

AMNESTY INTERNATIONAL PUBLIC STATEMENT

29 March EUR 21/3912/2021

AMNESTY INTERNATIONAL'S CONCERNS REGARDING THE BILL "TO STRENGTHEN RESPECT FOR THE PRINCIPLES OF THE REPUBLIC"

The bill "to strengthen respect for the principles of the Republic" was approved by the Council of Ministers and forwarded to the presidents of the National Assembly and Senate on 9 December 2020. The bill was submitted for the consideration of a special committee in January 2021. The text, which is being fast-tracked, was passed at first reading on 16 February by the National Assembly.¹ The Senate debate on the bill will start on 30 March 2021.²

Amnesty International considers that several provisions in the bill raise particular concerns regarding France's obligations to respect the rights to freedom of association and expression, and the principle of non-discrimination.

1. RIGHT TO FREEDOM OF ASSOCIATION

Article 6 of the bill states that any organization that applies for a grant from the State or a local authority must sign a contract of "republican commitment". Grants may be denied to any organization pursuing activities that are not compatible with this contract. If the contract is broken after a grant has been awarded, the organization concerned will be required to repay the grant received. A Council of State decree will determine the content of this contract as well as the conditions pertaining to reimbursements.

Under this contract, organizations will undertake to "respect the principles of liberty, equality, fraternity, human dignity, public order, the minimum requirements of life in society and the fundamental symbols of the Republic."

The purported aim of this measure is to ensure that resources made available to organizations are used in line with the Republic's principles of liberty, equality, fraternity, respect for human dignity and protection of public order, which will be set out in a contract of republican commitment.³

International and European human rights law permits States to restrict the right to freedom of association in order to protect public order and the rights of others. However, any restriction must be necessary and proportionate to the aim pursued and must be implemented in accordance with the principle of non-discrimination.⁴

Rules concerning the funding of organizations can have a negative impact on the right to freedom of association. The United Nations' Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association has underlined that "the right to freedom of association ranges from the creation to the termination of an association, and includes the rights to form and to join an association, to operate freely and to be protected from undue interference, to access funding and resources and to take part in the conduct of public affairs".⁵

Furthermore, in June 2020, the Court of Justice of the European Union concluded that the rules concerning the financing of organisations by persons living abroad disproportionately limited the right to freedom of association in Hungary.⁶

Amnesty International calls on States to allocate funds in a non-discriminatory manner and to ensure that organisations espousing opinions that differ from those of the government and working to promote the rights of marginalised groups have the same chances of receiving funding as organisations that comply with government policies.⁷

¹ The text adopted by the National Assembly is available here: https://www.assemblee-nationale.fr/dyn/15/textes/I15t0565_texte-adopte-seance

² On 17 and 18 March, the Senate legal committee adopted some amendments to the text that the National Assembly had previously passed (www.senat.fr/presse/cp20210319a.html). This public statement focuses on the text adopted by the National Assembly as the amendments passed by the Senate legal committee do not address the main human rights concerns that this bill raises.

³ Explanatory statement: https://www.assemblee-nationale.fr/dyn/15/textes/I15b3649_projet-loi

⁴ Article 22 of the International Covenant on Civil and Political Rights (ICCPR) and Article 11 of the European Convention on Human Rights (ECHR).

⁵ The report of the Special Rapporteur is available here:

https://www.ohchr.org/documents/hrbodies/hrcouncil/regularsession/session20/a-hrc-20-27_en.pdf

⁶ The ruling is available here: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-06/cp200073en.pdf>

⁷ For further information see: <https://www.amnesty.fr/liberte-d-expression/actualites/des-lois-concues-pour-muserler>

Making the awarding of grants subject to “respecting the public order” could be particularly problematic since this principle can be very broadly interpreted. In addition, the bill stipulates that the content of the contract of republican commitment, which is not explicitly defined in the text, will be determined in a decree to be issued by the Council of State.

The Syracuse Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, which protects the right to freedom of association, conceives of public order as all the principles that ensure the functioning of a society, with human rights being part of those principles.⁸ Some current French laws are problematic with regard to international human rights law as they include, for example, the offence of contempt or the offence of apology of terrorism. The vague definition of these criminal offences raises concerns regarding the respect of human rights.⁹ The peaceful contestation of these laws, for example, must not be considered a threat to public order that justifies the withdrawal of public funding.

