



Civic Space Report 2024

FRANCE





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.

About this report

This analysis was published as part of the European Civic Forum's Civic Space Report 2024. The full report contains chapters written by its secretariat, by member organisations, or by partner organisations and individuals. Much of the content originally appeared as part of ECF's submission to the European Commission's Rule of Law consultation. Each chapter reflects the views and analysis of its respective author. For more information about the European Civic Forum, please visit www.civic-forum.eu

Read the full report at

civic-forum.eu/CivicSpace24

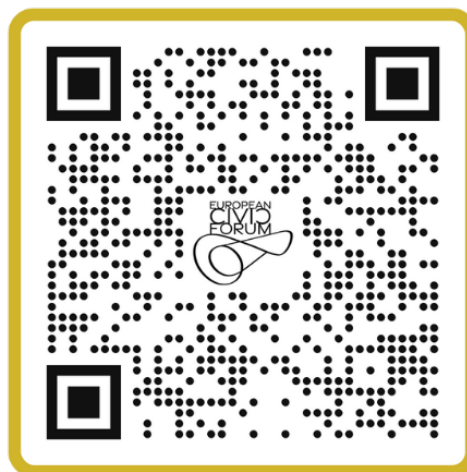


TABLE OF CONTENTS

SUMMARY	7
THE ROLE PLAYED BY GOVERNMENT ACTORS IN THE RESPECT OF THE RULE OF LAW	9
DISREGARD FOR THE RULE OF LAW IN THE APPLICATION OF MIGRATION POLICY	9
AUTHORITIES PASS OFF RESPONSIBILITY FOR COMPLIANCE TO CONSTITUTIONAL COUNCIL	10
ATTACKS ON FREEDOM OF EXPRESSION AND ASSEMBLY	12
ADMINISTRATIVE ORDERS BANNING DEMONSTRATIONS	12
POLICE INTIMIDATION, OBSTRUCTION TO THE FREEDOM TO DEMONSTRATE	17
LACK OF RECOGNITION OF OBSERVER STATUS	21
POLICE VIOLENCE	23
VIOLATIONS OF FREEDOM OF ASSOCIATION	27
REPEATED PUBLIC ATTACKS BY THE POLITICAL AUTHORITIES ON CIVIC ORGANISATIONS	27
REPEATED DISSOLUTION OF ASSOCIATIONS BY ADMINISTRATIVE DECISIONS	28
RECOMMENDATIONS	31
ABOUT EUROPEAN CIVIC FORUM	32

Summary

The contribution we are presenting this year for France takes account of a significant number of facts which, taken together, indicate a situation that can be described as deleterious in terms of the commitment of the French authorities to ensuring a high level of compliance with best practice in terms of the Rule of Law.

In 2023, the number and nature of breaches to the rule of law in France intensified, bringing it on a path to systemic failure. The European Civic Forum (ECF) and its member Ligue des droits de l'Homme (LDH) have expressed serious concerns about the French government's ongoing disregard for the rule of law and civic space. We have highlighted that when concerns are not addressed at an early stage, the situation often further deteriorates. In the French case, the accumulation of multiple and repeated specific attacks over time has resulted in a worrying deterioration. The repeated violations of the right to peaceful assembly, expression, police violence, and the adoption of legal provisions in the migration bill- openly contrary to Constitutional order- are having a serious impact on society. It feeds public demoralisation and doubts in the role of functional institutions in upholding values and principles.

On several occasions, we have raised these concerns in real time, including with the European Parliament (LIBE Committee), the European Commission. We jointly requested a hearing with European Commissioner for Justice, Didier Reynders, in order to compare the respective approaches of the Commission and our civil society organisations, both in terms of assessing the seriousness resulting from the accumulation of breaches and the means of exerting pressure to halt what can be considered a steadily ongoing deterioration, that brings France close to a systemic failure.

Throughout the year checks and balances overly have relied upon the judicial system to hold political and administrative authorities to account and to protect fundamental rights, more so than through the doing of elected decision makers.

It has been particularly visible during adoption of the migration law in Parliament in the very last weeks of 2023 by the parties supporting the government ("Renaissance" and junior partners), "Les Républicains" and the "Rassemblement National". After adoption, both the President of the Republic and the Prime Minister said that a significant number of its provisions are not in conformity to the French Constitution and the European Convention for Human Rights, and they then asked the Constitution Council to check all its provisions. This process marks a crucial breach to the proper functioning of the rule of law in a mature democracy. It is concerning that the French President and Prime minister set aside their institutional responsibilities that includes acting in conformity with the Constitution and called for their duty to be addressed by the Constitutional judges. This is the more

worrying when the far-right is attacking a so-called “power of the judges” that would hamper the capacity of the elected decision-makers to act, who are joined by right-wing politicians calling for France to withdraw from the ECHR.

Civil society groups continued to be challenged by the law “on the respect of the republican principles,” with the dissolution and undue withdrawal of public funding of several associations and groups. On a positive note, misdoing by authorities was repeatedly and successfully challenged in front of the judiciary. The Council of State, the highest court, ruled against the dissolution of the environmental group, Soulèvements de la Terre. On a number of occasions, the judiciary annulled decisions taken by administrative authorities to ban demonstrations.

Conversely, associations have had to censor activities even when in accordance with law in order to continue to receive public funds. Politicians have acted to discredit non-for-profit civil sector associations who have scrutinised their decision, or have acted to make institutions accountable for their behaviour.

Additionally, civic actors have staged protests on issues including on pension and retirement reforms, environmental rights, solidarity with the Palestinian people, killings by police officers. These protests have repeatedly and consistently been met with undue and disproportionate police violence, and prefects’ bans including by means of decisions that were published or notified at very short notice before, or even during the demonstrations.

Global index by the Civicus Monitor reflects a deterioration in civic space in France, rating it as “narrowed.”¹

¹ <https://monitor.civicus.org/country/france/>

The role played by government actors in the respect of the Rule of Law

Disregard for the rule of law in the application of migration policy: an ongoing practice

The Minister of the Interior, Gérard Darmanin, regularly communicates his claimed non-compliance with international conventions, particularly the Convention for the Protection of Human Rights and Fundamental Freedoms.

The case of Imam Hassan Iquioussen² was an opportunity to blur the message conveyed by human rights defenders, as this person had made anti-feminist and anti-LGBT comments, thereby allowing the creation of a climate hostile to his presence on French territory.

