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## **COMMISSION STAFF WORKING DOCUMENT**

### **2023 Rule of Law Report Country Chapter on the rule of law situation in France**

*Accompanying the document*

### **COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS**

#### **2023 Rule of Law Report**

#### **The rule of law situation in the European Union**

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## **ABSTRACT**

The Government initiated a number of measures to improve the quality and efficiency of the justice system, in particular as a follow-up to the findings of the Committee of the Estates General of Justice. Significant steps were taken to ensure adequate human resources for the justice system, and the ongoing projects aimed at full digitalisation of civil and criminal court proceedings further advanced. The status of prosecutors, as regards both their disciplinary regime and appointment rules, is still subject to ongoing constitutional reforms, which have not advanced due to the current absence of a political majority. A reform of the civil procedure envisages to develop further amicable settlement of disputes, including through split proceedings. The overall length of court proceedings decreased and increasing resources can be expected to further improve judicial efficiency.

The 2020-2022 national anti-corruption plan was implemented successfully, with the next anti-corruption plan (2023-2025) in preparation. Results have been achieved in the prosecution and sanctioning of high-level corruption offences, while the investigations are impacted by structural and resource challenges. The Anti-Corruption Agency continues to deliver supporting tools, although its operational effectiveness is weakened by the instability of resources available. Measures on the integrity of public officials continue to be monitored and largely implemented, and this is also the case for members of the Parliament and the Senate, though suggestions for improvement have not been addressed. Regular audits on political party finances continue, while the existing concerns on the type of lobbying activities and lobbyists remain unaddressed. There is room for further progress regarding integrity-related security checks in the police and the disciplinary authority over judges. While new rules for the protection of whistleblowers are in place, the lack of resources risks adversely affecting their implementation.

The legal framework concerning media pluralism and media freedom, safeguards freedom of expression as well as pluralism and independence of the media. The media regulator “Autorité de régulation de la communication audiovisuelle et numérique” (ARCOM) continues to operate as an independent body in the entire field of audiovisual and digital content with adequate resources. No further action has been taken to enhance the transparency of media ownership, in particular regarding complex shareholding structures, building on the existing legal safeguards. Established safeguards continue to guarantee the independence of public service media, while a recently adopted law has removed the public broadcasting fee. Journalists continue to be exposed to threats and attacks, in spite of the measures that were designed to reinforce their security in the context of protests and demonstrations.

The Government made a wide use of mechanisms, which are allowed under the Constitution, for fast-track legislative procedures which shorten or curtail parliamentary debate on legislative proposals. Emergency regimes were repealed and a permanent committee for managing health risks was created. The transparency and adversarial aspect of the procedure for *ex ante* constitutional review were enhanced. Judicial decisions recalled the administration’s obligation to ensure the transparency and justify the necessity of orders prohibiting demonstrations. While the financial environment of civil society organisations remains favourable, stakeholders raised concerns on the implementation of legislation which conditions access to public funding to respect for the fundamental values of the French Republic.

## **RECOMMENDATIONS**

Overall, concerning the recommendations in the 2022 Rule of Law Report, France has made:

- Some progress on continuing efforts to complete ongoing projects aimed at full digitalisation of civil and criminal court proceedings.
- Significant progress on continuing efforts to ensure adequate human resources for the justice system, including to improve its efficiency, taking into account European standards on resources for the justice system.
- Significant progress on continuing the effective investigation, prosecution and sanctioning of high-level corruption offences.
- No progress on ensuring that rules on lobbying activities are consistently applied to all relevant actors, including at top executive level.
- No further progress on enhancing the transparency of media ownership, in particular regarding complex shareholding structures, building on the existing legal safeguards.

On this basis, and considering other developments that took place in the period of reference, it is recommended to France to:

- Further continue efforts to complete ongoing projects aimed at full digitalisation of civil and criminal court proceedings.
- Further continue efforts made to ensure adequate human resources for the justice system, particularly by completing the development of the workload measuring tools to better evaluate the needs.
- Ensure that rules on lobbying activities are consistently applied to all relevant actors, including at top executive level.
- Step up efforts to improve the transparency of media ownership, in particular, complex shareholding structures, building on the existing legal safeguards.

## I. JUSTICE SYSTEM

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

### **Independence**

**The level of perceived judicial independence in France continues to be average among the general public and is now average among companies.** Overall, 53% of the general population and 46% of companies perceive the level of independence of courts and judges to be 'fairly or very good' in 2023<sup>5</sup>. According to data in the 2023 EU Justice Scoreboard, the perceived judicial independence among the general public has decreased in the last years. The level of perceived judicial independence among the general public has decreased in comparison with 2022 (56%), as well as with 2016 (54%). The level of perceived judicial independence among companies has decreased in comparison with 2022 (61%), as well as with 2016 (59%).

**The procedure opened against the Minister of Justice is continuing.** As described in the 2022 Rule of Law Report<sup>6</sup>, the Minister of Justice was indicted before a special court, the Court

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<sup>1</sup> The High Council for the Judiciary has two distinct formations. For the formation relating to judges, the High Council for the Judiciary is comprised of the President of the Court of Cassation, five judges, one public prosecutor, one member of the Council of State, one lawyer, and six other qualified members, who are not affiliated with the Parliament, the judiciary or the administrative order. An additional judge completes this formation when acting as a disciplinary council. For the formation relating to prosecutors, the High Council of the Judiciary is comprised of the General Prosecutor of the Court of Cassation, five public prosecutors, one judge, the same member of the Council of State as mentioned above, the same lawyer as mentioned above and the same six other qualified members as mentioned above. An additional prosecutor completes this formation when acting as a disciplinary council.

<sup>2</sup> Prosecutors are currently nominated by the Minister of Justice, following an advisory opinion of the Council, which has been followed in practice since 2008.

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

<sup>4</sup> Art. 1 of Law 2013-669 of 25 July 2013 and Art. 30 of the Code of Criminal Procedure. This prohibition is respected in practice.

<sup>5</sup> Figures 49 and 51, 2023 EU Justice Scoreboard. The level of perceived judicial independence is categorised as follows: very low (below 30% of respondents perceive judicial independence as fairly good and very good); low (between 30-39%), average (between 40-59%), high (between 60-75%), very high (above 75%).

<sup>6</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 5.

of Justice of the Republic (CJR)<sup>7</sup>, for alleged illegal taking of interest following administrative investigations he ordered, on the recommendation of his administration, against three magistrates<sup>8</sup>. On 3 October 2022, the investigation commission<sup>9</sup> notified the Minister with the decision to open the trial phase before the CJR<sup>10</sup>. An appeal to the Court of Cassation is currently pending, so this decision is not final.

**A draft law foresees modifications to the disciplinary regime for magistrates in relation to individual complaints.** A draft organic law, presented by the Government to the Council of Ministers on 3 May 2023,<sup>11</sup> aims to simplify the admissibility conditions of complaints lodged by litigants<sup>12</sup> against magistrates with the High Council for the Judiciary and strengthen the investigative powers of the latter's panel ruling on the admissibility of such complaints (the 'filtering panel'). In its observations on the draft law<sup>13</sup>, the High Council assessed negatively several proposed changes giving more powers to the Minister of Justice<sup>14</sup> and easing procedural requirements for individual complaints<sup>15</sup>, in order to reinforce the confidence of citizens in the judiciary. The draft law also aims to increase the dialogue between the High Council and the Ministry of justice, thus helping the latter to better identify systemic malfunctions<sup>16</sup>. While welcoming the broader powers of investigation which would be assigned to the filtering panel,

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<sup>7</sup> This special court is competent to hear criminal cases relating to acts of members of the Government in the exercise of their functions.

<sup>8</sup> In September and October 2022, the disciplinary panels of the High Council for the Judiciary considered that the judge and prosecutors concerned had not committed any disciplinary offence. In its decision of 15 September 2022, the High Council noted that the Minister of Justice found himself in an "objective situation of conflict of interest" by ordering an administrative investigation against the former judge involved. However, the High Council considered "that this conflict of interest had had no impact on the conduct of the administrative investigation and that, in any event, any irregularity in the latter would have had no effect on the validity of the referral to the Council, for which it is not a necessary precondition".

<sup>9</sup> The investigation commission, made up of three judges from the Court of Cassation, conducts hearings and decides whether or not to refer the accused to the Court of Justice of the Republic (CJR).

<sup>10</sup> On 21 April 2023, the Constitutional Council dismissed as ineffective a preliminary constitutionality question raised by the Minister of Justice to challenge the validity of the provisions of the Criminal Procedure Code relied upon to order a search in the premises of the Ministry of Justice as part of the CJR's investigation in July 2021; Constitutional Council Decision No. 2023-1046 QPC of 21 April 2023.

<sup>11</sup> Draft organic law relating to the opening, modernization and accountability of the judiciary.

<sup>12</sup> In its opinion of 24 September 2021 on the accountability and protection of magistrates, the High Council for the Judiciary recommended modifying the regime applicable to individual complaints, the vast majority of which are declared inadmissible or rejected as unfounded. See 2021 and 2022 Rule of Law Report, Country Chapter on the rule of law situation in France, pp. 3-4 and 3-5, respectively.

<sup>13</sup> High Council for the Judiciary, observations on the preliminary draft organic law relating to the opening, modernization and accountability of the judiciary, 12 April 2023. In its preliminary observations, High Council notes that it was consulted late in the legislative process and that the draft law includes almost none of the proposal that it made in its opinion of 24 September 2021 on the accountability and protection of magistrates.

<sup>14</sup> Observations of the High Council for the Judiciary of 12 April 2023, para. 33-36. The High Council expressed reservations as to the systematic hearing of the magistrate concerned when a complaint is declared admissible, noting that written observations requested by the admissibility panel are usually sufficient, whereas oral hearings could destabilise magistrates. The High Council also disagreed with providing the notification of all decisions by the admissions panel to the Minister of Justice, who is currently only informed of decisions to refer to the Disciplinary Board and to reject complaints declared admissible. Finally, it assessed negatively the possibility, for the High Council, to request opening an administrative enquiry to the Minister of Justice, who would retain a discretionary power to do so.

<sup>15</sup> *Ibid.*, para. 36-37. In particular, the High Council opposes eliminating the admissibility requirements that the complaint contains structured grounds and be signed by its author.

<sup>16</sup> The purpose of this mechanism is to enable the Minister to deal with inadmissible or recurring complaints indicating potential structural issues requiring general measures.

the Venice Commission recommended making additional changes to the disciplinary regime for magistrates<sup>17</sup>. In addition, the GRECO has recommended to concentrate the disciplinary authority over judges within the Judicial Service Commission, however, this has not been followed up yet<sup>18</sup>.

**The status of prosecutors, as regards both their disciplinary regime and appointment rules, is still subject to ongoing constitutional reforms, which have not advanced.** The Committee of the Estates General of Justice<sup>19</sup> highlighted the need to increase the prosecutor's offices' independence by completing the constitutional reforms already initiated<sup>20</sup>. The proposed constitutional amendments, which have been presented in previous reports and which remain pending before the Parliament<sup>21</sup>, would make the opinions of the High Council for the Judiciary binding on the Minister of Justice as regards both appointments and in disciplinary matters<sup>22</sup>. The opinions on appointments are always followed in practice, but the constitutional amendments would enshrine this practice in law<sup>23</sup>.

