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Global Perspectives on Freedom of Association: France

Vanessa Barbé

Societās Exploring the Value of Freedom of Association

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Project Lead
Professor Maria Cahill
School of Law
University College Cork
Cork, Ireland
www.associationalfreedom.org

Editors of the Global Perspectives on Freedom of Association collection
Professor Maria Cahill, School of Law, University College Cork
Dr. Seán Ó Conaill, School of Law, University College Cork
Professor Dwight Newman, School of Law, University of Saskatchewan
Mr. Ruairí McIntyre, School of Law, University College Cork

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Freedom of Association in France: a Freedom in Danger?

Vanessa Barbé [*]

I. Introduction

In France, freedom of association is protected since a law of 1901 (section 2) and has a constitutional and international value (section 3). However, there are many justifications for the dissolution of associations (section 4), the number of which has increased since 2017 (subsection 4.1). This paper analyses a recent modification of the law of associations in 2021, through the case of the dissolution of an undeclared association which is accused to 'provoke violent acts against persons or property' (subsection 4.2). Another modification in 2021 deals with the public funding of associations, with the establishment of the 'republican commitment contract' that associations must sign before applying for a public subsidy (section 5). Freedom of association seems to be in danger in France because of the multiplication of legal restrictions on this freedom, justified by its ambiguous nature (section 6).

II. History and Legislative Status of Freedom of Association in France

In France in the Middle Ages and before the Revolution, there was no freedom of association. Associations needed an authorisation and there were no political freedoms.

In the French Declaration of Human Rights of 1789 as well, freedom of association was not protected because there were no collective rights in the Declaration (i.e. freedom of association, freedom of assembly, right to protest), as the revolutionaries wished to abolish all communities within society (*Décret d'Allarde* (March 1791) and *Loi Le Chapelier* (June 1791)). Even in the criminal code of 1810, there was a prohibition to create an association of more than 20 members without an authorisation of the government (called the crime or offence of association). During the Monarchy (1814-1830 and 1830-1848), some political associations were created in secret, called clubs and workers corporations.

[*] University of Valenciennes, France.

The Third Republic (1870-1940) was slow to assert the right of association. From 1871 to 1901, no less than 33 bills were drafted on this topic. But hesitations arose, as some feared that this freedom would be used by the Church to reinforce its weight in society. Finally, a first step forward, both symbolic and concrete, was taken with the law of 21 March 1884, which legalised the unions by offering them a very liberal framework.

At the time, Waldeck-Rousseau, as Minister of the Interior, was one of the main architects of the law establishing trade union freedom. He was a fierce supporter of freedom of association. When Waldeck-Rousseau became head of the government in 1899, one of his objectives was the establishment of freedom of association. The law relating to the contract of association was promulgated on 1 July 1901. The law institutes a very liberal regime, in complete break with a secular tradition of distrust of any coalition outside the control of public authorities.

Thus, individuals are given full freedom to associate. According to article 2 of the law: 'Associations of persons may be formed freely without prior authorisation or declaration'. The purpose of the association is left to the free choice of its founding members. No formalities are required. Only if the members of the association wish it to get legal personality (in order to be able, for example, to take legal action) must they declare it to the prefecture. But even in this context, liberalism is the principle, since the prefect cannot refuse to issue a receipt. It is only later that the prefect can act, if he/she considers, for example, that the association has set itself an illegal goal. Article 3 of the 1901 law on contracts of association provides that 'any association founded on a cause or with a view to an illicit object, contrary to the law or morality, or whose purpose is to undermine the integrity of the national territory or the republican form of government, is null and void'.

Finally, there is one last element that confirms the liberal nature of the regime of creation of associations. This is the very wide latitude given to members in drafting the association's statutes. This is perfectly logical in legal terms, since the law of 1901 defines the association as a contract. In French law, a contract is the 'thing of the parties'. It is therefore up to the members of the association themselves to determine the form and the rules of operation of their creation.

At present, it is still the regime of the law of 1901 that applies. The right to freedom of association includes the right to associate, to disassociate and to organisational autonomy.