Shortly after the terrorist attack in Arras on 14 November 2023, the Minister of Interior deported an Uzbek national (subject to an administrative decision prohibiting his stay since April 2021) on suspicion of proximity to the jihadist movement.³ This expulsion was carried out despite a decision by the European Court of Human Rights ordering the French government not to take such a measure, pending a judgement on the risks involved. Although the Council of States interim relief judge suspended the order, it had already been executed, the person being placed in detention on arrival in Uzbekistan.

The President of the French National Consultative Commission on Human Rights wrote to the Prime Minister, to express his concern that the Interior Minister's claims violated the ECHR decision.⁴ He

² <https://www.ldh-france.org/arrete-dexpulsion-de-m-hassan-iquioussen-la-ldh-appelle-au-respect-du-droit/>

³ https://www.lemonde.fr/societe%20/article/2023/12/12/gerald-darmanin-epingle-pour-avoir-expulse-un-ouzbek-en-violation-d-une-mesure-prescrite-par-la-cedh_6205349_3224.html

⁴ <https://www.cncdh.fr/publications/lettre-de-la-presidence-la-premiere-ministre-la-suite-de-lexpulsion-dun-ressortissant>

added concern about the "growing criticism in the public debate on migration issues of the primacy of international law, and more particularly of fundamental rights."

An unaccompanied minor was kept in a waiting zone at Orly airport, despite a decision to suspend, on a provisional basis, her return to her country of origin, even though she should have been entrusted to the child welfare services (aide sociale à l'enfance - ASE) as she could not be expelled.

Highest political state authorities claim they put to Parliament vote unconventional and unconstitutional provisions, passing off their political responsibility for compliance to the Constitutional Council

Following the early December vote in the Assemblée Nationale (one of the chambers of the Parliament) that rejected considering the immigration bill⁵, Mr Darmanin tendered his resignation (which was refused by the President of the Republic) and the immigration law was anew put forward by the Prime Minister.

During the adoption of the immigration law in December, the Minister of Interior, Gerald Darmanin, stated that provisions put to the vote were contrary to the Convention for the Protection of Human Rights and Fundamental Freedoms (CSDH), but that he intended to maintain them.⁶ Concerns included that the law violates article 8 of the Convention on respect for private and family life.

Fully aware of this non-compliance, the leader of the Les Républicains (LR) party in the French Senate, Bruno Retailleau, tabled a constitutional bill to escape the French and European legal frameworks on migration. He called for the amendment of Article 55 of the French Constitution, which stipulates that treaties take precedence over laws, and Article 88-1 on the primacy of European Union laws over national laws. Mr. Darmanin expressed support to debate the issues without mentioning any opposition to the proposal. It was only due to the defection of the LR's centrist allies in the Senate that the proposal was finally withdrawn.

After the law was adopted, Mr. Darmanin stated again that some provisions included in the law were "manifestly and clearly contrary to the Constitution", while pointing out that "politics is not about being a lawyer before lawyers" and referring to the role the Constitutional Council had to play.⁷

⁵ <https://civicspacewatch.eu/france-draft-immigration-bill-threatens-human-rights/>

⁶ <https://www.publicsenat.fr/actualites/politique/la-cedh-empeche-t-elle-lexpulsion-des-etrangers-qui-menacent-gravement-lordre-public>

⁷ https://www.lemonde.fr/politique/article/2023/12/21/le-conseil-constitutionnel-charge-par-l-executif-de-corriger-la-loi-immigration_6207061_823448.html

For the time being, it remains that provisions contrary to the CSDH have been defended by the government and passed into law. This led to the transferring the responsibility of deciding which measures to reject according to what is not applicable under the Convention to the courts. The government's failure to acknowledge its responsibilities in conformity with the law is a major blow for the rule of law.

It has to be noted that the politicisation of applicable legal provisions has also been reflected in decisions by several "Departments" run by left-wing majorities.⁸ They claimed not to apply the new requirements for payment of the Personalized Autonomy Allowance (APA - Allocation personnalisée d'autonomie), which the law now makes conditional on five years' regular presence on French territory for people who are not working and two and a half years for those who are working.

The submission of the voted law for the opinion of the Constitutional Council by both the Prime Minister and the President of the Republic, has already been denounced by parliamentarians from the far-right and the right who voted for the law as a political manoeuvre with a reinforced rhetoric against the rule of law, particularly the narratives against "a government of judges" and against European treaties, and more generally against human rights fed by the process followed by the Prime Minister and President.

In summary, for the time being, it remains that with full knowledge, provisions contrary to the Convention for the Protection of Human Rights and Fundamental Freedoms have been defended by the government and put into law. This has led to transferring the responsibility of deciding to judges which measures to reject according to what is not applicable under the European Convention and the French Constitution. The government's failure to acknowledge its responsibilities for conforming with the law has to be understood as a major blow to what the rule of law stands for.

⁸ <https://www.publicsenat.fr/actualites/projet-de-loi-immigration/loi-immigration-plusieurs-departements-de-gauche-refusent-dappliquer-la-preference-nationale>

Attacks on freedom of expression and assembly

Administrative orders banning demonstrations

As part of the pension mobilisation in Paris

During the spring of 2023, prefects banned demonstrations against pension reform by means of decisions that were published or notified at very short notice before or even during the demonstrations.

In Paris, for example, bans on demonstrations issued by the Prefect of Police, almost daily for several weeks, were regularly published a few hours before the planned demonstration was due to start.

In fact, no less than eight prefectorial decrees banning demonstrators between 23 and 28 March were published the evening before they came into force, and civic actors (as LDH) were unable to challenge them effectively because the judge of appeal did not have time to rule before the ban came into force.

Delayed publication of such a ban nullifies any possibility of lodging an appeal against it in good time, thereby undermining the exercise of the right to peaceful assembly and the right to effective remedy.

Following these end of March decrees, at the request of the LDH and several other organisations, the Paris Administrative Court ordered the *Préfecture de Police* to publish orders banning gatherings in certain areas within a timeframe that allows them to be contested (*TA Paris, Association de défense des libertés constitutionnelles et autres, 4 avril 2023, no. 2307385/9*).

