FUNDAMENTAL RIGHTS AND THE RULE OF LAW

National developments from a civil society perspective, 2018-2019

Excerpt - Authorities' observations on the report on country visit to **France** | 28-29 May 2019

European Economic and Social Committee

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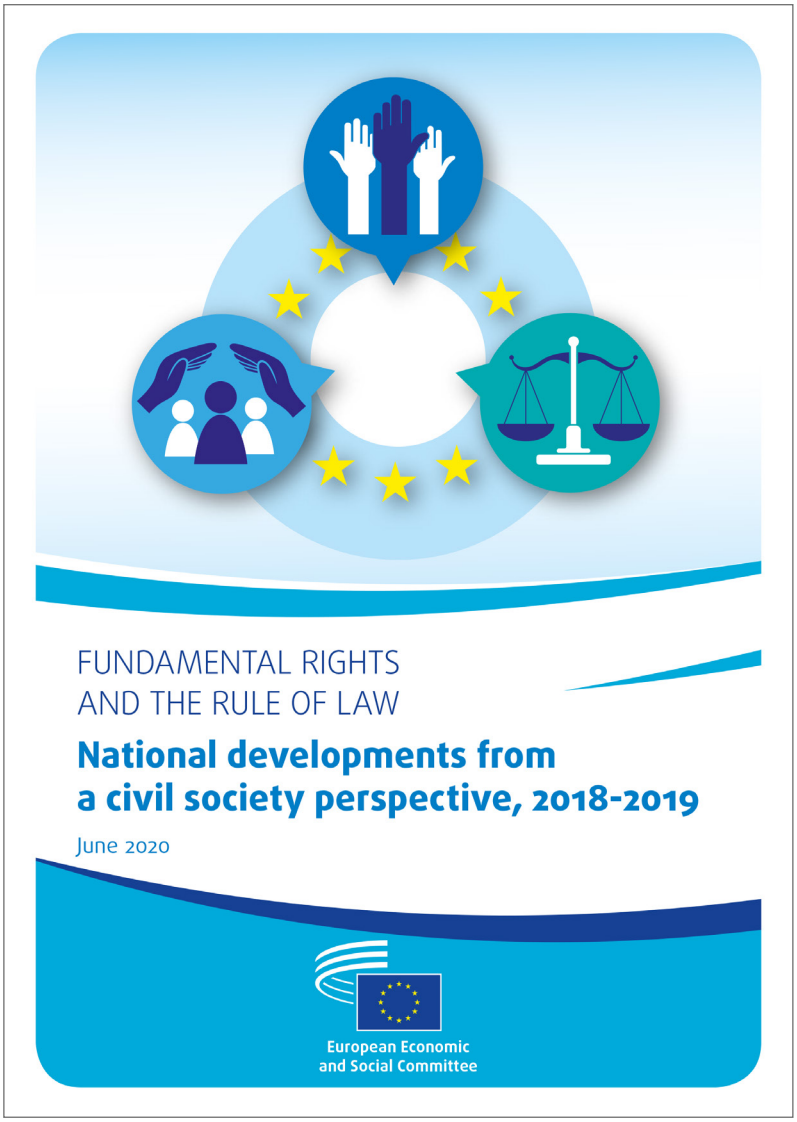

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Observations from the French authorities on the report of the Fundamental Rights and Rule of Law Group on its visit to France

on 28-29 May 2019

Subject: Comments from the French authorities on the report by the EESC's Group on Fundamental Rights and the Rule of Law, following its mission to France on 28 and 29 May 2019.

As a preliminary remark, the French authorities note that the report has not been adopted by the EESC under its internal procedures, but is rather a compilation of comments gathered by the Group following visits to five Member States. The French authorities deduce from this that the report does not claim to be either representative — although its stated objective is to present trends throughout the European Union from the point of view of civil society — or objective — since its aim is to reflect the views of civil society organisations (CSOs). In this connection, the authorities appreciate the opportunity they have been given to draw up a more complete picture of the situation by making the comments set out below. They also wonder whether this initiative is in keeping with the brief of the group, which was set up in 2018 with the aim of promoting respect for European values, focusing on topics rather than on individual Member States.

Freedom of association

The French authorities would like to inform the EESC of the following additional points:

With regard to the financing of CSOs in society and the resources available to them:

The share of public and private funding has actually grown in recent years. Although the share of public funding has not increased as much as the funding needs of associations, the latter have however increased from EUR 30 billion to almost EUR 50 billion over the last 12 years. The voluntary sector in France is still as dynamic as ever and the exercise of freedom of association is in no way threatened by this public authority disengagement, which remains fairly relative.

A few figures demonstrate this:

In 2017, there were 1.6 million active associations and 21 million members, with a budget of EUR 113 billion (+ 1.6% per year on average between 2011 and 2017).

