According to the guidelines published by the Venice Commission, the amounts of private donations should be limited to ensure that there is no distortion of the political process in favour of wealthy interests, without, however, discouraging political participation.[59] French legislation limits the amount of donations to political parties to €7 500 per person a year. This is an important first step in preventing certain organisations or groups of individuals from gaining a stranglehold over political parties. The amount is relatively high, equating to a third of the median income in France. In addition to direct donations to political parties, donations are also made to candidates in elections. Private individuals are permitted to donate a maximum of €4 600 per election whereas donations by political parties are uncapped. The statistics show that the wealthiest people donate more to political parties as a proportion of their incomes: the richest 10% account for 53% of total donations and contributions paid to political parties,[60] which is significantly higher than their share in overall income (33%).

65. This imbalance is accentuated by the tax deductibility mechanism for donations. While donations to political parties confer entitlement to a deduction of two thirds of their amount, only 57% of households pay income tax in France. The least wealthy 43% are therefore not eligible for this tax benefit. As a result, the best-off households are reimbursed for two thirds of the sums which they donate, while the least well-off households do not receive any reimbursements. According to the data for 2016, 60% of tax reimbursement expenditure relating to donations to political parties went to the 10% of the population with the highest incomes.[61] In practice therefore, the government spends considerably more subsidising the political preferences of the best-off, most of whose donations go to parties on the right of the political spectrum.[62]

66. The Assembly recommends that direct State financial contributions should be calculated "in ratio to the political support which the parties enjoy" but also that they should "enable new parties to enter the political arena and to compete under fair conditions with the more well-established parties."[63] In France, such

53. 2017 law on trust in political life.
54. According to GRECO, "neither the CNCCFP nor the general public have an overall view of the financial investment of political parties in election campaigns, which quite naturally limits the scope of the provisions relating to transparency." (Eval III Rep (2008) 5E). The OSCE/ODIHR recommends that, in order to further enhance transparency and accountability, the reporting deadlines for political parties' campaign expenditures be synchronised with those for candidates to allow effective oversight.
55. OSCE ODIHR, Election Assessment Mission Final Report, parliamentary elections of 12 and 19 June 2022, p.2.
56. Greco RC-III (2011) 1E, paragraph 69.
57. OSCE ODIHR, Election Assessment Mission Final Report, parliamentary elections of 12 and 19 June 2022, p.12.
58. See, in particular, Cagé Julia, Le prix de la démocratie, Gallimard, 2020. All the data on which the analyses in this study are based are freely accessible.
59. CDL-AD(2020)032, Guidelines on political party regulation, second edition, 14 December 2020, paragraph 213.
60. Source: Cagé Julia, *Le prix de la démocratie*, op. cit., p. 145.
61. Ibid., p. 150.
62. Ibid., p. 169 et seq.

financing is based on the results of the parliamentary elections, with one part being calculated according to the number of votes obtained and the other depending on the number of National Assembly members belonging to a given party. This system has the disadvantage of setting political financing in stone for five years and means that new political groups cannot emerge between two elections unless they are able to raise enough private funding, which, as we have seen, is not distributed fairly. Moreover, the voting system in parliamentary elections boosts the number of seats for the largest parties, at the expense of smaller ones. The latter therefore receive a lower share in funding.[64]

67. France should therefore continue its efforts to improve the transparency of the system of political financing. The GRECO recommendations which had been partly implemented at the end of the third evaluation round could be looked at again, in particular with a view to enhancing the functions of the CNCCFP (recommendation ix) and improving the transparency of private donations. On the latter point, the French authorities justified their refusal to act on the basis of the principle of proportionality. GRECO pointed out that it was "one of the requirements of Recommendation Rec(2003)4 of the Committee of Ministers to member States on common rules against corruption in the funding of political parties and electoral campaigns (Articles 12 and 13) (…) [and] that the vast majority of the other GRECO member countries have managed to introduce the principle of disclosure of the identity of donors above a certain threshold."[65]

4. Rule of law

4.1. Fight against corruption

68. In 2001, GRECO noted certain conditions that encouraged corruption and were particular to France: concentration of political power in the hands of the executive, emergence of a relationship between elected members and officials based on personal rather than institutional loyalty, persistence of certain forms of trading favours for votes, ramshackle system for financing political parties and election campaigns and abuse of associations.[66] Since then, France has undergone five GRECO evaluation rounds and major legislative changes have greatly improved the legal framework and the organisational arrangements for combating corruption. The first three evaluation rounds are over, the first having focused on national bodies engaged in the prevention of and fight against corruption, the second on several aspects including the links between public administration and corruption and the third on transparency of party funding.

69. Between 2012 and 2017, following a scandal involving the minister responsible for the budget,[67] the government decided to provide the judiciary with new instruments to combat all forms of fraud and breaches of integrity. It was accordingly decided in 2013 to set up the Supreme Authority for Transparency in Public Life (HATVP), the National Financial Prosecution Office (PNF) and the Central Office for Combating Corruption and Financial and Tax Offences (OCLCIFF). In 2016, an additional body was created, namely the French Anti-corruption Agency (AFA).

70. Despite these undeniable institutional developments, there has been no progress as regards the perception of corruption in France.[68] The institutions set up appear to lack independence and resources, and transparency remains limited. The human and financial resources allocated to the OCLCIFF are not sufficient to enable it to conduct the complex investigations required of it. In 2021, the OECD Working Group on Bribery in International Business Transactions reported as follows: "the serious lack of resources allocated to the OCLCIFF has been heavily criticised for a number of years, despite a recent increase in staff numbers and a

63. Recommendation 1516 (2001), paragraph 8. a. ii.
64. In 2022, public funding was still based on the results of the 2017 parliamentary elections. La République en Marche received €20 million a year, Les Républicains €13 million, the Socialist Party €6 million, the National Rally and Modem €5 million and La France insoumise €4.3 million. Source: Vie publique (1February 2022).
65. Greco RC-III (2015) 19E revised, paragraph 56. In their comments, the French authorities stated that in 2022, the CNCCFP examined a total of more than 5 000 financial accounts of 5 297 candidates in the legislative elections and rejected 429 accounts. From the 2022 presidential election onwards, new software (Fin'pol) is used to check the financial declarations of presidential candidates. In December 2022, the CNCCFP approved the financial declarations filed by all 12 presidential candidates. A temporary national electoral campaign control commission (CNCCEP) is set up for each election to monitor the campaign and guarantee equal treatment.
66. GRECO, first evaluation round, evaluation report on France, paragraph 14.
67. Jérôme Cahuzac, the minister responsible for the budget, was accused by the investigative website Mediapart of having undeclared bank accounts. After denying the allegations and suing the media for defamation, he was charged with tax fraud and money laundering and eventually sentenced to two years in prison, banned from running for office for five years and fined €300 000.
68. France scored 71 on Transparency International's corruption perception index in 2012 and 72 in 2022.

relative decrease in cases. (…) magistrates, investigators, lawyers, journalists and civil society representatives unanimously confirmed these difficulties."[69] The working group therefore urged France "to take promptly the necessary steps to ensure that (...) sufficient resources are allocated to specialised investigative units, in particular to the OCLCIFF (…)."[70] In the 2022 report on the rule of law situation in France,[71] the European Commission likewise highlighted the OCLCIFF's "limited resources". The PNF meanwhile has nineteen prosecutors supported by 7 specialist assistants[72] to process the 600 cases that have been entrusted to it, and the number of cases for which each prosecutor is responsible is almost five times greater than that originally envisaged in the run-up to its creation.[73]

71. The role of the French Anti-Corruption Agency (AFA) is to help prevent and detect corruption. It is headed by a senior member of the judiciary appointed by the President of the Republic for a non-renewable six-year term. Cases can be referred to it by the courts, large companies, government agencies or local authorities. It has administrative oversight powers and can check to ensure that anti-corruption compliance mechanisms implemented by companies, government agencies and local authorities exist and are functioning properly. The AFA, which comes under the joint authority of the Minister of Justice and the Minister of Budget, is not independent.[74]

72. The Supreme Authority for Transparency in Public Life (HATVP) was set up to "give citizens reasonable assurance about the integrity of public officials and civil servants in order to ensure that public decision making is always in the public interest", according to its president. It is an independent administrative authority whose powers have been gradually extended by lawmakers. Its mandate is to check the declarations of assets made by key public decision makers,[75] to prevent conflicts of interest and to regulate lobbying. The resources allocated to the HATVP are not considered sufficient for its tasks, and it is said to be understaffed and lacking in legal support.[76] An increase in resources would seem appropriate, especially as there are plans to further expand the HATVP's remit by assigning it certain tasks currently performed by the AFA.[77]

73. The fourth and fifth GRECO evaluation rounds – focusing on prevention of corruption in respect of members of parliament, judges and prosecutors and prevention of corruption and promoting integrity in central governments and law enforcement agencies – are under way and the evaluation reports and several compliance reports have already been published. The main concerns relate to the lack of transparency. As regards preventing corruption in respect of members of parliament, GRECO welcomes the progress made in terms of oversight of Assembly members' operational expenses but calls on the National Assembly and the Senate to improve transparency by publishing this information.[78] In his 2023 report, the National Assembly's ethics adviser notes "a clear improvement in the understanding by MPs, their accountants and their staff of the requirements for oversight of operational expenses". The refusal to disclose operational expenses has been challenged before the European Court of Human Rights on the grounds of "infringement of the freedom to receive information of public interest".

74. GRECO also considers that bans in principle on certain gifts, donations and other benefits should be introduced or clearly imposed by the National Assembly and the Senate. Lastly, GRECO calls for Assembly members' and Senators' declarations of assets to be published online, as recommended by the HATVP.