On 16 May 2023, the LDH asked the Prime Minister to repeal legal provisions that allow for the late publication of decrees and disproportionately infringe on the right to effective legal remedy and to collective expression of ideas and opinions. In the absence of a response, which was tantamount to an implicit refusal, the LDH lodged an appeal for annulment of this de facto refusal, together with a request that a priority question of constitutionality be referred.

In a decision handed down on 4 December, the Council of State rejected the appeal, its merits and the request for the priority constitutionality issue to be referred to it, while attaching safeguards to its decision. Thus, while the High Administrative Court notes that the possibility of public order disturbances may only become apparent shortly before the demonstration takes place, the administrative authority must, before taking a decision to ban the demonstration, assess whether other measures that are less intrusive, such as adapting the planned route or limiting the duration of the demonstration, would likely prevent these risks. In addition, the Council of State mentioned the obligation to inform the public by any useful means of the ban imposed and, as far as possible, to carry out these various information measures within a timeframe that allows the matter to be brought before the administrative court. Lastly, the court was careful to emphasise that there can be no question of imposing a ban on demonstrations - and therefore imposing a penalty in the form of a fine - before the ban has been adequately publicised.

However, it is important to note that these case law clarifications have not prevented some prefectures from repeating their previous practices for the demonstrations in protest of Israel's operations in Gaza since 7 October.

Banning of protests when the President of the Republic travels in France

In a decree dated 24 April 2023, the Prefect of the Loir-et-Cher department set up a protective perimeter for the presidential visit scheduled for 25 April, prohibiting protest rallies and sound amplifying devices within this perimeter.

The LDH and the SAF (*syndicat des avocats de France*) brought an application for interim relief in front of the Orléans Administrative Court. In an order dated 25 April, the administrative court issued a stay of execution of the disputed order, noting in particular that a protective perimeter under these provisions can only be set up by the prefect to ensure the security of a place or event exposed to a risk of acts of terrorism due to its nature and the scale of its attendance.

In the absence of special circumstances, a visit by the President of the Republic cannot be considered to justify, by its very nature, the establishment of a security perimeter. The interim proceedings judge also ruled that the current social climate and, in particular, the mobilisation linked to the protest against the pension reform were not sufficient, even though several demonstrations had given rise to violence and damage by rioters, to characterise the existence in this case of a risk of acts of terrorism within the meaning of article L. 226-1 of the Internal Security Code.

In an order dated 26 April 2023, the Prefect of the Doubs department set up a protective perimeter prohibiting demonstrations and imposed various administrative police measures in the towns of La Cluse and Mijoux as part of the visit by the President of the Republic on 27 April. The LDH and the SAF lodged an application for interim relief. The Doubs Prefect withdrew the contested order before

the hearing, leading the judge at the Besançon Administrative Court to rule that there was no need to continue with the interim proceedings.

In an order dated 19 April, the Prefect of the Hérault issued a decree establishing a protection perimeter within which the use of "portable sound devices" was prohibited, in the light of a visit by the President to the commune of Ganges on 20 April.

As the order was issued too late, it would have been futile to file an application for interim relief, since the judge was unable to rule before the start of the presidential visit.

However, the LDH and ADELICO lodged an appeal to have the administrative court rule on the legality of this order. The case is pending.

Banning of protests in support of the Palestinian people

The Minister of the Interior has been curtailing the freedom of peaceful assembly and expression by issuing a new round of orders banning demonstrations denouncing Israel's operations in Gaza.

On 12 October 2023, in an administrative letter issued to all departmental prefects, the minister asked for a systematic ban on all demonstrations in support of the Palestinian people, explaining that each of them was to be seen as inviting support for Hamas, at the very moment when many in the international community were stressing the importance of putting forward a political solution and at the same time the Israeli government was announcing the imminence of a ground offensive that would result in a considerable number of casualties, mainly in Gaza, but also in the West Bank.

The prefects followed the Minister's order and most systematically banned many gatherings throughout the country, which called for a ceasefire, for a just and lasting peace⁹.

In an interim order dated 18 October 2023, the judges of the Council of State hearing an appeal against the Minister's letter, recalled that it was up to the prefects alone to assess, on a case-by-case basis and under the supervision of the administrative judge, whether there were grounds for banning a demonstration with a direct link to the Israeli-Palestinian conflict. The prefects could not legally decide to ban a demonstration solely by referring to the letter issued by the Minister or solely on the grounds that the demonstration in question was intended to support the Palestinian people¹⁰.

⁹ <https://www.mediapart.fr/journal/fil-dactualites/121023/darmanin-ordonne-l-interdiction-des-manifestations-pro-palestiniennes-et-l-interpellation-des-org>;
<https://www.amnesty.org/en/latest/news/2023/10/ban-on-protests-supporting-palestinians-is-disproportionate-attack-on-the-right-to-protest-in-france/>

¹⁰ https://www.francetvinfo.fr/monde/proche-orient/israel-palestine/le-conseil-d-etat-rejette-le-recours-depose-contre-l-interdiction-de-manifestations-pro-palestiniennes_6129585.html

Since then, even if not in systematic way, a number of prefectures have issued orders banning demonstrations declared by the Association France Palestine Solidarité (AFPS) in support of peace and a ceasefire in Gaza.

Against these bans, the LDH lodged several applications for interim relief on the grounds that the freedom of peaceful assembly was clearly being infringed, which enabled the courts to suspend the bans in Auxerre, Dijon, Laval, Nancy, Nîmes, Nice and Rennes.

In Nice, the Prefect of Police issued no less than ten successive orders banning gatherings organised by the *"Collectif 06 pour une Paix juste et durable entre Palestiniens et Israéliens"* (06 Collective for a just and lasting peace between Palestinians and Israelis (translated from French)). All were suspended by the administrative court on the grounds of serious and manifestly illegal infringement of the fundamental freedoms of expression and assembly, and in one of its decisions (of 18 November 2023), the interim judge pointed out the prefect's obstinacy in an approach that had already been judged illegal.

Despite the systematisation of the bans on gatherings, the Council of State ruled that even with this repetition of bans there was no evidence to show that an administrative decision instituted a general and absolute ban contrary to fundamental freedoms, merely a general guideline for maintaining public order for which the Prefect is responsible. This ruling by the highest court is most surprising given that the Prefect Hugues Moutouh in an interview with France Bleu Azur on 7 November endorsed the ban on protests, stating: "For the past few weeks, I have decided to systematically ban demonstrations which, under the guise of defending peace and the Palestinian people, are incitement to hatred of Jews. This is part of an attack on intangible public order. There is no need for demonstrations to descend into violence"¹¹

Since then, the Prefect of the Alpes Maritimes has tirelessly continued to ban the Collective's gathering every week, despite weekly censures by the administrative court.