More than 70 400 new associations are set up each year, and 135 000 associations, representing 159 370 establishments, employ staff. There were 1.8 million employees working in associations in 2018 (+ 0.5% per year between 2011 and 2017), with a wage bill of EUR 39.95 billion. (Between 2008 and 2017, the gross wage bill of the associations increased by 2.3% per year

and the average gross annual salary by 1.6%). Employment in associations is more dynamic than in the rest of the private sector in general, and in France accounts for as many employees as the construction and banking sectors combined.

Almost one French person in four works for an association free of charge; this involves about 12.5 million people. Of these, just over one French person in ten, i.e. between 5.2 and 5.4 million people, have been doing such voluntary work every week in 2019, and they form the backbone of these associations.

The government has been developing a proactive policy to support this sector, be it in terms of funding or in terms of employment and voluntary work, since the associations, as well as being of key economic importance, are also a crucible for active citizenship promoting social ties in France. As such, civic service and, in the near future, universal national service, are schemes that promote involvement in associations from an early age.

Where CSOs provide assistance to migrants:

The French government **vehemently disputes the statements made by some associations**, in particular those which provide assistance to migrants, reporting "an increasing number of attempts to hamper or halt their activities through threats of judicial proceedings against them, and even to arrest some of their volunteers and employees".

It should be noted from the outset that the French authorities attach great importance to respect for the rule of law: action by public authorities is governed by laws and regulations, and may be the subject of numerous appeals before the courts or bodies which deal with the infringement of fundamental rights.

While it is conceivable that police action may sometimes be perceived as acts of "intimidation" by people who are not familiar with the national legal framework, this cannot be the case for associations, which are familiar with the legal framework which regulates the actions of the administrative authority of the police, which acts alongside the judicial authority, under the supervision of the courts. Moreover, although the vast majority of human rights associations carry out their tasks in a manner that is irreproachable, some players, in order to defend migrants' rights, have at times acted outside the law by encouraging people who - viewed objectively - are clearly in distress, to settle or to cross borders illegally. This is a point which the President of the Republic stressed in his speech to the security forces in Calais on 16 January 2018:

> *"I would call on all associations to be responsible here. When they encourage these women and men to settle and even to cross borders illegally, it is a huge responsibility they are taking on.*
>
> *They will never, ever have the state on their side. We will always defend those associations which, working in partnership with the state and local and regional authorities, are in contact with migrants, provide them with basic services, protect them and explain matters to them […]"*

From that point of view, detecting infringements of the law and, in particular minor offences, cannot be regarded as "intimidation", but merely as a matter of implementing the laws and rules that apply to every person in the country. It may be worth noting that detection of infringements is based on bringing together the constituent elements of a crime, as defined by the legislator and supervised by the courts, including, where appropriate, the Constitutional Council, as was recently the case with regard to '"solidarity crimes". Thus, in Decision 2018-717/718 of 6 July 2018, the Constitutional Council held that the exemption from charges stipulated in Article L. 622-4 of the Code on the entry and stay of aliens and the right to asylum(*Code de l'entrée et du séjour des étrangers et du droit d'asile* - CESEDA) should not be limited, as the legislator had initially planned, to cases of assistance in "providing illegal residence", but should also be extended to cases of assistance for "movement" where this is "accessory to the assistance" for residence provided to a foreign national (13th recital of its decision). However, this exemption from charges does not extend to illegal entry, "*including when it is given for humanitarian reasons*". The law of 10 September 2018 on controlled immigration, effective right of asylum and successful integration took this decision into account and amended Article L. 622-4 of the CESEDA.

Finally, the French authorities wish to point out that, while the objective of monitoring the legality of the entry and residence of "illegally staying foreign nationals" is a constitutional objective, the French state carries out all its activities in full compliance with EU law and the legislative framework laid down by the CESEDA, striking a balance between the reception of migrants and the preservation of national law and order, where respect for human dignity is one of the components, as well as efforts to combat lawlessness (insecurity, smuggling networks, prostitution rings and illegal immigration networks).

In conclusion, the French authorities dispute the allegations of intimidation, harassment and obstruction relating to the actions of certain parties defending migrants, reported by some of the CSOs interviewed, since police action is governed by a legal and regulatory framework. Therefore, where shortcomings have been identified, it is still possible to submit judicial appeals to refer matters to the French courts. In this connection, it is important to note that the public prosecutor's office in Douai, which covers Calais, has not been aware of any obstruction to the activities of associations or NGOs supporting migrants, and the Dunkirk public prosecutor has not been aware of violence, threats or intimidation by the police directed at volunteers.

The French authorities have, moreover, undertaken to look into each allegation of bad treatment, as pointed out by the President of the Republic in his speech of 16 January 2018 referred to above: "*I have asked the Minister of the Interior to systematically examine and establish the true facts of the case, either to defend the police, including before the courts, where they have not in fact committed such acts, or to introduce any measures and sanctions necessary*".