There are 1.3 million associations and 22 million members of associations in France (the third of the total population); they represent 113 billion euros (3 % of the GDP of France) and employ 1.8 million staff members[1]. These figures can be explained by the very simple procedure in place for setting up associations, in force since 1901.

There are different status of associations:
- Undeclared associations or de facto groupings: they are not declared to the prefecture, but they do not obtain legal personality;
- Declared associations are subject to a written declaration to the prefecture, in order to obtain legal capacity. The declaration mentions the name and purpose of the association, the location of the establishments, the names of the directors or managers, and includes two copies of the statutes. The prefect then has the authority to issue a receipt attesting to the declaration within five days;
- Associations recognised as being of public utility have a broader legal capacity allowing them to receive donations and legacies. The Minister of the Interior issues the receipt. However, associations recognised as being of public utility, which obtain certain advantages in terms of financing, are subject to rules that are defined by decree;
- Accredited associations: they get more rights, especially related to court proceedings.

Freedom of association is the foundation of many other freedoms, especially political freedoms. Only freedom of association can make some freedoms less virtual for the majority of individuals: freedom of opinion, freedom of speech, freedom of assembly, are often exercised only through an association, as well as the right to protest or the right to an effective remedy.

Freedom of association is also a factor in political innovation, because administration seems to be slow to adapt to social demand. On the contrary, the spontaneity with which associations are created means that they are directly in tune with the concerns of today's citizens. This is why, very often, the action of an association precedes that of the public authorities: it drives innovation, expresses a new need and gradually leads the State to take it into account. That is the case particularly concerning environmental associations or consumers' rights associations.

[1] Associathéque, 'Key Figures and History of the Associative Sector' (4 Janurary 2023) https://www.associatheque.fr/fr/creer-association/chiffres-cles.html> accessed 10 February 2024.

At last, freedom of association is a factor in education. Associations are places where individuals discover judicial procedures and acquire skills that enable them to dialogue on an equal footing with public and private technocrats.

That's why since 1901 some Acts of Parliament were adopted in order to enlarge the rights of associations. For example, a law of 28 July 2011 authorises minors of sixteen years and older to form an association. With the law of 31 July 2014 on the social and solidarity economy and the ordinance of 23 July 2015, some new provisions were taken in order to simplify the regime for associations. Later, the 'Equality and Citizenship' law of 27 January 2017 aims to strengthen associative engagement, particularly of young people, as well as to encourage legal actions by associations (for example, students' associations in hazing cases).

But there have also been some major changes to the law of associations recently, in order to restrict associations' rights. The law of 24 August 2021 reinforcing respect for the principles of the Republic[2] is an essential law for associations and, further, for all non-profit organisations. However, contrary to the last laws that modified the law of associations, which essentially aimed at strengthening associations and simplifying their functioning, the new text, voted in a context of a fight against separatism, intends to reinforce the State's control over associations. First, it creates a new ground for dissolution of an association which provokes violent acts against persons or property. Second, it establishes the 'republican commitment contract' for associations. In particular, it requires them, as a condition for obtaining a public subsidy: to commit themselves, by the signature of the contract, to respect the principles of freedom, equality, fraternity and human dignity as well as the symbols of the Republic, not to call into question the secular character of the Republic, and, finally, to refrain from any action that would undermine public order. It should however be noted that article 16 of the law reinforcing respect for the principles of the Republic allowed the Minister of the Interior to suspend the activities of an association in case of emergency and as a precaution. The Constitutional Court considered that the provision was contrary to the Constitution on the grounds that 'by allowing such a

[2] Law n° 2021-1109 of 24 August 2021 Reinforcing Respect for the Principles of the Republic (*confortant le respect des principes de la République*).

decision to be taken, without any other condition than urgency, the legislator has infringed freedom of association in a way that is not necessary, appropriate and proportionate'.[3]

Ultimately, freedom of association is subject to an extended legislative status. In addition, it has a constitutional and international value, and is accordingly a fundamental right in France.