Ban on Salah Hamouri's conferences

Since Salah Hamouri's expulsion by Israel and his arrival in France in December 2022, the French Palestinian activist has had to contend with regular orders against him issued by the Ministry of Interior, in the name of an alleged risk of disturbing public order, prior to speaking engagements.

For example, on the eve of an event due to take place on 15 March 2023, the Prefect of Meurthe-et-Moselle banned the conference entitled "Son of Jerusalem, expelled from his native land by Israel", to be held at the Pichon youth and cultural centre in Nancy. The LDH challenged this decision by a legal freedom petition filed in parallel with the one presented by the Association France Palestine

¹¹ <https://www.marianne.net/societe/manifestation-pour-gaza-a-nice-la-justice-suspend-l-interdiction-la-prefecture-oublie-de-retirer-son-tweet>

Solidarité Lorraine Sud, Amnesty International France and Hamouri himself, citing in particular the clear infringement of constitutional freedoms such as freedom of peaceful assembly and expression. In an order dated 16 March, the Nancy Administrative Court suspended the contested order, recognising that right to peaceful assembly had been seriously, manifestly and unlawfully infringed and found that the risk of public order disturbance was not sufficiently serious¹².

¹² <https://www.ldh-france.org/le-muselement-de-salah-hamouri-censure-par-le-tribunal-administratif/>

Police intimidation, obstruction to the freedom to demonstrate

Monitoring demonstrators

The strong social mobilisations linked to pension reform and those linked to climate and environmental concerns have led to an increase in the use of abusive means of surveillance and to significant repressions by the public authorities.

The newspaper Mediapart revealed the decision to set up a personal data processing system on behalf of the State, by the magistrates of the public prosecutor's office of the Lille judicial court. The purpose of the system is to collect the surname, first name and date of birth of the participants of demonstrations held in police custody, even when no criminal proceedings are subsequently instituted.

The Chancellery did not deny the reality of the implementation of such data processing since it stated that "local initiatives may have led to the implementation of dedicated tools for monitoring and processing procedures brought to the attention of the judicial authorities. There are no existing applications that are covering this need".

LDH, along with other civic organisations, decided to lodge an application for interim relief with the Lille Administrative Court in order to stop this decision, which infringes on fundamental freedoms, in particular the right to privacy, freedom of expression and freedom to peacefully assemble.

On 19 May 2023, the court agreed to this request and ordered the deletion of personal data files of the people placed in police custody when demonstrating against the pension reform. It stated that the file constitutes processing of personal data covered by the provisions of the Act of 6 January 1978 relating to data processing, files and freedoms, and that its implementation without the prior intervention of a regulatory text authorising its creation, terms of use and the safeguards, constitutes a serious and manifestly unlawful infringement of the right to respect for private life, which includes the right to protection of personal data.

Briefcam software

On 14 November 2023, the "Disclose" website published an investigation revealing that a large number of government departments and local authorities had acquired Briefcam's artificial

intelligence software¹³ without any legal authorisation and, above all, in a context in which municipal police forces are not allowed to use it, given their legal prerogatives, while national police forces could only use it in cases of absolute necessity¹⁴.

According to the online magazine NextImpact, Briefcam is used daily by the services of at least 34 local authorities, including Roubaix, Vannes, Vitrolles, Nice, Vienne, La Baule, Vaulx-en-Velin, Deauville, Nîmes and Aix-les Bains.

In response, on 15 November 2023, on the X (formerly known as Twitter), the CNIL (Commission Nationale Informatique et Libertés) announced that it was initiating a control procedure following the publication of the investigation into the use of video surveillance software published by Briefcam.

The LDH, the Syndicat de la Magistrature and “Solidaires” (a TU) have decided to challenge the use of this software by local authorities outside any legal framework with the administrative court. The case is still pending.

Drones to support administrative policing and increased surveillance of demonstrators

On 19 April 2023, the government adopted the decree on the use of image processing devices installed on drones for administrative police purposes, the provisions of which infringe the right to privacy and the protection of personal data.

LDH lodged an action for annulment with the Council of State. It argued that the provisions of the decree disregarded conventional and constitutional requirements related to the respect for private life by interfering in an unjustified and disproportionate manner with the right to private life and to the protection of personal data, constitutional and conventional requirements for the protection of personal data. The Court’s decision is pending.

The use of drones as a tool to repress protest movements followed, most notably during the social movement against pension reform. Then, numerous prefectorial orders authorising the use of drones during demonstrations were issued throughout France between May and September 2023.

In its decision validating the use of drones, the Council of State entered two reservations of interpretation: In a first reservation of interpretation, it ruled that “the prefect’s authorisation

¹³ Briefcam, an Israeli company and subsidiary of the Canon group, devotes a large part of its business to the development of algorithmic video surveillance technology tools which, through the use of using the so-called artificial intelligence applications, can analyse images captured by cameras or drones and is able to detect situations qualified by the user of the software as abnormal by along the processing algorithms. Briefcam is also touted by distributors as “the best facial recognition technology”.

¹⁴ <https://www.ldh-france.org/briefcam-souriez-vous-etes-filmes/>

determining this purpose and the perimeter strictly necessary to achieve it, as well as the maximum number of cameras that may be used simultaneously within the same geographical perimeter, cannot, without infringing the right to respect for private life, be granted until the prefect has ensured that the service cannot use other less intrusive means with regard to this right or that the use of these other means would be likely to result in serious threats to the physical integrity of the officers”.

In a second reservation of interpretation, it ruled that “the renewal of such authorisation cannot, without disregarding the right to respect for private life, be decided by the prefect without it being established that the use of these airborne devices remains the only means of achieving the objective pursued” (press release on CC 2021-834 DC 20 January 2022, law on criminal liability and internal security). However, it has to be said that administrative judges are inclined to validate orders providing for the use of drones without really investigating whether they are subsidiary¹⁵.