## Quality

**Significant progress was made as regards the recommendation to continue efforts to ensure adequate human resources for the justice system, and initiatives are in progress to further address current needs.** The 2022 Rule of Law Report recommended to France to “[c]ontinue efforts to ensure adequate human resources for the justice system, including to improve its efficiency, taking into account European standards on resources for the justice system”<sup>24</sup>. Following the final report of the Committee of the Estates General of Justice, which made a preliminary evaluation of additional needs<sup>25</sup>, the justice budget was further increased

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<sup>17</sup> In particular, it recommended transferring the power to initiate proceedings from the Minister of Justice to the High Council for the Judiciary and making the statutory duties of judges more specific. See 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), CDL-AD(2023)015-e, para. 58 and 67.

<sup>18</sup> GRECO Fourth Evaluation Round – Addendum to the Second Compliance Report, p. 10.

<sup>19</sup> This independent committee, composed of representatives of the judiciary, the bar and of independent stakeholders, was entrusted with drafting a final report following the Estates General of Justice, a nation-wide consultation directed both at the general public and justice professionals. For more details on this consultation process, see 2022 Rule of Law Report, Country Chapter on the rule of law situation in France, pp. 19-20.

<sup>20</sup> Final report of the Committee of the Estates General of Justice, p. 117.

<sup>21</sup> See 2021 and 2022 Rule of Law Report, Country Chapter on the rule of law situation in France, pp. 3-4 and 3-5, respectively.

<sup>22</sup> The Venice Commission also recommended to entrust the sole authority to impose disciplinary sanctions on prosecutors to the High Council and to align the disciplinary procedure for members of the prosecution service with that applicable to judges. CDL-AD(2023)015-e, para. 71.

<sup>23</sup> In its opinion CDL-AD(2023)015-e, the Venice Commission underlines that, despite this practice, the executive through its proposals exerts significant influence over the appointment process of prosecutors, which may create a risk of politicisation. It therefore recommends aligning the appointment procedure of prosecutors to the current procedure for judges, noting that it would be more in line with the principle of prosecutorial autonomy and European practice, although there are no clear-cut ‘standards’ as to how national authorities should organise the manner of appointment of prosecutors.

<sup>24</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 2.

<sup>25</sup> Noting a “chronic lack of investment” in the justice system, the Committee found a need to recruit at least 1 500 additional magistrates, not counting replacements following retirements, over the next five years. It also recommended to recruit no less than 2 000 additional contractual legal assistants, 500 additional court clerks and 2 000 additional agents for administrative and technical support (in particular for the deployment, adequate

in 2023 by 8%, representing an additional investment of EUR 710 million<sup>26</sup>. The budget for legal aid was also increased to EUR 641 million in 2023, compared to EUR 615.2 million in 2022. As regards human resources, a large part of the 1 914 supporting contractual staff recruited in December 2021 was converted into permanent positions in the 2023 justice budget<sup>27</sup>. A draft law on the orientation and programming of justice<sup>28</sup> provides for the recruitment of 10 000 additional staff by 2027, including 1 500 magistrates<sup>29</sup>, 1 500 court clerks as well as a large number of judicial assistants<sup>30</sup>. The draft law also proposes to simplify the current alternative admissions to the magistracy for experienced law professionals<sup>31</sup>. Workload measuring tools, currently in development, are expected to evaluate more precisely the number of magistrates and supporting staff needed to ensure the sustainability of the justice system<sup>32</sup>. The expanded budget for justice comprises an increase of approximately EUR 1 000 in the gross monthly remuneration of magistrates in civil and criminal courts, now equal to the remuneration of administrative judges, and is expected to make the profession more attractive. Moreover, a ministerial order extended the benefit of an index bonus to all civil and criminal court presidents<sup>33</sup>. Therefore, significant progress was made regarding the 2022 recommendation to continue efforts to ensure adequate human resources for the justice system.

**Some progress was made on the recommendation to continue efforts to complete the full digitalisation of civil and criminal court proceedings.** The 2022 Rule of Law Report recommended to France to “[c]ontinue efforts to complete ongoing projects aimed at full digitalisation of civil and criminal court proceedings”<sup>34</sup>. In 2022, following the

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use and maintenance of digital tools). See final report of the Committee of the Estates General of Justice, pp. 23 and 86-90.

<sup>26</sup> Input from France for the 2023 Rule of Law Report, pp. 4-5.

<sup>27</sup> Ibid.

<sup>28</sup> Draft law on the orientation and programming of the Ministry of Justice 2023-2027, tabled in Parliament by the Government on 3 May 2023 under the accelerated procedure.

<sup>29</sup> To this effect, the total number of auditors of justice was increased to 380 in 2023 and will reach 470 in 2024, against 335 previously. There is currently no information if the resources assigned to the National School for the Judiciary will be adapted to accommodate the new training needs.

<sup>30</sup> The draft law also envisages to develop further the team around the magistrates, in particular by creating a new status for assistants to magistrates to consolidate their supporting role in the adjudication of cases. Under the proposed revision of the Code of Judicial Organisation, the newly created legal attachés, appointed under oath and submitted to professional secrecy, would provide assistance to judges and prosecutors in decision-making, administrative activity and the implementation of public policies. To this aim, they would be empowered to attend the hearings and deliberations and access the relevant procedural files.

<sup>31</sup> The current alternatives to the competitive examination were criticised by the Committee the Estates General of Justice in its final report (pp. 135-139) as being slow, inconsistent and lacking attractiveness. While welcoming the proposed simplification, magistrates’ and lawyers’ associations highlight the need to provide adequate training for all categories of trainee judges. Information received from the Union Syndicale des Magistrats, the Syndicat de la Magistrature and the Bar Associations in the context of the country visit. See also contribution from the Délégation des Barreaux de France for the 2023 Rule of Law Report.

<sup>32</sup> At pp. 81-82 of its final report, the Committee the Estates General of Justice notes that the absence of sufficiently precise activity indicators leads to a sub-optimal allocation of resources, with important discrepancies between the workload of certain courts and its resources. The Ministry of Justice is still working on the development of a case weighting system. See 2022 Rule of Law Report, Country Chapter on the rule of law situation in France, pp. 9-10 and footnote 61.

<sup>33</sup> The High Council for the Magistracy however notes the persistence of the lack of attractiveness of the functions of head of court, which remain difficult to fill, mostly due to personal factors, and the need to create additional incentives to apply for such positions. See High Council for the Magistracy, 2022 Annual Activity Report, p. 30.

<sup>34</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 2.

recommendations of the Court of Audit<sup>35</sup>, progress was made in implementing the *Procédure Pénale Numérique* (PPN)<sup>36</sup>, a project to digitalise all steps of the criminal procedure<sup>37</sup>. As regards civil proceedings, *Portalis*, a project aiming to merge all eight existing applications, was initiated and is currently being tested in nine labour courts. It will be extended in 2023 to all labour courts<sup>38</sup>. The development of electronic signatures<sup>39</sup> and the deployment of the Legal Aid Information System (SIAJ), which enables digital legal aid procedures<sup>40</sup>, also continued. A new digital transformation plan is being drawn up to strengthen and secure networks and further improve existing software<sup>41</sup>. However, France remains among the lowest-ranking Member States as regards the use of digital technology by courts and prosecution services and the availability of secure electronic communication tools for courts and prosecution services<sup>42</sup>. Therefore, some progress has been made on the recommendation made in the 2022 Rule of Law Report to continue efforts to complete ongoing projects aimed at full digitalisation of civil and criminal court proceedings.

### **Online access to court decisions improved further, and the Constitutional Council launched a new digital portal for case law on priority questions of constitutionality.**

Overall, since the entry into force of new legislation providing for the availability of decisions in open data for some courts<sup>43</sup>, France made considerable progress as regards the online access to published judgments by the general public<sup>44</sup>. Moreover, the Constitutional Council launched a new online portal<sup>45</sup> containing relevant information on the priority questions of constitutionality (QPC)<sup>46</sup>. It gives access to decisions of the Constitutional Council on the

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<sup>35</sup> Court of Audit, Communication to the Finance Committee of the Senate, ‘Improving the functioning of justice – stage point of the digital transformation plan of the Ministry of Justice’. See 2022 Rule of Law Report, Country Chapter on the rule of law situation in France, pp. 6-7.

<sup>36</sup> ‘Digital Criminal Procedures’. For more details on this project, see 2022 Rule of Law Report, Country Chapter on the rule of law situation in France, pp. 6-7.

<sup>37</sup> In 2022, more than 800 000 fully digital procedures were communicated by the Ministry of the Interior to the Ministry of Justice through the PPN application. 95% of courts benefit from the automated recording of procedures classified without prosecution. In addition, 53 courts deal with at least one procedural step for misdemeanours through PPN (summons by judicial police officer or deferral). 32 of them have widened the scope of cases transmitted and processed through PPN (such as appearances on prior admission of guilt or the execution of sentences). Input from France for the 2023 Rule of Law Report, p. 7.

<sup>38</sup> It is planned to develop further the *Portalis* application to support other disputes and cover all civil proceedings. Input from France for the 2023 Rule of Law Report, p. 7.

<sup>39</sup> Ibid. Development on the issue of data storage is expected to be completed by 2024, primarily for procedures of injunction to pay.

<sup>40</sup> By the end of 2022, more than 80% of mainland civil and criminal courts were equipped with SIAJ. The interface of the SIAJ application was also modernised. Input from France for the 2023 Rule of Law Report, p. 8. For more information on the SIAJ application, see 2022 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 7.

<sup>41</sup> Input from France for the 2023 Rule of Law Report, p. 6. The digital transformation plan 2023-2027 will be built around three main objectives: 1) providing support to courts, through enhanced network, equipment and dedicated IT technicians, 2) improving existing software, including by merging the numerous applications used in criminal proceedings, and 3) reaching fully digital procedures by 2027 in all types of litigation, in particular by implementing electronic signatures, digital communication and storage of procedural acts. See press release of the Ministry of Justice of 14 February 2023.

<sup>42</sup> Figures 42-44, 2023 EU Justice Scoreboard.

<sup>43</sup> In this respect, see 2022 Rule of Law Report, Country Chapter on the rule of law situation in France, pp. 7-8 and footnote 40.

<sup>44</sup> Figure 47, 2023 EU Justice Scoreboard. See, for comparison, Figure 48, 2022 EU Justice Scoreboard.

<sup>45</sup> The QPC360° portal is accessible at <https://qpc360.conseil-constitutionnel.fr/>.

<sup>46</sup> The QPC is a procedure, provided for since 2008 in article 61-1 of the Constitution, allowing a litigant to challenge a law infringing the rights and freedoms protected by the Constitution by raising a question during



questions referred, as well as to those of all civil, criminal, and administrative courts on the admissibility, referral and procedural aspects of such questions, thus giving an overview of relevant case law to citizens and law practitioners.