III. Constitutional and International Value of Freedom of Association

The right to freedom of association is a major fundamental right in France since a landmark decision of the Constitutional Court in 1971,[4] as it is not explicit in the Constitution of the 5th Republic of 1958. In this decision, the Court held not only that freedom of association was a constitutional right, but also that the Constitutional court could overrule an Act of Parliament if it is not compatible with such a fundamental constitutional right. This "Marbury v Madison" type of decision was a small revolution in France. In 1971, it was the first time that a piece of legislation was overruled by the Constitutional Court, when the Parliament wished to transform the system of declaration of associations into a system of authorisation. In that decision, the court held that:

> 'Among the fundamental principles recognised by the laws of the Republic and solemnly reaffirmed by the preamble to the Constitution is the principle of freedom of association; that this principle underpins the general provisions of the law of 1 July 1901 relating to the contract of association; that, by virtue of this principle, associations are freely constituted and can be made public subject only to the filing of a prior declaration; that, with the exception of measures that may be taken in respect of particular categories of associations, the formation of associations, even if they appear to be null and void or have an illicit object, cannot be subject to the prior intervention of the administrative authority or even the judicial authority in order to be valid'.

[3] Decision n° 2021-823 DC of 13 August 2021 2021 Reinforcing Respect for the Principles of the Republic (*Loi confortant le respect des principes de la République*).
[4] Decision n° 71-44 DC of 16 July 1971, Law Supplementing the Provisions of Articles 5 and 7 of the Law of 1 July 1901 Relating to the Contract of Association (*Loi complétant les dispositions des articles 5 et 7 de la loi du 1er juillet 1901 relative au contrat d'association*).

Freedom of association is also protected through Article 11 of the European Convention on Human Rights (ECHR)[5], Article 12 of the Charter of Fundamental Rights of the European Union[6] and Article 22 of the International Covenant on Civil and Political Rights.[7] France is a monist system: each ordinary court has got the power to check the compatibility of an Act of Parliament or of an administrative act with a treaty. For example, the administrative decision to dissolve an association can be challenged before the Supreme Administrative Court (Council of State), either through a request for annulment on the merits, or through an emergency procedure - notably a "référé-liberté" on the grounds of infringement of a treaty. It is possible to ask the judge to temporarily suspend the dissolution, but at the same time an appeal must be lodged with the administrative court to request the definitive annulment of the decision. Recently for instance, the suspension of the dissolution of an undeclared association was ordered on 11 August 2023[8], on the ground that it infringed articles 10 and 11 of the ECHR (see below).

Freedom of association was the subject of a landmark decision of the European Court of Human Rights of 29 April 1999 (*Chassagnou v France*).[9] Pursuant to the law of 10 July 1964, known as the "*Loi Verdeille*", on the organisation of approved municipal or inter-municipality hunters' associations, all the applicants, who are opposed to hunting, had to become members of the

[5] Article 11: 'Freedom of assembly and association
1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.'

[6] Article 12: 'Freedom of assembly and of association
1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.'
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

[7] Article 22:
'1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.'

[8] N° 476385. https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2023-08-11/476385

[9] *Chassagnou and Others* v *France* [GC] App nos 25088/94, 28331/95 and 28443/95 (ECHR, 29 April 1999).

associations set up in their municipalities and to transfer hunting rights over their land to these associations so that all hunters living in the relevant municipality could hunt there. They could not evade the obligation to join the association and to transfer their hunting rights to it.

The Court held that to compel a person by law to join an association even if it is fundamentally contrary to his own convictions to be a member of it, and to oblige him, on account of his membership of that association, to transfer his rights over the land he owned so that the association in question could attain objectives of which he disapproved, went beyond what was necessary to ensure that a fair balance was struck between conflicting interests and could not be considered proportionate to the aim pursued. There had therefore been a violation of Article 11 of the Convention.

