



FUNDAMENTAL RIGHTS AND THE RULE OF LAW

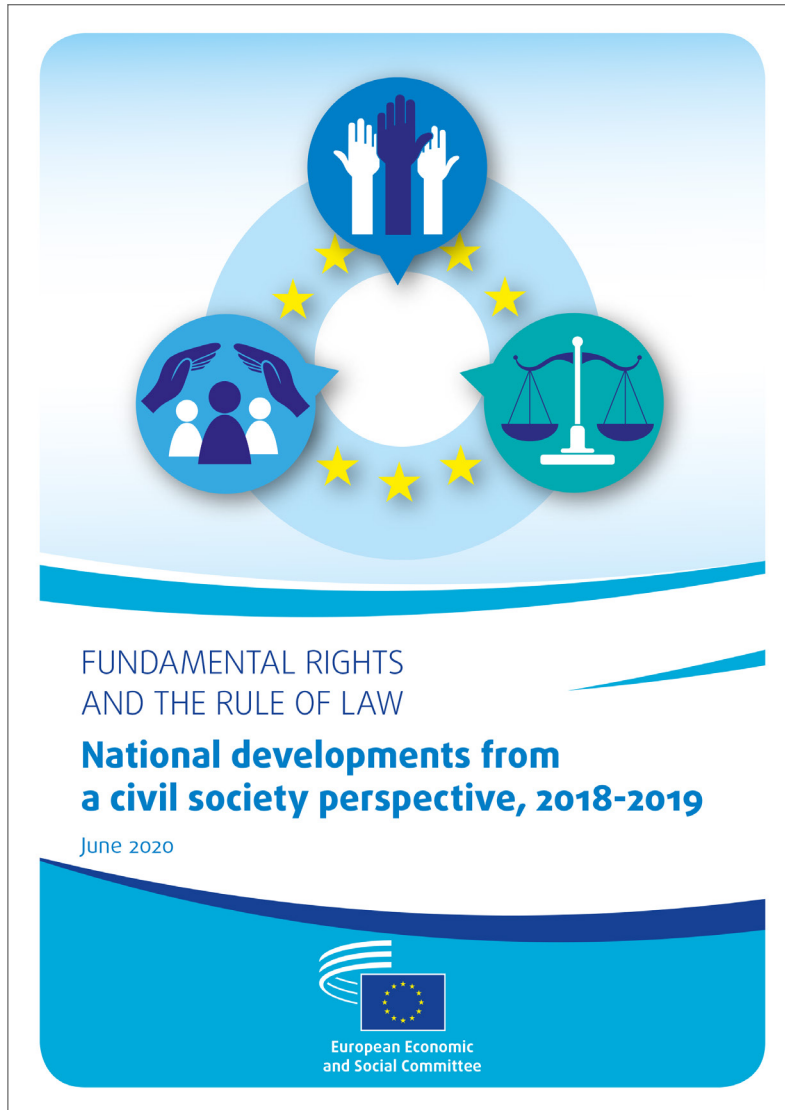
National developments from a civil society perspective, 2018-2019

Excerpt - **France** - Country visit report
28-29 May 2019



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reporting on seven initial country visits in
Romania, Poland, Hungary, Austria,
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Report on the visit to France

28-29 May 2019

Six members took part in the country visit to France. The delegation met with several representatives of civil society, specifically civil society organisations (CSOs), social partners, the media, independent human rights organisations and the legal profession on the one hand, and the French authorities on the other. [The aim of this report is to faithfully reflect and reproduce the views of civil society.]

Freedom of association

From a legal point of view, freedom of association is well protected in France¹². However, according to the CSOs met during the visit, the full and unhindered enjoyment of this freedom is currently facing challenges from two sides. On the one hand, in a context of scarce resources, public and private financing available for CSOs has decreased. Associations are particularly badly affected by this situation. According to the representatives met during the mission, they are seen only as easy budgetary adjustment variables, while their civic, democratic, social and economic functions are forgotten or even challenged.

On the other hand, CSOs – and particularly those that provide assistance to migrants – report increasing attempts to stop or hinder their activities through threats of legal proceedings or detention of their volunteers and workers. According to representatives met during the mission, a process is underway in France of criminalising organisations whose sole purpose is to save human lives. Some also mentioned smear campaigns against CSOs by private actors. Trade union representatives met during the mission felt that they were being subjected to increasing obstacles and discrimination in the conduct of their activities.

Freedom of assembly

According to representatives met during the mission, the entry into force of the law on “the maintenance and reinforcement of public order during demonstrations” in April 2019 has led to a deterioration in the otherwise solid legal protection of the right to demonstrate in France. Before this law was published, the Constitutional Council removed a provision that would have allowed Prefects to issue preventive administrative bans on demonstrating (*interdiction administrative de manifester*).

12 In a 1971 Decision, the French Constitutional Council (Conseil Constitutionnel) gave freedom of association the status of “fundamental principle recognised by the laws of the Republic”, i.e. a Constitutional-level value.