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69. OECD, Implementing the OECD Anti-Bribery Convention, Phase 4 Report, adopted on 9 December 2021, paragraph 140 et seq.
70. In their comments, the French authorities state that at 1 January 2023, the OCLCIFF had a staff of 82, including 2 *commissaires*, 15 members of the command corps, 37 members of the supervision and enforcement corps, 24 judicial tax officials and 4 administrative staff (at 1 January 2022, the OCLCIFF employed 78 people).
71. SWD(2022) 510 final.
72. Staffing numbers as at 4 January 2023: www.tribunal-de-paris.justice.fr/75/lequipe-du-pnf.
73. See: OECD, Implementing the OECD Anti-Bribery Convention, Phase 4 Report France, December 2021.
74. In their comments, the authorities point out that when it comes to exercising oversight, the director of the AFA is fully independent and to this end enjoys security of tenure. Article 2 of the Sapin II Law provides that "the member of the judiciary in charge of the agency shall not receive or seek instructions from any administrative or governmental authority in the performance of the tasks mentioned in paragraphs 3° and 4° of Article 3. Their appointment may be terminated only at their request or in case of impediment or serious misconduct."
75. Its authority extends to elected representatives, heads of public bodies, members of ministers' private offices and staff of the President of the Republic, members of independent administrative authorities and senior officials.
76. See for example the hearing with Mr Christophe Pallez in connection with his proposed appointment to the HATVP, National Assembly's legislation committee, on 23 January 2023.
77. Report on the fact-finding mission of the legislation committee, Mr Gauvain and Mr Marleix, 7 July 2021.
78. GrecoRC4(2022)2.

75. With regard to top executive functions, GRECO also recommends that France make improvements in transparency. It recommends, for example, that persons with top executive functions publish at regular intervals a list of lobbyists they have met and the subjects discussed. This is essential if there is to be transparent decision making at the highest level. The legislative mechanism provided for in legislation introduced in 2016 is not satisfactory,[79] and a French parliamentary assessment found that the law "left a margin of discretion to the regulatory authority which has used it to reduce the scope of the mechanism" and "made it easier to circumvent the requirement."[80] The HATVP concluded in its 2021 activity report: "The persistent difficulties surrounding the current system make it impossible to effectively gauge the impact of lobbying on the legislative process."

76. In addition, a parliamentary inquiry committee[81] expressed concern about the government's widespread and growing use of consulting firms over the last five years, pointing to the ethical risks of conflicts of interest[82] and the lack of transparency around such services. In the wake of the report, the National Financial Prosecution Office launched an investigation into the circumstances surrounding consultancy firms' involvement in the 2017 and 2022 election campaigns.[83]

77. In their comments, the authorities stated that France is closely following the GRECO compliance report and is committed to complying with the relevant recommendations. An interministerial working group was set up in November 2022 to devise the new national anti-corruption plan for the period 2023-2025 and to mobilise all public stakeholders.

4.2. Independence of the judiciary

78. In 2001, GRECO noted that, "the judiciary is viewed very unfavourably by the public as regards its independence of economic and financial circles, and of the political authorities (…) 40 % of those interviewed thought that the ties between the public prosecutor's department and the political authorities should be completely cut to foster justice in France."[84] Twenty years on, the report submitted on 8 July 2022 following the *Etats Généraux de la Justice* meeting, organised by the government, made a troubling observation: "The judiciary is in bad shape. All of the professionals involved in its day-to-day operation have expressed profound concern, while members of the public have only limited faith in it. The institution appears to have seized up. Many feel it is in tatters."[85] In the light of this situation, and in particular the inadequate resources available to the justice system and the delays that undermine public confidence in the institution, the Minister of Justice announced an ambitious action plan to fix the problems, acknowledging that "for thirty years now the justice system has been starved of policy support, funding and human resources".[86] As part of this plan, two bills have been tabled, one to ensure much-needed budgetary catch-up,[87] and the other to achieve greater openness in the judiciary, improve career development and foster increased accountability and protection for members of the judiciary.[88] Other reforms, including some of a constitutional nature, remain on hold.

79. According to the Constitution, "The President of the Republic shall be the guarantor of the independence of the judicial authority. He shall be assisted by the Superior Council of Magistracy".[89] The Superior Council of Magistracy (Conseil supérieur de la magistrature (CSM)) is competent in respect of promotion and discipline of judges and prosecutors. Its composition is laid down in the Constitution and it comprises judges, prosecutors and prominent figures from outside the judiciary. The CSM is divided into three bodies under the chairmanship of the first president of the Court of Cassation and its principal State prosecutor: a body competent in respect of judges in matters concerning their appointment and discipline, a

79. Transparency International France, report "Pour un meilleur encadrement du lobbying", 2019.
80. Report on the legislation committee's fact-finding mission, Mr Gauvain and Mr Marleix, 7 July 2021.
81. Report on behalf of the inquiry committee on the growing influence of private consulting firms over public policy: "Un phénomène tentaculaire: l'influence croissante des cabinets de conseil sur les politiques publiques", 16 March 2022.
82. At his hearing before the inquiry committee, the president of the HATVP expressed the view that since these companies had growing numbers of private and public clients, their presence was "liable to increase the risk of conflicts of interest".
83. Press release from the Financial Public Prosecutor of 24 November 2022: "a judicial investigation was opened on 20 October 2022, in particular on charges of non-compliant keeping of campaign accounts and underestimation of accounting elements in a campaign account, relating to the conditions of intervention of consultancy firms in the 2017 and 2022 election campaigns."
84. GRECO, evaluation report on France, Greco Eval I Rep (2001) 4E Final, 14 September 2001.
85. Report by the *États généraux de la justice* committee, April 2022, foreword.
86. Eric Dupond-Moretti, presentation of the *États généraux de la justice* action plan, Paris, 5 January 2023.
87. Orientation and programming bill for the Ministry of Justice 2023-2027
88. Draft organic law on openness, modernisation and accountability of the judiciary.
89. Article 64 of the Constitution.

body competent in respect of prosecutors, likewise in matters concerning their appointment and discipline, and a plenary competent to deal with requests emanating from the President of the Republic or the Minister of Justice.

80. Following our visit to France, we asked the Monitoring Committee to request the opinion of the Venice Commission on the composition of the Superior Council of Magistracy and the status of the judiciary. This opinion was issued on 9 June 2023.[90]

81. Firstly, as regards the composition of the CSM, and specially the participation of the Minister of Justice in sittings of the CSM, as provided for in Article 65 of the Constitution, the Venice Commission notes that the minister has never attended any meeting of the CSM and that there is therefore no risk of interference as things stand at present in practice. The Venice Commission points out, however, that in a recent judgment, the European Court of Human Rights held that "the presence, even if only passive, of a member of the Government on a body empowered to impose disciplinary sanctions on members of the judiciary is, in itself, extremely problematic in the light of the requirements of Article 6 of the Convention and, in particular, the requirement that the disciplinary body be independent".[91] We believe therefore that it would be better to bring the Constitution into line with the consistent practice of the authorities and the case law of the European Court of Human Rights and to do away with the possibility for the Minister of Justice to sit on the CSM.

82. As regards the balance between judicial and non-judicial members of the CSM, the Venice Commission considers that the composition of the CSM described in Article 65 of the French Constitution does not seem problematic "as far as the sections on disciplinary proceedings are concerned, as well as the section with jurisdiction over public prosecutors". However, "concerning the section with jurisdiction over judges, the judicial representation falls short of at least a member of the judiciary".[92] In this regard, "The Venice Commission is aware of the suggestion of the *Comité des États généraux de la justice* to actually increase the number of non-judicial members, and, during the visit in Paris, the delegation of rapporteurs has carefully listened to the generalised perception (with the exception of the representatives of a union of magistrates) that the fact that the judicial members are in a minority in the CSM does not affect the independence of the judiciary and is rather preferable for reducing the risk of corporatism within the CSM. Nonetheless, the Commission – in line with general recommendations promulgated by relevant Council of Europe bodies– invites the authorities to contemplate a constitutional amendment aimed at increasing, at least by one member, the number of judicial members of the section with jurisdiction on judges."[93]

83. In addition, in order to perfect the composition of the CSM and to ensure the necessary diversity among its members, the Venice Commission "recommends elaborating some (in)eligibility criteria for the selection of the prominent citizens and setting the requirement of a qualified majority (with due anti-deadlock mechanisms) for the selection of the prominent citizens, in order to ensure the maximum diversity."[94]

84. Secondly, as regards the status of members of the judiciary, this is governed by an organic law that sets out the guarantees of their independence.[95] Professional law officers belong to the same corps and may be appointed to the bench and/or the prosecution service in the course of their careers. Judges enjoy greater protection with respect to the rules governing appointments, disciplinary procedures and professional mobility. Prosecutors, in order to implement the criminal justice policy decided by the government, are subject to the hierarchical principle. The Minister of Justice has the power to appoint and sanction them and they do not enjoy security of tenure.

85. Judges and prosecutors are appointed by decree of the President of the Republic. "The Venice Commission has recognised that in certain systems the Head of State can directly appoint judges, but a distinction needs to be made between those systems where the President has more formal powers and is withdrawn from party politics (usually parliamentary systems) and those systems where the President plays a prominent role with a clear political drive (usually presidential or semi-presidential systems). (…) France rather belongs to the second model, given the President's leading role within the executive, and his/her consequent capacity of influencing the government's choices on justice. Yet Article 64.1 of the Constitution not only entrusts the President with the power to appoint judges but even makes the President the guarantor of the independence of the judicial authority. (…) the nominations of the higher judicial positions by the President of

90. CDL-AD(2023)015, op. cit.
91. European Court of Human Rights, *Catana v. Republic of Moldova*, 21 February 2023, Application no. 43237/13, paragraph 75.
92. CDL-AD(2023)015, op. cit., paragraph 24.
93. Ibid., paragraph 25.
94. Ibid., paragraph 30.
95. Order of 22 December 1958 enacting the organic law on the status of the judiciary.

the Republic follow the proposal of the CSM and this practice seems to be consistent, as has been confirmed in the exchanges with all interlocutors during the visit of the rapporteurs in Paris. The Commission therefore acknowledges that the role of the President of the Republic does not seem problematic in this respect (…). Nonetheless, the Commission invites the authorities to contemplate a constitutional reform amending the first paragraph of article 64 in order to clarify the primary role of the CSM as guarantor of the independence of the judiciary. The fact that at present the President of the Republic does not wield political influence does not necessarily mean that the current constitutional set-up prevents such a situation in the future. What is more, given the wording of Article 64.1 of the Constitution, it is uncertain whether such increased political influence could be regarded as unconstitutional."[96]

86. Two appointment procedures exist for judges. For the most important positions in the judiciary[97] (around 400), the CSM has complete freedom of choice. It receives and examines applications, interviews some of the candidates and adopts proposals. Under Article 28.1 of the organic law, the President of the Republic issues the decree appointing persons to these senior positions on the recommendation of the CSM. This procedure does not give rise to any particular concerns.