Freedom of assembly

Regarding the use of force, the French authorities wish to note that, at the hearing, they stated that "*the use of force was strictly necessary, gradually increased and proportionate, as the Council of State ruled on the occasion of the disputes which arose in that connection*". Moreover, the French authorities would like to inform the EESC of the following additional points:

On the lack of deterioration in legal protection of the right to demonstrate under Law No 2019-290 of 10 April 2019 aiming to strengthen and guarantee [the maintenance of] public order during demonstrations

This allegation appears to the French authorities to be questionable in several respects. **From the outset**, France wishes to point out that it attaches particular importance to the protection of human rights and fundamental freedoms. France has a long tradition of freedom of expression and peaceful assembly, which are guaranteed by the 1958 Constitution and the European Convention on Human Rights. France cultivates the established practice of demonstrations, allowing freedom of expression in public of highly diverse demands and opinions, most often in opposition to decisions taken by the executive and the legislator, and sometimes in support of them. The principle of freedom of assembly is the result of the law of 30 June 1881 on freedom of assembly and is guaranteed by the French state. A key judgment of the Council of State of 19 May 1933 (Benjamin act) requires that freedom of assembly prevail over police powers, where there is no relatively serious public disorder. Moreover, the right to demonstrate is recognised in case law.

In France, the right to demonstrate is accompanied by the obligation to give notice of any demonstrations on public roads, which ensures the safety of demonstrators. In this regard, the UN Human Rights Committee has considered that the obligation to warn the police six hours before an event starts in a public place may be part of the restrictions allowed by Article 21 of the International Covenant on Civil and Political Rights (ICCPR) on the right to peaceful assembly (Human Rights Committee (HRC), *Kivenmaa v Finland*, 1994, Communication No 412/1190).

However, a distinction must be made between demonstrations, whether declared or not, and mobs.

While the former consists of a gathering, stationary or mobile, intended to express ideas or put forward claims, the latter, from a legal point of view, is deemed tortious and consists of a rally likely to cause public disorder within the meaning of Article 431-3 of the Penal Code. Put more simply, a mob is a demonstration that has degenerated into violence (see detailed explanations below).

Although freedom of expression and freedom of assembly, to which the freedom of demonstration contributes, are guaranteed by law - both constitutional law and treaty law - this guarantee only covers assembly and demonstrations that are peaceful (ECHR, Grand Chamber, of 15 October 2015, *Kudevicius and Others v. Lithuania*, Application No 37553/05, and of 15 November 2018, *Navanyy v Russia*, Application No 29580/12).

In view of the particular nature of and risks specific to public meetings and demonstrations, the European Court also considers that the authorities **have a duty** to take the steps needed to ensure the smooth running of any legal demonstration and the safety of everyone (see, in particular, ECHR, 20 February 2003, *Djavit An v. Turkey*, Application No 20652/92 § 56-57; ECHR, 1 December 2011, *Schwabe and M.G. v. Germany*, Application Nos 8080/08 and 8577/08, § 110-113; and ECHR, 15 November 2012, *Celik v. Turquie*, Application No 34487/07, § 88).

To this end, the legislator introduced provisions into the legal process that were validated by the Constitutional Council (Decision No 2019-780 DC of 4 April 2019), which deemed them

to be necessary, appropriate and proportionate in order to counter certain types of extreme violence during demonstrations: these provisions allow, during demonstrations, some types of checks and searches on the basis of a court order (Article 2), as well as making it a criminal offence to intentionally conceal the face (Article 6) where there is no legitimate reason for doing so, within, or in the immediate vicinity of, a demonstration on public roads, in the course of which or at the end of which there is or is likely to cause public disorder.

The aim of these provisions is, *inter alia*, to promote implementation of the right to demonstrate, by enabling the police to ensure the safety of demonstrators from possible rioters who might benefit from the context to perpetrate violence against people and property.

The legislator also wished to give the police the possibility of imposing individual bans on people participating in demonstrations whose conduct in previous public demonstrations has given rise to serious bodily harm to others, as well as to serious damage to property or to acts of violence. However, that measure has been criticised, not in terms of the need for it, but rather because the guarantees provided are not sufficient, which demonstrates the effectiveness of the supervision of the Constitutional Council.

Use of force at demonstrations carried out by the "*gilets jaunes*" (yellow vests)

Despite the violence to which they gave rise every Saturday, the demonstrations linked to the "yellow vests" movement were most often covered by a security mechanism designed to ensure the safety of demonstrators and limit disorder, rather than banned; bans were only envisaged as a last resort, when the resources at the disposal of the administrative authorities did not enable them to guarantee public order, in particular due to the fact that demonstrators gathered in many different places and because of the unpredictable nature of the demonstrations due to the systematic refusal of some demonstrators to register under the declaratory scheme. The conditions for police intervention were particularly difficult. The demonstrations were hallmarked by serious violence by some demonstrators, directed at the police, journalists and others, as well as at businesses, buildings and public facilities. It should also be stressed that some racist, anti-Semitic and homophobic statements, slogans and attacks were recorded in the course of or on the sidelines of the demonstrations.

