



Civic Space Report 2023

FRANCE



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About European Civic Forum

European Civic Forum (ECF) is a pan-European network of nearly 100 associations and NGOs across 29 European countries: big federations of associations, national platforms uniting hundreds of thousands of NGOs, and smaller groups working at community level or engaging with the public on local issues. We work to build a democratic and civic Europe that delivers on people's needs.



About Civic Space Watch

Civic Space Watch collects findings and analyses from actors in Europe on the conditions for civil society to operate, capturing national and trans-European trends in civic space. Through ongoing monitoring of social media and regular contact and interviews with a strong network of members and partners on the ground, we strive to provide easy access to resources and improve information sharing within civil society across Europe with, policy-makers and the media.

Key Developments

- The implementation of “Separatism Law” challenges freedom of association and access to funding
- Concerns remain over the 2021 new version of the Scheme for the Maintaining of public order and de facto impunity of security forces’ violence during protests
- Organisations aiming at Muslim people’s participation and anti-discrimination are targeted by public authorities.

While fundamental freedoms are protected by the law and generally well respected, since 2015’s state of emergency introduced in response to the terrorist attacks, and then following the killing of Samuel Paty in 2020, authorities have added legal frameworks and specific measures that unduly limit civil liberties and put pressure on segments of civil society¹.

Regarding 2022, the implementation of the “Separatism Law” started to produce negative effects on the right to freedom of association and the right to access funding, with at least three cases of associations whose funding has been endangered and four decrees by the ministry of interior dissolving associations. Concerns over the right to protest remain, especially with regard to the regulatory framework for maintaining public order and accountability of security forces. In the same way, we are witnessing increased repression of actions of environmental defenders resorting to civil disobedience. Finally, several measures taken by the public authorities affect the freedom of religious expression of Muslims and the freedom of associations that support them. It should be noticed that in a significant number of cases, the judiciary took positive decisions against authorities’ abuses.

¹ France is rated narrowed on the CIVICUS Monitor.

The regulatory environment for civic freedoms

Freedom of association

In France, the law of 1901 provides a highly liberal frame for enabling freedom of association. In particular, no authorisation has to be given for citizens to come together and create an association; no condition of citizenship is required. However, civil liberties, including the freedom of association, have been under increasing pressure since 2015, after the state of emergency was introduced in response to the terrorist attacks and then again following the killing of Samuel Paty in 2020.

The “Separatism Law” challenges freedom of association and the right to access funding

The law “on the respect of the republican principles” (Law No. 2021-1109 of 24 August 2021) claims reinforcing the neutrality and secularism of public services and associations. It also amends the regime governing the dissolution of associations².

The law requires any association applying for public financing to sign a “contract of commitment to Republican principles” (thereafter, “contract”) by which it undertakes:

1. to respect the principles of liberty, equality, fraternity and human dignity, as well as the symbols of the Republic within the meaning of Article 2 of the Constitution;
2. not to call into question the secular character of the Republic;
3. to refrain from any action that undermines public order.

Administrative authorities are given the power to decide whether an organisation is not in compliance with any of the principles mentioned in the contract. In the event it judges a violation took place, the law provisions allow the immediate withdrawal of the grant or, where it has yet to be disbursed, its non-award. Appealing to the judiciary is possible only after the funding has been lost.

The law also assigns responsibility to associations for acts committed by members, linked or not to their activities, when their leaders are aware of them and have refrained from stopping them³.

² <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043964778>

³ L.212-1-1 of the Internal Security Code

In 2022, authorities began implementing the new provisions under the separatism bill with negative repercussions on freedom of association and access to funding:

- 🔍 In March, the mayor of Chalon-sur-Saone decided to forbid a public event organised for International Women's Rights Day by the local branch of the Planning Familial⁴, an association that is well recognised for more than 60 years, benefiting public funds in order to carry activities for assisting women that want to access abortion, for sexual education and gender equality. The national campaign included a promotional poster featuring a veiled woman, among others, which the mayor argued constituted a violation of the principle of secularism. The mayor's order was suspended by the Dijon administrative court⁵ and later declared illegal by the Council of State⁶.
- 🔍 In June, the Ile-de-France region suspended a subsidy to the Ligue de l'Enseignement (the oldest association in France, created in 1866) with almost a million affiliates across France after seven young participants in a publicly-funded eloquence contest formulated their point of view in ways "contrary to the values of secularism and the Republic", despite the organisation making clear that the speeches do not reflect the association's position on secularism⁷. The decision was later cancelled.
- 🔍 In October, the Prefect of Vienne challenged before the Administrative Court the grant of a subsidy from the City of Poitiers to the association Alternatiba, which fights against climate change and social inequalities with a wide resonance in society, on the ground that the latter had organised workshops on nonviolent civil disobedience actions, which, in the view of the prefect, were likely to constitute a disturbance of public order⁸. In response, several associations mobilised alongside Alternatiba in the name of respect for freedom of association, assembly and expression. A legal appeal is still pending in court.