The introduction of AI to detect suspicious behaviour via cameras in the context of the Paris Olympic games

The Olympic Games Act was considered as an opportunity by French authorities to introduce AI into video protection cameras and drones with the aim to detect "suspicious behaviour". It is introduced on “an experimental basis” but the provision of the law (n° 2023-380 of 19 May 2023) could be extended beyond the Olympic Games, to 2025.

The government has asserted that AI-based applications are to detect situations including 'suspicious' behaviour. However, at this stage, there is no guarantee of how the implemented algorithms will work, in particular but not only, to avoid discriminatory bias notably on the basis of ethnic characterisation.

Already, some towns and cities seem to be seizing on the possibility of using these surveillance tools in public spaces on a very wide scale, even though the law only allows algorithms to be used to "secure sporting or cultural events".¹⁶ There is no real control over whether or not facial recognition is implemented with the AI applications, a use which is not permitted by law. For the time being, the administrative judge has refused to halt the use of such applications, as requested by LDH, as long as it could not demonstrate that facial recognition was actually being used¹⁷.

¹⁵ <https://www.conseil-etat.fr/actualites/emploi-de-drones-a-des-fins-de-maintien-de-l-ordre-le-conseil-d-etat-rejette-la-demande-de-suspension-du-decret-du-gouvernement>

¹⁶ https://www.lemonde.fr/societe/article/2024/01/02/pourquoi-la-promesse-de-videogerer-les-villes-avec-des-cameras-couplees-a-une-intelligence-artificielle-seduit-et-inquiete_6208686_3224.html

¹⁷ <https://www.ldh-france.org/projet-de-loi-jeux-olympiques-et-paralympiques-2024-limportant-cest-de-surveiller/>

Preventive arrests, a gagging procedure against the right to expression

In 2010, the so-called “Estrosi” law created an offence for “obstruction” or “prevention” and criminalises a person that “knowingly takes part in a group, even one formed on a temporary basis, with a view to preparing, as evidenced by one or more material acts, deliberate violence against persons or destruction or damage to property”, punishable by one year's imprisonment and a €15,000 fine” (article 222-14-2 of the Criminal Code).

Although the Council of State validated this text, the National Consultative Commission for Human Rights expressed concern about “the excessive use of judicial police procedures diverted from their purpose in order to maintain law and order, both in terms of the large-scale use of police custody prior to certain demonstrations and the conditions under which [potential] “rioters” or “troublemakers” are questioned”.

On 26 February 2019, the Council of Europe's Commissioner for Human Rights condemned the numerous arrests including for holding objects considered suspicious by the police, sometimes in a questionable manner (a diving mask or a yellow waistcoat, for example), under article 222-14-2 of the Criminal Code, to the extent that she wondered “whether the objective pursued in this way is not more to prevent participation in a demonstration than to punish the an effective offence” (§39).¹⁸

The “*Défenseure des droits*” mentions a protest in Paris on 18 March 2023, where 283 of the 292 people questioned were released without any charge, demonstrating that there was no evidence of an offence, and that the assessment of “potential risk” was left to police officers' subjective discretion. The “*Contrôleuse générale des lieux de privation de liberté*” issued a report on police custody related to two pension reform protests held in March 2023, expressing concern about the possible misuse of a judicial measure of deprivation of freedom to move (police custody) under a pretext of maintaining public order, to prevent demonstrations¹⁹.

LDH, Amnesty International, the Syndicat des Avocats de France and the Syndicat de la Magistrature have called for this “Estrosi Law” provision to be repealed, as it constitutes an infringement of the peaceful assembly through abusive and unfounded detention in police custody and the undue abuse of the judicial system under the guise of maintaining law and order.

LDH intervened in support of the application for an interim freedom measure (un référé-liberté) brought by the Association for the Defence of Constitutional Freedoms (ADELICO) to put an immediate end to the use of the so-called “preventive arrest technique” in the policy the Paris Police

¹⁸ <https://rm.coe.int/commdh-2019-8-memorandum-france-en/1680932f57>

¹⁹ <https://www.cglpl.fr/2023/enquete-sur-les-mesures-de-garde-a-vue-prises-dans-le-contexte-des-manifestations-contre-la-reforme-des-retraites/>

Prefect, as witnessed during organised protests against the government's use of Article 49.3 of the Constitution for adopting the Social Security Amendment Bill 2023.

In the overwhelming majority of cases, these methods of arrest - which increased sharply from March 2023 mobilisations - resulted in several hours in police custody after which the detainees were released without any decision being taken on criminal proceedings, and sometimes without being interviewed. The particularly widespread use of this method, and the fact that no criminal proceedings are brought, do little to disguise the fact that these arrests are in fact made for purposes other than identifying offences.

In a legal order dated 24 March 2023, the Tribunal Administratif de Paris ruled that the administrative court had no grounds to hear the case, insofar as it had not been established that the Prefect of Police had resorted to preventive arrests as part of his law enforcement policy, as alleged by the claimants. It stated that the arrest of persons was justified as there were one or more plausible grounds for suspecting that they had committed or attempted to commit an offence. This TA statement is disappointing, even if not surprising for its juridical approach.

Lack of recognition of observer status: the case of Sainte-Soline

A 10 June 2021 decision by the Council of State extended protections granted to journalists during a demonstration to independent observers.

With this in mind, the *Observatoire Poitou-Charentes des Libertés Publiques et des Pratiques Policières* (Poitou-Charentes Observatory of Public Freedoms and Police Practices) sent a letter to the prefects of the Vienne and Deux-Sèvres departments to warn them of their presence at the major demonstrations planned for 24, 25 and 26 March 2023.

In letters dated 22 March 2023, the Prefect of Vienne and the Préfet of Deux-Sèvres indicated that, for the purposes of maintaining law and order, LDH observers intending to be present at the Sainte-Soline demonstration would be assimilated to demonstrators, thus denying their specificity and legitimacy.

LDH lodged an application for interim relief against each of these decisions. In two orders dated 24 March 2023, the judge of the Poitiers administrative court rejected the application, while recognising the illegality of the failure to recognise a specific status for independent observers.