In this context, the use of force by the police, although it sometimes resulted in spectacular images, was intended as a necessary, strictly proportionate response to such serious, unlawful violence, as provided for by law and in accordance with the international commitments entered into by France. While some cases of misuse or disproportionate use were reported, administrative inspections and criminal investigations are currently under way which will make it possible to shed light on these events and draw the appropriate disciplinary consequences, without prejudice to any criminal convictions.

On 14 October 2019, the Ministry of Justice (Directorate for Criminal Matters and Pardons) was informed that 409 complaints had been lodged against the police since the beginning of the "*gilets jaunes*" movement. For the purposes of comparison, in relation to the scale of the demonstrations, note that since the beginning of the movement in November 2018, more than 50 000 events had been organised in many cities, bringing together more than 2.3 million demonstrators. While no convictions have been handed down to date, many cases are still being processed by the judicial authorities. 291 cases have been referred to the General Inspectorate

of the National Police by the public prosecutors' offices, including 193 cases at Paris's *tribunal de grande instance* (regional court). Of these, nine have been the subject of judicial inquiries and in 28 cases the charges have been dropped. Certain matters have been submitted to other investigative departments, such as the general inspectorate of the national *gendarmerie* and the *départements'* security services.

The very fact of these cases being processed by the judicial authority, whose independence is, pursuant to Article 64 of the Constitution, guaranteed by the President of the Republic, and which is the guardian of individual freedoms, illustrates the effectiveness of the guarantees attached to the rule of law in France.

a) As regards allegations concerning law enforcement and the use of weapons:

Firstly, a distinction must be made between demonstrations, whether declared or not, and mobs.

While the former consists of a gathering, stationary or mobile, intended to express ideas or put forward demands, the latter, from a legal point of view, is deemed tortious and consists of a rally likely to cause public disorder within the meaning of Article 431-3 of the Penal Code. Put more simply, it is a demonstration that has degenerated into violence or where violence is imminent.

Pursuant to Article R.211-21 of the Internal Security Code, it is up to the civil authority, which must be at the scene, to assess the moment when a demonstration becomes a mob, in other words to label it a mob, with a view to deciding on the use of force after issuing a warning.

That article lists the civil authorities responsible for the use of force: *département* prefects or sub-prefects, mayors or one of their deputies, chief constables, *département gendarmerie* group commanders or, if authorised by the prefectural authorities, police commissioners, district police commanders or *département gendarmerie* company commanders.

When a decision has been made to use force, and if the civil authority does not itself issue the warning, it may designate any law enforcement officer responsible for public safety, or any other law enforcement officer, to do so. The latter must not belong to the law enforcement body responsible for dispersing the mob.

The instructions dated 21 April 2017 on the maintenance of law and order by national police (NOR: INTC1712157J) point out the legal framework for deploying force to re-establish law and order and specify the role of the different players in the chain of command.

Secondly, the police deployed at an event are, above all, to there to ensure the safety of demonstrators. In this connection, it should be noted that the flash ball riot control gun known as an LBD (*lanceur de balles de défense*) is not used in demonstrations, but where there are mobs, i.e. demonstrations which have degenerated into violence (in keeping with the first indent of Article 431-3 of the Penal Code: "*A mob is any assembly of people on public roads or in a public place which is likely to cause public disorder*"). At no point must the LBD be used against demonstrators, even where they are vehement, if they are not physically violent, in particular towards the police, or if they do not commit serious damage. If they do become

violent in this way, they are no longer deemed to be demonstrators, but rather participants in violent, illegal mobs.

Since the LBD is a weapon intended to react instantaneously to violence directed at, or assaults on, the police or if they cannot otherwise defend the position they are occupying, that is to say, using a weapon designed to stop a dangerous individual in the process of committing an act of aggression, and not a weapon designed to disperse a mob, the use of the LBD is at the discretion of the police officer who has the weapon and intervenes without warning, within the legislative and regulatory framework in force.

Thirdly, in a state governed by the rule of law, the use of force by the state is strictly regulated and complies with the principles of strict necessity and proportionality, as laid down in Article L. 435-1 of the Internal Security Code.

- The units responsible for the use of force shall deploy it in a gradually increasing manner, first by using physical force, possibly accompanied by equipment which is not a firearm[17], before - should the disorder persist or get worse, and after a further warning - using intermediate weapons — which include, *inter alia*, instant tear gas grenades and hand sting-ball grenades.

- The Internal Security Code stipulates, however, that if acts of violence or *de facto* assault are carried out against members of the police who have been called in to dissipate a mob, or if they cannot otherwise defend the position they occupy, force may be deployed directly, without warning, using the weapons provided for in the case referred to above, as well as the 40 calibre LBD known as "LBD 40 x 46" with non-metallic projectiles.

French legislation therefore stipulates proportionate and gradually increasing use of force, which must be adapted to the circumstances of each demonstration.