Moreover, conditioning the awarding of public grants on the respect of “fundamental symbols of the Republic” such as the flag or the national anthem constitutes an unlawful restriction of the right to freedom of expression. The European Court of Human Rights has repeatedly ruled that the right to freedom of expression also applies to disturbing, shocking or offensive forms of expression.¹⁰ For instance, in the case of *Stern Taulats and Roura Capellera versus Spain*, the European Court held that the Spanish State had violated the right of freedom of expression by convicting two people who had burned an image of the king and queen during a demonstration.¹¹ Disrespecting “fundamental symbols of the Republic” is covered by the right to freedom of expression and must not result in the imposition of penalties, including the withdrawal of grants.

Amnesty International echoes the concerns of France’s Ombudswoman, who recalls that sanctions against organizations that fail to comply with the law already exist and considers that Article 6 of the bill would place “organizations in a position where they are not simply asked not to commit an offence, but to positively and explicitly commit, in both their objectives and the way they are organised, to principles promoted by the public authorities”. That would risk “partially undermining the status of civil society organizations, which are essential intermediaries between citizens and public authorities”.¹²

In light of the concerns regarding the respect for the right to freedom of association, Amnesty International asks that Article 6 be dropped.

Article 8 of the bill proposes to broaden the grounds for dissolving an organization to include the acts of its members, in instances where executives are aware of those acts but do not take the necessary measures to stop them, taking into account the means available to them.

Amnesty International recalls that the dissolution of an organization is one of the most severe restrictions of the right to freedom of association and should only be imposed as a last resort, where there is clear and present danger resulting from a flagrant violation of the law. Moreover, any such dissolution should be ordered by a court.¹³

Amnesty International questions the measure sets out in Article 8, and shares the concerns of France’s National Consultative Commission on Human Rights (CNCDH) and Ombudswoman, which highlight “a reversal of the burden of proof” and how it could legitimately be difficult for the executives of an organization to identify and prevent reprehensible acts.

Amnesty International calls for Article 8 be dropped and for the existing legislation to be amended to ensure that the dissolution of an organization is only used as a measure of last resort, decided by a court, in response to an imminent danger resulting from a flagrant violation of French laws, in accordance with international human rights law.

2. RIGHT TO FREEDOM OF EXPRESSION

Article 18 of the bill creates a new offence of endangering life by disseminating information about a person’s private, family or professional situation that makes it possible to identify or locate them, with the aim of exposing them or members

⁸ The Syracuse Principles can be consulted here: <https://undocs.org/pdf?symbol=en/E/CN.4/1985/4>

⁹ For more information see: <https://www.amnesty.org/download/Documents/EUR2117912020ENGLISH.PDF>; <https://www.amnesty.org/download/Documents/EURO153422017ENGLISH.PDF>

¹⁰ ECtHR case *Handyside v. The United Kingdom*, para. 48, <http://hudoc.echr.coe.int/eng?i=001-57499>

¹¹ ECtHR case *Taulats and Capellera v. Spain*: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-181719%22%7D>

¹² Recommendation no. 21-01 : https://juridique.defenseurdesdroits.fr/doc_num.php?explnum_id=20384

¹³ For more information see: <https://www.amnesty.org/download/Documents/EURO133592020ENGLISH.PDF>

of their family to a direct risk of injury to person or property, of which the perpetrator of the dissemination must have been aware.

The penalties are increased when the targeted person holds a position of public authority or performs a public service role.

Amnesty International recalls that restrictions on freedom of expression to protect privacy or other human rights are legitimate, insofar as they are lawful, necessary and proportionate. Furthermore, while incitement to violence or crime can be punished, there must be a clear and direct link between the incitement and the likelihood of violence actually being perpetrated. The Johannesburg Principles on National Security, Freedom of Expression and Access to Information stipulate that a form of expression “may be punished as a threat to national security only if a government can demonstrate that: (a) the expression is intended to incite imminent violence; (b) it is likely to incite such violence; and (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence”.¹⁴

Although the bill mentions the “aim of exposing persons to a direct risk”, the wording of Article 18 is vague and it is not made sufficiently clear that only acts resulting in a direct and likely risk of violence against people or property can be criminalized. Amnesty International fears that the notion of injury to person or property could be interpreted too broadly when this provision of the bill is enforced, which could constitute a disproportionate restriction of the right to freedom of expression.