**A reform of the civil procedure envisages to further encourage the amicable settlement of disputes, including through split proceedings.** The draft law on the orientation and programming of justice<sup>47</sup> aims at encouraging Alternative Dispute Resolution (ADR), in line with the Committee of the Estates General of Justice's recommendation to extend such procedures, without however making prior recourse to ADR mandatory for parties<sup>48</sup>. The draft law foresees to recast the code of civil procedure to clarify the existing modes of ADR, and increase the compensation of lawyers under the legal aid regime when resorting to ADR, to encourage their use. It is also proposed to introduce the possibility for the judge to split proceedings, by adjudicating on the main substantive issues of the dispute and referring the parties to amicable settlement for ancillary issues such as the amount of compensation<sup>49</sup>.

**The Code of Criminal Procedure is to be recast to improve its clarity and legibility.** Following the recommendations of the Committee of the Estates General of Justice<sup>50</sup>, the draft law on programming of justice<sup>51</sup> proposes to empower the Government to reorganise the legislative part of the Code of Criminal Procedure, without amending its provisions, to improve its clarity and legibility. The draft law also contains specific provisions aimed at simplifying criminal procedure to facilitate investigations<sup>52</sup>.

**The imposition of fixed fines was extended to a wider list of criminal offences, with limits on recourse to a judge.** Fixed fines<sup>53</sup> are pecuniary penalties that can be implemented directly by law enforcement officers upon observing *in flagrante* certain criminal offences of minor gravity. They can be paid immediately if the perpetrator acknowledges the facts. Their payment terminates prosecution, but the offence appears in the criminal record of the perpetrator and limits the right to challenge the sanction in court<sup>54</sup>. A law adopted in January 2023 widened

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court proceedings. If the question meets all the admissibility conditions, the court seized of the main case refers it either to the Court of Cassation or the Council of State, which decides whether to refer the question to the Constitutional Council.

<sup>47</sup> Draft law on the orientation and programming of the Ministry of Justice 2023-2027.

<sup>48</sup> The Committee recommended to foster optional recourse to ADR, in particular amicable settlement of dispute, through a coherent overall policy and without creating additional workload for judges, who should have a central role in preparing and orienting the procedure. See final report of the Committee of the Estates General of Justice, pp. 179-180.

<sup>49</sup> Split civil proceedings, in French "césure", could allow shortening the main proceedings by allowing the judge to concentrate on the more complex legal issues.

<sup>50</sup> At p. 195 of its final report, the Committee of the Estates General of Justice assessed that an overhaul of the Criminal Procedure Code was necessary in the face of the increasing complexity of the rules of criminal procedure, leading to legal uncertainty and impracticalities.

<sup>51</sup> Draft law on the orientation and programming of the Ministry of Justice 2023-2027.

<sup>52</sup> In particular, the draft law is foreseeing a modification of the search regime, a reform of the status of assisted witness, and a limitation of pre-trial detention.

<sup>53</sup> Initially provided for certain traffic offenses by Law No. 2016-1547 of 18 November 2016 on the modernization of justice, this procedure was afterwards extended to the illicit occupation of land, then to certain petty offenses including the use of narcotics.

<sup>54</sup> Law enforcement officers may decide to impose a criminal sanction without referring it to the judicial authority, and assess the guilt of the persons concerned upon observing the facts. To challenge the fine in court, the accused must deposit a sum equivalent to its amount and is not notified of the entire report of the finding of the offense.

the scope of this procedure to a number of minor offences and misdemeanours<sup>55</sup>. Lawyers' associations consider that the fixed fine mechanism calls into question the rights of defence and confers judicial powers on law enforcement officers<sup>56</sup>. The Constitutional Council found that, when applied to less serious offences, this mechanism does not infringe the right of access to justice and equality before the law<sup>57</sup>.

**A joint advisory council on ethics made proposals to enhance the relationship between magistrates and lawyers.** With a view to enhance the quality of justice through improved relationships, representative organisms of magistrates and lawyers set up a joint advisory council<sup>58</sup> in 2019, which has been holding regular meetings since then. It was entrusted with issuing advisory opinions, making recommendations, drawing up a case law repository and a guide of good practices and identifying necessary reforms as regards ethics in professional relations between lawyers and magistrates. In this context, each of the three working groups set up by the joint council, delivered a thematic report<sup>59</sup>, including a guide of best practices, a compendium of practical cases and recommendations on issues affecting both professions<sup>60</sup>.

## Efficiency

**The overall length of court proceedings shortened and increased resources can be expected to further improve judicial efficiency.** In 2021, the estimated time needed to resolve civil and commercial cases at first and second instance, measured in disposition time, decreased considerably<sup>61</sup>, except as regards corruption cases, for which the average length of court cases at first instance is particularly high<sup>62</sup>. Similarly, the estimated time needed to resolve administrative cases lowered significantly across all instances<sup>63</sup>. Overall, the number of pending cases remains stable<sup>64</sup>, and the clearance rate, which improved slightly for administrative cases, increased over the 100% mark for civil and commercial cases<sup>65</sup>. The

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<sup>55</sup> Art. 25, Law No. 2023-22 of 24 January 2023 on the orientation and programming of the Ministry of the Interior.

<sup>56</sup> Contribution from lawyer's associations to the 2023 Rule of Law Report, pp. 9-11. It is argued that the possibility, for law enforcement officers, to find the alleged perpetrator guilty of a criminal offence without a judge intervening, as well as the limits imposed on the right to challenge the fine whose amount is not adjusted to the personal circumstances of the accused, are affecting the equality before the law, the rights of defence, and the separation of powers.

<sup>57</sup> Decision No. 2022-846 DC of the Constitutional Council of 19 January 2023.

<sup>58</sup> The Joint advisory council on the ethics of the relationship between magistrates and lawyers was established by a charter signed between the Court of Cassation, the High Council for the Judiciary, the four Conferences of Heads of Courts and Jurisdictions, the Bar Association, the National Bar Council, the Conference of Presidents of the Bars of France and Overseas as well as the Paris Bar.

<sup>59</sup> All three reports are available on the website of the Court of Cassation at the following address: <https://www.courdecassation.fr/conseil-consultatif-conjoint-de-deontologie-de-la-relation-magistrats-avocats>.

<sup>60</sup> The report proposes in particular ways to improve the use of alternative dispute resolution, open data accessibility of court decisions and alternatives to prosecution.

<sup>61</sup> Figures 5-6, 2023 EU Justice Scoreboard. The disposition time for civil, commercial, administrative and other cases at first instance decreased from 554 to 440 days, whereas it lowered from 637 to 495 days for litigious civil and commercial cases at first instance, and from 607 to 466 days at second instance.

<sup>62</sup> Figure 23, 2023 EU Justice Scoreboard. The average duration of proceedings at first instance is of 529 days, the third highest available data across the EU.

<sup>63</sup> Figures 8-9, 2023 EU Justice Scoreboard.

<sup>64</sup> Figures 13-15, 2023 EU Justice Scoreboard.

<sup>65</sup> Figures 10-12, 2023 EU Justice Scoreboard. This means that courts are now able to deal both steadily with incoming cases and reduce their backlog.

abovementioned increase in human resources in the justice system, as well as other initiatives foreseen in the draft law on the orientation and programming of justice<sup>66</sup>, in particular to streamline both civil and criminal proceedings, are expected to have a positive impact on judicial efficiency.

## II. ANTI-CORRUPTION FRAMEWORK

Authorities competent for the fight against corruption include the French Anti-Corruption Agency (AFA, which prepares the multiannual anti-corruption plan, monitors its implementation and supports private and public entities on how to prevent and detect corruption)<sup>67</sup>, the High Authority for Transparency in Public life (HATVP), responsible for ensuring the integrity of public officials, and the Central Office for Combating Corruption and Tax Offences (OCLCIFE, a specialised police service for the investigation of economic crimes, including corruption and money laundering). The National Financial Prosecutor Office (PNF) is competent for the investigation of high-level corruption cases.

**The perception among experts and business executives is that the level of corruption in the public sector remains relatively low<sup>68</sup>.** In the 2022 Corruption Perceptions Index by Transparency International, France scores 72/100 and ranks 10<sup>th</sup> in the European Union and 21<sup>st</sup> globally. This perception has been relatively stable<sup>69</sup> over the past five years. The 2023 Special Eurobarometer on Corruption shows that 69% of respondents consider corruption widespread in their country (EU average 70%) and 12% of respondents feel personally affected by corruption in their daily lives (EU average 24%)<sup>70</sup>. As regards businesses, 59% of companies consider that corruption is widespread (EU average 65%) and 40% consider that corruption is a problem when doing business (EU average 35%)<sup>71</sup>. Furthermore, 23% of respondents find that there are enough successful prosecutions to deter people from corrupt practices (EU average 32%)<sup>72</sup>, while 38% of companies believe that people and businesses caught for bribing a senior official are appropriately punished (EU average 30%)<sup>73</sup>.

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<sup>66</sup> Draft law on the orientation and programming of the Ministry of Justice 2023-2027.

<sup>67</sup> Competences are carried out through advice and administrative audits, and also the monitoring of companies' compliance programs when decided by judicial authorities. Information received in the context of the country visit to France from the AFA.

<sup>68</sup> Transparency International (2023), Corruption Perceptions Index 2022. The level of perceived corruption is categorised as follows: low (the perception among experts and business executives of public sector corruption scores above 79); relatively low (scores between 79-60), relatively high (scores between 59-50), high (scores below 50).

<sup>69</sup> In 2018 the score was 72, while, in 2022, the score is 72. The score significantly increases/decreases when it changes more than five points; improves/deteriorates (changes between 4-5 points); is relatively stable (changes from 1-3 points) in the last five years.

<sup>70</sup> Special Eurobarometer 534 on Corruption (2023). The Eurobarometer data on citizens' corruption perception and experience is updated every year. The previous data set is the Special Eurobarometer 523 (2022).

<sup>71</sup> Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023). The Eurobarometer data on business attitudes towards corruption as is updated every year. The previous data set is the Flash Eurobarometer 507 (2022).

<sup>72</sup> Special Eurobarometer 534 on Corruption (2023).

<sup>73</sup> Flash Eurobarometer 524 on Businesses' attitudes towards corruption in the EU (2023).

**According to the Anti-Corruption Agency (AFA), the 2020-2022 national anticorruption plan was implemented successfully<sup>74</sup> and a new plan for 2023-2025 is in preparation.** Discussions between ministries and NGOs for the preparation of the new national anti-corruption plan for 2023-2025 are ongoing, and the new plan is expected to be adopted in the course of 2023<sup>75</sup>. The draft law on anti-corruption, which was tabled in Parliament in October 2021<sup>76</sup>, was not placed on its agenda for discussions since<sup>77</sup>.