In this context, and in particular during the "*gilets jaunes*" episode, faced with a number of demonstrations that degenerated into mobs or resulted in mobs, the police had to use force, deploying intermediate weapons in compliance with this legal framework. Thus, intermediate weapons allow the police to deal with significant violence from large numbers of people in ways which entail the least risk to personnel. The number of times these weapons have been used is also to be seen in relation to the number of such mobs and the intensity of the violence involved.

Although it was reported that, for example, thousands of tear grenades were used for the demonstration on 1 December 2018, we should bear in mind the context which required the use of those weapons, such as the scenes of major urban violence caused by these mobs: the *Arc de Triomphe* was ransacked, cars set alight, shops evacuated, shop windows smashed and barricades set up and there were clashes with the police. In Paris, there was considerable damage to both people and property, including private property.

The police were attacked by very violent individuals. Cobblestones were thrown at them, as was street furniture, as well as improvised bombs made from agricultural materials, and acid

17 Such as defensive truncheons, shields, water canons, tear gas containers and certain tear gas grenades.

was sprayed at them, directly endangering the lives of some policemen. Witness statements showed that some individuals dismantled the railings of monuments and sawed off the arrows to throw them at the police. About 1 900 law enforcement officers (police and *gendarmerie*) were injured in the attacks, as were firefighters who intervened to treat those who were injured and to extinguish the fires caused by the demonstrators and the rioters, not to mention the many other collateral victims.

The use of intermediate weapons, which the police were forced to deploy in certain exceptional situations, meant it was possible to fully contain the violence and to prevent any deaths in the ranks of either the police or the rioters.

The purpose of these intermediate-level weapons was therefore to permit, in accordance with the laws and regulations in force, a gradual and proportionate response to a dangerous situation where the legitimate use of force proved necessary. This was, moreover, the thinking behind the decisions by the Council of State, which was asked to rule on the legality of the use of the LBD (Council of State, Emergency Decision, 1 February 2019, Nos 427390 and 427386; Council of State, 24 July 2019, No 427638) and of the GLI-F4 grenade during the law and order operations in question (Council of State, 24 July 2019, No 429741).

Fourthly, although cases of misuse of the LBD are, regrettably, always possible, despite reminders of the instructions being systematically given before each intervention, such misuse, which is punishable by the full, requisite disciplinary and judicial response, is not on its own sufficient to call into question regular use of the weapon in cases of extreme necessity, that is to say in cases of necessary defence or where the police are do not have other means to defend their position.

In any event, with the judicial investigations still ongoing, it has not to date been possible to determine whether the people injured by LBD shots were in a situation which justified the use of that weapon, with the unfortunate ensuing consequences, or in a situation where the use thereof was abusive, which would, of course, be punishable.

It is therefore, as things stand, difficult to infer purely from the number of alleged victims of LBD shots that the precautions for using that weapon could never be effectively observed, given that, as at 1 February 2019, more than 9 000 LBO shots had been fired throughout France since 17 November 2018.

In this respect, the use of video cameras by the police since the events of 26 January 2019 must both make it possible to better establish liability and make users of this weapon more accountable.

As regards the allegations by certain CSOs that the disproportionate use of force by the police had taken place before the "*gilets jaunes*" demonstrations and that this force had been used at authorised events that had been properly overseen by their organisers, the lack of precision with regard to the circumstances of the alleged acts makes it impossible to give a clear response and to assess whether they were justified. In any event, whatever the purpose of the demonstration, the principles governing the applicable principles of law enforcement are the same, and such force must, under the conditions laid down in the applicable laws and regulations, only be used against mobs and never against peaceful demonstrators.

b) As regards, more specifically, the use of flash ball riot control guns (LBDs):

The use of authorised weapons when dispersing a mob is explicitly and exhaustively provided for in Articles R. 211-16 *et seq.* of the Internal Security Code (CSI), where an LBD 40 is explicitly authorised by Article D. 211-19 of the CSI in the framework of law enforcement operations.

The legal conditions (and specific instructions) for the use of force and weapons are set out in the common national police/*gendarmerie* instructions of 2 August 2017 on the use of intermediate weapons (AFI) in the national police force and gendarmerie units. Annex II thereto deals specifically with the use of the LBD 40 (40x46 mm). The legal frameworks in which this AFI can be used are set out in Articles L435-1 and L211-9 of the CSI (MO - maintaining public order) and 122-5 and 122-7 of the Penal Code (necessary defence of self and others and necessity). The precautions for using the weapon are described in point 3.3 (preferred aim area, context, etc.).

Thus, in accordance with the principles laid down in L. 435-1 of the Internal Security Code governing the use of weapons by police officers and *gendarmes*, also applicable to cases of dispersing mobs provided for in Article L. 211-9 of the Code, the police have to act within a precise legal framework and be guided by the principles of absolute necessity and strict proportionality in the use of force, whether in necessary defence or to disperse a mob. The aim is to contain the most aggressive individuals and disperse them, avoiding further violence and also preserving the freedom of expression of those who wish to make their demands peacefully.

The LBD is intended to ensure gradually increasing use of force.

