

Legal environment and space of civil society organisations in supporting fundamental rights and the rule of law

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1 Civic space developments in 2021

1.1 Law on consolidating the principles of the Republic (<i>Loi confortant le respect des principes de la République</i>)¹	
Area	Freedom of association
Topic	Funding; Formation and registration of associations; Involuntary dissolution; Transparency; Counterterrorism
Impact	Major

The law of 24 August 2021 reinforcing respect for the principles of the Republic introduces the new contract of republican commitment and amends the law of 9 December 1905 on the separation of Church and State, as well as the law of 2 January 1907 on the exercise of public religious worship.

In particular, associations or foundations that apply for a public subsidy have to undertake to adhere to the secular character and principles of the Republic (equality between men and women, human dignity, fraternity, etc.) in a "contract of republican commitment". If they infringe this obligation, the subsidy must be repaid. Compliance with the contract becomes a condition for obtaining approval or recognition as a public utility.

The list of grounds for dissolution of associations has been expanded. Associations may be held liable for acts committed by their members, acting in this capacity, or for acts directly related to their activities.

Endowment funds, a tool for financing patronage, will be more controlled by prefects. Tax authorities will be able to ensure that only associations that meet the conditions set out by law can benefit from public generosity and issue tax receipts. Foreign funding received by associations under the 1901 law that receive more than 153,000 euros in donations per year and through endowment funds, will be controlled.

The conditions for creating and governing of associations managing a place of worship provided for by the 1905 law have been reviewed. These religious associations will have to declare themselves to the prefect every five years. Their accounting obligations have been reinforced. Foreign donations of more than 10,000 euros and the transfer of places of worship to a foreign state must be

¹ France, Law No. 2021-1109 on consolidating the principles of the Republic (*Loi n° 2021-1109 confortant le respect des principes de la République*), 24 August 2021, available at: www.legifrance.gouv.fr/jorf/id/JORFTEXT000043964778/

declared. The prefect may object when a fundamental interest of society is at stake.

The associations will be able to own and operate investment properties acquired by bequest or donation. 50% of annual resources can be derived from such real estate properties. Municipalities and departments must inform prefects before any public guarantee for a loan intended for the construction of a religious building, or the signing of an emphyteutic lease (long-term lease).

For so-called mixed associations, which are governed by the law of 1 July 1901 and which exercise a religion, their obligations, in particular in terms of administrative and accounting, are aligned with those of religious associations: certification in certain cases of their accounts, accounting distinction of their religious activities from the rest of their activities, declaration of money coming from abroad. The prefect may order an association whose purpose is in fact the exercise of a religion to declare itself as a religious association.

The penalty for incitement to discrimination, hatred or violence committed by a minister of religion is increased to five years in prison. The organisation of voting operations for French or foreign political elections is prohibited. The judge may, moreover, prohibit a person guilty of a religious worship policing offence from appearing in places of worship. The prefect may temporarily close places of worship in the event of acts that provoke hatred or violence.

1.2 Law on associative commitment (<i>Loi en faveur de l'engagement associatif</i>) ²	
Area	Freedom of association, Financing framework
Topic	Responsibility, State aid, Promotion
Impact	Major

The law on associative commitment mitigates the financial liability of volunteer associative leaders in the event of mismanagement, by extending the "negligence exception" provided for business leaders. Until now, personal assets of such volunteer leaders could be seized in the event of mismanagement.

² France, Law No. 2021-874 on associative commitment (*Loi n° 2021-874 en faveur de l'engagement associatif*), 1 July 2021, available at: www.legifrance.gouv.fr/jorf/id/JORFTEXT000043741537

Associations with fewer than 20 employees (instead of 10 previously) can benefit from the "job impact" (*impact emploi*) scheme: URSSAF's³ service solution for managing jobs in the associative sector, which involves taking overall responsibility for the formalities involved in managing an employee (hiring, pay slips, social and tax returns).

The law amended the education code to include raising the awareness of the associative life of students and teachers.

1.3 Law to improve the cash flow of associations (<i>Loi visant à améliorer la trésorerie des associations</i>)⁴	
Area	Financing framework
Topic	Funding landscape, tax regime
Impact	Major

Law 2021-875 of 1 July 2021 to improve the cash flow of associations (*Loi n° 2021-875 visant à améliorer la trésorerie des associations*), now allows for the keeping of the unspent surplus of a subsidy of more than 23,000 euros, if the agreement between the administration or the organisation that awards the subsidy and the beneficiary association provides for its conditions.