**Significant progress has been achieved in the prosecution and sanctioning of high-level corruption offences, while the investigations are impacted by structural and resource challenges.** The 2022 Rule of Law Report recommended to France to “Continue the effective investigation, prosecution and sanctioning of high-level corruption offences”<sup>78</sup>. At the end of 2022, the OCLCIFI was handling a total of 235 ongoing cases<sup>79</sup>. It relies on 81 investigators with an additional 12 investigators expected to join in 2023<sup>80</sup>. A planned reform to put the investigative police under the direction of the prefect<sup>81</sup>, raised criticism among stakeholders and judicial authorities, which feared that it might affect the effectiveness of the investigations against corruption<sup>82</sup>. In early 2023, the National Financial Prosecutor Office (PNF) and the Anti-Corruption Agency (AFA) issued guidelines on internal investigations<sup>83</sup>, and the PNF published a series of guidelines on the judicial agreements of public interest (CJIPs)<sup>84</sup>. In 2022, additional officers were allocated to counter economic crimes, namely one judge for investigation and seven specialised assistants at the Paris court<sup>85</sup>. In light of the GRECO recommendation<sup>86</sup>, in 2022 the PNF acquired two additional prosecutors, supported by eight specialised assistants<sup>87</sup>. Nonetheless, the PNF office remains understaffed, according to the

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<sup>74</sup> The 2020-2022 anticorruption plan focused on the following actions: optimising data analysis; training; support private and private entities (including for municipalities) to establish anti-corruption programmes; promoting integrity in sports; enhancing penalties; enhancing international anti-corruption action. Written contribution from the Ministry of Justice in the context of the country visit to France, p. 37-44. The report on the final implementation is not yet published.

<sup>75</sup> Information received in the context of the country visit to France from the AFA.

<sup>76</sup> Bill n° 4586 for strengthening the fight against corruption proposed both preventive and repressive measures. 2020 Rule of Law Report, Country Chapter on the rule of law situation in France, pp. 5-8.

<sup>77</sup> Input from France for the 2023 Rule of Law Report.

<sup>78</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 2.

<sup>79</sup> Interview by Mr. Hézard (Chief of the OCLCIFI), December 2022: [https://www.tribunal-de-paris.justice.fr/sites/default/files/2022-12/Interview\\_PNF\\_Guillaume\\_Hezard.pdf](https://www.tribunal-de-paris.justice.fr/sites/default/files/2022-12/Interview_PNF_Guillaume_Hezard.pdf). Written contribution from the OCLCIFI in the context of the country visit to France, p. 33.

<sup>80</sup> Input from France for the 2023 Rule of Law Report, p. 12. Written contribution from the OCLCIFI in the context of the country visit to France, p. 32.

<sup>81</sup> The investigation police reform was announced by the Minister of the Interior and the Minister of Justice at the end of 2022, and it is currently debated in a legislative committee of the Senate. Information report no. 387 (2022-2023), filed on 1 March 2023, <https://www.senat.fr/rap/r22-387/r22-387.html>.

<sup>82</sup> If approved, this reform might create a risk to the effectiveness of the fight against corruption, as well as to the independence of justice. ‘Anticor alerts the Senate to the perverse effects of the reform of the judicial police’, Anticor (January 2023). See also High Council of the Magistracy, press release of 26 October 2022, expressing ‘deep concern at the planned reform to place the judicial police under the authority of the departmental director of the national police’, and letter from the Union of Magistrates of 13 July 2022 to the Minister of Justice.

<sup>83</sup> AFA (March 2023), Internal Anti-Corruption Investigations.

<sup>84</sup> AFA (2019), Guidelines on the judicial agreements of public interest.

<sup>85</sup> Input from France for the 2023 Rule of Law Report, p. 11.

<sup>86</sup> GRECO recommended that the National Financial Prosecution Office be provided with additional human resources. GRECO Fifth Evaluation Round - Compliance Report, p. 13.

<sup>87</sup> Written contribution from the PNF in the context of the country visit to France, p. 34.

Chief Financial Prosecutor<sup>88</sup>. While a draft reform to modify the framework for the duration of criminal investigations, particularly in the area of corruption, is currently being discussed in Parliament<sup>89</sup>, some concerns raised by the OECD on the structural challenges for the investigations, the criminal process against foreign bribery, and on the legislative measures for corporate liability for foreign bribery<sup>90</sup>, remain. In 2022, the PNF dealt with 708 ongoing procedures<sup>91</sup>, convicted 70 individuals (including high-level officials)<sup>92</sup>, approved 18 individual appearances on prior admission of guilt (CRPC)<sup>93</sup>, and concluded six judicial agreements of public interest (CJIPs), including for international affairs (for a combined amount of nearly EUR 672 million)<sup>94</sup>, plus other criminal compositions (for approximately EUR 858 million)<sup>95</sup>, and seizure of illicit assets (for about EUR 461 million)<sup>96</sup>. While the investigations are impacted by some structural challenges and the available resources, tangible results in the prosecution and adjudication of corruption cases continue to be achieved. Some stakeholders expressed concerns that the widespread use of alternative criminal measures (such as the CJIPs) for corporations could affect deterrence and transparency<sup>97</sup>. So far, there has been some progress on the implementation of the recommendation made in the 2022 Rule of Law Report.

**AFA continues to deliver supporting tools while operational effectiveness is weakened by the instability of its resources.** In 2022, the AFA delivered a series of guidelines, reports and training aimed at improving the integrity in the public administration<sup>98</sup>, including a report on

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<sup>88</sup> Franceinfo (2023), Corruption: the fight is still insufficient, in terms of actions and human resources, says the national financial prosecutor.

<sup>89</sup> Input from France for the 2023 Rule of Law Report.

<sup>90</sup> Structural resource problems affect all stages of the criminal justice process. Implementing the OECD Anti-Bribery Convention, Phase 4 Report, France, adopted in December 2021. See also 2022 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 13.

<sup>91</sup> Statement by Mr. Bohnert, Chief Financial Public Prosecutor, Formal hearing for the start of the 2023 school year and 2022 activity report, <https://www.tribunal-de-paris.justice.fr/75/actualites-mensuelles-parquet-national-financier>.

<sup>92</sup> A former Minister of Justice was sentenced to three years imprisonment (suspended) for allocating fictitious jobs to his family members. *Le Monde*, 26 January 2023. In March 2023, a former senator was sentenced to 4 years imprisonment for corruption in public procurement, *FranceInfo*, 22 March 2023. In May 2023, the conviction of a former President of the Republic was upheld, *France24*, 17 May 2023. Information received in the context of the country visit to France from the Ministry of Justice.

<sup>93</sup> Written contribution from the Ministry of Justice in the context of the country visit to France, p. 37.

<sup>94</sup> Summarised version of the CJIPs are published on the webpage of AFA.

<sup>95</sup> Written contribution from the Ministry of Justice in the context of the country visit to France.

<sup>96</sup> According to the Mechanism to assign illicit funds to the victim, a fund managed by the Ministry of Foreign Affairs was created in 2022, which allows entities (including the French Development Agency), to use funds to implement international development actions. See Circular No. 6379/SG of 22 November 2022 relating to the mechanism for the restitution of illicit funds.

<sup>97</sup> ‘The Judicial Convention of Public Interest (CJIP)’, Transparency International France (January 2023). The French authorities however underline that these proceedings present several advantages, including the shorter procedures which also allow for the swift compensation of victims’ damage, and the monitoring of compliance, which prevents the risk of reiteration. Input from France for the 2023 Rule of Law Report.

<sup>98</sup> A practical guide on the prevention of breaches of probity for sports federations (July 2022); A practical guide on the prevention of breaches of probity for operators of the Ministry of Sports and the Olympic and Paralympic Games (July 2022); ‘Public officials: the risks of breaches of probity concerning gifts and invitations’ (September 2022); Practical guide for the regions implementing a probity breach risk management system (November 2022); 1<sup>st</sup> statistical study on breaches of probity recorded by the police and the gendarmerie (November 2022); Corporate anti-corruption accounting controls (April 2022).

the breaches of integrity occurred between 2016 and 2021<sup>99</sup>. In 2022, AFA initiated 18 inspections against regional public institutions, sport federations and central procurement entities<sup>100</sup>. In 2022, AFA was impacted by a lack of fully and permanently employed senior staff, which might affect the continuity and effectiveness of its operations<sup>101</sup>. The Director of AFA concluded his mandate in March 2023, while the sanction committee of AFA, which was no longer operational since August 2022<sup>102</sup>, was reappointed in April 2023<sup>103</sup>.

**The High Authority for Transparency in Public Life (HATVP) continues to regularly monitor the implementation of the integrity measures for public officials, including their declarations of asset and interests, which are largely complied with.** In 2022, the HATVP received 10 659 declarations of assets and interests, examined 4 170 declarations, and transmitted 51 files (compared to 66 cases in 2021) to the Public Prosecutor Office for further analyses of possible crimes<sup>104</sup>. The HATVP does not have financial or administrative sanctioning power, thus each violation (regardless of its value or severity) is transmitted to the judicial authority<sup>105</sup>. In 2022, the HATVP performed 639 integrity checks, and issued 581 opinions (including 330 on “revolving doors” reports)<sup>106</sup>. In March 2023, the HATVP took decisions on revolving doors of two former Ministers and other public officers: one was rejected and 20 were approved<sup>107</sup>. According to the HATVP, despite integrity rules becoming

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<sup>99</sup> In October 2022, the French Anti-Corruption Agency and the Department of Statistics of the Ministry of Interior published a study on breaches of integrity registered by the police, indicating that: between 2016 and 2021, there have been 1.232 cases of corruption recorded by the police (including 68% occurring in the public sector); Since 2016, there is an increase of 28% in breaches of integrity; Corruption is the first type of breach of integrity, followed by embezzlement of public funds and conflicts of interests. See at <https://www.interieur.gouv.fr/content/download/132910/1054200/file/Interstats%20Analyse%20N%C2%B050.pdf>.

<sup>100</sup> Input from France for the 2023 Rule of Law Report, p.20. The Flash Eurobarometer on Businesses’ attitudes towards corruption in the EU shows that 33% of companies in France (EU average 26%) think that corruption has prevented them from winning a public tender or a public procurement contract in practice in the last three years. This is 7 percentage points above the EU average. In June 2023, the police searched the offices of the committee organising the 2024 Paris Olympic Games, as part of an investigation into alleged corruption in the awarding of contracts. ‘France probes alleged corruption in Paris Olympics contracts’, Financial Times, 20 June 2023.

<sup>101</sup> Although the initial plan was to have a staff of 70, currently AFA has 50 officers, including public agents seconded on temporary terms; 30% of the staff are at junior level, coming from private auditing, legal or banking enterprises. AFA advocates for stronger powers on the detection and examination of corruption, which would help to better achieve its tasks. Interview to the Director of the French Anticorruption Agency, 5 October 2022, <https://www.lcb-ft.fr/blog/corruption-interview-charles-duchaine>. Written contribution from the Ministry of Justice in the context of the country visit to France, p. 57.

<sup>102</sup> ‘The French Anti-Corruption Agency amputated of its armed arm’, *La gazette des communes*, 31 March 2023. The Sanctions Committee may impose a fine for violation of integrity rules (up to 200 000 euros for individuals, and up to EUR 1 million for legal persons).

<sup>103</sup> As per Decree of 17 April 2023 on appointing members of the Sanctions Committee of the French Anti-Corruption Agency (JORF n°0092 of April 19, 2023, Text No. 53). Input from France for the 2023 Rule of Law Report.

<sup>104</sup> In 2022, 3 451 declarations of asset and interests, including those submitted by the candidates for the presidential election, were published on the HATVP website. Written contribution from the HATVP in the context of the country visit to France.

