



Resolution 2512 (2023)¹

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

Parliamentary Assembly

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 that are not subject to specific monitoring procedures.
3. France is a country with a long-standing tradition of democracy and 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 originality of the French system lies 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 chambers that make up the 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 or citizens' conferences, or on the arrangements for the use of 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 that included 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 new 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 links 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

1. *Assembly debate* on 10 October 2023 (21st sitting) (see [Doc. 15833](#), report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Ms Yelyzaveta Yasko and Ms Fiona O'Loughlin). *Text adopted by the Assembly* on 10 October 2023 (21st sitting).



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 criminal convictions for unlawful acts of violence committed during these 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, through 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 has 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 increasing 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 initiate 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 as regards nominations, mutations, promotions and disciplinary procedures, 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, in particular, 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 text of 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 constitutional and legislative 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. transferring 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 upon 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 create new prison places will not provide a lasting solution within a reasonable time frame, 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 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 national consultation process, "États généraux de l'information", and will follow this 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 natural persons may donate. 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 Co-operation 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.