There is also a control of dissolutions of associations by the European Court of Human Rights. For example, on 28 April 2010, two decrees ordered the dissolution of two football supporters' clubs due to repeated acts of damage to property and violence against individuals (including the death of a supporter). The Supreme Administrative Court rejected the requests to annul the decrees, as they were compatible with Article 11 of the European Convention on Human Rights. Indeed, although the contested decisions to dissolve the clubs (based on article L. 332-18 of the French Sports Code) may constitute an interference with the right to freedom of association, the dissolution measure was not, in this case, disproportionate in view of the facts that had led, in particular, to the death of a supporter following brawls between certain members of the associations. This interpretation was confirmed by the European Court.[10]

In *Ayoub v France*,[11] the European Court had to consider the dissolution of paramilitary-type far-right associations following violence and public-order disturbances by their members. Three extreme right-wing organisations were dissolved following the death of a young man in a fight with members of one of them (*Troisième Voie*). The legal grounds for dissolution invoked by the authorities included the existence of a private militia and incitement to discrimination, hatred and violence. The appeals lodged by the applicants were dismissed by the Supreme Administrative Court. The European Court admitted that dissolution was a drastic measure of last resort. Nevertheless, in view of the seriousness of the context, the authorities

[10] Council of State 13 July 2010, *Ass. Les Authentiks*, n° 338257; 13 July 2010, *Ass. Supras Auteuil 91*, n° 338293; *Les Authentiks and Supras Auteuil 91* v *France* App nos 4696/11 and 4703/11 (ECHR, 27 October 2016).
[11] *Ayoub v France* App nos 77400/14, 34532/15 and 34550/15 (ECHR, 8 October 2020).

had been justified in believing that allowing the *Troisième Voie* to continue in existence would be perceived as indirectly legitimising past and future public disturbances. They had not had any less intrusive legal means available to them, for instance the possibility of suspending the groups' activities. The domestic courts had performed detailed scrutiny of the characterisation of the facts and had examined the compatibility of the impugned measure with freedom of association. In view of the broader margin of appreciation left to the authorities in cases of incitement to violence, the measure had been necessary in order to prevent public-order disturbances as effectively as possible, and could therefore be regarded as proportionate to the aim pursued.

If need be, these decisions show that despite its constitutional and international value, freedom of association is not absolute, and that some associations can be banned, in accordance with the law and in compliance with the Constitution and the international framework.

IV. Justifications for Banning Some Associations

The dissolution of an association may occur by decision of its members (in application of its statutory provisions), by court decision or by administrative decision.

The judicial dissolution can be pronounced in the following cases: when the purpose of the association is illegal or contrary to the laws and morality; in case of the illegal use of the association form (e.g. to try to circumvent tax provisions); in case of attacks on the national territory and against the republican form of government by the association; if there has been a criminal conviction of the association.

Since 1936, an administrative dissolution may also occur.[12] An association is dissolved by decree of the Council of Ministers[13] in the following cases:[14] incitement to discrimination,

[12] Law of 10 January 1936 on Combat Groups and Private Militias (*sur les groupes de combat et milices privées*), now art. L. 212-1 of the French Internal Security Code.
[13] The Council of Ministers is composed of the Government and the President of the Republic.
[14] Art. L. 212-1 of the Internal Security Code: 'All associations or de facto groups shall be dissolved by decree of the Council of Ministers:
1° Which provoke armed demonstrations or violent acts against persons or property;
2° Or whose military form and organisation give them the character of combat groups or private militias;
3° Or whose purpose or action tends to undermine the integrity of national territory or to violate the republican form of government by force;
4° Or whose activity tends to thwart measures concerning the re-establishment of republican legality;
5° Or whose aim is either to bring together individuals who have been convicted of collaborating with the enemy, or to exalt such collaboration;

hatred or violence towards a person or a group of persons because of their origin or their belonging or not belonging to a specific ethnic group, nation, race or religion or propagation of ideas or theories tending to justify or encourage such discrimination, hatred or violence; participation in acts of terrorism in France or abroad. That is also the case for associations presenting, by their military form and organisation, the character of combat groups or private militias and associations whose purpose is to undermine the integrity of the national territory or to attack by force the republican form of government.

Since 2006, supporters' associations may also be dissolved or suspended from activity for up to 12 months by decree[15] if their members have committed the following offences during a sports event: damage to property, violence against persons, acts of incitement to hatred or discrimination against persons because of their origin, sexual orientation or gender identity, their sex or their membership, real or supposed, to a specific ethnic group, nation, race or religion.