<sup>105</sup> Information received from the HATVP in the context of the country visit to France.

<sup>106</sup> On average, 10% of the cases are found incompatible, while 2/3 of the requests are approved with reserve. Written contribution from the HATVP in the context of the country visit to France.

<sup>107</sup> Webpage of the HATVP, decision and opinions.

stricter over time, public officials are increasingly aware of integrity risks, and largely comply with the existing integrity measures<sup>108</sup>.

**Regular audits on funds of political candidates and political parties continue.** In 2022, the National Commission on Campaign Accounts and Political Financing (CNCCFP) examined in total approximately 5 161 financial statements from 5 297 candidates to legislative elections (compared to 5 427 for the previous legislative elections of 2017) and rejected 429 financial statements<sup>109</sup>. The CNCCFP does not have investigative powers<sup>110</sup>. While the CNCCFP may issue financial sanctions (including punitive fines) for mild violations, in case of possible crime the file is transmitted to the public prosecutor<sup>111</sup>. In March 2023, a political party was fined EUR 250 000 by the Paris Court of Appeal for concealment of misuse of corporate assets<sup>112</sup>. Starting with the 2022 Presidential election, a new software (Fin'pol) was used to check the financial declarations of the 12 Presidential candidates<sup>113</sup>. In December 2022, despite some minor shortcomings, the CNCCFP approved the financial declarations filed by all the 12 presidential candidates<sup>114</sup>.

**The existing concerns on the type of lobbying activities and lobbyists remain unaddressed.** The 2022 Rule of Law Report recommended to France to “[e]nsure that rules on lobbying activities are consistently applied to all relevant actors, including at top executive level”<sup>115</sup>. Despite being responsible for managing the lobbying register, the HATVP lacks the necessary sanctioning powers for violation of disclosure rules<sup>116</sup>. In 2022, the HATVP received the registration from 2 584 lobbyists<sup>117</sup> (8% more than in 2021), 11 105 lobbying activities, and launched 163 controls<sup>118</sup>. Despite some increase in the financial and human resources

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<sup>108</sup> HATVP, Activity Report for the year 2021, published in 2022. <https://www.scoop.it/topic/insp-fonction-publique-statut/p/4132875166/2022/06/02/la-haute-autorite-publie-son-rapport-d-activite-2021-hatvp/original>.

<sup>109</sup> Written contribution from the CNCCFP in the context of the country visit to France.

<sup>110</sup> National Commission on Campaign Accounts and Political Financing (CNCCFP), Annual Report for the year 2021.

<sup>111</sup> Information received from the CNCCFP in the context of the country visit to France.

<sup>112</sup> The violation occurred during the 2012 legislative elections. ‘Case Of Campaign Kits: The National Rally Sentenced On Appeal To A Fine Of 250,000 Euros’, Globe Echo (March 2023).

<sup>113</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 14. Report by the CNCCFP for the ‘Election of the President of the Republic of April 2022’.

<sup>114</sup> Inter alia, the shortcomings were: instances of non-electoral expenses, insufficiently justified expenses and omitted expenses. Information received from the CNCCFP in the context of the country visit to France.

<sup>115</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 2.

<sup>116</sup> In June 2022, the HATVP developed guidelines to advise new declarants, published on its webpage. The HATVP has no financial or administrative sanctioning power against non-criminal violations, thus all violations are forwarded to the prosecutorial authority. Written contribution from the HATVP in the context of the country visit to France.

<sup>117</sup> The definition of lobbyist includes entities that initiate the contact with a public official to influence a public decision. The current system might unfairly benefit large existing lobbying entities (with well-established relationships with decision-makers), and disadvantage small or new lobbying entities (which must establish lobbying relationships with decision-makers). The proposal presented by the HATVP was not taken into consideration in the new draft law on post-Sapin II. Information received from the HATVP in the context of the country visit to France. 2021 Rule of Law Reports, Country Chapter on the rule of law situation in France, pp. 1 and 9.

<sup>118</sup> The HATVP found 87 violations (for non-disclosure) and forwarded 8 files to the public prosecutor. Written contribution from the HATVP in the context of the country visit to France.

allocated in 2022<sup>119</sup>, the HATVP continued to face challenges dealing with significant workload<sup>120</sup>. Although there is no obligation by law, a number of elected officials actively publish online their agendas and meetings with lobbyists<sup>121</sup>. The exclusion of certain groups from the obligation to register as lobbyists continue to raise criticism<sup>122</sup>. While at the moment only a small number of parliamentarians is employed by lobbying groups after mandate, some NGOs advocate for the full prohibition for MPs to act as lobbyists for at least one year following the end of their mandate<sup>123</sup>. In its 2022 annual report, the HATVP provides suggestions to improve the regulation on lobbying<sup>124</sup>, including the power for the HATVP to impose administrative sanctions. The draft law on lobbying<sup>125</sup> that was to address all existing concerns, including those raised by GRECO<sup>126</sup> on the disclosure of lobbying meetings with persons who are entrusted with top executive functions at national level<sup>127</sup>, as well as those on the type of lobbying activities and lobbyists<sup>128</sup>, was not tabled in the Parliament's agenda for discussion<sup>129</sup>. So far, there has been no progress on the implementation of the recommendation made in the 2022 Rule of Law Report, which has not been implemented.

**The existing integrity rules for members of Parliament and Senate continue to be regularly implemented, although suggestions to improve the integrity measures for MPs and top executives have not been followed up.** In 2022, the Commission for Ethics of the National Assembly<sup>130</sup> responded to about 196 requests for ethical advice, verified 191 financial

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<sup>119</sup> The HATVP relies on 67 agents (compared to 65 in 2021) and a budget of EUR 9 million (compared to EUR 8 million in 2021). Written contribution from the HATVP in the context of the country visit to France.

<sup>120</sup> Significant workload is due to the need to registering interactions between lobbyists and local government executives, as well. Thus, the audience of declarants is up to 18 000 individuals (11 000, in the previous system). Input from France for the 2023 Rule of Law Report, p. 21.

<sup>121</sup> 'Transparency of agendas for meetings with lobbyists in the National Assembly: the progress of good practices remains limited by the lack of political will'. Transparency International France. For 2022, the HATVP analysed declarations of interests of 569 MPs, and indicated that 17% of MPs intends to maintain at least one professional activity during their mandate, and 50% hold another elective position (40% at the municipal level). HATVP (2023), Analysis of Members' declarations of interests and activities.

<sup>122</sup> Trade unions, religious organisations and foreign states are not bound to declare lobbying activities (as per law n° 2016-1691). Information received from the Transparency International France and Anticor in the context of the country visit to France.

<sup>123</sup> Post-mandate employment is regulated for government officials, civil servants and local representatives, but not for parliamentarians. Transparency International France (2022), 'For an extension of the bill relating to consulting firms to lobbying transparency'.

<sup>124</sup> Require declarations when the contact is initiated by a public official; require corporate groups to declare lobbying activities at the aggregate level (of the group); for lobbyists acting on behalf of others, declare the annual price of that activity; require lobbyists more clarity on the decision and public official they lobby on; require more frequent declarations (twice a year); require police officers to attend on-site verifications conducted by the HATVP. HATVP Report on activity declarations 2021.

<sup>125</sup> This is the same law on anticorruption which was withdrawn by the Government, see footnote 69. Written contribution from the Ministry of Justice in the context of the country visit to France, p. 18.

<sup>126</sup> GRECO Fifth Evaluation Round - Compliance Report, p. 8.

<sup>127</sup> The President of the HATVP was heard by a committee of the Parliament to provide suggestions to improve the decree (no. 2017-867) related to the digital directory of lobbyists. Information received from the HATVP in the context of the country visit to France.

<sup>128</sup> The definition of lobbyist includes entities. 2022 Rule of Law Reports, Country Chapter on the rule of law situation in France, p. 14.

<sup>129</sup> Input from France for the 2023 Rule of Law Report.

<sup>130</sup> The Commission is responsible *inter alia* to monitor the implementation of the code of conduct for parliamentarians.



statements of members of the Parliament<sup>131</sup>. Recommendations made by GRECO to improve the integrity measures for MPs and top-executives<sup>132</sup> have not been followed up. The Ethics Commissioner regrets that the opinions issued by his office remain unpublished<sup>133</sup>. The Ethics Committee of the Senate remains responsible for ethics of Senators<sup>134</sup>. After October 2022, the Ethics Committee issued 5 ethical opinions, and 116 preventive opinions (an increase of almost 85% compared to the previous year) mostly on the use of public funds to senators and performed 355 audits (amounting to roughly 15 000 documents examined)<sup>135</sup>. The declarations for recusals from both Deputies and Senators to avoid conflicts of interest are published on the website of each Chamber. However, the number of declarations seem modest compared to the total members of the National Parliament<sup>136</sup>. A Senate commission, established after concerns about possible corruption in public contracts allegedly committed by consulting companies, issued recommendations<sup>137</sup>. Prosecutions concerning possible financial crimes or undue influence remain open at the PNF office<sup>138</sup>, in addition to ongoing corruption-related cases against top Government executives<sup>139</sup>.

**While police officers and judges are bound by ethical rules, there is room for further progress regarding integrity-related security checks in the police .** Police officers submit the declaration of their assets (to the HATVP) and pass an ethics interview before moving to a different post. An integrity officer checks the accumulation of side activities, and a special entity may start an inquiry into possible violation of ethics rules<sup>140</sup>. The GRECO recommendation to carry out security checks relating to the integrity of members of the

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<sup>131</sup> Information received from the Ethics Commissioner of the National Assembly in the context of the country visit to France.

<sup>132</sup> Regarding codes of conduct (for persons who are entrusted with top executive functions at national level), on the verification and accessibility of declarations of assets (of the presidential candidate, of persons with top executive functions, as well as those filed by members of the National Assembly and Senators), on conflicts of interests, as well as on examination of cases of corruption affecting members of the Government. GRECO Fifth Evaluation Round - Compliance Report, and GRECO Fourth Evaluation Round - Addendum to the Second Compliance Report. 2022 Rule of Law Reports, Country Chapter on the rule of law situation in France, p. 15.

<sup>132</sup> GRECO Fourth Evaluation Round - Addendum to the Second Compliance Report, pp. 7, 9-10.

<sup>132</sup> GRECO Fourth Evaluation Round - Addendum to the Second Compliance Report, p. 7.

<sup>133</sup> National Assembly (2022), 'The tenth year of ethics in the National Assembly'.

<sup>134</sup> This Ethics Committee is composed by Senators who rely on professional accountants to undertake targeted controls of Senators' expenses. In accordance with the order No. 58-1100 of November 1958 on the functioning of parliamentary assemblies.

<sup>135</sup> Written contribution from the Ethics Committee of the Senate in the context of the country visit to France.

<sup>136</sup> Currently there are approximately 23 declarations from 16 MPs (register of recusals, <https://www.assemblee-nationale.fr/dyn/16/deports>), and three declarations from Senators (register of recusals, [https://www.senat.fr/role/comite\\_deontologie/obligations\\_deontologiques\\_senateurs.html](https://www.senat.fr/role/comite_deontologie/obligations_deontologiques_senateurs.html)), vis-à-vis 577 Members of the Parliament and 348 Senators in total in France.

