

State-association relations: an authoritarian shift in contemporary France?

Antonio Delfini et Julien Talpin • Observatoire des libertés associatives

In France, relations between the State and the nonprofit sector have often been stormy – a sign of a healthy democratic system. However, here the authors explain that, for some years now, an arsenal of legislation and administrative practices has been undermining the foundations of this system of checks and balances. And risks threatening the rights of associations.

Emmanuel Macron's first five years in office ended with an unprecedented conflict between the State and the nonprofit sector. The State's animosity against "intermediary bodies", which became more pronounced during his recent term, has given way to a centralised, disjointed approach to the management of terrorist, social and health crises. The resulting marginalisation of the nonprofit sector in particular has contributed to reducing the civic space and aggravated our current democratic crisis.

What really sparked things off were the twenty provisions addressing the organisation, operation and financing of "associations" [civil society organisations under the French association law of 1901, editor's note] included in France's 2021 "separatism act". According to the Council of State, consulted, as is the rule, before the bill was presented to the Council of Ministers, the law had a tremendously broad scope of application, since it covered practically "all constitutionally and conventionally guaranteed rights and freedoms", first and foremost of which is the freedom of association.¹ However, by breaking with the progressive co-formulation of the rules governing the partnership between the State and associations, two of its key measures – the introduction of a Republican commitment contract (*Contrat d'engagement républicain* – CER in French) and the extension of the grounds for dissolution of associations – sent waves of concern throughout the nonprofit sector.

Some observers have interpreted these provisions as an indication of a shift in relations between the State and nonprofit sector, viewing it as a landmark act of regression away from the rights of associations and the freedom of association itself.

¹ Conseil d'État du 9 décembre 2020, *Avis sur un projet de loi confortant le respect, par tous, des principes de la République*, <https://www.conseil-etat.fr/avis-consultatifs/derniers-avis-rendus/au-gouvernement/avis-sur-un-projet-de-loi-confortant-le-respect-par-tous-des-principes-de-la-republique>

Special partners

The relations between the State and associations are marked by their differences or even the tensions that exist between them. In France, these differences constitute part of a setting that has seen a structural decline in public funding over the last ten years,² as well as an increase in calls for proposals and the commodification of certain nonprofit activities.³ These developments have contributed to the precariousness of associative life, particularly for the least professional structures, with the abolition of a substantial proportion of subsidised jobs (from which many small associations benefited) at the beginning of the previous five-year term deepening these difficulties. In this context, the number of disagreements has grown in recent years, raising concerns around the French nonprofit sector's independence and the public freedoms it enjoys.

The student association Genepi had its agreement with the Ministry of Justice terminated in December 2018 and its annual funding of 51,000 euros revoked. The reason given was the association's stated position on prison conditions and prison management policies. A few days earlier, on 5 November 2018, the Minister of Justice, Nicole Belloubet, had addressed the issue directly on a French public radio: "Genepi developed arguments that are highly adverse to the public policies that we pursue. [...]. Therefore, it was no longer a policy of forming a partnership based on our goals, but one of near-constant head-on opposition. I therefore took the decision to revoke the grant."⁴

As another example, in 2018, a sub-prefect replied to a nonprofit health centre in Toulouse, "Don't bite the hand that feeds you", to justify the reason for rescinding their financial support. The association, which represented migrants legally challenging the Prefecture's refusal to reimburse their healthcare costs, found itself at odds with it. "We don't consider you a partner", said the senior civil servant. "A partner is one who implements government policy."⁵

In October 2020, the first report released by the *Observatoire des libertés associatives* [the French watchdog for associations' freedoms, editor's note] examined 100 cases of government sanctions against associations responsible for certain public statements or

² Lionel Prouteau et Viviane Tchernonog, « Évolutions et transformations des financements publics des associations », *Revue française d'administration publique*, vol. 163, n° 3, 2017, p. 531–542, <https://www.cairn.info/revue-francaise-d-administration-publique-2017-3-page-531.htm>

³ Simon Cottin-Marx et al., « La recomposition des relations entre l'État et les associations : désengagements et réengagements », *Revue française d'administration publique*, vol. 163, n° 3, 2017, p. 463–476, <https://www.cairn.info/revue-francaise-d-administration-publique-2017-3-page-463.htm>

⁴ *Observatoire des libertés associatives*, *Perte de convention et coupure de subvention pour une association étudiante d'aide aux détenus*, octobre 2020, fiche n° 32, <https://www.lacoalition.fr/Perte-de-convention-et-coupure-de-subvention-pour-une-association-etudiante-d-57>