As it was practice that the Toulouse observatory notifies the Prefect of Haute-Garonne before each observation, the Prefect indicated that he considered that the observers would be subject to the same legal rules as the demonstrators themselves and could therefore be prosecuted for the same offences. In an order dated 14 November 2023, a judge of the Toulouse administrative court

dismissed the application for an interim relief seeking suspension of this decision, on grounds similar to those given by the Poitiers judge: "In the absence of any evidence produced in support of the application, particularly as regards the number of observers likely to be mobilised and the practical conditions of such mobilisation, the decision in question cannot be considered, in the light of the investigation, as seriously and manifestly unlawful interference with the freedom of expression and communication, the exercise of which may be guaranteed, where appropriate, after the dispersal of gatherings, by journalists", specifying that the number of observers present is not a permissible obligation under international law.

In his defence of the national policing plan, the Minister of the Interior argued that LDH observers were not independent because they belonged to an association that called for the demonstrations. This is a denial of the specific mission of observers, who are identifiable as such and present themselves as "observing" police practices. This denial is also present in a report submitted on 7 November 2023 by Florent Boudié, the rapporteur for the Commission of Inquiry into violent groups (set up by the National Assembly), where he proposes to create a status of observers who are not connected to association's observers to observe violence committed against the police.

On 29 December 2023, the Council of State annulled points 2.2.3.2 and 2.2.3.3 of the *Schéma national du maintien de l'ordre* (SNMO) insofar as they did not allow independent observers to remain after a dispersal order, in the same way as journalists. Unfortunately, it refused to go any further, ruling in particular that independent observers are not to "benefit from guarantees identical to those provided for journalists" (CE 29 December 2023, no. 461513 and 461598 §5 and 6). The pending risk is that the government may decide in its next version of the SNMO to require official accreditation in order to be considered an observer.

As a general remark, it should be noted that since Sainte-Soline observatories are under heavy attack as a result of the report published on how policing was implemented there, a factual report which contradicted the version of the gendarmes and the national gendarmerie inspectorate (IGGN). On 29 December 2023, the *Conseil d'Etat* annulled points 2.2.3.2 and 2.2.3.3 of the *Schéma national du maintien de l'ordre* (SNMO) insofar as they did not allow independent observers to remain after a dispersal order, in the same way as journalists. Unfortunately, it refused to go any further, ruling in particular that independent observers are not to "benefit from guarantees identical to those provided for journalists" (CE 29 December 2023, no. 461513 and 461598 §5 and 6)²⁰. The pending risk now is that the government will decide in a next version of the SNMO to require official accreditation in order to be considered an observer.

As a general remark, it should be noted that the observatories are since Sainte Soline under heavy attack as a result of the report published on how policing was implemented there, a report which

²⁰ <https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2023-12-29/461513>

contradicted with many factual elements the version of the gendarmes and the national gendarmerie inspectorate (IGGN).

Police violence

National policing plan (SNMO)

Since Laurent Nuñez took up the post of Prefect of Paris in July 2022, there has been a reduction in the level of violence perpetrated by the forces of law and order in the capital city. The decision to make law and order personnel less visible from demonstrators by movement more through the adjacent streets, has helped to reduce the tension previously created by the close mobile encirclement of demonstrators.

This shows the margin of manoeuvre for applying the provisions set out in the SNMO of December 2018 when implementing the operational modalities of the maintenance of order by all internal security forces in the context of public demonstrations. It is concerning that policy makers have not called into questions the provisions that resulted in implementation. The ministerial instruction is still the primary handbook for managing protesting crowds, rather than provisions aimed at the protection of the freedom of peaceful assembly.

Thus, charges or "offensive moves" that we regularly witness on the ground repeatedly do not correspond with the need to maintain order, target peaceful protesters as was seen during January and February 2023 trade unions' first demonstrations against the law on pensions. These demonstrations were subjected to harassment, abusive arrests and violence, with the police entering the processions of demonstrators without legitimate need.

In addition, the SNMO is to be implemented by police forces who are not trained to maintain law and order during demonstrations, such as the *Compagnies d'intervention* (CI), the BRAV-M (*brigades de répression de l'action violente*) intervening with motorcycles, which report to the Préfecture of police in Paris, the BAC ("Anticrime brigade"). These non-specialised units are responsible for the majority of serious injuries.

Despite several calls to disband the BRAV-M, the new Paris Prefect has not done so. This comes as the BRAV-M has been the source of much violence.

Journalists and observers have documented the highest level of violence by police on the ground, including unnecessary orders to charge, intentionally physically target journalists (such as Commissioner "P", whose actions were documented by the Paris Observatory, whose videos were reconstructed by a journalist from Le Monde, Arthur Carpentier). Even in well documented cases of police violence, the police officers have continued their responsibilities.

A new trend is emerging that has been documented by the Paris Observatory: the dispersal of demonstrators by private agents intervening directly (staff of the transport operator (RATP) and security guards), pushing protesters into the metro on the grounds of “maintaining order”.

In addition to these elements, the use of extremely dangerous "reduced lethality" weapons such as the LBD 40 or dis-encirclement grenades, or pyrotechnic grenades (GM2L or ASSL) has to be noted, even if less so than in comparison to the Yellow Vests protests. The press revealed that the instructions given to police officers on how to use the launchers did not comply with the manufacturer's recommendations on the safe firing angle (unlike the instructions given to the gendarmes).

Many police officers and gendarmes carry assault rifles when not in action, which can serve as a deterrent for demonstrators.

In November 2023, the French Minister of the Interior placed his biggest order to date for grenades, including tear gas, explosive and stun grenades amounting to 78 million euros. This was done, without calling into question the proportionality of using certain grenades given that France is the only country in Europe to use grenades for law enforcement operations. It also placed an order for a new 40x46 calibre multi-shot grenade launcher (valued at 5.3 million euros).

Furthermore, while 10 June 2021, the Council of State overruled the provision of the SNMO related to the use of the encirclement technique on 10th June 2021, the most recent version of the SNMO retains the controversial kettling technique (“nasse”), justifying its use on the grounds of that it would be needed under certain circumstances. Thus, the kettling provision for encircling demonstrators even acting peacefully, along the provision 3.1.4 of the SNMO, is likely to dissuade and discourage people from participating in demonstrations. Given that the freedom of peaceful assembly is guaranteed, as set out in the European Court of Human Rights (ECHR), such a deterrent makes this measure contrary to the positive obligation incumbent on the French authorities.