On dissolution of associations, the law creates a new provision allowing the dissolution of any association or de facto group that provokes violent acts against persons or property⁹.

Since the beginning of 2022, there have been no less than four decrees dissolving an association or a de facto group, including two under the new provision referred to above: the "Antifascist Group of

⁴ <https://www.info-chalon.com/articles/2022/03/04/67804/gilles-platret-refuse-la-demande-formulee-par-le-planning-familial-71-et-l-accuse-de-communautarisme/>

⁵ <https://www.info-chalon.com/articles/2022/03/04/67806/gilles-platret-tente-de-museler-le-planning-familial-71-et-s-enforce-dans-ses-theories-ideologiques/>

⁶ <https://www.info-chalon.com/articles/2022/03/11/67982/le-conseil-d-etat-desavoue-gilles-platret-sur-la-question-du-planning-familial-71/>

⁷ <https://www.lefigaro.fr/actualite-france/laicite-la-region-ile-de-france-suspend-sa-subvention-a-la-ligue-de-l-enseignement-20220623>

⁸ Prefectural referral filed on October 28, 2022 before the Administrative Court of Poitiers

⁹ L. 212-1 of the Internal Security Code

Lyon and around" known as "GALE" and the "Bloc Lorrain" that claims to be an anarchist and anti-capitalist association¹⁰. The independent media "Nantes Révoltée" has also been threatened with administrative dissolution¹¹.

With regard to GALE, the Council of State cancelled the dissolution, ruling in particular that their very critical stance against the police institution could not in itself constitute a provocation to violent acts within the meaning of the new provisions and that the participation of its members or sympathisers in demonstrations where violence may have been committed could not in itself lead to the attribution of violence to the group. In essence, the Council of State seems to enshrine the political legitimacy of anti-fascism and anti-capitalism, whose freedom of expression must be protected.

On the contrary, the court confirmed the dissolution of Bloc Lorrain¹².

It is important to note that even when authorities' moves against an association do not lead to a suspension of funding or dissolution, they have severe material and symbolic costs, such as reputational damage and intimidation. In all cases, authorities' declarations or decisions divert capacities and resources away from the organisation's mission to defend itself in court and the public. Indictments, even if declared to date often undue, may also deter associations and activists from pursuing their normal actions for fear of repression.

Freedom of assembly

Articles 10 and 11 of the French Declaration des droits de l'homme et du citoyen enshrine freedom of expression. The Constitutional Council has also enshrined the right to the collective expression of ideas and opinions (CC n°94-352 DC of 18 January 1995; CC n°2019-780DC of 4 April 2019). Under French law, prefects or mayors who are receiving prior notification of demonstrations to be held in the public space may sign an order prohibiting a specific event if they consider that it is likely to disturb public order (Article L 211- 4 of the Internal Security Code). Restrictions on the right to freedom of peaceful assembly can only be decided for one of the specific purposes mentioned by the law. The measures must be limited to what is necessary to achieve the purpose and must be proportionate to the objective pursued.

¹⁰ Decree of 9 March 2022 dissolving the de facto group "Collectif Palestine Vaincra", decree of 9 March 2022 dissolving the association "Comité Action Palestine", Decree of 30 March 2022 dissolving a de facto grouping GALE, decree of 23 November 2022 dissolving the association Bloc Lorrain

¹¹ Civic Space Watch | FRANCE: "Nantes Révoltée" under threat of dissolution

¹² <https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2022-12-20/469368>

Since 2015 the right to peaceful assembly has been put under growing pressure, including through the denial of the right to hold demonstrations, extensive use of preventive detention and excessive use of force.