In addition, French criminal law already punishes threats, harassment and the violation of the right to privacy. To date, the authorities have not demonstrated the necessity for this new criminal offence. Amnesty International calls for Article 18 be dropped as it raises concerns regarding the respect of the right to freedom of expression. At the very least, it should be clarified that only acts that entail a direct and likely risk of violence against persons or property can be criminalized.

3. THE PRINCIPLE OF NON-DISCRIMINATION

Not only must the measures that the French authorities adopt to protect national security, public order or the rights of others be necessary and proportionate, they must also respect the principle of non-discrimination, which is enshrined in numerous international human rights treaties, including the International Covenant on Civil and Political Rights (Articles 2.2 and 26) and the International Covenant on Economic and Social Rights (Article 2.2).¹⁵

The principle of non-discrimination requires that the French authorities refrain from adopting measures that could be directly or indirectly discriminatory against groups defined by protected characteristics such as religion or belief, ethnic origin, nationality or migration status. Even in the absence of measures that are directly discriminatory in their formulation, there is the risk of indirect discrimination in the implementation of this proposal.

In its statement setting out the justification for the bill to strengthen respect for the principles of the Republic, the government mentions the need to strengthen a legal arsenal that is insufficient to tackle “radical Islam”. The government focuses on “radical Islam”, arguing in the explanatory statement that:

“An insidious but powerful communitarian entryism is slowly eroding the foundations of our society in certain regions. This entryism is essentially of Islamist inspiration. It is the manifestation of a conscious, theorised, politico-religious political project, which aims to see religious norms prevail over the common law that we have freely given ourselves. It is unleashing a separatist dynamic that aims at division [...] In the face of radical Islam, in the face of all forms of separatism, it is clear that our legal arsenal is insufficient. We must face up to reality: The Republic is not sufficiently equipped to take action against those who want to destabilise it.”¹⁶

The government fails to define the notions of “separatism” or “radical Islam”, or to provide information or data to justify its specific and exclusive focus on those phenomena. Amnesty International is concerned that these vague notions risk reinforcing pre-existing negative and harmful stereotypes that conflate Muslims and terrorism. This raises the fear of discriminatory implementation of the bill once it is adopted, which could have a particularly negative impact on Muslim individuals and associations.

¹⁴ Principle no. 6. The Johannesburg principles can be consulted here: <http://hrlibrary.umn.edu/instree/johannesburg.html>

¹⁵ For more information about respecting the principle of non-discrimination in the fight against terrorism see: Amnesty International and Open Society Foundations. A human rights guide for researching racial and religious discrimination in Europe: <https://www.amnesty.org/download/Documents/EURO136062021ENGLISH.PDF>

¹⁶ Explanatory statement: https://www.assemblee-nationale.fr/dyn/15/textes/l15b3649_projet-loi

Amnesty International has shown that the French authorities have, in the past, used the concept of “radicalisation” or “radical Islam” to justify the imposition of emergency measures without valid grounds and in a discriminatory manner.¹⁷ The United Nations’ Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism has expressed her concerns about the conflation of Islam and terrorism in France. Following her visit to France in 2018, she underlined that “the conflation of Islam with terrorism in government policy and in the implementation of administrative measures unduly singles out this community, alienates the community from the State, and creates a form of political and social disenfranchisement that is inconsistent with the State’s obligations under international human rights law”.¹⁸

The bill does not provide specific guarantees concerning, for example, the withdrawal of grants from organizations accused of failing to respect the contract of republican commitment. Consequently, any administrative authority or body responsible for managing a public service could decide to deny or withdraw a grant without any formality other than giving the organizations the opportunity to submit written or oral comments at its request. The judicial remedies remain those provided under current law.

The lack of control regarding application of the provisions established in the bill and the vague notions that have justified its introduction raise concerns that the principle of non-discrimination could be infringed in the implementation of the bill.

¹⁷ Amnesty International, Upturned lives: The disproportionate impact of France’s state of emergency, EUR 21/3364/2016, <https://www.amnesty.org/download/Documents/EUR2133642016ENGLISH.pdf> Amnesty International, Punished without trial: The use of administrative control measures in the context of counter-terrorism in France, <https://www.amnesty.org/download/Documents/EUR2193492018ENGLISH.pdf>

¹⁸ The conclusions of the Special Rapporteur are available here: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23128&LangID=E>