87. As regards all other judicial appointments, the CSM does not have the power to nominate candidates; it gives its opinion on the minister's proposal and a judicial appointment can only proceed if the CSM section approves that proposal (power of veto). This procedure is contentious as the Minister of Justice is able to select the candidates he or she wishes to nominate and may favour or punish judges according to whether or not they are sufficiently compliant, yet the CSM does not have the power to amend the minister's proposal. "The Venice Commission is of the opinion that this system allocates an undesirable power to the executive in the field of judicial appointments. It creates a risk, not purely theoretical, that political considerations are taken into account when proposing candidates for a judicial post. The power of the CSM to reject some candidates does not appear sufficient to counter this risk nor does it fulfil the role that is proper to this institution, namely safeguarding the independence of the judiciary. In this respect, the Venice Commission has clearly expressed the view that a judicial council should have a decisive influence on the appointment and promotion of judges."[98]

88. "Considering that the CSM is already screening all profiles of candidates (proposed and excluded), making the necessary comparisons to formulate recommendations and opinions, assessing the observations of excluded candidates, it should be possible, as a first step, to modify the organic law in order to entrust it with the power to modify the proposal of the Minister of Justice, by reintegrating or replacing certain candidates, where it considers it appropriate. "The Venice Commission therefore recommends attributing to the CSM, at least, the power to modify the proposal of appointments made by the Minister of Justice."[99]

89. A proposal along these lines was made at the *États généraux de la justice* meeting, but the authors of the final report concluded that: "the current methods of appointing judicial officers other than members of the Court of Cassation and heads of courts do not warrant a transfer of powers between [the Ministry of Justice] and the CSM, contrary to one of the recommendations made by the *États généraux* working group (…)"[100] because such a reform "would make it difficult to take a comprehensive approach to managing the justice system (...)".[101]

90. The procedure for appointing prosecutors is different to the extent that the CSM has no power of veto: its opinion is merely advisory and the Minister of Justice is at liberty to disregard it. In its opinion, the Venice Commission notes that there is no common European standard on the organisation of the prosecution service. "The peculiarity of the French system lies in the fact that, on the one hand, the prosecution service is built upon a hierarchical system under the authority of the Executive, that can give general instructions and it follows the opportunity principle in the criminal proceedings, and, on the other hand, prosecutors belong to the judicial authority and constitute, together with judges, a single body of magistrates, with the possibility to move between the two functions in the course of their career (...) this peculiarity carries with it a risk of vulnerability if the safeguards of prosecutorial autonomy are not sufficiently strong as regards political interference both at the stage of appointments and promotions and during the exercise of the prosecutorial activity."[102]

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96. CDL-AD(2023)015, op. cit., paragraphs 36 and 37
97. Judicial posts in the Court of Cassation, first presidents of courts of appeal and presidents of ordinary courts.
98. CDL-AD(2023)015, op. cit., paragraph 40.
99. Ibid., paragraph 40 and 41
100. Report by the *États généraux de la justice* committee, April 2022, p. 110.
101. Idem.
102. CDL-AD(2023)015, op. cit., paragraph 45

91. As to the guarantees surrounding prosecutorial activity, these are satisfactory since prosecutors are independent in the exercise of public action on a case-by-case basis and the Minister of Justice cannot give instructions in individual cases.

92. As to the safeguards from political interference at the appointments stage, the CSM "shall give its opinion on the appointment of public prosecutors". It is for the Minister of Justice to propose candidates (including for high-level positions) and the CSM is merely able to give advice which is not binding on the executive: the minister may disregard it and propose that the President of the Republic make appointments which the CSM has not endorsed.[103] The French Government makes no secret of its involvement in the prosecutorial appointments process, with former Prime Minister Édouard Philippe, for example, telling the National Assembly, on the subject of the Paris public prosecutor's post: "(...) I fully acknowledge the fact that I will be meeting with candidates and satisfying myself that the one who will be put forward for appointment and approval by the Superior Council of Magistracy will be wholly in line with the government and that I will be entirely comfortable with that prosecutor."[104] According to the Venice Commission, "(a)lthough the Minister of Justice has systematically followed the negative advice of the CSM in the last fifteen years, the executive through its proposals exerts significant influence over the appointment process of prosecutors, which may create a risk of politicisation."[105]

93. To reduce this influence, the CSM has proposed that the procedure for appointing prosecutors be brought into line with the one for appointing judges. Back in 2013 GRECO called for "a procedure for the appointment of prosecutors in line with that for judges" and "consultations (...) on the possibility of aligning the disciplinary procedure for members of the prosecution service with that applicable to judges (with the CSM holding sole authority)."[106] The Venice Commission recommends proceeding with such a legislative and constitutional reform which seems to be based on a consensus in consideration of the fact that a fifteen-year long practice is not necessarily ever-lasting. In our discussions with the spokespersons for the political parties represented in parliament, all said they were in favour of the reform and called on the executive to proceed without further delay.

94. This reform should go hand in hand with changes to the role of the CSM in the appointment of judges. When questioned by the parliamentary committee of inquiry on the independence of the judiciary, the principal state prosecutor attached to the Court of Cassation considered that "the CSM's assent will not be enough to fix everything now, because we have waited too long and such assent has become the absolute minimum that is required".[107] He also proposed that the CSM should have the power to initiate appointments of principal state prosecutors and state prosecutors, namely that it should itself draw up the list of proposed appointments.

95. As far as disciplinary power is concerned, this is exercised by the CSM in the case of judges and by the Minister of Justice in the case of prosecutors (or members of the judiciary seconded to administrative positions at the Ministry of Justice or an inspectorate).

96. In its opinion on the status of the judiciary, the Venice Commission reiterated the Council of Europe's insistence that any sanctions incurred by members of the judiciary be clear and proportionate:[108] "the ECtHR found that in the absence of practice, domestic law needs to establish guidelines concerning vague notions to prevent arbitrary application of the relevant provisions[109] (…) Increased sensitivity regarding the issue of disciplinary offences and their impact on the independence of the judiciary is also demonstrated in the case-law of the Court of Justice of the European Union."[110] In the light of these requirements, the Venice

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103. In practice, this situation was common until 2007, with the minister overruling the CSM's opinion in 9 out of 10 cases in 2006 and 9 out of 14 cases in 2007. Since 2008, successive ministers have undertaken to abide by the opinion of the CSM, but this is merely a unilateral commitment on their part.
104. National Assembly, sitting on Tuesday 2 October 2018.
105. CDL-AD(2023)015, op. cit., para. 49
106. Greco Eval IV Rep (2013) 3E, para. 148.
107. Hearing with Mr François Molins, Wednesday 5 February 2020, Report on obstacles to independence of the judiciary, p. 263.
108. See for example Recommendation CM/Rec(2010)12.
109. European Court of Human Rights, *Oleksandr Volkov v. Ukraine*, op. cit., para. 185. See also, *Denisov v. Ukraine*, 25 September 2018, Application no. 76639/11.
110. CJEU, C-204/21, 5 June 2023, Commission v Poland, ECLI:EU:C:2023:442, CJEU, C 791-19, 15 July 2021, Commission/Poland (Disciplinary liability of judges), EU:C:2021:596, Joined Cases C-558/18 and C-563/18, 26 March 2020, Miasto Łowicz (Disciplinary regime for magistrates), ECLI:EU:C:2020:234, and Joined Cases C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, 18 May 2021, Forum of Romanian Judges, ECLI:EU:C:2021:393.

Commission recommends rewording the general provisions applicable to members of the judiciary[111] in order to define in a more complete and concrete manner the duties of office of judge and the other notions, as well as to explicitly mention the principle of proportionality of disciplinary sanctions.[112]

97. As regards procedure, the procedural safeguards for the rights of defence are deemed to be sufficient but the Venice Commission said it was concerned about the power of initiative and investigation of the Ministry of Justice and the lack of such power in the hands of the CSM. In its 2013 evaluation report, GRECO considered that "in the light of disciplinary practice in recent years and of the risk of the mechanisms being used to bring undue pressure to bear on judges and prosecutors, the disciplinary procedure relating to judges should be the sole prerogative of the CSM, which should be able to have proper powers of investigation and be allowed to make use of a service with an investigative capacity, such as the IGSJ, even before proceedings are opened. The intervention of the Minister of Justice should be restricted to receiving complaints and filing a case for possible deficiencies with the CSM."[113] The CSM, in an opinion issued at the request of the President of the Republic, likewise concluded that the disciplinary procedure should be reviewed and asked that the right to refer cases to the Inspectorate General of Judicial Services be extended to heads of courts and to the CSM itself.[114] The Venice Commission therefore recommends shifting the power to initiate disciplinary proceedings from the Minister of Justice to the CSM, which should be able to initiate such proceedings *ex officio*, and to request the General Inspectorate of the Justice System to carry out an investigation.[115]

98. A draft organic law[116] currently being debated provides for greater flexibility in the admissibility of complaints from the public, gives the CSM more effective powers of investigation into such complaints, and also stipulates that the CSM will systematically hear any member of the judiciary against whom complaints are made by a member of the public. These measures are in line with the recommendations of the Council of Europe.

99. The disciplinary procedure applicable to public prosecutors differs in one essential respect: the CSM's competence is only advisory, and the decision lies with the Minister of Justice. In addition, prosecutors do not have security of tenure. According to the Venice Commission, this system "carries a risk of vulnerability if the safeguards of prosecutorial autonomy are not sufficiently strong as regards political interference, not only at the stage of appointments and promotions, but also during the exercise of the prosecutorial activity and in particular in the context of disciplinary proceedings. Thus, the Venice Commission reiterates that "[i]t is necessary to secure proper tenure and appropriate arrangements for promotion, discipline and dismissal which will ensure that a prosecutor cannot be victimised on account of having taken an unpopular decision." The Venice Commission therefore recommends entrusting sole authority to impose disciplinary sanctions on prosecutors to the CSM and aligning the disciplinary procedure for members of the prosecution service with that applicable to judges.[117]

100. The risk that disciplinary procedures could be perceived as politicised is very real. GRECO expressed its concern as far back as 2013: "there are risks of problematic interference of the executive in the disciplinary proceedings and appointment/career system of judges and even more, of prosecutors. This calls for improvements since the current situation can generate 'reluctance' among practitioners when they deal with sensitive cases".[118]

101. There is broad agreement that the differences in the appointments process and disciplinary procedure for judges and prosecutors ought to be abolished, particularly in view of the increased investigative powers granted to prosecutors. In 2020, the parliamentary committee of inquiry referred to the "vital need to align the conditions of service of judges and prosecutors" and recommended "aligning the method of appointment and the disciplinary arrangements for prosecutors with those applicable to judges". In its opinion addressed to the President of the Republic, the CSM "firmly reiterate[d] its wish to see the successful completion of the constitutional review, which would assign it decision-making power in disciplinary matters concerning prosecutors, in addition to aligning the conditions for appointing prosecutors with those applicable to judges.