It should be noted that article 16 of the law reinforcing respect for the principles of the Republic of August 2021[16] creates a new ground for dissolution of an association which provokes violent acts against persons or property. In its decision on the law,[17] the Constitutional Court ruled that, given the guarantees surrounding the adoption of the decision to dissolve (precise purpose, decision taken by decree of the President of the Republic, possibility for the association to present observations, control of the administrative judge), the legislator had not infringed on freedom of association in a way that would not be necessary, appropriate and proportionate.

Finally, there are many legal grounds for the dissolution of an association in the law. In practice, those grounds seem to be increasingly mobilised by the government.

6° Or which either provoke or contribute through their actions to discrimination, hatred or violence against a person or group of persons on the grounds of their origin, sex, sexual orientation, gender identity or their actual or supposed membership or non-membership of a particular ethnic group, nation, alleged race or religion, or propagate ideas or theories tending to justify or encourage such discrimination, hatred or violence;
7° Or who engage, on or from French territory, in activities designed to provoke acts of terrorism in France or abroad.
The maintenance or reconstitution of an association or group dissolved under the present article, or the organisation of such maintenance or reconstitution, as well as the organisation of a combat group, are punishable under the conditions laid down in Section 4 of Chapter I of Title III of Book IV of the French Penal Code'.

[15] Law n° 2006-784 of 5 July 2006 on the Prevention of Violence at Sporting Events (*relative à la prévention des violences lors des manifestations sportives*), now art. L. 332-18 of the French Sports Code.

[16] Law n° 2021-1109 (n 2).

[17] Decision n° 2021-823 (n 3).

4.1 Recent Attacks towards Freedom of Association

Since 2017, there have never been so many administrative dissolutions of associations (declared or not). Since 14 May 2017, 35 dissolutions of associations have been pronounced - an average of 5.83 dissolutions per year. Moreover, since the law against separatism in August 2021, there is a new ground for the dissolution of associations that 'provoke armed demonstrations or violent acts against persons or property'. The change in the law in 2021 has been accompanied by a marked acceleration in the number of dissolutions. Since 2021, fourteen associations have been dissolved, mainly far-right organisations or those accused of promoting radical Islamist ideology. Over the previous decade, between 2010 and 2020, 29 such dissolutions had been pronounced (during the previous Hollande mandate, 10 dissolutions were pronounced between 15 May 2012 and 14 May 2017 - an average of 2 dissolutions per year[18]).

The comparison can go back as far as 1936. Over that period, and excluding the aforementioned dissolutions, the number of dissolutions averaged 1.39 per year for the 1936 law, and 1.5 for the 2006 law.[19]

Those dissolution decrees were very rarely annulled by the Supreme Administrative Court. During the Hollande term, 6 appeals on the merits concerned dissolution decrees adopted during this period: 1 was annulled and 5 were confirmed.

Under President Macron, of the 5 appeals on the merits processed by the Supreme Administrative Court, 5 have been rejected, subject, of course, to any appeals that may be lodged with the European Court of Human Rights.

4.2 Case Study: Dissolution of "Earth Uprisings"

The government dissolved the environmental movement *Les Soulèvements de la Terre* (LST, "Earth Uprisings") during a Council of Ministers' meeting on 21 June 2023, after the March 25 demonstration against the giant water reserve project in Sainte-Soline, co-organised by *Les Soulèvements de la Terre*, and the violent clashes that followed.

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[18] Dalloz, 'Has Freedom of Association Been in Danger since 2017?' (30 May 2023) <https://actu.dalloz-etudiant.fr/le-billet/article/la-liberte-dassociation-est-elle-en-danger-depuis-2017/h/a6d5ee38b340b90f06ede3a2221883f4.html> accessed 10 February 2024.
[19] ibid.

LST is not a declared association, but a movement born in January 2021 from the grouping of around a hundred organisations and numerous individual supporters. However, the government felt justified in dissolving the movement, calling it a 'de facto grouping' or undeclared association.