Concerns remain over the 2021 Plan for the Maintaining of Public Order and the impunity of security forces during protests

The National Plan for the Maintenance of Public Order (SNMO) is a document published by the Ministry of the Interior, which aims to establish the operational modalities of the maintenance of order by all internal security forces in the context of public demonstrations. The Plan was first presented on 16 September 2020 in response to the yellow vest demonstrations - characterised by an intensification of conflicts with the protesters and the routinary use of disproportionate force by the police - provides for a stiffening of policing practices, especially the possibility of encircling a group of demonstrators for the purpose of control, arrest or prevention of further unrest¹³. The Council of State cancelled the provision, considering it insufficiently precise and whose implementation is likely to significantly affect the freedom to demonstrate, deter its exercise and infringe the freedom to come and go.¹⁴

On 17 December 2021, the Ministry of the Interior published a new version of the SNMO seeking to take into account the decision rendered by the Council of State¹⁵, which is considered to remain illegal by human rights actors. Indeed, not only does it not conform with the first decision made by the Council of State, but it also contains more worrying provisions in the police practices dealing with demonstrators' rights, including the use of kettling¹⁶. Furthermore, it fails to provide clear and concrete guarantees for rights observers monitoring and reporting on police behaviours during demonstrations. An appeal against SNMO 2 is currently pending before the Council of State.

On the impunity of the police officers, legal recourse to the Council of State was filed on 26 September 2022 to ensure effective compliance with the legal requirement of visible identification

¹³ Point 3.1.4 that " Without prejudice to the non-confinement of demonstrators, which is a condition for dispersal, it may be useful, for the time just necessary, to surround a group of demonstrators for the purpose of controlling, arresting or preventing further disturbances. In these situations, people are systematically left with a controlled exit point. ».

¹⁴ THAT 10 June 2021, No. No. 444849

¹⁵ <https://www.interieur.gouv.fr/actualites/communiqués/mise-a-jour-du-schema-national-du-maintien-de-lordre-snmo>

¹⁶ https://site.ldh-france.org/paris/files/2021/12/202112_CP_SNMO.pdf

of the police officers, enabling accountability. This requirement is particularly necessary for the context of police violence that has recurrently occurred during public demonstrations¹⁷.

Although an identity and organisation repository (RIO) has been set up, it is a fact that, in practice, the tools that support the identification of law enforcement agents are ineffectively implemented. In particular, the methods of wearing the individual identification number are manifestly inappropriate, with the absence of visible wearing and the practices of voluntary concealment of the personal number.

Obstacles to so-called “civil disobedience” actions by environmental defenders continue

In recent years, the repressive tendencies of the public authorities have extended to actions of environmental defenders defined as “civil disobedience”. In the vast majority of cases, these are peaceful actions to protest against the lack of sufficient regulation to meet France’s international environmental obligations or against the insufficient implementation of existing regulations. These actions often consist of the symbolic violation of a rule to draw public attention to crucial issues and make the authorities face up to their responsibilities. It is important to note that international standards on the freedom of assembly and expression recognise that collective civil disobedience or direct-action campaigns can be covered by the right to peaceful assembly and expression, provided that they are non-violent¹⁸. The response of the authorities to “civil disobedience” actions is marked by a stiffening and a lack of discernment: disproportionate deprivation of liberty, prosecution, and physical violence at the initiative of police agents. Far from recognising the nature of the action as an act of protest and their direct link with freedom of expression and the renewed need for freedom of information in a context of climate emergency, a context recognised by the authorities themselves, there are recurrent authorities’ behaviours and decisions that correspond to criminalising the actions of environmental defenders^{19,20,21}.

The creation in 2021 of a new offence of trespassing on airport runways, punishable by six months imprisonment and a fine of 7500 euros, expanded the legal arsenal against climate activists’

¹⁷ Article 15 of the DDHC 1789 « The company has the right to hold everyone accountable. t public official of his administration”

¹⁸ [CCPR/C/GC/37 \(un.org\)](https://www.un.org/ru/sections/news/press/docs/2014/14_06_01_ccpr_cgc_37.htm) para 16

¹⁹ <https://site.ldh-france.org/st-denis-93/soutien-aux-militants-dattac-et-dextinction-rebellion/>

²⁰ https://www.lemonde.fr/societe/article/2022/05/18/la-condamnation-des-decrocheurs-de-portraits-d-emmanuel-macron-confirme-en-cassation_6126678_3224.html

²¹ <https://site.ldh-france.org/paris/files/2020/05/Rapport-d%3a9fenseur-des-droits-Manif-pont-de-Sully.pdf>

actions²² 23. This was in direct connection with a successful protest against the extension of Roissy airport, as it was abandoned, among other things, in view of climate issues²⁴. Draft bills, some of which are still under discussion, seek to broaden the repression of actions disrupting economic activities under the argument of assimilating them to infringements of fundamental freedoms.²⁵

Cases described in the section “The implementation of “Separatism Law, challenges freedom of association and right to access to funding” illustrate how the public authorities use the provisions of the so-called “separatism” law of 24 August 2021 to hinder the freedom of association on the grounds that civil disobedience actions would contravene to the “republican values” as defined in the separatism bill, through attempts to ban demonstrations and withdraw public subsidies on these grounds.²⁶ On 10 October, the Ministry of the Interior also sent a circular to all prefectures detailing the application of the contract of commitment to Republican principles. The document gives concrete examples in a chapter entitled “In what cases can we consider that the Republican Commitment Contract (CER) is not respected?” which cites an example of an environmental association created to oppose the construction of a radioactive waste storage site²⁷. Even if appeals to the judiciary are often successful, the legal and regulatory texts and their implementation against “civil disobedience” actions contribute to the deterioration of active citizens to trust institutions’ willingness to guarantee public freedoms and a democratic debate.