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111. Article 43.1 of the organic law currently provides: "Any failure by a member of the judiciary to fulfil the duties of their office or to uphold honour, discretion or dignity shall constitute a disciplinary offence."
112. CDL-AD(2023)015, op. cit., para. 59.
113. Greco Eval IV Rep (2013) 3E, para. 126.
114. Superior Council of Magistracy, Opinion for the President of the Republic, submitted on 24 September 2021.
115. CDL-AD(2023)015, op. cit., para. 67
116. Draft organic law on openness, modernisation and accountability of the judiciary.
117. CDL-AD(2023)015, op. cit., para. 71
118. Greco Eval IV Rep (2013) 3E, para. 3.

Any state governed by the rule of law has a positive obligation to ensure an impartial and independent justice system, that is definitively above suspicion, meaning that prosecutors must enjoy protection equivalent to that afforded to judges."[119]

102. Changing the current arrangements involves amending the article of the Constitution that lays down the powers of the Superior Council of Magistracy. There have been several attempts at constitutional reform of this kind (in 1998, 2013, 2018 and 2019) but none has ever succeeded, even though the French authorities told GRECO in 2013 that there was broad political support for such reform, both houses having adopted the relevant bill with the same wording.[120] In 2022, GRECO pointed out that "there has been no progress on the draft constitutional reform intended to amend the procedure for the appointment of prosecutors and the disciplinary procedure applied to them. This is a matter of paramount importance, and the authorities are invited to accelerate the procedure and give effect to this recommendation as soon as possible".[121]

103. It is disturbing to read, therefore, in the *États généraux de la justice* report that "the constitutional reform of the conditions of service of public prosecutors, which has been ready for nearly a quarter of a century, has never been followed through, a strong indication in itself of the reservations that the representatives of the French people harbour towards the justice system." It seems to us that the conditions for a broad consensus are in place, and that the reform in question could be enacted provided it is not accompanied by other more controversial constitutional measures, as has been the case until now.[122]

104. Quite apart from the statutory aspects, the fact that the French justice system has been under-resourced for decades is widely recognised. An article signed in 2021 by nearly three thousand members of the judiciary, namely one third of the profession, complained about working conditions and spelt out the "unacceptable dilemma" facing judges: "Whether to make quick but bad judgments, or whether to make good judgments but with unacceptable delays".[123] According to the latest reports of the European Commission for the Efficiency of Justice (CEPEJ), the number of judges in France is in fact much lower than the European averages, with 11.4 professional judges per 100 000 inhabitants compared with 21.4 on average in Council of Europe countries.[124] The situation as regards prosecutors is worse, with 3.2 per 100 000 inhabitants in France compared with an average of 11.25 in Council of Europe countries.[125] The excessive workload facing members of the judiciary makes it difficult to implement any major reform of the criminal justice system, as they have neither the time nor the resources to get to grips with it. In an effort to fix the problem, the authorities have announced plans to recruit 1 500 judges and prosecutors and 1 500 registrars by 2027.

105. The French authorities have clearly grasped the extent of the problem and an unprecedented drive to increase resources is under way, with the justice budget rising by almost 26% between 2020 and 2023. Further efforts are planned in the form of a 21% budget increase between 2023 and 2027.

5. Human rights and fundamental rights

5.1. Prison overcrowding and conditions of detention

106. According to Ministry of Justice data, there were 74 237 people in French prisons at 1 August 2023 as compared with 60 629 places. The average occupancy rate in remand prisons was 145.9%, with 2 383 detainees having to sleep on mattresses on the floor because of the lack of beds; 26 873 people, namely more than a third of prisoners, are held in facilities with an occupancy rate of over 150%.[126] These figures point to a serious situation for which France was censured in a European Court judgment handed down on January 2020. The Court held that the problem of prison overcrowding in France was of a structural nature and recommended that France consider the "adoption of general measures […] to ensure that prisoners' conditions of detention were compatible with Article 3 of the Convention". In this connection, the Court asked France to put "a permanent end to overcrowding in prisons".[127] This ruling corroborates the findings of the

119. Superior Council of Magistracy, Opinion for the President of the Republic, submitted on 24 September 2021, p. 25.
120. Following the adoption of an identically-worded text by both houses, the constitutional reform procedure requires a second stage: its approval by referendum or by two thirds of the parliamentarians convened in congress.
121. GrecoRC4(2022)2, para. 61.
122. See for example the reform mentioned in para. 21.
123. Le Monde (23 November 2021): L'appel de 3 000 magistrats et d'une centaine de greffiers: «Nous ne voulons plus d'une justice qui n'écoute pas et qui chronomètre tout».
124. And more precisely 17.7 for the group C countries, which include France.
125. And 8 per 100 000 for group C.
126. Statistics: measure of imprisonment, key indicators at 1 August 2023. www.justice.gouv.fr/statistiques-mensuelles-population-detenue-ecrouee-11. Statistiques de la population détenue et écrouée (30 August 2023).

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)[128] and reports by parliamentary bodies,[129] independent administrative authorities[130] and the main non-governmental organisations.[131]

107. The logic pursued by France regarding imprisonment runs counter to the trend in most other Council of Europe States: the number of detainees has been rising almost continuously whereas there was a steady reduction in the average prison population in Europe from 2011 to 2021.[132] The French prison population has experienced sustained and constant growth since 1980 (+98%), much higher than that of the general population (+23%).[133] According to the CNCDH, the national institution protecting and promoting human rights in France, several decades of ever tougher criminal policies have resulted in a heavy increase in the number of prison sentences, increased use of provisional detention, the proliferation of so-called short sentences, longer sentences on average, and little in the way of alternatives to imprisonment being introduced.[134] Whereas back in 1980 the rate of imprisonment was 66 per 100 000 inhabitants, it now stands at 105 per 100 000 habitants. To quote the Minister of Justice: “The figures clearly show, quite unequivocally, that justice is tougher now than it was before, whether for sentences handed down by judges or sentences set by juries.”[135] The mean duration of custodial sentences rose from 8.9 months in 2010 to 11.1 months in 2021.

108. Prison overcrowding exacerbates the insalubrity of material conditions of detention and several studies bring out a direct link between the conditions of detention and recidivism and the reintegration of the detainee.[136] In addition to prisoners being forced into close proximity and ever more of them having to sleep on mattresses on the floor, the 32 applicants in the case of *J.M.B. v. France* complained of the presence of fleas, bedbugs, cockroaches and rats, the lack of privacy resulting from the toilets being “partitioned off by just a mid-height swing-door”, mould-infested and unventilated shower rooms, the forced cohabitation of non-smokers and smokers, the lack of light in the cells, inadequate provision of cleaning products, recurrent difficulties to have heating, fans and hot water and exercise areas that were too cramped and lacking any benches or shelters. A major effort to renovate the buildings is urgently required therefore, but the corresponding provision in the prison administration budget for 2023 is only 80 million euros, which is a very long way off the estimated needs.[137] In its opinion on prison overcrowding, the CNCDH recommends: “the rehabilitation of these dilapidated establishments as a matter of urgency and, accordingly, a substantial increase in the budget allocated to the upkeep of the existing prison estate.”[138] Legislation passed in 2021 introduced a new judicial remedy for challenging undignified conditions of detention.

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127. European Court of Human Rights, 30 January 2020, judgment in the case of *J.M.B. and others v. France*.
128. Report to the Government of the French Republic on the visit to France by the CPT, para. 41: “The CPT has been finding that the country's prison establishments are overcrowded since 1991, and every one of its reports on prisons recommends that steps be taken to remedy this situation.”
129. See *inter alia* National Assembly, Information report on alternatives to detention and the possible creation of a prison regulation mechanism, 19 July 2023; National Assembly, committee of inquiry into the situation in French prisons, report, 28 June 2000; Senate, legislation committee of inquiry into the conditions of detention in prisons in France, report, 29 June 2000.
130. See *inter alia*: CNCDH, Avis sur l’effectivité des droits fondamentaux en prison, 24 March 2022 [Opinion on the effectiveness of rights in prison]; CGLPL, “Les droits fondamentaux à l’épreuve de la surpopulation carcérale”, Dalloz, 7 February 2018; Defender of Rights, “Avis 21-13 relatif à l’identification des dysfonctionnements et manquements de la politique pénitentiaire”, 30 September 2021.
131. In particular: the Observatoire international des prisons and Amnesty international: “Dignity in prison, what is the situation two years after the European Court of Human Rights ruled against France?”, June 2022.
132. See the Council of Europe Annual Penal Statistics, SPACE (coe.int). According to the information report on alternatives to detention and the possible creation of a prison regulation mechanism (mentioned above), the analysis of these statistics demonstrates that between 2010 and 2020, only France and Türkiye recorded a trend of growing imprisonment rate.
133. Assemblée nationale, Information report on alternatives to detention and the possible creation of a mechanism of prison regulation, 19 July 2023, p. 56.
134. CNCDH, Avis sur l’effectivité des droits fondamentaux en prison, [Opinion on the effectiveness of rights in prison], op. cit., para. 7.
135. Report of the Senate’s legislation committee, 8 November 2022.
136. Assemblée nationale, Information report on alternatives to detention and the possible creation of a mechanism of prison regulation, 19 July 2023, p. 84.
137. Observatoire international des prisons, “Budget pénitentiaire 2023: enfermer toujours plus, qu’importent les conditions”, 15 December 2022.
138. CNCDH, Avis sur l’effectivité des droits fondamentaux en prison, [Opinion on the effectiveness of rights in prison], op. cit., recommendation n°3.