The government decree relies on the first paragraph of article L. 212-1 of the Internal Security Code, which authorises the dissolution of associations that 'provoke armed demonstrations or violent acts against persons or property' - a ground expanded in the law against separatism in August 2021. 'Under the guise of defending the preservation of the environment', this movement 'incites the commission of sabotage and material damage, including through violence', according to the 21 June 2023 decree.[20]

In addition, the law punishes participation in the maintenance or reconstitution of a dissolved association or grouping with three years' imprisonment and a fine of €45,000.[21] This means that it is no longer permitted to use the logo, slogans or social networking accounts of a dissolved group.

The administrative decision to dissolve LST was challenged through a "*référé-liberté*" (emergency procedure) on the grounds of infringement of the fundamental freedom of association, and the suspension was ordered on 11 August 2023[22]. The Supreme Administrative Court held that:

> '[A]lthough the contested decree accuses *Les Soulèvements de la Terre* of inciting violent acts against persons and property, it is not clear … from the evidence presented at the hearing that this collective in any way condones violence against people. With regard to the alleged acts of violence against property, it is clear … that the actions promoted by Soulèvements de la Terre which led to damage to property were part of the collective's stance in favour of civil disobedience initiatives and the "disarmament" of devices damaging the environment, the

[20] Decree of 21 June 2023 dissolving a de facto grouping (*portant dissolution d'un groupement de fait*).
[21] Art. L. 212-2 of the Internal Security Code.
[22] N° 476385. https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2023-08-11/476385

> symbolic nature of which it claims, and were limited in number. In view of the limited nature and extent of the damage resulting from these attacks, the argument that the actions of which the collective is accused cannot be qualified as incitement to acts seriously disturbing public order such as to justify the application of the aforementioned provisions of 1° of article L. 212-1 of the Internal Security Code, in particular with regard to the requirements of Articles 10 and 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, is, as the investigation stands, such as to create a serious doubt as to the legality of this decree'.

This suspension may be a first stage towards the annulment of the decree. But many other dissolutions challenged before the administrative courts have been upheld by the Supreme Administrative Court in recent years. These include the government's dissolution of the far-right association *Génération identitaire* (May 2021), of the *Collectif contre l'Islamophobie en France* (CCIF) and BarakaCity, accused of "Islamist propaganda" (September 2021), and of the libertarian association *Le Bloc lorrain* (December 2022).

After the Supreme Administrative Court, a final appeal remains possible to the European Court of Human Rights. In January 2023[23], the CCIF lodged an application with the ECHR against France for 'disproportionate interference in its rights to freedom of expression and association'. In the event of failure at the national level, LST say they are ready to go all the way to the European Court.

Finally, this new ground for dissolution of an association which provokes violent acts against persons or property seems to be a rather useful tool for the government in order to control associations. That is also the case for the second innovation of the 2021 law relating to the public funding of associations.

V. Public Funding of Associations: the Republican Commitment Contract ('*contrat d'engagement républicain*')

The law of 24 August 2021 reinforcing republican principles has added a limitation to freedom of association not provided for by the 1901 law. From now on, the association must undertake

[23] *Collectif contre l'Islamophobie en France* Request no 15745/22 (ECHR, 30 January 2023).

‘to respect the principles of liberty, equality, fraternity and human dignity, as well as the symbols of the Republic’, ‘not to call into question the secular character of the Republic’ and ‘to abstain from any action prejudicial to public order’.

Moreover, the system of subsidies is changed, as associations will no longer be able to apply for a public benefit if they have not subscribed to a republican commitment contract or if they do not respect its principles. Compliance with these principles is also a condition for maintaining the benefits granted to the association. In the event of non-compliance, the grant will be withdrawn and the sums paid refunded. Subsidies include optional contributions of any kind, i.e. not only aid in monetary form, but also aid in any kind. This includes the loan of a room or access to the public highway for the organisation of an event.