⁵ *Observatoire des libertés associatives*, *Un centre de santé communautaire menacé de fermeture par la préfecture de Haute-Garonne*, avril 2020, fiche n° 52, <https://www.lacoalition.fr/Un-centre-de-sante-communautaire-menace-de-fermeture-par-la-prefecture-de-Haute>

actions.⁶ These sanctions, such as the exclusion of association activists from public platforms, the filing of lawsuits for defamation, subsidy cuts and the withdrawal of meeting room access, were more or less covert disengagement strategies that could jeopardise the democratic role of associations. They undermine the rights of associations, which include all those that the latter employ to carry out their democratic function: the freedom of expression, assembly and demonstration. This dynamic is especially noteworthy in associations that rely on advocacy institutions to change legislation by lobbying public authorities. Raising the price of engagement or penalising associations that have publicly taken controversial positions through their words or actions acts as a sword of Damocles hanging over each organisation and reinforces self-censorship, transforming partnership relations into relations of “service control” and, if necessary, sanctions.

Even though several associations had pointed to the importance of recognising this “grey area” of unfair practices, the passing of the CER in 2021 ultimately legalised these sanctions.

Is the Republic against associations?

“Not a single euro of public money for the enemies of the Republic”⁷ was the lead statement that was joined to the government’s presentation of the separatism act and its flagship provision: the introduction of the CER. This document prescribed that the payment of government subsidies and the granting of approvals was to be conditional on respect of “the principles of liberty, equality, fraternity and human dignity, and of the symbols of the Republic, i.e., its national emblem (the flag), national anthem and motto” as well as the fact of “not challenging the secular character of the Republic and, lastly, refraining from any action that undermines public order”.⁸

The introduction of this Republican commitment contract caused a minor earthquake in the recent past relations between the public sphere and the nonprofit sector. By requiring associations to sign a contract primarily comprised of obligations, constraints and controls, the CER brought an end to reciprocal rule-making between the State, local governments and

⁶ *Observatoire des libertés associatives, Une citoyenneté réprimée. 100 cas de restriction des libertés associatives, 12 pistes pour mieux les protéger, octobre 2020, https://www.lacoalition.fr/IMG/pdf/rapport_v2.pdf*

⁷ Among the many uses of the statement, refer to the one by Sarah El Haïry, the former Secretary of State for Youth and Engagement: Mohamed Sifaoui, « La ministre Sarah El Haïry au JDD : “Pas un euro d’argent public ne doit aller aux ennemis de la République” », *Le Journal du Dimanche*, 20 mars 2021, <https://www.lejdd.fr/Politique/la-ministre-sarah-el-hairy-au-jdd-pas-un-euro-dargent-public-ne-doit-aller-aux-ennemis-de-la-republique-4032842>

⁸ Légifrance, *Décret n° 2021-1947 du 31 décembre 2021 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*, 31 décembre 2021, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000044806609>

associations that had culminated in the signing of the Charter of Reciprocal Commitments in February 2014⁹.

In February 2022, the *Observatoire des libertés associatives* published its second report on the detailed investigation of twenty court cases between 2016 and 2020 involving associations accused of making statements or implementing actions considered contrary to the values of the Republic.¹⁰ Going back to the post-terrorist climate of 2015-2016, this report exposed the proliferation of accusations of “subversion of secularism”, “communitarianism” and “proselytism” levelled against associations whose practices appeared to be entirely lawful, yet based on shaky factual foundations. In so doing, this report foreshadowed the potential abuses of the CER.

As an example, we can recall that, in early June 2018 – prior to the enactment of the separatism act – the managers of the family allowance fund (*Caisse d'allocation familiale* – CAF in French) in Dordogne informed the mayor of Bergerac that it was suspending the equivalent of 300,000 euros in subsidies to two community centres in the town's working-class neighbourhoods. The agency had reprimanded these establishments for keeping their doors open to local residents until 1 am during Ramadan. This measure constituted an “infringement of secularism” according to Michel Beylot, director of the CAF in Dordogne. The mayor of Bergerac had publicly supported the two community centres, because the associations that administered them were mainly financed by the municipality. He believed the two establishments had made a common sense decision: “During Ramadan, the night falls late as does the breaking of the fast. As a result, people stay out late, which can create noise [...]. By allowing people to meet elsewhere than in the street, the late opening of community centres absorbs all the commotion.” He added: “Religion has nothing to do with it. We adapt to other people's habits during this period. [...] There is no religious character to it. It's as if we ordered that nothing should happen at Christmas because it's a religious holiday. The CAF does what it wants, but in this case, it's totally off track. [...] If they insist on going down this route, we'll take them to administrative court”.¹¹ The case was eventually settled through negotiations between the municipality of Bergerac and the CAF of Dordogne with a simple reminder of the law and jurisprudence on the matter, saying that an association that is not performing a delegated public service mission is not required to follow the rules of religious neutrality imposed on State services.¹² The association had already attested to the CER's potential violation of the rights of associations.