109. The French authorities' response to the problem of prison overcrowding is a twin-pronged strategy of building to create additional prison capacity and developing alternative measures to detention. On this point, the CPT has stated: "The CPT has been finding that the country's prison establishments are overcrowded since 1991, and every one of its reports on prisons recommends that steps be taken to remedy this situation. The French authorities' responses have invariably outlined a policy revolving around two main strategies: creating new places and undertaking statutory reforms aimed at lowering occupancy rates and developing alternatives to imprisonment. Notwithstanding the constant increase in prison capacity and the adoption of numerous measures and pieces of legislation, the population has continuously expanded at an ever-increasing rate, which prompts the Committee to question the effectiveness of the steps taken by the authorities over the last three decades."[139]

110. Accordingly, the CPT invited the French Government to "learn from the failures of the measures taken over the last 30 years to curb overcrowding in prisons and draw up a global strategy to put an end to it" and reiterated once again that "increasing prisoner capacity is far from being a lasting solution to the problem of overcrowding."[140] The Committee of Ministers, in the context of supervising execution of the judgment in the case of J.M.B. v. France, "noted with interest the very detailed information provided by the authorities, notably their efforts to better distribute detainees between establishments and to develop out-of-cell activities for all detainees; also took note with interest of very numerous measures which they have already adopted in order to try to reduce prison overcrowding" but "expressed, however, deep concern at the latest figures, which show a worsening of the situation" and "therefore, invited once again the authorities, in the light notably of the CPT's recommendations, to adopt promptly a comprehensive and coherent strategy to reduce, in the long term, the prison overcrowding and to continue to adopt as many measures as possible to better distribute the detainees; also invited the authorities to emphasise all alternatives to detention and to strengthen the means necessary for their development and implementation by the jurisdictions, instead of continuing to increase the number of prison places."[141] In terms of increasing capacity, the plan to build 15 000 additional places by 2027 is worryingly behind schedule. According to the report on the draft budget for 2023: "The Government has taken note of the delay in delivering the places scheduled under the prison plan. The 7 000 places that were to be delivered by the end of 2022 have not been built in full. As at 1 July 2022, 2 081 net places had come on stream, with a further 360 places to be available by the end of the year (...) In all, 24 establishments, that is to say half of the initial forecast, will be operational by 2024."[142] An amendment to the draft bill on justice currently being discussed in parliament has increased the number of places to be built by 2027 from 15 000 to 18 000. In view of the difficulties in building the 15 000 places initially planned, this objective seems hardly credible.

111. Developing alternatives to detention is a longstanding stated aim of the authorities, and numerous legislative measures have indeed paved the way for handing down alternative measures or adjusted sentences. Since 1 June 2023 prisoners with less than three months left to serve are automatically granted conditional release.[143] There are, however, other factors standing in the way of the expected results. A large proportion of France's prisoners are serving short sentences despite the fact that such sentences have no impact on the individual or on reoffending, carry a high risk of desocialising prisoners and represent a very high cost for the community.[144] Legislation introduced in 2019 prohibits courts from imposing custodial sentences of less than or equal to one month and requires custodial sentences of less than six months to be adjusted except in the event of "impossibility resulting from the convicted person's personality or situation", as well as an adjustment of sentences of more than 6 months and less than 1 year when the situation and personality of the convicted person allow it. In April 2023, 4.9% of prisoners were serving a sentence of less than or equal to six months, 15.6% of prisoners were serving a sentence of less than or equal to one year, while 23% of prisoners in detention on 31 December 2022 were serving a remaining sentence of less than one year.[145] Unfortunately, the legislation failed to bring about a reduction in the number of short sentences

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139. CPT/Inf (2021)15, Report to the Government of the French Republic on the visit to France by the CPT from 4 to 18 December 2019, para. 41. At that date, the average occupancy rate was 116%; today it is 120%.
140. CPT/Inf (2021) 14, para. 43.
141. 1451st meeting CM-DH, 6-8 December 2022, para. 5.
142. National Assembly, Report on the finance bill for 2023 (No. 273), Appendix No. 30 (Justice), Mr Patrick Hetzel, 6 October 2022.
143. In their comments, the authorities underline that this measure allowed the release of 4 178 detainees as of 4 May 2023. The Ministry released a circular on 20 September 2022 which reflected numerous local initiatives aimed at a better prison regulation.
144. *États généraux de la justice* report, p. 205. According to the National Assembly's information report on alternatives to imprisonment and the possible creation of a prison regulation mechanism: "Prison overcrowding renders it ineffective in its mission of reintegration and combating recidivism".
145. OPEFEM, March 2023.

and in fact had the opposite effect: as it placed obstacles in the way of imposing custodial sentences of less than six months, judges have tended to hand out longer sentences for conduct that used to be punished by lesser sentences in the past.[146] Members of the judiciary consider that they do not have enough time at hearings to envisage all possible alternatives to imprisonment and do not always have the information and documents to hand that would provide justification for adjusting sentences. According to the conclusions of a cross-partisan parliamentary fact-finding mission:[147] "the development of judicial measures limiting the use of detention has increased (…) without having reduced prison pressure" and "the alternatives do not bite on detention but on freedom."

112. There has been an alarming slump in sentences involving community work following the reform of 2021, despite them being promoted by the Minister of Justice.[148] The most commonly imposed alternative measure to detention – and one that is very much on the increase – is house arrest under electronic surveillance but these sentences are in addition to imprisonment rather than instead of it, as evidenced by the inexorable rise in the number of people imprisoned.

113. The Minister of Justice announced several additional measures on 5 January 2023 to combat prison overcrowding. The *États généraux de la justice* report advocated fewer short sentences and the introduction of a mechanism for regulating prisons, of the kind called for by the Committee of Ministers, the CPT, the Inspector-General of Places of Deprivation of Liberty (Contrôleur général des lieux de privation de liberté – CGLPL) and the CNCDH, which consider that only a binding mechanism will be capable of achieving results. Without a binding legislative basis, the stipulations laid down in directives do not have the impact required. The CGLPL therefore recommends enacting a general ban on accommodating prisoners on mattresses on the floor or without any guarantee that they can have a bed, a chair and at least a shared table at which to sit.[149] The *États généraux de la justice* report proposed a less restrictive mechanism. The CNCDH recommends a prison regulation mechanism prohibiting any prison establishment, and any wing thereof, from exceeding an occupancy rate of 110%. A fact-finding mission from the National Assembly focused specifically on this issue and delivered its report on 19 July 2023. Its conclusions are unequivocal: the establishment of a binding prison regulation mechanism responds to a unanimous request from stakeholders in the criminal justice system (representatives of lawyers, magistrates and prison staff) and "the rapporteurs believe, in conclusion of their work of several months, that there is currently no alternative to the implementation of a regulatory mechanism. Indeed, in spite of the measures taken over the past twenty years, in spite of the development of alternative sentences, in spite of the construction of new prison places, nothing solved the problem and overcrowding has continued to grow. It therefore becomes necessary to assume, in addition to the continuation of all these measures already in place, the creation of a regulatory mechanism."[150] The report proposes to gradually put in place a binding prison regulation mechanism to sustainably reduce prison overcrowding from 2027.

114. For the time being, introducing such a mechanism is not one of the solutions opted for by the government. A number of political decision makers explained that, for cultural reasons, imprisonment was the only measure seen by the French people as real punishment, and this appears to be the reason for the continued pursuit of the policies found by the CPT to be ineffective. When asked about this at the general meeting of the National Council of Bar Associations on 9 June 2023, the Minister of Justice cited political responsibility as the reason for his unwillingness to take the risk of releasing 13 000 people.[151] The level of prison overcrowding is such, however, that the European Court of Human Rights has urged France to adopt general measures to ensure that prisoners' conditions of detention are compatible with Article 3 of the Convention and to put an end to prison overcrowding. This should be an urgent priority for the country's administrative and political authorities. While attitudes need to change, the courage to take measures that might be unpopular seems to have been lacking in this area so far.[152]

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146. In their comments, the authorities state that the average quantum of sentences handed down increased from 9.4 to 10.1 months between March 2021 and March 2023. The number of sentences of less than 6 months passed from 6 353 to 6 120 over the same period. The number of sentence adjustments made at sentencing has also increased, with the ratio of the number of *ab initio* adjustments to sentences of less than 1 year rising from 17.1 to 30%.

147. Assemblée nationale, Information report on alternatives to detention and the possible creation of a mechanism of prison regulation, 19 July 2023.

148. In the first quarter of 2022, judges handed down 30% fewer community service sentences than in the first quarter of 2019: Le Monde (8 August 2022). In the longer term, the number of sentences involving community work has risen from 18,000 at the end of 2018 to 26,058 in February 2023.

149. CGLPL, 2021 activity report, p. 19.

150. Assemblée nationale, Information report on alternatives to detention and the possible creation of a mechanism of prison regulation, 19 July 2023, p. 129.

151. See the report of the general meeting of the National Council of Bar Associations: www.cnb.avocat.fr/fr/actualites/projet-de-loi-justice-le-garde-des-sceaux-vient-echanger-avec-les-avocats.

5.2. Use of force during demonstrations

115. Since 2016, there have been ever more outbreaks of violence on the fringes of demonstrations, and the doctrine guiding crowd control has evolved, reverting to the previously favoured principle of keeping people at a distance. The number of people injured during demonstrations has escalated alarmingly, among both law enforcement officers and demonstrators. The Council of Europe's Commissioner for Human Rights took the view, in February 2019, that the number and seriousness of injuries inflicted on the "yellow vest" demonstrators raised questions about the "compatibility of the methods used in operations aimed at maintaining public order with due regard for [human] rights."[153] One year after the start of the movement, according to government figures, 2 500 protestors and 1 800 police had been injured. President Macron has acknowledged the "need to change policing strategies in order to limit the number of injuries at protests".[154]

116. In September 2020, a new national blueprint for law enforcement was published and a parliamentary committee of inquiry drew up a report on the current state of ethics, practices and doctrines in the sphere of law enforcement.[155] It appears that, given the very high number of demonstrations, units that were not specialised in public order operations were deployed despite not having the necessary theoretical and practical training. Consequently, the parliamentary committee of inquiry recommended that every effort be made to prioritise intervention by units specialised in crowd control and to provide adequate training for non-specialised police and gendarmerie units that might be mobilised for public order operations.[156] The consequences of the lack of training are exacerbated by the fact that police are equipped with weapons that may be regarded as inappropriate in the context of crowd control operations.[157] In a framework decision of 9 July 2020, the Defender of Rights considered that the use of intermediate weapons during public order operations "exposed protestors to the use of disproportionate force by law enforcement agencies"[158] and recommended banning the use of flash-ball weapons during such operations. That recommendation was partially reiterated in the parliamentary committee of inquiry report.[159] Nevertheless, during violent clashes on the fringes of a protest in a rural area on 25 March 2023, observers from the Ligue des droits de l'Homme reported that "gendarmes (…) shot (…) with military grade weapons: teargas grenades, sound grenades, explosive grenades type GM2L and GENL, and LBD 40 flash-ball weapons."[160]