²² <https://monitor.civicus.org/updates/2021/09/01/national-assembly-approves-controversial-separatism-bill-massive-protests-opposing-passsanitaire/>

²³ https://www.legifrance.gouv.fr/jorf/article_jo/JORFARTI000044176999

²⁴ https://www.francetvinfo.fr/meteo/climat/climat-sept-militants-juges-pour-s-et-re-introduit-sur-le-tarmac-de-l-aeroport-de-roissy_4791327.html

²⁵ <https://www.senat.fr/dossier-legislatif/ppl18-023.html>

²⁶ <https://france3-regions.francetvinfo.fr/nouvelle-aquitaine/vienne/poitiers/et-si-desobeir-etait-reconnu-d-interet-general-la-prefecture-n-apprecie-pas-et-demande-de-retirer-les-subsventions-publiques-a-alternatiba-poitiers-2615668.html>

²⁷ <https://www.mediapart.fr/journal/france/130123/la-repression-de-la-desobeissance-civile-se-generalise>

The principle of non-discrimination

The repression of associations in the name of the fight against Islamism

In the name of the "fight against separatism", "communitarianism" or "Islamism", associations defending the rights of Muslims, as well as those showing solidarity with these populations, have become the target of smear campaigns and sanctions by the public authorities.

Smear campaigns are public comments by political or administrative officials to denigrate an association or one of its members. The smear campaigns are based on three types of accusations: "proselytising" and "undermining secularism"; "separatism" and "communitarian" practices; and finally, association with groups or individuals said to be "radicalised" or threatening the "values of the Republic".

They are sometimes used to justify forms of hindrance: financial and material (loss of subsidies), regulatory and administrative (loss of accreditation, denial of service, dissolution).

Such acts of repression are never decided through judicial procedures but through administrative decisions that do not respect the principles of a fair process (contradiction, non-retroactivity, presumption of innocence, proportionality, possibility of appeal).

The report of the Observatory of associative freedoms (2022) lists for the years 2016-2021 20 cases of sanctions against associations for which public authorities accused them of "separatism", "communitarianism", "religious radicalisation" or "proselytism"²⁸. The alleged facts are quite diverse, ranging from public statements denying the concept of Islamophobia and related actions done to oppose its manifestations, criminalising collective actions concerning the right to wear the headscarf in the context of social activities and even attacking activities related to providing services in relation to Islam (distribution of meals, organisation of a buffet during a conference...).

By penalising associations whose practices are legal under current law and sometimes on charges with uncertain factual bases, these administrative decisions are dangerous and counterproductive. Dangerous because they illustrate more than often arbitrariness and undermine the rule of law. And

²⁸ https://civicspacewatch.eu/wp-content/uploads/2022/02/Rapport_Chasse-aux-Sorcieres_2022_VF.pdf

counter-productive because they contribute to deepening the civic marginalisation of Muslim citizens through the weakening or disappearance of legal associations.

Burkini ban spurred on by the government

In the context of a growing trend of hate speech against people of Muslim faith, in the summer of 2016, a number of French local authorities issued municipal decrees banning the wearing of a swimming costume worn by Muslim women, the burkini, on beaches, referring to a principle of secularism.

The misguided use of the principle of secularism was not upheld by the high administrative court, which censured this banning measure on the grounds that it seriously violated fundamental freedoms, namely the freedom of movement, the freedom of belief and the personal liberty²⁹.

Nevertheless, some municipalities continue to take such banning measures as summer approaches, regularly with the indifference or complicity of the prefectural authorities, who still do not intend to exercise their duty of control of the legality of these measures despite their highly liberticidal nature³⁰.

Yet, by prohibiting access to bathing to any person who wears a burkini, a cloth that respects the rules of hygiene and safety adapted to the public maritime domain, the contested orders hinder free access to a public space that has to be open to all. They prevent the exercise of fundamental freedoms in this space in a discriminatory manner and without any justification.