At last, a legal action created by the law of 24 August 2021 enables the prefect to apply to the judge for the suspension of an act taken by a local authority that is likely to ‘seriously undermine the principles of secularism and neutrality of public services’. This mechanism can be used against a local authority that has awarded (or not withdrawn) a subsidy to an association that has not subscribed to the contract or does not respect its principles. Such an application is pending before a local administrative court in October 2023. The prefect (*Vienne*) has appealed against the refusal of one municipality to take back a grant awarded to an association that organised a ‘civil disobedience training workshop’.

In its decision of 13 August 2021[24] on the law, the Constitutional Court specified that subscribing to the republican commitment contract did not represent an infringement of freedom of association. Indeed, the court specified that the obligation to subscribe to a contract in order to apply for a subsidy ‘is not intended to regulate the conditions under which [the association] is formed and carries out its activity’.

Nevertheless, public subsidies represent an important and necessary resource for associations. According to the bill’s impact study, 61% of associations receive public funding, and subsidies account for an average of 20% of their financing.

[24] Decision n° 2021-823 (n 3).

In addition, the Constitutional Court stated that the withdrawal of subsidies 'cannot, without disproportionately infringing freedom of association, lead to the repayment of sums paid in respect of a period prior to the breach of the contract'. Consequently, this provision, subject to the aforementioned interpretation, is deemed to comply with the Constitution. The Constitutional Court noted that procedural guarantees had been adopted to govern the return of subsidies. Indeed, a contradictory procedure must be implemented, the withdrawal of the subsidy must be justified and the association has six months to return the funds.

However, it is still possible to consider that the republican commitment contract represents a tightening of control over associations by local authorities. This contract, perceived as a measure of mistrust towards associations, has been the subject of various criticisms.

That's why on 1 March 2023, twenty-five associations lodged an appeal with the Supreme Administrative court against the republican commitment contract, which was given concrete form in a decree published on 31 December 2021.[25]

For the associations lodging this appeal, the contract is an obstacle to freedom of association. In a press release, they stated that the contract contains 'vague provisions' that risk subjecting associations 'to arbitrary decisions by the administration and local authorities'.[26] Moreover, they asserted that 'the decree is all the more worrying in that it comes against a backdrop of mistrust and repression of associations. This is borne out by the difficulties already encountered by several of them in obtaining the necessary approvals for legal action'. They also point out that the *Commission nationale consultative des droits de l'Homme* (French National Advisory Commission on Human Rights) had called for the withdrawal of this contract.

Nevertheless, on 30 June 2023,[27] the Supreme Administrative Court rejected the application against the decree establishing the contract. It ruled that on the one hand, the new obligations thus imposed on the associations pursue a legitimate aim, since the republican commitment

[25] Decree n° 2021-1947 of 31 December 2021 Implementing Article 10-1 of law n° 2000-321 of 12 April 2000 and Approving the Republican Commitment Contract for Associations and Foundations Receiving Public Subsidies or State Approval (*pris pour l'application de l'article 10-1 de la loi n° 2000-321 du 12 avril 2000 et approuvant le contrat d'engagement républicain des associations et fondations bénéficiant de subventions publiques ou d'un agrément de l'État*).

[26] Gisti, 'Appeal against the Decree Approving the Republican Commitment Contract for Associations and Foundations Receiving Public Subsidies' <https://www.gisti.org/spip.php?article6743> accessed 10 February 2024.

[27] N^{os} 461962, 462013, 462015. https://www.legifrance.gouv.fr/ceta/id/CETATEXT000047773958/.

contract aims to ensure that associations wishing to receive subsidies respect the principles of freedom, equality, fraternity and human dignity, as well as the secular nature of the Republic, public order and the symbols of the Republic within the meaning of Article 2 of the Constitution. On the other hand, these obligations are defined in sufficiently precise terms by the law of 24 August 2021. Furthermore, the withdrawal of public subsidy granted to an association that has failed to comply with the contract, which cannot lead to the repayment of sums paid in respect of a period prior to the breach, as ruled by the Constitutional Court, are measures taken under the control of the administrative judge. It follows that that the new obligations imposed on associations in order to receive a public subsidy constitute a measure that is necessary in a democratic society and proportionate to the aim pursued.