117. Several protests against the pension reform bill, with protesters gathering in historically high numbers, occurred without major clashes in February and March 2023. However, following the decision to push the reform through without a vote in the National Assembly on 16 March 2023, many spontaneous protests occurred in which cases of disproportionate use of force were reported. The Commissioner for Human Rights stated on 23 March 2023: "In the context of the social movement against the pension reform in France, the freedoms of expression and assembly are being exercised under worrying conditions"[161] The CNCDH was also concerned about "certain acts by enforcement officers observed in particular since [the announcement of use of article 49(3)]."[162] The Defender of Rights also shared her worries,[163] as well as United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Clément Nyaletsossi Voule. The Minister of the Interior declared: "There's no law enforcement problem, there's a problem with the ultraleft."[164]

118. In addition to the use of force, Amnesty international has also criticised the use of the criminal law in a way that infringes freedom of protest, particularly through the use of identity checks, preventive arrest, custody[165] and prosecution on the basis of the arbitrary application of provisions of the Criminal Code.[166] Many cases of abusive arrests were reported on the fringes of protests against the pension reform in February

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152. See the opinion expressed by Senator André Vallini: Le Monde (14 December 2022): André Vallini: «En matière de politique carcérale, il faut choisir la pédagogie plutôt que la démagogie».
153. CommDH(2019)8, "Memorandum on maintaining public order and freedom of assembly in the context of the "yellow vest" movement in France", 26 February 2019. See section on maintaining public order.
154. France Info, interview with Emmanuel Macron published on 26 August 2019.
155. National Assembly, «Rapport fait au nom de la commission d'enquête relative à l'état des lieux, la déontologie, les pratiques et les doctrines de maintien de l'ordre», 20 January 2021.
156. Ibid., p. 52 and 61.
157. Ibid., p. 43.
158. Defender of Rights decision no. 2020-131, 9 July 2020, p. 14.
159. The report recommends "prohibiting the use of flash-ball weapons in a crowd-control context, except in case of grave danger or riots."
160. Ligue des droits de l'Homme, Première synthèse – Observations des 24-26 mars 2023 à Sainte-Soline.
161. Statement by the Commissioner for Human Rights (24 March 2023).
162. Statement by the CNCDH (23 March 2023).
163. Statement by the Defender of Rights (21 March 2023).
164. Hearing with Gérald Darmanin before the National Assembly's legislation committee, 5 April 2023.

and March 2023. In a statement dated 21 March 2023, the Defender of Rights "issued an alert on the consequences of preventive arrests of people in the vicinity of protests. She underlined that this practice could induce a risk of disproportionate recourse to measures of deprivation of liberty and could increase tensions. Individual freedom can only be restrained within the framework and conditions set by law."[167]

119. In conclusion to its findings, the parliamentary committee of inquiry into public order called on the authorities to look at the methods used in other countries and engage in dialogue at European level. Exchanges of experience of this kind exist and have demonstrated their utility. The "GODIAC"[168] project run between 2010 and 2013 involved police forces from twelve European States[169] and research bodies and highlighted several important strategies aimed at reducing conflict in public order operations. Similarly, the IPCAN network,[170] of which the Defender of Rights is a member alongside ten other independent authorities, held a seminar on relations between the police and the public in October 2019. It suggests various strategies promoting an approach emphasising the calming of tensions and de-escalation of the situation and calls for the organisation of a second GODIAC project, that would enable the law enforcement agencies of States that had been unable to contribute to the findings of the first project to participate.

120. The manner in which violence during demonstrations has been dealt with in criminal law has also come in for scrutiny. The criminal law response to violence committed during the "yellow vest" protests was firm in the extreme: over 3 100 convictions handed down between November 2018 and 2019, of which 400 were custodial prison sentences, with immediate effect, largely for offensive behaviour towards an officer of the law, stone-throwing and damage to property. On the law enforcement side, it is not statistically possible to arrive at figures for prosecutions and convictions of police and gendarme officers following public order operations. According to the Ministry of Justice, "In most cases, no further action was taken on the complaints lodged either because of the violent conduct of the victim or because it could not be established that the injury complained of was caused by inappropriate use of force, or owing to the difficulty of identifying the officer who had fired the intermediate weapon."[171] This differentiation in treatment by the judiciary depending on whether the perpetrators of violence are members of law enforcement or protesters fuels the sentiment that police forces are enjoying a form of impunity. To remedy this, the authorities reiterate the requirement for members of law enforcement agencies to wear a clearly visible identification number.

121. In addition, the police inspectorate (IGPN) and the *gendarmerie* inspectorate (IGGN) have come in for repeated criticism for lack of impartiality. According to the parliamentary committee of inquiry into public order, these inspectorates are too understaffed to cope with the volume of activities. A comparative study on twenty countries showed that the French inspectorates are among the less staffed as compared to the number of agents they have to control[172]. According to the ministry of justice: "regional offices of the IGPN, which are naturally seized in priority by prosecutors, are saturated on a regular basis, when their geographical distance is not hindering their action".[173] Moreover, both inspectorates statutorily come under the Ministry of the Interior. This hierarchical subservience makes the inspectorates dependent on the ministry's decision as to whether or not to open an administrative investigation into unlawful acts of violence committed by members of law enforcement. The Defender of Rights deplored the fact that no disciplinary proceedings were instituted by the Ministry of the Interior on the basis of the 36 issues raised by the Defender's office in this connection between 2014 and 2019.[174][175]

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165. In Paris, around half of those held in custody during the seven-month period that formed the height of the "yellow vests" movement were not prosecuted.
166. Amnesty International, "Arrested for protesting, the law as a weapon to repress peaceful protesters in France", September 2020.
167. Statement by the Defender of Rights (21 March 2023).
168. Good practice for dialogue and communication as strategic principles for policing political manifestations in Europe.
169. Germany, Austria, Denmark, Spain, Hungary, Portugal, United Kingdom, Slovak Republic, Sweden, Cyprus, the Netherlands and Romania. France refused to take part.
170. Independent police complaints authorities' network.
171. Ministry of Justice, Prosecutor's office 2019 annual report, p. 35.
172. IPCAN, Les agences de contrôle externe des polices: émergence et consolidation, 20 janvier 2023. https://defenseurdesdroits.fr/fr/etudes-et-recherches/2023/01/etude-les-agences-de-controle-externe-des-polices-emergence-et.
173. Ministère de la justice, rapport annuel du ministère public 2020, p. 32.
174. Defender of Rights, annual report 2019, p. 60.
175. In their comments, the authorities added that "Since 2012, IGPN has undertaken a reforming process and created tools to enhance transparency: the TSUA ("treatment on follow-up of weapons' uses") and RBD ("census of wounded or deceased persons on the occasion of a police intervention"). A Committee of evaluation of ethics of the police has been installed at the initiative of the IGPN. The independence of inquiries led by IGGN under supervision of judicial magistrates was acknowledged by the European Court of Human Rights in its judgement of 17 April 2014."

122. The perceived risk of these inspectorates lacking independence is also partly due to the fact that the vast majority of their members are law enforcement officers,[176] who could fall under suspicion of bias, *inter alia* because there have been few criminal prosecutions or convictions following investigations by the IGPN. Among the investigations carried out by the IGPN, no further action was taken in a third of cases because the inspectorate failed to identify the police officers having perpetrated the alleged offences. According to the parliamentary committee of inquiry into public order, suspicions of bias in the inspectorates stem from their lack of autonomy. It therefore called for them to be reformed, by encouraging more individuals from outside the police and *gendarmerie* corps to join them and by allowing the Defender of Rights to refer cases directly to the inspectorates. It also recommended directly assigning investigations into unlawful violence committed by law enforcement officers to an investigating judge rather than a prosecutor.

5.3. Combating discrimination

123. ECRI published its sixth monitoring report on 21 September 2022. At national level, the CNCDH publishes a yearly report on combating racism, antisemitism and xenophobia[177] and in 2022 published, for the first time, a report reviewing the effectiveness of the rights of LGBTI persons in France.[178] The Defender of Rights also produces an annual activity report[179] and an annual report on children's rights.[180] Several thematic reports are also published each year by these two institutions. The interministerial delegation on fight against racism, antisemitism and anti LGBT hatred (DILCRAH) is acting in complement of the Defender of Rights and is responsible for the implementation of action plans.

124. In its 2022 report, ECRI noted several good practices and promising practices in the area of inclusive education and recommended that the authorities include mandatory training on human rights, education for tolerance, respect for diversity, including LGBTI issues, prevention of bullying and responses to prejudice and discrimination in the basic training of all teachers, to be supplemented thereafter by in-service training.[181] This issue is also addressed by the CNCDH report, which makes twelve detailed recommendations.

125. Regarding the ECRI recommendations on the situation of migrants and equality of LGBTI persons, we refer to the relevant work of the Assembly's Committee on Equality and Non-Discrimination and the Committee on Migration, Refugees and Displaced Persons.