Discrimination in access to sports and ban on protest

Wishing to assert their right to play football while wearing a veil and, more generally religious symbols, a group of women decided, in the face of the absence of any support neither from the authorities at the national level, nor the sports authorities, to organise a protest event with some MPs in front of the National Assembly³¹.

²⁹ <https://www.conseil-etat.fr/decisions-de-justice/dernieres-decisions/ce-ordonnance-du-26-aout-2016-ligue-des-droits-de-l-homme-et-autres-association-de-defense-des-droits-de-l-homme-collectif-contre-l-islamophobi>

³⁰ <https://www.varmatin.com/politique/linterdiction-du-burkini-sur-les-plages-et-dans-les-piscines-municipales-de-frejus-fait-des-vagues-768506>

³¹ <https://www.mediapart.fr/journal/france/090222/la-prefecture-de-paris-prive-les-hijabeuses-d-un-match-devant-l-assemblee>

By an administrative order dated 8 February 2022, the prefect of police of Paris banned the event entitled *"MPs play football with hijabeuses"*, which should have taken place on the following day.

In order to ban this demonstration, the police prefect used reasons that were full of misleading statements and approximations, such as the fact that the demand for this event was subject to *"lively debates and a major split within society between supporters of the affirmation of a political Islam, which advocates the wearing of the veil by women, and supporters of the republican values of equality between women and men"*.

This ban, which violated the freedom of demonstration, was suspended by the Administrative Court, which ordered the Paris police prefect to remove all obstacles to holding the declared demonstration³².

The "Hijabees" protest is in relation to measures taken by the French Football Federation in the name of an undue interpretation of the principle of neutrality that it claims is to be imposed on people's participation in sports events.

While the International Football Federation (FIFA) had authorised in 2014 Muslim female footballers to wear the veil on the playing fields as a sign of tolerance and respect of religious freedom as defined in the Universal Declaration of Human Rights, the statutes of the French Football Federation (FFF), established for the 2021-2022 season, prohibit *"during competitions or events organised by the federation or in connection with it, (any) speech or display of a political, ideological, religious or trade union nature, (any) wearing of signs or clothing ostensibly expressing a political, philosophical, religious or trade union affiliation, (and) any act of proselytising or propaganda"*.

By instituting such a rule, the FFF has created an obligation of what they claim to be a neutrality for its players, the scope of which is both general and absolute. However, in France, the law says that the principle of secularism and the applicable texts only apply to the public agents invested with a public service mission are invested with such an obligation of neutrality, to the exclusion of their users and, more generally, of the public for whose benefit the public service activity or the mission of general interest is carried out.

The Conseil d'Etat is examining an application for annulment of FFF ruling.

³² Ord. TA Paris, 9 février 2022

Recommendations

Regulatory environment for civic freedoms:

- Freedom of association: The application of the law “on the respect of the republican principles” and the so called “Contrat d’engagement républicain” have been successfully challenged in courts. The law should now be amended and the contract withdrawn in line with the full respect of civic freedoms.
- Freedom of assembly: The “Plan for the Maintaining of the Public order” contains a number of provisions that significantly limit the right to peaceful demonstration. It shall be modified to follow best practices in other European countries. The Government should develop accountability mechanisms for police forces, particularly an effective identification of police officers, and ensure their proper implementation.
- Freedom of expression: Legal and regulatory texts and their implementation regarding “civil disobedience” actions should recognise the nature of the actions as acts of protest and their direct link with freedom of expression and the right to information in the context of climate emergency.

Safe space and right to participation:

- Non-discrimination: For specific communities, particularly Muslim people and some vulnerable groups, counter-terrorism laws and their implementation have a proven negative impact on their rights, especially the right to freedom of association, freedom of assembly and right to participation, and access to justice and fair trial – crucial principles of the rule of law. The European Commission, with the support of the European Union Agency for Fundamental Rights should monitor and assess the impact of counter-terrorism laws and their compliance with the Charter of Fundamental Rights of the European Union. The French government shall take measures to redress these impacts.

About the author

Ligue des droits de l'Homme is an association founded in 1898. It is a highly recognised civic actor, acting in total independence of political parties, and public authorities. It claims to be a political actor in the sense of dealing with all issues of public interest for the effective access to all rights for all. It is therefore an actor of the public debates. It acts against injustice, racism, sexism, anti-Semitism and discrimination of all kinds. It acts for the development of an active citizenship which relies on a strong and vibrant democracy and extended solidarity. It defends a secularism of the State that favours inclusion for all faith and belief. It fights against any xenophobic instrumentalisation, freedoms, equal rights and fraternity as the basis of a fraternal society and, therefore, of solidarity.





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