<sup>137</sup> The Senate commission issued recommendations to: end opacity of consulting services; publish annual open data on consulting services provided by the State and its operators; regularly evaluate consulting services and apply penalties when services are not satisfactory; impose a declaration of interest on consultants. <http://www.senat.fr/dossier-legislatif/ppr21-111.html>.

<sup>138</sup> 'Two investigations, opened by the National Financial Prosecutor's Office, are looking into the growing influence of consulting firms in the French government', Le Monde (November 2022). See further at [https://www.tribunal-de-paris.justice.fr/sites/default/files/2022-11/221124\\_CP%20proc%C3%A9dures%20cabinets%20de%20conseils%20diffus%C3%A9.pdf](https://www.tribunal-de-paris.justice.fr/sites/default/files/2022-11/221124_CP%20proc%C3%A9dures%20cabinets%20de%20conseils%20diffus%C3%A9.pdf)

<sup>139</sup> Including a former President of the Republic. Le Monde, 14 November 2022.

<sup>140</sup> National Service for Administrative Security Investigations (SNEAS). Information received from the Ministry of Justice in the context of the country visit to France.

National Police and the National Gendarmerie at regular intervals remains unaddressed<sup>141</sup>. The Deontology Action Plan, with anti-corruption measures, was adopted by the IGGN, and distributed to commanders in chief in September 2022<sup>142</sup>. In 2022, the Inspectorate General of the Police (IGPN) conducted 19 disciplinary procedures for integrity breaches, involving 37 police agents, while an additional 67 officers were involved in 113 judicial investigations<sup>143</sup>. A steering committee was organised by the Police in December 2022, in order to assess corruption risks and mitigating actions<sup>144</sup>. In 2022, the National School of Magistrates delivered 12 classes on ethics and professional conduct to judges<sup>145</sup>. Members of the judiciary submit their declaration of asset to the HATVP<sup>146</sup>. A committee on ethics provides advice to magistrates on matters related to the application of ethical obligations<sup>147</sup>.

**While new rules to protect whistleblowers are in place, a lack of human and financial resources risks adversely affecting their implementation.** In 2022, the Defender of Rights (Defender) received 136 whistleblowing cases (an increase of 50% compared to 2021), it established an infoline for whistleblowing and acquired a software to exchange secured information with competent entities<sup>148</sup>. At the end of 2022, two decrees were issued<sup>149</sup> for the implementation of the law on the protection of whistleblowers<sup>150</sup>. The decrees set up the central role of the Defender<sup>151</sup>, the appointment of 40 competent entities, the definition of whistleblowing and the protection of whistleblowers<sup>152</sup>. The Defender recognises the status of whistleblower and is responsible to deliver training and support to whistleblowers<sup>153</sup>. In March 2023, the Defender organised a first meeting for the 40 competent entities to coordinate their actions and published online a guideline for whistleblowers<sup>154</sup>. The practical implementation of the new rules is faced with challenges. First, despite the allocation of three additional

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<sup>141</sup> GRECO Fifth Evaluation Round - Compliance Report, p. 15. In 2022, two judges were appointed Chief and deputy of the Inspectorate General of the Gendarmerie (IGGN). Input from the France for the 2023 Rule of Law Report, p. 14. See also 2022 Rule of Law Report, Country Chapter on the rule of law situation in France, pp. 15-16.

<sup>142</sup> The implementation also relies on the 50 ethics correspondents within the gendarmerie. Input from France for the 2023 Rule of Law Report, p. 20.

<sup>143</sup> Input from France for the 2023 Rule of Law Report, p. 21.

<sup>144</sup> The multi-services committee (with the Central Directorate of the Judicial Police (DCPJ), intelligence and investigation services, the police, the gendarmerie and the PNF) was organized to discuss and exchange information between services. Input from France for the 2023 Rule of Law Report, p. 26.

<sup>145</sup> Written contribution from the High Council of Magistrates in the context of the country visit to France.

<sup>146</sup> Information received from the High Council of Magistrates in the context of the country visit to France.

<sup>147</sup> Information received from the High Council of Magistrates in the context of the country visit to France.

<sup>148</sup> There continue to be a strong interest by large corporations and lawyers. Information received from the Defender of Rights in the context of the country visit to France.

<sup>149</sup> Decree No. 2022-1284 (of October 3, 2022 relating to the procedures for collecting and processing reports issued by whistleblowers and setting the list of external authorities established by Law No. 2022-401 of March 21, 2022 aimed at improving protection of whistleblowers), and Decree n° 2022-1686 (of December 28, 2022 relating to the contribution of the personal training account of a whistleblower employee). *Inter alia*, the decrees specify the conditions for whistleblowers to report facts either internally (to the organization), externally (to a list of recipient authorities), or publicly.

<sup>150</sup> Law No. 2022-401 of March 21, 2022 aimed at improving the protection of whistleblowers. The decrees will notably be assessed by the GRECO in light of its recommendation to revise the protective regime for whistleblowers.

<sup>151</sup> The Defender of Rights is the entity that provides support and advice to whistleblowers. 2022 Rule of Law Reports, Country Chapter on the rule of law situation in France, p. 16.

<sup>152</sup> Input from the France for the 2023 Rule of Law Report, p. 21.

<sup>153</sup> Information received from the Defender of Rights in the context of the country visit to France.

<sup>154</sup> Information received from the Defender of Rights in the context of the country visit to France.

officers<sup>155</sup>, the Defender points to the lack of sufficient human and financial resources to carry out its tasks<sup>156</sup>. Second, while by law the competent entities are responsible to provide legal, financial, and psychological support to whistleblowers, no public funding to this end was allocated to the 40 competent entities, which *de facto* weakens their supporting role<sup>157</sup>.

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

The French Constitution safeguards freedom of expression as well as pluralism and independence of the media. These principles are further enshrined in specific sectoral legislation, enforced by the independent media regulator. The Declaration of the Rights of Man and of the Citizen recognises freedom of expression as a fundamental right. Right to information is guaranteed by France's legal framework<sup>158</sup>. French legal system also provides for specific rules concerning transparency of media ownership<sup>159</sup>.

**The media regulator continues to operate as an independent body in the field of audiovisual and digital content.** As set out in the 2022 Rule of Law Report<sup>160</sup>, the *Autorité de régulation de la communication audiovisuelle et numérique* (ARCOM) was created as the result of the merger of two major regulatory authorities, the media regulator *Conseil supérieur de l'audiovisuel* (CSA) and the online copyright authority *Haute autorité pour la diffusion des oeuvres et la protection des droits sur internet* (HADOPI)<sup>161</sup>. The competences of the merged institutions were extended to include issues relating to disinformation, the defence of cultural creation, the fight against illegal streaming or downloading and the protection of minors. Financial and human resources of ARCOM are considered adequate and have remained stable. ARCOM shares with the Competition Authority the competence on mergers in the audiovisual sector; when assessing a transaction involving an editor or distributor of radio and television services, the Competition Authority is to seek the opinion of ARCOM<sup>162</sup>. ARCOM also grants the authorisations for television and radio services operating on terrestrial frequencies. As in the past year, the Media Pluralism Monitor (MPM 2023) reports a very low risk for the independence of the media regulator<sup>163</sup>.

**While discussions on updates to the rules on transparency of media ownership have started, no further progress has been made on the 2022 recommendation to enhance the transparency of media ownership.** The 2022 Rule of Law Report recommended to France to

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<sup>155</sup> One deputy director, a legal officer and one chief of project, all for the whistleblowing protection department. Information received from the Defender of Rights in the context of the country visit to France.

<sup>156</sup> 2022 Information received from the Defender of Rights in the context of the country visit to France.

<sup>157</sup> The 40 entities to receive external complaints from whistleblower have been appointed through a decree of October.

<sup>158</sup> Law No. 78-753 of 17 July 1978, Law No. 79-587 of 11 July 1979, Law No. 2000-321 of 12 April 2000, Ordinance No. 2005-650 of 6 June 2005.

<sup>159</sup> Law No. 86-1067 of 30 September 1986 on the Freedom of Communication; Law No. 2004-575 of 21 June 2004 to support confidence in the digital economy, and Law of 29 July 1881 on the Freedom of the Press. France ranks 24th in the 2023 Reporters without Borders World Press Freedom Index compared to 26th in the previous year.

<sup>160</sup> Ibid.

<sup>161</sup> Pursuant to Law no. 2021-1382 of 25 October 2021 relating to regulation and protection of access to cultural works in the digital age.

<sup>162</sup> ARCOM has to send its observations within one month. Article 41-4 of Law No. 86-1067 of 30 September 1986.

<sup>163</sup> 2023 Media Pluralism Monitor, France, p.13.

“enhance the transparency of media ownership, in particular regarding complex shareholding structures, building on the existing legal safeguards”<sup>164</sup>. In France, legal safeguards are in place to guarantee transparency of media ownership<sup>165</sup>. However, as previously reported<sup>166</sup>, journalists organisations<sup>167</sup> highlighted risks in the area of transparency of media ownership, in particular related to the complexity of media ownership structures and pointed to the high degree of concentration in the French media environment<sup>168</sup>. The MPM 2023 indicates a medium risk for the transparency of media ownership, due to the complexity and multi-layers in the shareholding structure of many media conglomerates, and highlights the high degree of concentration of the French media.<sup>169</sup> Following the Report of the Senate Commission of enquiry established in November 2021, which considered the Law on the Freedom of Communication “obsolete” and suggested its complete revision<sup>170</sup>, reflections are ongoing within the Government on how to revise the regulation on media concentration, but no further steps have been taken in this regard. The Government has stated that the issue of transparency of media ownership and media concentration will also be addressed in the framework of the upcoming *États généraux du droit à l’information* (Estates General of the right to information), to evaluate the possible revision of the existing rules to guarantee better transparency. Details of this revision are not yet specified<sup>171</sup>. Thus, as no concrete steps have been taken so far, there has been no further progress on the implementation of the recommendation made in the 2022 Rule of Law Report.

**Well-established safeguards continue to ensure the independence of French public service media, while the law on financing public broadcasting was amended.** As described in the 2022 Rule of Law Report<sup>172</sup>, the French public service media (France Television) is regulated by the Law on Freedom to Communicate, which establishes that public service media must ensure honesty, pluralism of information and independence as well as diversity of opinion, respect for human rights and democratic principles<sup>173</sup>. The appointment procedures for management and board functions in the public service media are transparent and balanced. The Law also stipulates that France Television’s news programmes have an independent editorial line<sup>174</sup>. ARCOM oversees the independence and impartiality of the public service media<sup>175</sup>. The French Senate has recently approved the Government plan to abolish the public broadcasting fee and the 2022 Amending Budget Law has removed the public broadcasting

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<sup>164</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 2.

<sup>165</sup> See also 2022 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 17.

<sup>166</sup> Ibid.

<sup>167</sup> Reporters without Borders (2022), French presidential election – RSF’s ten proposals for journalistic freedom and independence.