126. Opinion surveys reveal a fairly open conception of French citizenship among the public. The members of minority groups holding French nationality are regarded as French, just like anyone else, be they Jews (89%), Muslims (83%) or Roma (63%), which shows a broadly shared non-exclusive view of nationality. Likewise, the presence of immigrants does not seem to engender very strong opposition. While one in two French people (49%) feels that there are too many immigrants in France today, the majority (72%) believe that the presence of immigrants is a source of cultural enrichment and that immigrant workers must be considered as having their rightful place in France as they contribute to the French economy (81%).[182]

127. In the long term, French society is becoming more tolerant because of structural demographic factors: higher academic qualifications, a new generation coming through and a more diversified population. That said, the prism through which news is presented causes variations in the degree of tolerance: "It is not events as such that directly influence individual opinions, but the way in which those events are framed by the political, social and media elites, which have a particularly strong responsibility to create a dominant narrative (…). Following the terrorist attacks of January 2015 there was an opportunity to "take the high ground", thanks in particular to the "Je suis Charlie" demonstrators, who advocated tolerance, a rejection of sweeping generalisations and commitment to freedom of expression, rather than a rejection of Islam and immigrants."[183]

128. In this context, ECRI reported concerns over the trivialisation of hate speech during election campaigning, within protest movements (such as "La Manif' pour tous", the "Gilets jaunes" and "Anti-pass sanitaire" (Anti-Health Pass)). The watchdog role of the Arcom where racism in the media is concerned had

176. In 2021, the IGPN had 270 staff, 73% of them police officers. The authorities added that a magistrate was appointed at the head of the IGPN and that direct signalments were possible online on IGPN and IGGN platforms.
177. CNCDH, 2021 Report on combating racism, antisemitism and xenophobia, March 2022, p. 371.
178. CNCDH, Report entitled "Orientation sexuelle, identité de genre, intersexuation: de l'égalité à l'effectivité des droits", March 2022, p. 480.
179. Defender of Rights, "Annual Activity Report 2021", p. 139, in three languages: French, English and German.
180. Defender of Rights, "La vie privée, un droit pour l'enfant", 2022 report, p. 73.
181. ECRI, report on France 2022, para. 15.
182. CNCDH, 2021 annual report, p. 33.
183. Ibid., p. 48.

been extended to online content in 2020. ECRI noted with regret, however, that, in practice, efforts to counter the exploitation of racism in politics, including online, have been largely insufficient and that the few criminal convictions handed down have little deterrent effect. According to ECRI, hate speech "continues to be disseminated by the media in the absence of effective self-regulation.". Accordingly, ECRI recommended that "political figures on all sides take a firm and public stance against any racist or LGBTI-phobic hate speech and respond with strong counter-speech. All political parties should adopt codes of conduct condemning and appropriately penalising hate speech and calling on their members and supporters never to resort to it."[184] In their comments, the authorities point out that combating discrimination remains high on the agenda of the Ministry of Justice. When it comes to making criminal justice policy, several dispatches and circulars have been issued, emphasising the need to combat hate speech.

129. The ECRI report includes a topic specific to France: "preventing and combating any racist or LGBTI-phobic abuse by law enforcement officers." ECRI "is concerned that little progress has been made since its previous reports to effectively prevent or take action against certain types of misconduct by law enforcement officers that disproportionately affect people perceived as having an immigrant background or belonging to minority groups."[185] Several widely reported cases of violence committed by members of law enforcement[186] and also investigations by reporters have revealed the existence of discriminatory bias in certain units. The CNCDH has recommended taking measures to improve in-service training of law enforcement officers, particularly in the area of ethics.

130. The issue of discriminatory identity checks has been emphasised by many talking partners. This form of discrimination has long been criticised. In its 2010 report (fourth monitoring cycle), ECRI noted with concern that "allegations persist concerning discriminatory conduct by law enforcement officials in respect of members of minority groups, in particular visible minorities (…). A number of sources have stressed that racial profiling is a serious problem in the case of identity checks".[187] A 2017 report by the Defender of Rights established that persons matching the profile "young man perceived as black or Arab" were twenty times more likely than the average person to be stopped and ID-checked.[188]

131. Although the law expressly prohibits discriminatory checks,[189] this practice continues. The Court of Cassation held that the French State had committed gross misconduct in 2016. Since then, police training has been stepped up in areas such as ethics, identity checks, police-community relations, combating racism and xenophobia, and dealing with victims of discrimination and offences of a racist, anti-religious or anti-LGBTI nature.

132. The authorities are currently unable to indicate the number of identity checks carried out, the places and times of those checks, and the population groups affected. It is for this reason that ECRI, IPCAN, the Defender of Rights and the CNCDH, among others, have been calling for proper statistics on the practice of identity checks and profiling, but the Ministry of the Interior continues to dismiss such a measure. The CNCDH recommends issuing a receipt at the time of the identity check stating the date, time, place and reason for the identity check.[190] According to the Defender of Rights, "introducing a system of traceability is not enough and such a system should be backed up by guarantees and additional measures such as reform of the legal framework, training, the involvement of the hierarchy, provision of data, assessment and transparency, co-operation with the public and civil society stakeholders (…)."[191] In its 2022 report, ECRI "recommends, as a matter of priority, that the authorities introduce an effective system of recording identity checks by law enforcement officers, as part of a policy aimed at strengthening mutual trust between them and the public and their co-operation in the fight against discrimination"[192] and advocates a process of interim follow-up for this recommendation no later than two years after publication of the report.

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184. ECRI, report on France 2022, para. 60.
185. Ibid., para. 109.
186. The CNCDH report cites several cases in which black men died or were left seriously injured after being apprehended by law enforcement officers: death of Adama Traore on 19 July 2016, injuries inflicted on Théo Luhaka on 2 February 2017, death of Cédric Chouviat on 5 January 2020 after being held face down on the ground, arrest of Michel Zecler on 21 November 2020. The latter case triggered the launch of the "Beauvau round table consultation on security".
187. ECRI report on France (fourth monitoring cycle), 15 June 2010, para. 139 et seq.
188. Survey on access to rights by the Defender of Rights, volume 1, "Relations police/population: le cas des contrôles d'identité".
189. Article R.434-16 of the Interior Security Code: "Where authorised by the law to carry out an identity check, the police officer or gendarme officer shall not base their assessment on any physical characteristic or distinguishing feature to determine which individuals to check, unless they have a specific description providing grounds for the check."
190. CNCDH, 2021 annual report, p. 223.
191. Hearing with Ms Claire Hédon, Defender of Rights, at the Monitoring Committee meeting on 26 April 2022.
192. ECRI, France report 2022, para. 113.

133. In its response to the ECRI report, the government said that it had decided to make it mandatory for law enforcement officials to wear an identification number and a body-cam. In the view of the Defender of Rights, "the use of body-cams does not provide a means of verifying the reason for the ID check and whether it is abusive and repeated."[193] The effectiveness of wearing an identification number is questionable, as it is a 7-digit number which is difficult to memorise and is not always visible. The Ministry of the Interior acknowledged that: "policemen and gendarmes do not wear their identification number, which is, indeed, contrary to the rules".[194]

5.4. Freedom of information

134. Freedom of expression is well protected in France. The Constitution and the 1881 Law on freedom of the press guarantee media freedom, freedom of opinion and freedom of expression. Restrictions do exist, as strictly defined by law, in order to protect privacy and image rights and to prevent defamation, public insult, the condoning of terrorism, publication of fake news and hate speech. The criminal offence of insulting the head of State, having fallen into disuse, was repealed in 2013. Criminal procedure provides for special procedural guarantees where the media are concerned: short periods of limitation, ban on provisional detention, and limits on searches of premises.

135. The freedom of journalists is properly protected. The national blueprint for law enforcement was revised in December 2021 to guarantee journalists' physical safety during demonstrations, as requested by the profession itself. A liaison group between the interior and culture ministries and journalists' representatives meets regularly to facilitate communication with law enforcement agencies. However, there are growing threats to the profession of journalist owing to the economic context. There is a steady decline in the number of journalists holding press cards, and many younger journalists are leaving the profession, disillusioned by a growing sense of the futility of the job and an increasingly precarious financial situation.[195] The *Media Pluralism Monitor* recommends that the professional regulations and collective agreements be better applied and that sanctions be imposed for abuses of self-employed status and outsourcing.[196] The Ministries of Culture and Labour are in constant contact with the unions, who alert them to the lack of understanding of the status of journalists on the part of certain publishers.

136. Another threat, of a different nature, comes from proceedings aimed at gagging the press.[197] Since 2009, over twenty defamation suits have been lodged by the Bolloré group in France and abroad against articles, television and radio reports, reports by non-governmental organisations and even a book. It has also brought libel suits against individual bloggers who passed on information that it took exception to. These lawsuits do not result in convictions because French courts apply the law in a manner that affords strong protection for the freedom of journalists, who must simply demonstrate that they have acted in good faith. To circumvent this protective legislation, other procedural means such as commercial court proceedings or lawsuits in foreign courts have been used. The Bolloré group brought a claim for 50 million euros from a public television channel, not on grounds of defamation but for commercial denigration. These lawsuits against journalists come on top of other efforts to hamper press freedom. In 2014, for example, the group's advertising agency, Havas, sought to cancel over 7 million euros worth of advertising in the newspaper *Le Monde* after it published an investigation into Vincent Bolloré's dealings in Ivory Coast, and several documentaries that were to be aired on the Bolloré group-controlled *Canal+* TV channel were taken off the schedules.

137. The European Union presented a set of proposals for combating SLAPPS on 27 April 2022 and asked its member States to introduce similar measures into domestic legislation. France could therefore tweak its legislation to give journalists, civil society organisations and citizens greater protection from abusive legal proceedings aimed at intimidation. Transposition measures have been announced for civil procedure, and a 2022 law aimed at improving the protection of whistleblowers provides a mechanism for awarding an advance on costs to a defendant or accused "whistleblower" when the proceedings brought against them are intended to hinder their reporting or public disclosure.

193. Hearing with Ms Claire Hédon, Defender of Rights, at the Monitoring Committee meeting on 26 April 2022.
194. Senate, Legislation Committee, Events in Sainte-Soline, 25 March 2023 — Hearing with Mr Gérald Darmanin, Minister of the Interior and Overseas, Wednesday, 5 April 2023.
195. Jean-Marie Charon and Adénora Pigeolat, *Hier, journalistes. Ils ont quitté la profession*, Éditions Entremises, 2021, p. 126.
196. Centre for media pluralism and media freedom, "Monitoring media pluralism in the digital era", country report France, June 2022, p. 47.
197. Also known as SLAPPs: "Strategic Lawsuits Against Public Participation".

5.5. Concentration of media ownership and pluralism of information

138. With the number of channels accessible never having been as high, talking about media concentration might seem paradoxical. According to the president of Arcom: "today's audiovisual landscape is infinitely less concentrated than in 1986."[198] However, the audience continues to be concentrated on a limited number of operators. France Télévisions (public service) and TF1 (the leading private network) had a 56% share of the TV audience in 2020, while Radio France (public) and RTL (private) together account for 50% of the radio listener audience. Measuring sector concentration in terms of economic criteria alone does not provide any useful indication as to the pluralism of political information. Instead, it is proposed that it be measured in terms of audience attention. If attention is taken into account alongside market share, digital technology is driving concentration because, on the Internet, content is accessed above all via social networks and aggregators, which showcase the most popular content.