⁹ See *Charte d'engagements réciproques entre l'État, le Mouvement associatif et les collectivités territoriales*, février 2014, <https://www.associations.gouv.fr/IMG/pdf/CharteEngagementsReciproques.pdf>

¹⁰ *Observatoire des libertés associatives, Enquête sur la répression des associations dans le cadre de la lutte contre l'islamisme. Une nouvelle chasse aux sorcières*, février 2022, https://www.lacoalition.fr/IMG/pdf/rapport_chasse-aux-sorcieres_2022_vf.pdf

¹¹ « Dordogne. Des centres sociaux ouvrent plus tard pendant le ramadan, la Caf suspend ses aides », *Ouest France*, 4 juin 2018, <https://www.ouest-france.fr/nouvelle-aquitaine/dordogne-des-centres-sociaux-ouvrent-plus-tard-pendant-le-ramadan-la-caf-suspend-ses-aides-5803518> ; Grégoire Morizet, « La ville de Bergerac accusée par la CAF d'entorse à la laïcité », *Sud-Ouest*, 4 juin 2018, <https://www.sudouest.fr/2018/06/04/la-ville-accusee-par-la-caf-d-entorse-a-la-laicite-5113599-1733.php?nic>

¹² Gwénaële Calvès, *Territoires disputés de la laïcité. 44 questions (plus ou moins) épineuses*, Presses Universitaires de France, 2018, p. 151-198.

Despite these precedents and the multiple forewarnings from the nonprofit sector,¹³ the CER officially came into force on 1 January 2022. It only took a few weeks for elected officials to apply it. On 12 March, the family planning centre of Saône-et-Loire set up a stand on Place de l’Hôtel-de-Ville in Chalon-sur-Saône to commemorate International Women’s Rights Day. For the occasion, the municipality provided the association with a space and materials to raise awareness on gender equality.¹⁴ To advertise the event, the association produced a visual featuring several portraits of women, one of whom was wearing a veil. For the *Les Républicains* mayor Gilles Platret, the image of a woman wearing a veil on the poster gave the association’s work a “sectarian” tone.¹⁵ As a consequence, the mayor stated that he was revoking his authorisation for the stand and the loan of equipment. He wrote to the association, invoking the CER, and stated that “this contract is intended to ensure that your actions respect freedom of conscience and secularism (primary commitment). This requires you to operate on a secular basis in all regards and refrain from proselytising”. *Planning familial 71* took the case to court and won before the Administrative Court of Dijon and the Council of State,¹⁶ yet this case serves as an initial example of how the CER can be arbitrarily applied. What will happen when associations lack the energy or the financial means to fight for their rights in court?

Freedom of association at risk

The French separatism act sparked fierce opposition from within the nonprofit sector because of its impending threat, not only to the freedoms of associations but to the freedom of association itself. Aside from the CER, this law also modified the grounds for the dissolution of associations by the government through the authority of the President of the Republic. Consequently, this contract is likely to transform this presidential authority – one of the most politically coercive targeting civil society organisations – into a routine practice for regulating relations between the State and associations. This measure was originally enacted as an exceptional provision on 10 January 1936¹⁷ in the aftermath of an attempted coup by far-right leagues two years earlier.

¹³ Malik Salemkour, « Contrat d’engagement républicain, vers une démocratie muselée », *Ligue des droits de l’Homme*, 23 février 2021, <https://www.ldh-france.org/23-fevrier-2021-tribune-de-malik-salemkour-contrat-dengagement-republicain-vers-une-democratie-muselee-publiee-sur-mediapart> ; Le mouvement associatif, *Contrat d’engagement républicain : le désaccord des associations*, 3 janvier 2022, communiqué de presse, <https://lemouvementassociatif.org/contrat-dengagement-republicain-le-desaccord-des-associations>

¹⁴ Brigitte Clavagner, « Éditorial », *Juris associations*, n°660, juin 2022.