Applying these principles, Article R 431-3 of the Penal Code sets out the principle of gradual increase in the use of force which must guide the police in their daily work. It states that the use of force by representatives of law enforcement authorities shall be possible only where the circumstances make it absolutely necessary to maintain public order [...]. The force deployed must be proportionate to the disorder to be brought to an end and must stop when the disorder has ceased. Strictly applied, this article provides for the alignment needed between the force used and the disorder to be brought to an end.

This imperative is at the heart of the force commitment doctrines, the need to be able to carry intermediate weapons having been endorsed by the UN at its 8th Congress on the Prevention of Crime and the Treatment of Offenders, which adopted a resolution in September 1990 entitled *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, calling on national legislators to adopt legal provisions in order to equip services with *"various types of weapons and ammunition that would allow for a differentiated use of force and firearms"*.

It should be noted that Turkey has been condemned by the European Court of Human Rights (ECtHR) for failing to equip its police forces with weapons other than firearms and, consequently, for not giving police officers any option other than to shoot, during a demonstration in the course of which they were subjected to violence (ECtHR, Gülec v. Turkey, 27 July 1998, Application No 21593/93, § 71).

Thus, the conditions for use of LBDs by the police, in particular during the so-called "*gilets jaunes*" demonstrations, have been endorsed in principle by the Council of State, in particular in its decision of 1 February 2019 (EC, 1 February 2019, No 427390), which held that the

conditions governing the use of the LBD 40, which is primarily intended to safeguard public order, were strictly framed (Articles L. 435-1 and R. 211-13 of the Internal Security Code) by the principles of necessity and proportionality. Moreover, since 23 January 2019, these conditions have been accompanied by the requirement to film, as far as possible, the use of LBDs during demonstrations. The Council of State also held that, although use of this equipment could have caused injury during the demonstrations, the investigation did not show that in this case the authorities concerned had not intended to comply with the conditions of use. Last but not least, the Council of State pointed out that the huge number of demonstrations that have been taking place throughout France on a weekly basis since November 2018, without the routes taken always being clearly declared or respected, have frequently been the scene of acts of violence and de facto assault, damage to property and destruction. *The fact that it is impossible to be sure that such incidents will not occur again during forthcoming demonstrations means it is necessary to allow the police to use such weapons, which are particularly appropriate for dealing with this kind of situation, subject to strict compliance with the conditions of use which apply to their deployment*[18].

As regards the link between the use of police custody and curtailment of the right to demonstrate

The conditions for police custody are strictly laid down in Article 62-2 of the Code of Criminal Procedure:

- custody must be **decided by a law enforcement officer, overseen by the judicial authority**;
- there must be several **reasonable grounds for suspecting that the person has committed or attempted to commit an offence or a crime**;
- the offence or crime must be **punishable by imprisonment**;
- police custody must be the **only way of achieving one of the six objectives laid down by Article 62-2** (enabling investigations to be carried out requiring the presence or participation of the person; ensuring that the person appears before the public prosecutor so that the latter can assess what action should be taken with regard to the investigation; preventing the person altering material or other evidence; preventing the person putting pressure on witnesses or victims or on their family or close relatives; preventing the person consulting with others who are likely to have been co-perpetrators or accomplices; ensuring that the measures intended to put an end to the offence or crime are implemented).
- Thus, the above conditions must be clearly met in order for the police to take someone into custody, in particular as regards the existence of reasonable grounds for suspecting that the person has committed or attempted to commit an offence or a crime punishable by imprisonment. This measure cannot, therefore, be used solely for the purpose of preventing activists from taking part in demonstrations.

18 https://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000038135470&fastReqId=1975368748&fastPos=2

Freedom of expression and freedom of the media

The French authorities would like to inform the EESC of the following additional points:

The President of the Republic and the French government regularly stress the role that journalists play as democracy watchdogs and regularly have to condemn acts of violence against them in France or abroad. Thus, for example, the **Minister for Culture**, Franck Riester, spoke on the subject in the very first few days after he took office, in a speech he gave at the centenary of the National Association of Journalists on 18 October 2018. He also renewed the government's unconditional support for the profession at the Journalism conference on 15 March 2019, once again condemning acts of violence against journalists, particularly in connection with the "*gilets jaunes*" demonstrations. Moreover, in the ranks of both the majority party and the opposition, **almost all politicians publicly condemn in the strongest terms any acts of violence committed against journalists,** and generally do so on a systematic basis. In general, all acts of violence against journalists spark a response from public authorities and politicians. This response, supported by numerous statements by local and national elected representatives, as well as the main political organisations, helps to put allegations of "media bashing" into perspective, despite the fact of some politicians indulging in such practices.