In those two cases relating to the republican commitment contract, both the Constitutional Court and the Council of State appear to have exercised a control of proportionality reduced to its simplest form: the modifications of the law are deemed to be 'necessary, appropriate and proportionate' as it is stated in a very lapidary way. Finally, the 2021 Act of Parliament and all of the recent developments in the law of associations lead us to question the rationale for protecting freedom of association in France.

VI. Rationale for Protecting Freedom of Association

Freedom of association, which is not only a human right but also a political right, has an ambiguous nature that is a source of suspicion in France. Freedom of association can be seen as a form of participation in power,[28] as the exercise of the right to vote, together with political participation, is no longer considered sufficient. Citizens' assemblies, petitions, referenda, but also associations, are ways of involving citizens other than the right to vote. Moreover, they avoid the drawbacks of bureaucracy and represent a form of decentralisation of power, or a form of horizontality opposed to the verticality of the State's power. In that sense, freedom of association can be considered as a counterpower, as democracy cannot exist without checks and balances. Associations protect individuals from oppression in a democratic country. They avoid a face-off between the individual and political power.

[28] C Debbasch and J Bourdon, *Les associations* (Paris: PUF, 2006) 128.

That's why associations have always appeared to rulers as counterpowers likely to challenge established power.[29] Alongside political associations, religious groups have particularly attracted this mistrust, not only because of their political orientations, but also because they call for loyalties other than commitment to the State.

By affirming their popular legitimacy against the legitimacy of universal suffrage, associations assert themselves as rivals of democratic political power. The latter, while admitting freedom of association, is tempted to control its exercise. Moreover, the power of associations can jeopardise democratic freedoms if they set themselves revolutionary objectives. The problem is to know to what extent a democratic state can tolerate groups that are not democratic. The law of associations gives the government exceptional powers with regard to some of these groups. But there is a danger that these prerogatives will be used to undermine freedom of association. It is particularly difficult to draw the line between opposition and subversion. Article 4 of the 1958 Constitution attempts to establish the means of controlling political parties, after recognising them by stating: 'Political parties and groupings contribute to the expression of votes. They form and operate freely'; it adds: 'They must respect the principles of national sovereignty and democracy'.

Finally, every association is constantly trying to act as a pressure group and obtain decisions from public authorities that are in line with the interests of its members. This strategy can ruin the general interest and mark the triumph of special interests. According to the French concept of the general interest, it transcends individual interests, which cannot compete with it. The State cannot be made up of separate communities, each defining for itself what it deems to be most expedient, and imposing it on other social categories. The fear of communitarianism exists since 1789.

This tension between private and general interests was confirmed recently. On 4 October 2023,[30] on the basis of article L. 212-1 of the Internal Security Code, the Council of Ministers decided for the first time to dissolve a political party created under the status of an association (a catholic party named *Civitas*). The decree accuses the organisation of having the aim of undermining the republican form of government by force and of holding racist and

[29] ibid.
[30] Decree of 4 October 2023 Dissolving an Association (*portant dissolution d'une association*).

collaborationist ideological positions. The decision of the Supreme Administrative Court on the application against the dissolution is awaited, because it has always checked the constitutionality of the dissolution of associations in the light of the constitutional principle of freedom of association, and not the dissolution of political parties in the light of Article 4 of the Constitution. There is no guarantee that the standards of the control of dissolutions of associations are the same in the case of the dissolution of a political party, because the competence of the executive power to dissolve political parties that compete with it seems to be an issue.

On another note, on 13 October 2023, an amendment to the Finance Bill was adopted by the National Assembly's Finance Committee. Drafted by the majority, the aim of the amendment is to suspend tax benefits for any organisation appealing to the generosity of the public (especially associations) in respect of donations, payments and legacies if they are convicted of certain criminal offences. It extends the list of such offences to include defamation, incitement to commit an offence, occupying land belonging to another person or damaging property. Environmental associations protesting against large-scale projects such as motorways or airports may be affected. For those associations, this amendment represents another serious violation of freedom of association and freedom of speech.