139. In an opinion piece published in December 2021, 250 press, television and radio professionals cautioned against the risks posed by concentration of media ownership.[199] A topical issue that has far-reaching implications for democracy, it has been the focus of a number of recent studies. A senatorial committee of inquiry looked into the impact of the concentration of media ownership on democracy and submitted its report in March 2022.[200] According to the committee of inquiry, the concentration of media ownership resulting from the economic difficulties facing the sector may have an impact on pluralism by cutting down the number of topics covered and even by homogenising information. Investigative journalism has been abandoned by some private groups which claim that it is too costly[201]or are worried about upsetting advertisers; others make no pretence of having any journalistic ambition and publish content whose purpose is not so much to inform as to attract advertising.[202] According to *Media Pluralism Monitor,* the policy pursued within the Bolloré group has resulted in reduced pluralism of programmes, journalists and content.[203] In contrast, some media still follow a model based on having a high proportion of journalists. As Edwy Plenel, director of the online publication *Mediapart* put it: "We are companies and the first guarantee of independence is profitability. At *Mediapart*, we are showing that you can be profitable just by journalism, as opposed to others who destroy everything that journalism stands for and wreck any trust in the information provided."[204]

140. In the eyes of many observers and policy makers, the concentration of news media in France poses a very real threat to pluralism of information,[205] and it is a growing trend. The different thresholds of concentration provided for in the 1986 law on the media are not effective and no longer reflect reality. The groups that have invested in the media since the 1980s derive the bulk of their revenue from economic activities that depend on orders placed by the State (armaments and aviation) or are subject to regulation (telecommunications, transport, financial sector) or in which the State holds a stake; "besides lobbying, media control, in this context, is an obvious means of influence, and the ties media moguls have with leading political figures are well known and documented."[206]

141. Accordingly, the regulatory framework seems unsuited to protecting pluralism domestically and internationally. Despite their dominant influence, the big internet platforms such as Google and Facebook benefit from very loose rules. It is at the level of the European Union that relevant measures can be taken, not least to ensure that neighbouring rights are fairly remunerated. In France, the criteria for measuring the concentration of media ownership that were defined by the 1986 Law must be rethought in order to take the

198. Hearing with Roch-Olivier Maistre, president of Arcom, before the committee of inquiry into concentration of media ownership, 7 December 2021.
199. 250 professionnels de la presse, de la télévision et de la radio alertent: «L'hyperconcentration des médias est un fléau médiatique, social et démocratique» 15 December 2021.
200. Senate, Committee of inquiry to shed light on the processes that have allowed or may lead to concentration in the media in France, and to assess the impact of this concentration on democracy, 29 March 2022.
201. The chairman of the Canal+ group board claimed that "investigative segments did not bring enough to Canal+ to encourage people to subscribe". See the aforementioned report by the senatorial committee of inquiry.
202. Ibid., p. 236.
203. Centre for media pluralism and media freedom, "Monitoring media pluralism in the digital era", country report France, June 2022, p. 25.
204. Hearing with Mr Edwy Plenel before the committee of inquiry into concentration of media ownership, 21 January 2022.
205. Centre for media pluralism and media freedom, senatorial committee of inquiry, Reporters Without Borders, Julia Cagé.
206. Centre for media pluralism and media freedom, Monitoring media pluralism in the digital era, country report France, June 2022, p. 19.

diversity of media outlets into account. There should be stronger guarantees for the independence of media companies in the face of economic forces, and the scope for shareholders to interfere with editorial content must be limited.[207]

142. The existence of an independent, high-quality audiovisual sector is also a crucial factor in the pluralism of information. There was a sweeping reform of the method of funding public service broadcasting in summer 2022. The specific tax that existed for the purpose was abolished but the initial government proposal, to incorporate the funding of public service broadcasting in the general budget of the State, was turned down as it posed too great a risk to the independence of public channels. An alternative solution was introduced via a parliamentary amendment: a fraction of VAT will be assigned to public service broadcasting. Owing to the rules governing budgetary transparency, this solution can only last two years; parliament and government must therefore come to an agreement in the coming months on a means of funding public media that ensures the autonomy and durability demanded by their role.

143. Financial regulation of audiovisual services, the regulation of online platforms to combat the manipulation of information and dissemination of hate content and ensuring respect for pluralism in schools of thought and opinion are some of the tasks entrusted to Arcom, the authority that acts as guarantor for the freedom of communication. Arcom also ensures that audiovisual media comply with their obligations regarding the ethics of programmes, notably in terms of the honesty and independence of information and respect for human rights, freedoms and dignity. Its role is fundamental, therefore, to the functioning of a democratic society. The senatorial committee of inquiry has called for its resources to be significantly reinforced. In a report to the government in March 2022, a prospective mission proposed to reshape the concentration control mechanism by charging Arcom to assess the impact of concentration operations on pluralism of all media, as does the British Office of Communication (OFCOM). The perimeter of Arcom would be widened to written and online press and online media which can be considered as information source.

144. On 13 July 2023, President Macron announced the holding of a citizens' conference, the *États généraux de l'information*, which will be tasked with "questioning the considerable impact of technological innovations, the development of media and information literacy, the conditions for exercising the profession of journalist, the economic model and regulation of the information sector and the role of the various actors, and interference and manipulation in this area.[208]" This conference is expected to deliver its conclusions in the summer of 2024.

5.6. Combating violence against women

145. France signed the Istanbul Convention on 1 May 2011 and ratified it on 4 July 2014. Combating violence against women was designated as a "major national cause" in 2010. The High Council for Equality between Women and Men (Haut Conseil à l'égalité entre les femmes et les hommes – HCE), an independent advisory body under the Prime Minister tasked with promoting equality between women and men, was set up in 2013. President Macron declared equality between women and men a "major cause of his five-year term" in 2017.

146. The Group of experts on action against violence against women and domestic violence (GREVIO) published its first baseline evaluation report on France in 2019.[209] While recognising the authorities' commitment and efforts in this field, GREVIO recommends numerous measures to strengthen protection for victims. Concomitantly with the report's publication, a wide-ranging interministerial consultation involving associations and professionals, entitled the "Grenelle forum on intimate partner violence", was launched by Édouard Philippe's government on 3 September 2019. This culminated in the announcement of a governmental plan to combat violence against women on 26 November 2019, taking on board some of GREVIO's proposals. A new set of measures was announced on 2 September 2022 by the Prime Minister Élisabeth Borne.

147. In its evaluation, GREVIO notes that the legal framework for preventing and punishing violence has been considerably strengthened and that measures have been implemented to promote substantive equality between women and men, including measures to promote an integrated approach to equality issues. That said, the resources allocated to these policies do not appear to be enough to yield results.

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207. The aforementioned opinion piece backed by 250 professionals suggested creating a legal status for editorial offices and establishing the offence of influence peddling in the media sphere, see "L'hyperconcentration des médias est un fléau médiatique, social et démocratique", 15 December 2021.
208. www.elysee.fr/emmanuel-macron/2023/07/13/lancement-des-etats-generaux-de-linformation.
209. GREVIO (19 November 2019).

148. The lack of resources explains two recurrent difficulties in combating violence against women in France: the inadequacies of the criminal-justice response and the lack of places to accommodate women victims.

149. The failings in the criminal-justice response are partly down to an overall lack of resources allocated to the judicial system. Additional resources have been allocated: 40 million euros were earmarked in 2022 for victim support, the deployment of the "high danger telephone" and electronic tagging, to protect victims. In response to the overload of cases in the assize courts prompting the judicial authorities to make use of the procedural technique known in French as "correctionnalisation", which entails classifying offences as misdemeanours when in fact they ought to be classified as crimes, the law of 22 December 2021 introduced *département*-level criminal courts. Capable of trying cases much more quickly than the assize courts, these new courts also help to ensure that rape, which is very often downgraded, is once again treated as the crime it really is. The setting-up of the *département* criminal courts comes in the wake of the GREVIO recommendation about the need to ensure, through a review of judicial practices, an effective judicial response to sexual violence, given the criticism surrounding the use of "correctionnalisation".

150. Since the publication of the GREVIO report, numerous measures have been announced: improving the reception of women who lodge complaints, drawing up a unified danger assessment protocol to be used within law enforcement agencies and making the possibility of lodging a complaint in hospital generally available. Fast-track processing has been set up in nearly all criminal courts. The number of electronic tagging orders imposed to keep violent spouses away is rapidly increasing: at 1 July 2022, 797 tags were active, which is ten times more than in May 2021. The number of "high danger telephones" doubled in a year, from 1 529 in July 2021 to 3 211 at 1 July 2022. In 2021, these devices were used to make 1 500 calls to the platform to which they are connected. In September 2022, the Prime Minister announced that two members of parliament had been tasked with making the judicial processing of violence against women more efficient.[210] They are due to submit their report in spring 2023.

151. These measures demonstrate an unequivocal desire to find solutions. Unfortunately, according to the last study published on deaths resulting from intimate partner violence,[211] in 2021, 122 women were killed by their spouse or former boyfriend, compared with 102 in 2020, an increase of 20%, whereas 2019 had seen a reduction in such murders due to the lockdown.[212]

152. Another recurrent difficulty deplored by victim support groups and noted by GREVIO is the lack of specialised facilities for accommodating women who are victims of violence. According to the Prime Minister Élisabeth Borne, 10 000 accommodation places were to be open by the end of 2022 and 1 000 additional places would be provided in 2023.[213]

153. Punitive measures must be backed up by a prevention policy. France has an adequate legislative framework, and the necessary pedagogical tools are available to teachers.[214] However, according to the Defender of Rights and the High Council for Equality (HCE), sex education is not systematic[215] and remains strongly geared to health education aspects.[216] In practice, as it is not mandatory for teachers to be trained in these subjects, their awareness of equality issues varies considerably. As children were starting their new school year in 2022, the HCE urged the public authorities to make gender equality education and respect between women and men from the earliest age an absolute priority, which implies an overhaul and the holding of sex education classes, which is provided for in law.[217]

154. Equality education must not be confined to the education system. Under the Istanbul Convention, the parties must actively encourage the media and the private sector as a whole to participate in the prevention of violence against women, through self-regulation and codes of ethics, both as employers and producers of media content, products and services. Arcom is the body tasked with ensuring that women and men are fairly represented on TV and radio programmes and combating gender-based discrimination.

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210. Website of the French Government (2 September 2022).
211. National survey on violent deaths in couples 2021.
212. While the number of domestic violence incidents increased during the lockdown periods, the number of murders in the family context fell.
213. Website of the French Government (2 September 2022).
214. For example: Réseau Canopé.
215. HCE report on sex education, 13 June 2016, p. 124.
216. 2017 report on children's rights by the Defender of Rights, November 2017, p. 100.
217. HCE "Vigilance égalité: Face à la montée des violences chez les jeunes, le HCE appelle à un plan d'urgence de l'égalité à l'école" (31 August 2022).