In addition, Law No 2018-1202 of 22 December 2018 combating the manipulation of information seeks to combat the online circulation of fake news more effectively, particularly in election periods, in the interest of freedom of the media. This came in the wake of the Cambridge Analytica scandal revealed by a whistleblower, Christopher Wylie, who brought to public awareness the risk that online disinformation campaigns financed indirectly by political movements could constitute for democracies. That law thus imposes a duty on digital platform operators to cooperate. In this way it should be possible to make the operators of these platforms accountable, to encourage good practice and to ensure that efforts by private players to combat fake news are based on transparent rules and discussed collectively. Moreover, in election periods the law also places an obligation on platform operators for greater transparency with regard to sponsored information content. Finally, the law establishes a new legal remedy enabling any stakeholder to bring a matter before the ordinary courts in election periods so as to apply for interim measures, in the event of deliberate, artificial or automated mass dissemination of information which is false and capable of altering the fairness of the poll, by means of an online public communication service. On this basis, the law thus aims to better protect the public without limiting freedom of the media.

In order to protect freedom of expression and the media before the adoption of the aforementioned law, **Article 27 of the Law of 29 July 1881 on freedom of the press** had already identified the dissemination of "fake news" and punished it with a fine of EUR 45 000. Similarly, Article L. 97 of the Electoral Code already imposed a one-year prison sentence and a fine of EUR 15 000 on those who, using fake news, slanderous rumours or other fraudulent manoeuvres, had changed or distorted the outcome of ballots, and, finally, the **Law of 21 June 2004 on confidence in the digital economy** already made it possible, including by means of an urgent application, to order internet operators to stop the damage caused by the content of an online public communication service. The Law of 22 December 2018 adds clarification of the concept of "fake news"; it defines it for the first time in internal law as *"inaccurate or misleading allegations or imputations likely to distort the outcome of an election"*.

On the other hand, the law is not intended to combat hate speech. This fight, which is necessary in a democratic world, is undertaken in the context of the **draft law combating hate content on the internet**, which is currently being discussed in the French Parliament.

Lastly, the establishment in France of an information ethics council could help to reconcile the media with their audience, which is necessary. Such a body already exists in a number of European countries. Several international organisations, such as UNESCO and the OSCE, recommend that one be set up.

In October 2018 the Minister for Culture gave Emmanuel Hoog, former chairman of the international news agency, *Agence France-Presse*, the task of drawing up an independent expert report proposing a framework for the possible establishment of such a body. In his report entitled *Towards the establishment of a self-regulation and ombudsman body* in the field of information, which he delivered on 27 March 2019, Mr Hoog called on the profession to itself organise the creation of an information self-regulation and ombudsman body backed by a membership-based structure independent of the public authorities. Following the conclusions of this report, several stakeholders in the sector met at the initiative of the Information Ethics Observatory (ODI) to do the groundwork for the creation of this body.

The French government encourages the establishment of a body of this type, provided that its independence from the public authorities is guaranteed.

<u>As regards alleged "police violence" against journalists:</u>

Firstly, it should be pointed out that the French authorities are regularly contacted via alerts from the Council of Europe's journalists' platform and that their answers can be consulted online. In particular, they responded to a number of alerts from journalists at the time of the "*gilets jaunes*" movement.

At "*gilets jaunes*" gatherings, tens of thousands of police and gendarmes, along with firefighters, have been called in several times, in Paris and across France, to secure, in often extremely difficult situations, the safety of property and people: demonstrators, shopkeepers, the general public, etc.

With regard to the press, after a meeting with trade union representatives on 30 November 2018, which was proposed in the wake of the violence perpetrated against journalists by demonstrators, the Minister for the Interior asked the police deployed during demonstrations to arrange for journalists who so wished systematically to be accommodated at the back, behind the police, so as to protect them, provided they could duly prove that they were journalists and be sufficiently identifiable in events where there was a risk of public disorder.

The police, who are frequently and throughout the year victims of sometimes extreme violence breaking out on the sidelines of some demonstrations, and in particular at several "*gilets jaunes*" events, have some experience in this area, although this does not preclude certain lapses, which should be severely punished. Where journalists have suffered from the use of force by police or *gendarmerie* units, they have the right to **file a complaint or to issue an alert on the National Police Inspectorate's online platform provided for this purpose.**

In addition, police forces systematically receive instructions to facilitate the work of journalists as much as possible.

French law does not ban the transportation, wearing or use of means of protection during demonstrations. However, the regulatory authority may issue an order banning the transportation, wearing and/or use thereof in certain circumstances and specific locations. As with any administrative police measure, this ban has to be strictly necessary and proportionate and has to be subject to full oversight by the administrative courts.

Such a ban, when imposed in accordance with the applicable legal and regulatory conditions, is explained by the fact that the use of such protective equipment makes it easier for those who have decided to commit acts of violence or cause damage during demonstrations to actually do so and enables them to resist police efforts to put an end to their violent acts.

If an object that is banned solely for the period of a demonstration and only in the places covered by the order - such as protective equipment - should be discovered, it has been stipulated that the object is to be confiscated.

Non-discrimination

The French authorities would like to inform the EESC of the following additional points:

They would point out that **combating hatred and discrimination** is a **priority of criminal policy** in France.