CSOs criticised of the fact that the right to demonstrate was being curtailed through a large number of disproportionate and unjustified arrests, and through the use of excessive force by security forces. CSOs also mentioned the abuse of custody ("*garde à vue*") as a means of neutralising activists – notably environmental activists – and preventing them from taking part in protests. They lamented that complaints brought against the police had not led to consequences.

These legal developments have taken place in the context of an evolution in the social dynamic of demonstrations in France, through the waves of "yellow vests" protests. These demonstrations have been spontaneously convened through social media by a number of loosely coordinated organisers, in multiple places at the same time and on a recurring – weekly – basis over several months. Participants explained that these originally peaceful demonstrations had been infiltrated by well-organised rioters who had systematically sought to give the protests a violent turn. Some participants mentioned that disproportionate use of force by the police predated the "yellow vests" demonstrations and that it had been used during authorised events that had been well supervised by their organisers.

The police has had to face an increasingly challenging environment in a situation of shortages of staff, resources and training, which has strongly affected staff morale. The representatives from the police trade union met during the mission claimed that the use of LBD-40s (*Lanceur de Balle de Défense*/Defensive Ball Launchers) – an intermediate force non-lethal weapon – was the only way they had of protecting themselves during demonstrations marked by a radicalisation of the yellow vests movement and infiltration by violent fringes ("black blocs"). Numerous stakeholders at national and international level have demanded that the use of LBD-40s be suspended. CSOs met during the mission denounced the fact that their use has resulted in a high number of people being injured and mutilated. The French authorities have however so far refused to suspend their use of LBD-40s, remaining the only EU country to do so.

The French authorities denied the existence of genuine abuses by the police forces, attributing the high number of detentions, accidents and injured people to the unprecedented number of demonstrations that have taken place since November 2018, as well as to the presence of rioters among the demonstrators. The authorities also assured the delegation that the police used force only in the event of violence by or between demonstrators, and that its use was progressive and proportionate, as stated by the State Council (*Conseil d'Etat*) consulted on this matter. The authorities are looking into other ways to keep demonstrations safe and secure, if possible avoiding direct contact between police and demonstrators.

Freedom of expression and freedom of the media

According to the organisations met during the mission, freedom of the media is guaranteed by law and in practice, but there are some challenges in France. Journalists and the profession in general are increasingly facing systematic discrediting (“media bashing”) by many politicians. Some recent laws, like the French Act on combating the manipulation of information, aimed at combating the propagation of fake news and anti-cyber hate speech, could have limiting effects on media freedom.

The media representatives met during the mission expressed their deep concerns about the severe and numerous cases of police violence against journalists during the “yellow vests” demonstrations. They informed the mission about journalists being prevented from passing roadblocks, being intimidated or injured, and being detained in police custody while their material and press cards were confiscated by the police or deliberately damaged.

Non-discrimination

According to CSOs and independent human rights organisations met during the mission, discrimination seems to be on the rise in France, in particular in the areas of employment, access to justice, housing and healthcare. The groups most vulnerable to discrimination are said to be persons of Arab and African descent (who are also subject to ethnic profiling during police controls), LGBTI people, homeless people, and Roma people. Despite advanced legislation, women still face discrimination, even more so if they are of Muslim origin. The situation of migrants – including asylum seekers – and especially child migrants, is particularly worrying in terms of the increasing violation of their human rights. Participants also mentioned the phenomenon of social discrimination and worrying developments in the area of online hate speech and violence.

Rule of law

Representatives met during the mission expressed their concerns about a general trend that had followed the terrorist attacks, which had seen the authorities introducing state of emergency provisions into ordinary law. They considered that this had tipped the institutional balance towards security, at the expense of other rights and freedoms, and had led to a weakening of the role of the Judiciary in favour of that of the administrative authorities. In their view, the extension of the state of emergency has progressively blurred the distinction between administrative police, who deal with prevention, and judicial police who are oriented towards enforcement.

The 2017 Law on strengthening internal security and the fight against terrorism permanently incorporated a number of state of emergency provisions into ordinary law. This was criticised by many of the organisations met during the mission, who were worried by the suspension of certain rights that this law entailed and by the tip in the balance of powers granting the administrative authorities some powers that were normally assigned to the judicial authorities.

The mission heard some concerns from the legal profession over the proposed reform of the French judiciary. Although it aims to make justice simpler and more efficient for the public, it is taking place against the backdrop of increasing constraints on the public financing of the judicial sector. Participants drew attention to the risk that the reform could affect fundamental rights, in particular with regard to the penal procedural code. According to these representatives, the rights of the defence are being excessively diminished, causing an imbalance in relation to those of the prosecution.

According to the representatives met, the aforementioned Law on the maintenance and reinforcement of public order during demonstrations also presents worrying developments concerning the judiciary¹³. Generally, participants expressed concerns about a shift towards preventive justice, which could endanger the independence of the judiciary and fundamental rights in the long term.

13 A circular sent by the Ministry of Justice to Prosecutors, encouraging them to call for "complementary penalty" (peines complémentaires) that can entail individual interdictions to take part in demonstrations.