Lastly, while the new version of the SNMO recognises that journalists can remain on the scene of protest after summons has been issued, it still denies the extension of this right to independent observers. However, as seen in the example of the observation in Sainte-Soline on 25 March 2023, independent observers’ continued presence is necessary in order to inform the public and, in this case, the courts (see above).

In light of these developments, the LDH has referred the matter to the Council of State as it considers that the implementation of the new version of the SNMO infringes and discourages the right to peaceful assembly, and infringes on the freedom of movement.²¹ In its 29 December 2023 judgement, the court approved the wording used in the SNMO on this issue (no. 461513 and 461598), ruling that the establishment of a controlled exit point is a sufficient guarantee. It pointed out that

²¹ <https://www.ldh-france.org/la-ldh-a-saisi-la-justice-pour-protger-lobservation-du-maintien-de-lordre/>

identity checks done in such circumstances could only be carried out in accordance with the Criminal Code. However, it should be noted that the Minister of Justice's Circulars on offences that may be committed during demonstrations set that public prosecutors' issued orders can allow police officers to carry out identity checks at any time, which contravenes both the freedom of movement and the right to peaceful assembly.

The mis-regulation for weapons' use by police officers and gendarmes outside law enforcement situations

In recent years, France has by far the highest number of people killed or injured by shootings by police officers in the EU under a "refusal to comply" charge. Evidence suggests that the increase in numbers is linked to a change in regulations introduced in 2017.

On 5 July 2023, LDH asked the Minister of the Interior, the Director General of the National Police (DGPN) and the Director General of the National Gendarmerie (DGGN) to repeal two instructions issued by the DGPN and the DGGN in March 2017 concerning the new legal framework for the use of weapons by members of the police and the use of weapons by members of the gendarmerie.

The two instructions are based on Article L.435-1 of the French Internal Security Code, which states that:

"In the performance of their duties and wearing their uniform or the external and visible insignia of their status, national police officers and members of the national gendarmerie may, in addition to the cases mentioned in article L. 211-9, use their weapons if absolutely necessary and in a strictly proportionate manner:

1° When their life or physical integrity is threatened or when armed persons threaten their life or physical integrity or that of others;

2° When, after two loud summonses, they cannot otherwise defend the premises they occupy or the persons entrusted to their care;

3° When, immediately after two loud warnings, they are unable to compel the arrest, other than by the use of weapons, of persons who are attempting to escape their custody or their investigations and who are likely, in their flight, to cause injury to themselves or to others;

4° When they are unable to immobilise, other than by the use of weapons, vehicles, boats or other means of transport, the drivers of which do not comply with the order to stop and the occupants which are likely, in their flight, to cause injury to themselves or to others;

5° For the sole purpose of preventing the recurrence, in the near future, of one or more murders or attempted murders that have just been committed, when they have real and objective reasons

for believing that such a recurrence is likely in the light of the information available to them at the time they use their weapons".

With regards to shooting cases, these instructions, like the provision on which they are based, do not provide a sufficient framework for the use of weapons by gendarmes and police officers. The concepts of strict proportionality and absolute necessity are not defined or clarified.

A study by sociologists Sebastian Roché, Paul Le Derff and Simon Varaine ("*Refusal to obey and police killings. Has the law made the police irresponsible?*", *Esprit* 2022 Halshs-03930552) demonstrated the link between the 2017 law and fatal shootings of young black or Arab men. In territories where it is the gendarmes who intervene, they carry out few of the shootings and even fewer of the fatal shootings.

In this respect, the instructions and article L.435-1 of the Internal Security Code seriously infringe the rights and freedoms guaranteed by the Constitution and the European Convention on Human Rights, in particular the constitutional principle of safeguarding human dignity and the right to life. A request for repeal is yet to be examined, while lethal use continues at an unprecedented rate in comparison with other European countries. The LDH has also asked members of Parliament to repeal this law.

Police impunity favoured by unsuitable ways of wearing personal identification number

For several years now, there has been an increase in violence in the policing strategy used at demonstrations in France. While these cases of disproportionate violence have been multiplying, investigations carried out have often been unable to identify the officer involved. Unsuitable ways of wearing the "RIO" (the identity and organisation reference number that police officers and gendarmes must wear when in service) make it impossible to identify the perpetrators, who may escape punishment as a result.

Testimonies, images and reports demonstrate a lack of rigour in the wearing of the "RIO". Despite the fact that it has been compulsory since 2013, it is often barely visible or even masked, contrary to the requirements of the ECHR, and officers are sometimes even hooded, as documented in particular by observatories monitoring police practices. This failure contributes to police officers' feeling of impunity when they use violence abusively and illegally. This situation is incompatible with the rule of law and damages the relationship of trust that should prevail between the public and the police.

For all these reasons, on 15 July 2022, the LDH and ACAT submitted a request to the Minister of the Interior asking him to take all necessary measures to ensure that the law and order agents comply with the obligation to visibly wear individual identifiers. In the absence of any response, the organisations appealed to the Council of State on 26 September 2022 to overturn this implicit refusal.

On 11 October 2023, an unequivocal decision was handed down by the highest court, rejecting the Minister of the Interior's implicit decision on the grounds that the Ministry of the Interior had "failed"

to "ensure compliance by its officials". The court ordered the Ministry to guarantee this obligation and to take appropriate measures to ensure that the RIO is visible and legible in all circumstances, including when maintaining law and order and wearing a tactical waistcoat. No progress has been noted since.

Violations of freedom of association

Repeated public attacks by the political authorities on civic organisations (associations)

In France, the law of 1901 provides a highly liberal frame for enabling freedom of association. In particular, no authorisation is needed 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.

It is in this context that for some time now, and particularly throughout 2023, politicians have attempted to discredit non-for-profit civil sector associations.

The latest case at the time of writing (mid-December) is linked to the killing of Dominique Bernard on 13 October 2023, a French teacher at the Gambetta school in Arras by a young adult with a foreign origin. Several politicians decided to place the blame for this tragedy on associations that had intervened in 2014 against the perpetrator's parents' expulsion from France, when he was only nine years old.

It should be noted that the Minister of the Interior himself has vilified associations that fight for the rights of foreign nationals and distilled the idea in public opinion that the action of associations, which is contrary to his immigration policy, could have led to the terrorist act that took place a decade later.

A case of attack on civic actors has also raised much attention. On 5 April 2023 during a Senate hearing, the Minister of Interior, questioned LDH's criticism of the police force's actions in Sainte Soline and called for the State subsidies to the LDH to be carefully scrutinised by local authorities.