French legislation has gradually stepped up this fight, **punishing all discriminatory behaviour with an increasing degree of severity** and, in order to ensure the effectiveness of this legislative framework, the Ministry of Justice supports the **implementation of a firm, responsive criminal policy which is regularly assessed**. **There are a consistent number of convictions in this area each year.**

This criminal policy is based, at local level, on the **development of a specific way of organising public prosecutor's offices**, the purpose of which is to ensure the visibility of criminal policy and adopt a partnership approach to the work of the prosecution service. It is based **on the appointment of a specialist judge within each public prosecutor's office and the general prosecutor's office and on the institutionalisation of a partnership approach** (in particular with local associations combating discrimination in the form of anti-discrimination centres or monitoring units).

Similarly, the public prosecutor's offices have been asked to appoint **specialists in the field of criminal labour law**. As the main labour inspectorate partner, the specialist judge may, amongst other things, deal with proceedings initiated by the latter in the more specific field of discrimination in recruitment, trade unions or the workplace.

The issue of online hate is, at last, given priority by the Ministry of Justice, which issued a new **circular combating discrimination and hate speech and behaviour on 4 April 2019** to remind public prosecutor's offices of the need to pay particular attention to these incidents, as well as providing an appropriate criminal justice response. In addition, **the Law on 2018-2022 programming and reform for justice of 23 March 2019** extended the online

complaint system provided for in Article 15-3-1 of the Code of Criminal Procedure to all types of incidents, including hate speech and behaviour. Finally, a bill on combating online hate speech (known as the Avia bill after the member who drafted it), aimed at making internet operators accountable when they are responsible for the spread of hate content online, was also adopted by the National Assembly at first reading and will be discussed by the Senate in the autumn. It requires online platform operators to withdraw or make inaccessible, within a period of no more than 24 hours after notification, any content which clearly includes incitement to hatred or a discriminatory insult on grounds of race, religion, sex, sexual orientation or disability.

In addition, the French authorities have put in place a **National Plan for Combating Racism and Anti-Semitism for 2018-2020,** promoted by the Prime Minister and issued in March 2018, focusing in particular on online hate. In addition, a call for local projects, covering all the areas of responsibility of the **Interministerial Delegation for Combating Racism, Anti-Semitism and Anti-LGBT Hate Crime** (DILCRAH), has been being developed since last year to finance the actions of associations in many French *départements* to combat hatred and discrimination. Lastly, DILCRAH organises training courses for police officers, *gendarmes*, judges and, currently, prison officers on combating hate speech in order to improve reporting and judicial processing of hate speech.

Rule of law

The French authorities would like to inform the EESC of the following additional points:

As regards the Law of 30 October on strengthening internal security and the fight against terrorism:

Law No 2017-1510 of 30 October 2017 **strengthening internal security and the fight against terrorism** (SILT) did not in any way include in ordinary law the measures set out in the state of emergency provisions, but was based on administrative police measures for effectively pre-empting the risk of a terrorist act actually being carried out, along with significantly stronger guarantees than those provided for in the state of emergency measures.

Thus, these measures are introduced solely for the purpose of combating terrorism, whereas state of emergency measures could be used in order to put an end to any risk of disruption of public order, including where there is no link to the threat which caused a state of emergency to be declared. They are subject to regular oversight by Parliament, to which each of the measures is addressed and which is in a position to ask for clarification.

Similarly, the measures are significantly more structured in that their duration is limited and the criteria for implementing them have been made more stringent; thus, searches of premises have to be authorised by the magistrate for custody and release. In addition, the legislator limited the timeframe in which they would be effective to up to 31 December 2020, making their continuation subject to an evaluation report submitted to Parliament. With the exception of a few procedural provisions which were criticised and have since been corrected, most of these provisions have been found by the Constitutional Council to comply with the Constitution in that they clearly strike a balance between preventing terrorism and the rights and freedoms enshrined in the Constitution.

As regards reform of the judiciary pursuant to the Law of 23 March 2019 on 2018-2022 programming and reform for justice:

The government has streamlined a number of elements of criminal procedure to make the latter more effective, with due regard for fundamental rights. Almost all the criminal procedure provisions of the above law were declared by the Constitutional Council to be in accordance with the Constitution, in Decision No 2019-778 DC of 21 March 2019. Forty provisions were thus validated by the Constitutional Council, including those on the restriction on informing lawyers when people in custody are being transported; the system for custody of vulnerable adults; the possibility for magistrates (magistrates for custody and release) to authorise searches in preliminary police inquiries for crimes incurring a sentence of at least three years, instead of five years; experimenting with reading people in custody their rights orally; provisions on house arrest, making this possible in certain cases without both sides being heard and for a period of two years after the end of the instruction phase, etc. The Council thus held that these measures included guarantees and that they were necessary and proportionate.

The few provisions considered to be out of line with the Constitution were criticised and have therefore not entered into force, which confirms the effectiveness of the judicial oversight in ensuring that laws comply with the principles of the rule of law.