The new law also provides that the public authority is required to pay the subsidy within sixty days of the date of notification of the decision to award the subsidy, unless the administrative authority, if necessary in the form of an agreement, has set other payment dates or made the payment conditional on the occurrence of a specific event.

The law also introduces the possibility for associations in the same federation to make cash loans to each other. In particular, provided that the loan is interest-free and is granted for up to two years, loans may be granted to members of the union or federation of associations constituted as an association of which they are members:

³ URSSAF ("Unions de Recouvrement des Cotisations de Sécurité Sociale et d'Allocations Familiales", meaning the Organizations for the Collection of Social Security and Family Benefit Contributions) collects employee and employer social security contributions that finance the general account of France's social security system, including state health insurance. This is available at www.urssaf.fr/

⁴ France, Law No. 2021-875 to improve the cash flow of associations (*Loi n° 2021-875 visant à améliorer la trésorerie des associations*), 1 July 2021, available at: www.legifrance.gouv.fr/jorf/id/JORFTEXT000043741543

- associations governed by the law of 1 July 1901 relating to the contract of association or registered in the register of associations pursuant to the local civil code applicable in the departments of Bas-Rhin, Haut-Rhin and Moselle, declared for at least three years and whose activities are referred to in b of 1 of Article 200 of the General Tax Code (*Code général des impôts*);
- foundations recognised as being of public utility;
- associations recognised as being of public utility.

The law also institutes the possibility for the *Caisse des dépôts* to pay a portion of the sums from inactive accounts of associations that are no longer active for the benefit of the development of associative life. In addition, associations or the Fund for the development of associative life (*Fonds pour le développement de la vie associative* (FDVA)) will be able to benefit from the balance of electoral financing associations.

The government must submit a report on the status of the taxation of donations and other means of developing philanthropy to the Parliament within one year. This report must determine the consequences of the tax measures of the last five years on the amount of donations to associations and foundations.

2 Examples of civil society contributions to the rule of law

2.1 The platform 'Mémo de Vie' (Memo of life)	
Topic	Assisting victims in accessing judicial and non-judicial mechanisms of justice

In 2021, Memo of Life (*Mémo de Vie*), the digital platform to help victims escape domestic violence, was recognised by the Equality Accelerator Award (*Prix Accélérateur d'Égalité*). Initiated in November 2020 under the aegis of the Ministry of Justice and supported by the France Victimes association, this platform (www.memo-de-vie.org) provides four functions to best help victims escape from domestic violence:

- The diary in which the user is able to relate and consult events and indicate their perceived safety.
- The "My Documents" space which allows various media (photos of bruises, audios of threats, etc.) and official documents (medical certificates, divorce decision, identity papers, etc.) to be stored and grouped in a secure, encrypted and time-stamped way.
- The "Useful contacts" section provides important emergency and support numbers for victims of domestic violence and offers the possibility of filling out a form so as to be re-contacted by a victim assistance professional.
- The library offers a selection of reliable content providing information on various topics related to their situation: law, health, social, testimonials, etc. Various tools are also available to allow victims to assess their situation.

Through the diary, the victim can describe and keep a record of the facts, thereby alleviating the problem of memory disorders that may accompany domestic violence, and in particular psychotrauma. This memory aid, together with visual indications, allows the victim to take a step back from their experience and helps them to grasp their situation and the seriousness of the violence involved. The ability to share the diary will allow a coherent, documented account to be forwarded and thereby facilitate the investigation. The possibility offered by the secure area to gather all official documents in one place simplifies administrative and judicial procedures. Finally, the account of the events provided by the diary and the secure media in this space can help to prove the facts by gathering evidence. Any professional can register free of charge for a Memo of Life (*Mémo de Vie*) awareness raising workshop via video conference. It offers a demonstration of the tool as well as a presentation of its objectives, issues, messages and communication media for victims.

2.2 Defending whistle-blowers

Topic	Keeping the national anti-corruption framework operational (protection of whistle-blowers)
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A coalition of 30 organisations (associations and trade unions), gathered at the initiative of the House of Whistle-blowers (*Maison des Lanceurs d'Alerte*), has formulated the proposed amendments of the bill filed by the member of parliament Sylvain Waserman on the protection of whistle-blowers to transpose the European directive of 2019.⁵

The amendments aim to broaden the scope of people who can obtain protection, grant them social, psychological and financial support, strengthen their rights, reinforce sanctions against "alert suffocators", create a "one-stop shop" for the follow-up of whistle-blowers (Public Defender of Rights / *Défenseur des droits*), clarify the authorities responsible for dealing with whistle-blowers, provide for criminal immunity for obtaining confidential information, protect organisations that carry out whistle blowing, guarantee organisations a right to protect their sources, involve trade unions in establishing internal channels within companies, facilitate emergency procedures for public officials, adopt a whistle-blowing mechanism specific to national security issues and offer easier access to refugee status for whistle-blowers.