The Prime Minister followed-up during questions to the government in the Senate on 12 April, by questioning certain positions taken by the LDH, which she described as "ambiguous in the face of radical Islam", an odious and not at all founded statement. To date these calls have not concretised, and the LDH has been reassured that its subsidies will continue.

Additionally, environmental associations have been repeatedly attacked by highest state political authorities and accused of staging terrorist actions or actions that seriously endanger 'public order'.

The multiplication of such undue statements come at a time when laws adopted in the recent years call into question the freedom and independence of associations. Such laws aim to control civil society organisations, which marks a shift in a country that has historically had a very liberal approach to the freedom of association (with the exception of the Vichy regime period during WW2).

The 2022 law "on the respect of the republican principles" (Law No. 2021-1109 of 24 August 2021) and its provisions relating to the so-called "Republican Commitment Contract" (hereafter "the contract") have considerably broadened the grounds for dissolving associations and tightened up funding control measures. This concretely marks a turning point in relations between administrations and associations, dictated by the will of political power. The "Contract" distorts relationship of trust that should prevail between public authorities and associations by introducing a form of prior certification of "republican conformity" contrary to the very liberal spirit of the 1901 law. Even when the provisions of this Contract are not directly used, the "Contract" increasingly constitutes threat for associations whose militant activities may not meet the views of public authorities.

The opening of this Pandora's box has now led local authorities to ask the associations to apply a so-called "neutrality" to their activities, regarding for instance religious preferences, that by law only apply to public services. As a result of the law provisions, administrative authorities can penalise associations for the individual actions of their members, without any intervention of the judiciary. Some authorities require associations to censor practices even when done in accordance with law in order to continue to receive public funds.

Whether it's a question of new administrative constraints, new legislation or public statements, associations find themselves restricted in their ability to take action, and are even attacked for challenging the public authorities, even though they do so peacefully, responsibly, using the activists' toolbox.

Repeated dissolution of associations by administrative decisions

In previous years only violent acts against individuals could lead to the dissolution of an association. However, since 2021, the Separatism law has made it possible to dissolve an association or de facto group that deem any acts against public property as violent.

Between 2021 and 2023, the government ordered the dissolution of several associations and groups, including *Les Soulèvements de la Terre*, the *Groupe Antifasciste Lyon et Environs* (known as "GALE"), the *Bloc Lorrain* and the *Coordination Contre le Racisme et l'Islamophobie*. Each of these organisations applied to the Council of State to have its decision of dissolution annulled, with some successful applications but not all.

In its judgments, the Council of State recalls that a dissolution measure seriously undermines the freedom of association, a fundamental principle recognised by the laws of the Republic. It can therefore only be implemented to prevent serious disturbances to public order. The court rules that dissolution is only justified when an association or grouping of associations incites people to commit violent acts against people or property (explicitly or implicitly, through words or deeds), publicly legitimises particularly serious acts or refrains from moderating explicit incitements to commit acts of violence published in particular on its social networks.

In the cases of *Groupe Antifasciste Lyon et Environs*, *Bloc Lorrain* and the *Coordination Contre le Racisme et l'Islamophobie*, the Council ruled that the dissolutions were appropriate, necessary and proportionate to the seriousness of the disturbances to public order.

On 21 June 2023, the government ordered the dissolution of environmental group *Soulevement de la Terre* on the basis of article L.212-1 of the French Internal Security Code, which states that "All associations or de facto groupings [...]: that provoke armed demonstrations or violent acts against people or property shall be dissolved by decree in the Council of Ministers²²".

On 28 July 2023, *Soulèvements de la Terre* appealed to the Council of State and requested a suspension and annulment of the decree dissolving the grouping. Given the seriousness of the infringement of freedom of association, the LDH, Mrap, Utopia 56 and Anafé intervened voluntarily in support of their applications.

On 9 November 2023, following its suspension order, the Council of State also annulled the decree dissolving the group ruling that the somewhat complacent reliance on images of demonstrators clashing with the police, in particular against the construction of water reservoirs in Sainte-Soline, did not constitute a claim, promotion or justification of such acts. On the other hand, it ruled that *Soulèvements de la Terre* had indeed engaged in incitement to violent acts against property (to be understood as damage to property) which fall within the scope of 1° of article L. 212-1 of the Internal Security Code. However, it considered that the dissolution did not constitute a measure that was appropriate, necessary and proportionate to the seriousness of the disturbances to public order in

²² <https://twitter.com/franceinfo/status/1640704009077157891?s=46&t=smPLI-7VdMRxGmyX3Xk0HQ;>
<https://civicspacewatch.eu/france-interior-minister-dissolves-environmental-movement/>

view of the real effects that their incitement to violence against property may have had on the date during which the contested decree was issued²³.

While the ruling by the Council of State is a positive development for the freedom of association, it is expected that the public authorities will not cease their undue attacks in 2024.

²³ <https://www.conseil-etat.fr/actualites/le-conseil-d-etat-suspend-en-refere-la-dissolution-des-soulevements-de-la-terre>

Recommendations

Targeted recommendation:

- 🔍 Urgently amend law “on the respect of the republican principles and withdraw the contract in line with the international standards on freedom of association.

- 🔍 Take appropriate measures to ensure that the RIO is effectively visible and legible in all circumstances.
- 🔍 Protect the rights of independent observers to ensure that they are able to freely monitor protests without obstructions.



About European Civic Forum

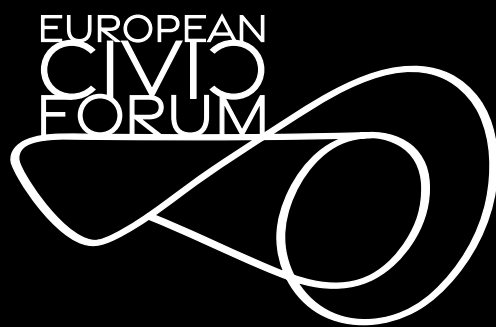
European Civic Forum (ECF) is a pan-European network of more than 100 associations and NGOs across 30 European countries,

Founded in 2005 by our member organisations, we have spent nearly two decades working to protect civic space, enable civic participation and build civil dialogue for more equality, solidarity and democracy in Europe.



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.



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