<sup>168</sup> Information received from Journalist associations in the context of the country visit to France. The OSCE Office for Democratic Institutions and Human Rights (ODIHR), in its Report on the France Election Assessment Mission, published in September 2022, p.2, reported that several ODIHR interlocutors raised concerns over the growing concentration of media ownership in France with a consequent impact on pluralism and freedom of the press and suggested that, ‘in order to protect media pluralism, existing legal framework regulating media concentration could be reviewed and adapted to the current state of the media industry’.

<sup>169</sup> 2023 Media Pluralism Monitor, France, p.15.

<sup>170</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 18.

<sup>171</sup> Input from France for the 2023 Rule of Law Report, p. 38.

<sup>172</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 18.

<sup>173</sup> According to European Parliament’s Flash Eurobarometer: News & Media Survey 2022, 49% of respondents in France stated that they trust public TV and radio stations, in line with the EU average of 49%.

<sup>174</sup> Article 44 of Law No. 86-1067 of 30 September 1986.

<sup>175</sup> See also 2022 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 18.

contribution as from September 2022<sup>176</sup>. According to the Law, public broadcasting will be financed by the value-added tax (VAT) revenues until the end of 2024. For the period after that, the Government must then present a separate plan for funding. This decision has raised some concerns over the future funding and independence of French public television and radio. In particular, according to associations of journalists and authorities, public broadcasting independence risks being weakened, as they consider that replacing the licence fee with a levy on VAT is a transitory solution not adequate to the role of public service media and have called for a more appropriate and predictable funding model to be created<sup>177</sup>. The MPM 2023 considers the independence of public service media governance as an area of medium risk<sup>178</sup>.

**Journalists continue to be exposed to different types of threats, and attacks have been reported, in particular during protests and demonstrations.** The Council of Europe's Platform to promote the protection of journalism and safety of journalists recorded 29 new alerts<sup>179</sup> since the publication of the 2022 Rule of Law Report. The registered incidents relate to threats, intimidation, and physical aggressions, in particular during protests and demonstrations. Several alerts relate also to death threats received by journalists. The 2022 Rule of Law Report took note that the Government took steps to strengthen the protection of journalists<sup>180</sup>, including the amendment of the National Law Enforcement Scheme (SNMO)<sup>181</sup> and the creation of a monthly liaison committee between the Ministry of the Interior and the press to address the tensions between the press and the police forces<sup>182</sup>. While it was reported that those initiatives contributed to improve overall the safety of journalists, and to address cases of police violence<sup>183</sup>, journalist associations also highlighted that, with the increase of protests during the last months, new attacks on journalists from protesters and excessive use of force by police officers have been registered<sup>184</sup>. The Law on Free Access to Administrative Documents<sup>185</sup> provides for a right to access by all persons to administrative documents held by public bodies. The MPM 2023 considers protection of right to information as an area presenting low risk, registering a consistent decrease compared to last year<sup>186</sup>.

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

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

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<sup>176</sup> The 2022 Amending Budget Law (FRL) published in Official Journal of 17 August 2022.

<sup>177</sup> See RSF: France must drop makeshift approach to public broadcast media funding. Information received from National Union of Journalists (SNJ) and ARCOM in the context of the country visit to France.

<sup>178</sup> 2023 Media Pluralism Monitor, France, p. 23.

<sup>179</sup> Council of Europe, Platform to promote the protection of journalism and safety of journalists, France.

<sup>180</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 19.

<sup>181</sup> A new version of the National Law Enforcement Scheme (SNMO) was published on 16 December 2021.

<sup>182</sup> 2022 Rule of Law Report, Country Chapter on the rule of law situation in France, p.19

<sup>183</sup> Contribution from RSF to the 2023 Rule of Law Report, p. 19.

<sup>184</sup> Information received from the National Union of Journalists (SNJ) and the Conseil de déontologie journalistique et de médiation (CDJM) in the context of the country visit to France.

<sup>185</sup> Law No. 78-753 of 17 July 1978.

<sup>186</sup> 2023 Media Pluralism Monitor, France, p. 11.

(CNCDDH) are both tasked with the promotion and protection of human rights and fundamental freedoms. The CNCDDH is the national human rights institution accredited with an “A Status” by the GANHRI<sup>187</sup> Sub-Committee on Accreditations, in compliance with the Paris Principles.

**The Government continued to make considerable use of accelerated legislative procedures which shorten or curtail parliamentary debate on legislative proposals.** Since the publication of the 2022 Rule of Law Report, the accelerated legislative procedure has been used in several instances<sup>188</sup>. In a letter to the National Assembly, the President of the National Consultative Commission on Human Rights (CNCDDH) deplored the repeated use of the accelerated procedure for laws affecting fundamental rights, considering it incompatible with the necessary length of parliamentary discussions on such draft laws<sup>189</sup>. The Government used several mechanisms allowed under the Constitution to pass laws. The constitutionality of the use of these mechanisms was confirmed by the Constitutional Council. Moreover, these mechanisms allowed the omission of parliamentary debates and the possibility to introduce amendments, in particular by subjecting the rejection of the draft law to a successful vote of no confidence by Parliament<sup>190</sup>, a possibility used eleven times since October 2022<sup>191</sup>. Sometimes a number of different mechanisms to limit parliamentary debates were used on the same legislation<sup>192</sup>.

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<sup>187</sup> GANHRI (Global Alliance of National Human Rights Institutions).

<sup>188</sup> From 1 October 2022 to 31 December 2022, 6 out of 23 draft laws were tabled by Government under the accelerated procedure, and all five draft laws introduced by Parliament were submitted to this procedure. For more details on the previous use of this procedure and its impact on parliamentary debate, see 2022 Rule of Law Report, Country Chapter on the rule of law situation in France, p. 20. For instance, it was used for the draft law on the organisation of the 2024 Olympic Games, whose provisions impacted several fundamental rights, as noted by the Constitutional Council in its Decision No. 2023-850 DC of 17 May 2023. Similarly, the Government triggered the accelerated procedure on 1 February 2023 for a draft law to control immigration and improve integration.

<sup>189</sup> *Commission nationale consultative des droits de l’homme*, letter of 14 February 2023 to the National Assembly.

<sup>190</sup> Art. 49(3) of the Constitution allows the Government to use this mechanism for finance laws, laws for financing social security and no more than one other legislative project per parliamentary session.

<sup>191</sup> The Venice Commission noted that the use of such a mechanism to remove the final vote of one chamber of parliament for the adoption of a law represents a significant interference by the executive in the powers and role of the legislature. It added that the activation of Article 49.3 does not result in the obliteration, but in a significant reduction of the parliament’s control over the content of the law, and gives broad powers to the executive as to the moment of its activation, while its review by the Constitutional Council is limited to whether the formal conditions were respected. Venice Commission, Interim Opinion on Article 49.3 of the Constitution, CDL-AD(2023)024, para. 44.

<sup>192</sup> In the case of a law adopted in March 2023, the Government used Art.44(2) of the Constitution, which allows a certain number of amendments to be declared inadmissible; Art. 38 of the Senate regulations, allowing to close the debate on an article or an amendment when two speakers with an opposite opinion have debated; Art. 42 of the Senate regulations, allowing to limit speaking times and set a fixed speaking time for political groups; Art. 44(3) of the Constitution, allowing to limit the vote of the Senate on the amendments proposed or accepted by Government; and Art. 47(1) of the Constitution, allowing to limit parliamentary debates to a total of fifty days. In its Decision No. 2023-849 DC of 14 April 2023, the Constitutional Council declared that, without being in itself of such a nature as to render unconstitutional the entire legislative procedure, the combined use of all these mechanisms on a single draft law was unusual. At para. 49 of its opinion CDL-AD(2023)024, the Venice Commission asserts that the combined use of Art. 47(1) and Art. 49(3) of the Constitution risks imposing an even heavier limitation the parliamentary debates, which may appear disproportionate.

**Emergency regimes were repealed and a permanent committee for managing health risks was created.** A law of 30 July 2022<sup>193</sup> repealed, as from 1 August 2022, the state of health emergency, as well as the health crisis management regime previously in force, including all emergency measures previously in force<sup>194</sup>. A decree<sup>195</sup> dissolved the former COVID-19 scientific council<sup>196</sup> and created a permanent committee, with broader missions, for monitoring and anticipating health risks<sup>197</sup>. The Government regularly informed Parliament of measures taken under the successive emergency regimes until their repeal<sup>198</sup>.

**The transparency and adversarial aspects of the procedure for *ex ante* constitutional review were enhanced.** The Constitutional Council amended its rules of procedure<sup>199</sup>, which now provide that the text of the referral for *ex ante* review shall be published immediately on its website. The Constitutional Council may also choose to set a closing date for the investigation phase, which is notified to the parties and made public on its website. To enhance the adversarial nature of the procedure, during the investigation phase, all acts and procedural documents are communicated to interested parties<sup>200</sup>. Parliamentarians may also request to be heard or send written observations. The new rules of procedure also make inadmissible *ex ante* referrals that raise specific grounds of unconstitutionality.

**On 1 January 2023, France had 29 leading judgments of the European Court of Human Rights pending implementation, an increase of four compared to the previous year<sup>201</sup>.** At that time, France's rate of leading judgments from the past 10 years that remained pending was at 36% (compared to 28% in 2022) and the average time that the judgments had been pending implementation was 2 years and 10 months (compared to 2 years and 11 months in 2022)<sup>202</sup>. The oldest leading judgment, pending implementation for almost 13 years, concerns the

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<sup>193</sup> Law No. 2022-1089 of 30 July 2022 putting an end to the exceptional regimes to fight against the epidemic linked to COVID-19.

<sup>194</sup> Under Law No. 2021-689 of 31 May 2021 on the management of the exit from the health crisis.

<sup>195</sup> Decree No. 2022-1099 of 30 July 2022 establishing a committee for monitoring and anticipating health risks.

<sup>196</sup> The former scientific council, created by a decree of 3 April 2020, provided advice to the Government on epidemiological developments to inform decision-making. It also issued public opinions and reports on the public health situation.

<sup>197</sup> In particular, it is responsible for ensuring scientific monitoring of the health risks associated with infectious agents affecting humans and animals, environmental and food pollutants and climate change and issuing opinions on the strategy to be adopted to combat these threats. Input from France for the 2023 Rule of Law Report, p. 44.

<sup>198</sup> Pursuant to Article L. 3131-14 of the Public Health Code, the Government submitted to Parliament 30 progress notes on the measures taken in the context of the health crisis between 21 October 2020 and 1 June 2021, then 50 progress notes on the measures taken as part of the regime for exiting the state of health emergency between 11 June 2021 and 10 June 2022.

<sup>199</sup> By Decision No. 2022-152 ORGA of 11 March 2022. Input from France for the 2023 Rule of Law Report, p. 42.

<sup>200</sup> The President of the Republic, to the Prime Minister and to the Presidents of the National Assembly and the Senate and, where relevant, to parliamentarians designated among the authors of the referral.

<sup>201</sup> The adoption of necessary execution measures for a judgment by the European Court of Human Rights is supervised by the Committee of Ministers of the Council of Europe. It is the Committee's practice to group cases against a State requiring similar execution measures, particularly general measures, and examine them jointly. The first case in the group is designated as the leading case as regards the supervision of the general measures and repetitive cases within the group can be closed when it is assessed that all possible individual measures needed to provide redress to the applicant have been taken.