The petition can be signed on the website presenting the proposed amendments.

The bill on the protection of whistle-blowers⁶ has been adopted by the National Assembly (*Assemblée nationale*) and is currently being examined by the Senate's Committee on Constitutional Law, Legislation, Universal Suffrage, Regulations and General Administration (*Commission des lois constitutionnelles, de législation, du suffrage universel, du Règlement et d'administration générale du Sénat*).

⁵ <https://loi.mlalerte.org/>

⁶ France, Bill on the protection of whistle-blowers (*Proposition de loi visant à améliorer la protection des lanceurs d'alerte*), n° 4398, available at : www.assemblee-nationale.fr/dyn/15/textes/l15b4398_proposition-loi

2.3 Anticor's position on the official debate on the Estates General on Justice (*États généraux de la justice*)

Topic	Contributing to law and policy making (involvement in public consultations)
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The AntiCor association, which is very active in the political and judicial area, fighting against corruption by notifying the public prosecutor of facts likely to receive a criminal qualification and by defending general interest during the judicial proceedings, has published its position⁷ in the context of the official debate on the Estates General on Justice (*États généraux de la justice*) on the Ministry of Justice's website.⁸

The individual and collective contributions are followed by the assessment of the proposed measures and the opinion of the committee of the Estates General on Justice (*États généraux de la justice*) is expected in February 2022.

In its contribution, the AntiCor association criticized the status of the French prosecutor's office, which is part of the Minister of Justice for appointments. The association pointed out that the Minister of Justice also defines the penal policy that has to be applied within a national framework. According to the association, the concept of power based on "the President of the Republic acting as the overseer of the independence of the judiciary"⁹ is no longer justified today. The judicial police reporting to the Ministry of the Interior was criticised. It was proposed to limit feedback to the executive branch on current procedures. The association considered that the public prosecutor's office could conduct a non-coercive preliminary investigation in cases involving a political person. However, it should be required to refer the matter to an investigating judge if coercive measures were envisaged. The same reasoning should be applied to media investigations. The association called for the optimising of the time of the procedure, stressing that "litigants, durably exposed to suspicion in spite of the presumption of innocence, paid a heavy price due to the structural weakness of the means of justice". The association proposed that the entire procedure for appointing judges should be assigned to the National Judicial Council (*Conseil supérieur de la magistrature*), without the participation of the Minister of Justice in the selection process. The representativeness of the National Judicial Council (*Conseil supérieur de la magistrature*) should also be improved, according to the contribution cited. The AntiCor Association proposed the creation of the Council of

⁷ France, AntiCor, AntiCor's contribution on justice (*Contribution d'AntiCor sur la justice*), available at: www.anticor.org/wp-content/uploads/2021/11/Etats-generaux-de-la-justice.pdf

⁸ <https://www.parlonsjustice.fr/>

⁹ France, Constitution, Article 64, available at: www.conseil-constitutionnel.fr/le-bloc-de-constitutionnalite/texte-integral-de-la-constitution-du-4-octobre-1958-en-vigueur

Justice (*Conseil de justice*), which would guarantee the absolute freedom of judges to rule impartially on the cases before them, according to their own conviction and interpretation of the facts, and in accordance with the applicable rules of law. It should also guarantee the conditions needed for prosecutors to be impartial in directing and monitoring investigations. Any draft text likely to have an impact on justice or the independence of judges, or changing the guarantees of access to justice for citizens (including judges themselves), should be submitted to the Council for advice before deliberation by Parliament. The Council should be empowered to make its views publicly known and to make representations to the public, public authorities and courts in defence of the reputation of the judiciary or its members. The association criticized the Court of Justice of the Republic (*Cour de justice de la République*), which deals with offences committed by ministers during the exercise of their duties, for being a "justice of exception". The association also disputed the complete penal and civil inviolability of the Head of state during their term of office, as a result of the constitutional reform of 23 February 2007. Finally, the association called for more resources for justice to be "equal for all" and "more effective than currently in dealing with the delinquency of the powerful".