<sup>202</sup> All figures are calculated by the European Implementation Network and are based on the number of cases that are considered pending at the annual cut-off date of 1 January 2023. See the Contribution from the European Implementation Network for the 2023 Rule of Law Report, p. 3.

inaction of the authorities in the execution of judiciary measures of expulsion regarding illegally occupied lands<sup>38</sup>. On 15 June 2023, the number of leading judgments pending implementation has decreased to 26<sup>203</sup>. In a judgment of 8 December 2022, the European Court of Human Rights (ECtHR) condemned France for the failure of the administrative authorities to comply with court decisions ordering to provide accommodation to families of asylum seekers<sup>204</sup>. The Defender of Rights, which intervened in the case before the ECtHR, noted that the findings of the Court, although referring to facts that occurred in 2018, were still relevant in December 2022<sup>205</sup>.

**Judgments recalled the administration’s obligation to ensure the transparency and justify the necessity of orders prohibiting demonstrations.** In March 2023, the competent executive authorities issued a series of administrative orders prohibiting undeclared demonstrations in certain areas to protect public order under penalty of fines<sup>206</sup>. Stakeholders voiced concerns as to the lack of transparency of the administrative acts used as a legal basis for sanctioning persons participating in demonstrations<sup>207</sup>. Seized under emergency proceedings brought by the *association de défense des libertés constitutionnelles*, the *Ligue des droits de l’homme* and individual citizens, administrative courts ordered the executive authorities to publish on their website orders prohibiting demonstrations before their entry into force to safeguard the right to an effective judicial remedy<sup>208</sup>, and suspended the implementation of some orders considered as unduly restricting the right to demonstrate<sup>209</sup>. Upon urgent referral by several associations<sup>210</sup>, the Council of State declared that the obligation to wear an identification number<sup>211</sup> has not been respected on various occasions by national police officers during the execution of their missions, in particular during law enforcement operations, despite instructions by their hierarchy to comply with this obligation<sup>212</sup>.

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<sup>203</sup> Data according to the online database of the Council of Europe (HUDOC).

<sup>204</sup> Judgment in case *M.K. and others v. France*, applications No. 34349/18, 34638/18 and 35047/18, ECLI:CE:ECHR:2022:1208JUD003434918. At para. 161 and 162 of the Judgment, the ECtHR “deplores the complete passivity of the competent administrative authorities with regard to the execution of the decisions of the administrative court” and highlights that the administrative authorities concerned did not simply delay enforcement, but opposed a “clear refusal to comply with the injunctions of the national court”.

<sup>205</sup> Defender of Rights, Press release from the Defender of Rights of 8 December 2022.

<sup>206</sup> This was notably the case in large areas of Paris. See *Le Monde*, 29 March 2023, *La très grande discrétion des arrêtés interdisant les rassemblements spontanés contre la réforme des retraites*.

<sup>207</sup> The administrative orders were published either after their entry into force, or only in the premises of the administrative authority. Information received from the *Ligue des Droits de l’Homme*, *Le Mouvement Associatif* and *European Civic Forum* in the context of the country visit. See also press release from the *Ligue des Droits de l’Homme* of 27 March 2023.

<sup>208</sup> Decision No. 2307385/9 of the Paris Administrative Court of 4 April 2023.

<sup>209</sup> For instance, by Decision No. 230744 of 1 April 2023, the Paris Administrative Court suspended the implementation of a prefect order prohibiting demonstrations in several areas of Paris. The Court considered that the measures were not necessary to safeguard public order and constituted a manifestly unlawful interference with the freedom to demonstrate.

<sup>210</sup> Namely the *Association des chrétiens pour l’abolition de la torture*, the *Ligue des droits de l’homme*, the *Syndicat des avocats de France* and the *Syndicat de la magistrature*.

<sup>211</sup> Wearing a visible identification number, which allows citizens and the administration to identify police officers in order to report irregularities such as the abusive use of force, in particular to seek an effective remedy in court, is mandatory under Art. R434-15 of the Code of Interior Security.

<sup>212</sup> Council of State, decision of 5 April 2023 on interim measures, ECLI:FR:CEORD:2023:472509.20230405. The Council of State rejected the interim measures requested, noting that the breaches of the obligation to wear an identification number would reflect a sufficiently serious failure to cause a serious and manifestly illegal infringement of a fundamental freedom.



**The financial environment of civil society organisations remains favourable, with stakeholders raising concerns on the implementation of legislation which conditions access to public funding to respect for the fundamental values of the French Republic.**

The civic space continues to be considered as narrowed<sup>213</sup>. The financial environment for civil society organisations (CSOs) continues to be favourable, including through substantial tax incentives<sup>214</sup>. Since the last Rule of Law Report, the executive branch, as well as local authorities, made use of provisions, made stricter by the Law on republican principles<sup>215</sup> which allow the review and suspension of funding of associations<sup>216</sup> or deny authorisation to conduct certain activities. The implementation of these provisions is subjected to judicial review<sup>217</sup>. The Government issued several decisions to dissolve associations considered as promoting violent actions, some of which were suspended by administrative courts<sup>218</sup>. Several announcements by the Minister of Interior to either trigger dissolution proceedings<sup>219</sup> or to review the allocation of subsidies to certain CSOs could be perceived as a means to exert pressure<sup>220</sup>. A challenge

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<sup>213</sup> Rating by CIVICUS; ratings are on a five-category scale defined as: open, narrowed, obstructed, repressed and closed.

<sup>214</sup> The sums allocated to policies in favour of associations, excluding tax expenditure, amounted to EUR 1.6 billion euros in 2021. Moreover, the amounts granted annually through tax measures, which include the tax advantages applicable to CSOs and incentives for donations, are evaluated to more than EUR 2 billion. Input from France for the 2023 Rule of Law Report, pp. 56-57. For more details on the public spending and tax measures in favour of CSOs, see Annex to the Draft 2023 Finance Law, *Effort financier de l'État en faveur des associations*.

<sup>215</sup> Law No. 2021-1109 of 24 August 2021 reinforcing respect for the principles of the Republic. For more details on its provisions, see 2022 Rule of Law Report, Country Chapter on the rule of law situation in France, pp. 23-24. In particular, associations requesting a subsidy, a State accreditation or a public utility status must subscribe to a “contract of republican commitment”.

<sup>216</sup> By two orders of 28 October 2022, the Prefect of Vienne region requested the Poitiers Administrative Court to order the withdrawal of subsidies granted to the Alternatiba Poitiers association, on the grounds that workshops on civil disobedience were infringing the association’s contract of republican commitment. The case is still pending before the administrative court.

<sup>217</sup> By decision of 10 March 2022, the Council of State annulled the decision of a mayor to withdraw the authorisation of an association to organise a public campaign on the grounds that it infringed its contract of republican commitment, and that the withdrawal decision was in serious breach of the freedom of expression.

<sup>218</sup> By Decision of 15 May 2022, the Council of State suspended the dissolution of the Groupe Antifasciste Lyon et Environs (GALE) pronounced by the Government on 30 March 2022, considering that the Minister of the Interior had not demonstrated that GALE incited to commit violent actions and seriously disturbed public order. Similarly, by Decision of 28 April 2022, the Council of State suspended the dissolution of the association Comité Action Palestine and the de facto group Collectif Palestine Vaincra, as the Government had not demonstrated that the positions taken by these associations constituted a call for discrimination, hatred or violence or actions aimed at provoking acts of terrorism.

<sup>219</sup> On 28 March 2023, the Minister of Interior declared the intention to impose the dissolution of ‘Soulèvements de la Terre’, a CSO gathering a number of associations, on the grounds that it organised and promoted violent demonstrations. Previously, in January 2022, a similar announcement was made regarding the association ‘Nantes révoltée’, without formal dissolution proceedings being triggered afterwards.

<sup>220</sup> In particular, a threat to the freedom of association was perceived in the announcement, by the Minister of the Interior before the Senate on 5 April 2023, to look into the subsidies allocated to the Ligue des droits de l’Homme following positions it took in the context of pro-environmental demonstrations which gave rise to violent incidents. See press release of the Defender of Rights of 14 April 2023 “Des risques d’atteintes aux droits et libertés qui fragilisent la démocratie”.

filed by CSOs seeking the annulment of a decree implementing the Law on republican principles<sup>221</sup> is pending before the Council of State<sup>222</sup>.

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<sup>221</sup> Decree No. 2021-1947 of 31 December 2021 implementing Article 10-1 of Law No. 2000-321 of 12 April 2000 and approving the republican contract of engagement of associations and foundations benefiting from public subsidies or state accreditation.

<sup>222</sup> On 1 March 2022, 25 associations challenged the decree, particularly on the grounds that it does not define clearly the obligations imposed on associations by the contract of republican commitment, and gives a broad discretion on the administration. See press release of 2 March 2022 from Sherpa, France Nature Environnement, Greenpeace France, Humanité et Biodiversité, Les Amis de la Terre France, LPO, Transparency Internationale France, Notre Affaire A Tous and Zero Waste France.

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

\* *The list of contributions received in the context of the consultation for the 2023 Rule of Law report can be found at [https://commission.europa.eu/publications/2023-rule-law-report-targeted-stakeholder-consultation\\_en](https://commission.europa.eu/publications/2023-rule-law-report-targeted-stakeholder-consultation_en).*

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

The Commission services held virtual meetings in March and April 2023 with:

- Agence France Presse
- Anticor
- Anti-Corruption Agency
- Central Office for Combating Corruption and Tax Offenses
- Conference of Bar Presidents
- Council of State
- Defender of rights
- Delegation of the Bars of France
- Ethics Commissioner of the National Assembly
- European Civic Forum
- High Authority for the Transparency of Public Life
- High Council for the Judiciary
- Journalistic Ethics and Mediation Council
- League for Human Rights
- Le Mouvement Associatif
- Ministry of Culture
- Ministry of Justice
- Ministry of Foreign Affairs
- National Commission on Campaign Accounts and Political Financing
- National Consultative Commission on Human Rights
- National Council of Bar Associations
- National Financial Prosecutor
- National Journalists Union
- Paris Bar Association
- Regulatory Authority for Audiovisual and Digital Communication (ARCOM)
- Reporters without Borders
- Senate Ethics Committee
- Syndicat de la Magistrature
- Union Syndicale des Magistrats

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

- ALDA (European Association for Local Democracy)
- Amnesty International
- Civil Liberties Union for Europe
- Civil Society Europe
- Culture Action Europe
- European Centre for Press and Media Freedom
- European Civic Forum
- European Federation of Journalists
- European Partnership for Democracy

- European Youth Forum
- Free Press Unlimited
- Front Line Defenders
- ILGA Europe
- International Commission of Jurists
- International Federation for Human Rights (FIDH)
- International Planned Parenthood Federation European Network
- International Press Institute
- JEF Europe
- Osservatorio Balcani e Caucaso Transeuropa
- Philea
- Reporters Without Borders
- SOLIDAR
- Transparency International EU