¹⁵ Gilles Platret, « La Ville de Chalon refuse de mettre des moyens publics au service du communautarisme », 4 mars 2022, communiqué de presse, <https://www.info-chalon.com/articles/2022/03/04/67804/gilles-platret-refuse-la-demande-formulee-par-le-planning-familial-71-et-l-accuse-de-communautarisme>

¹⁶ Décision n° 462140 du juge des référés du Conseil d’État, 10 mars 2022, <https://juricaf.org/arret/FRANCE-CONSEILDETAT-20220310-462140>

¹⁷ Nicolas Lebourg, « Usages, effets et limites du droit de dissolution durant la Ve République », in Romain Sèze (dir.), *Les États européens face aux militantismes violents. Dynamique d’escalade et de désescalade*, Riveneuve, coll. « Violences et radicalités militantes », 2019, p. 169-186 ; Romain Rambaud, « La loi du 10 janvier 1936 sur les groupes de combat et milices privées (article L. 212-1 du code de la sécurité intérieure) : l’arme de dissolution massive », *Revue des droits et libertés fondamentaux*, 2015, chron. n° 20,

To see how this development came about, you only need to look at how this provision was extended to all spheres, even at a time prior to having been legislatively modified. Between 6 July 2020, the date of Gérald Darmanin's appointment as Minister of the Interior, and 31 March 2022, the date of the last dissolution decree that dealt with GALE, the antifascist group of Lyon and its suburbs,¹⁸ there were fourteen cases launched over twenty-one months. The surge of procedural dissolutions had not been surpassed since the critical junctures of France's contemporary history (France's liberation, the decolonisation period, May '68, etc.). However, this surge was distinct from prior ones in terms of its duration. While previous waves of dissolutions were the result of a brief but strict application of the procedure (eighteen associations dissolved in 1944-1945; eleven associations in 1968, etc.), current dissolutions are taking place over the longer term (dissolution of four associations in 2016; six in 2019; five in 2020; five in 2021; six in 2022).

Even though the Castex government made considerable use of the provision, the separatism act yet expanded Article L.212-1 of the Internal Security Code to broaden the grounds for dissolving associations. This changed paragraphs 1, 3 and 6 of the article in question: while paragraph 1 was directed at associations "which provoke armed street demonstrations", the modification was directed at "violent acts against persons or property". And while paragraph 6 formerly referred to associations that "provoke discrimination", it now referred to associations that "provoke or contribute to discrimination by their conduct". It is clear that the aim was to broaden the range of potential applications of the provisions for dissolving associations. According to the analysis of legal expert Stéphanie Hennette-Vauchez, these semantic changes should be regarded as backpedalling the philosophy behind the dissolution procedure: "a provision to defend democracy now becomes a provision to maintain public order."¹⁹

The connection between public authorities and associations has shifted in the last five years, due to either the use of inconsistent practices or the rise of a new arsenal of government action. How far will this go? In this regard, the first few months of Emmanuel Macron's second term will be decisive. The processes described here bring to mind a "-counter-revolution against associations" as well as an authoritarian compulsion, both of which France, and western democracies in general, have not, in principle, been shielded from.²⁰ Although France is neither Putin's Russia or Bolsonaro's Brazil, these developments are no less worrisome in terms of the status of civil liberties and the degree of government

<http://www.revuedlf.com/droit-administratif/la-loi-du-10-janvier-1936-sur-les-groupes-de-combat-et-milices-privees-article-l-212-1-du-code-de-la-securite-interieure-larme-de-dissolution-massive>

¹⁸ Émilie Rossa, « Lyon : le groupe antifasciste Gale officiellement dissous par le gouvernement », *France 3*, 30 mars 2022, <https://france3-regions.francetvinfo.fr/auvergne-rhone-alpes/rhone/lyon/lyon-le-groupe-antifasciste-gale-officiellement-dissout-par-le-gouvernement-2515308.html>

¹⁹ Stéphanie Hennette Vauchez, « Dissolutions administratives : le contrôle à géométrie variable du Conseil d'État », *AOC*, 19 mai 2022, <https://aoc.media/opinion/2022/05/18/dissolutions-administratives-le-contrôle-a-geometrie-variable-du-conseil-detat>

²⁰ Philippe Ryfman, « Contrer la Contre-révolution anti-associative, un objectif de politique internationale », *The Conversation*, 28 juin 2017, <https://theconversation.com/contrer-la-contre-revolution-anti-associative-un-objectif-de-politique-internationale-79960>

action. At a time when electoral absenteeism is escalating with each passing election, when the far right is gaining greater power and imposing its mindset and in the face of the authoritarian compulsion of the State, intermediary bodies, collective institutions and citizen counterpowers appear to be, more than ever, essential safeguards. Any attempt to stifle critique voiced by associations impoverishes democracy.

Translated from the French by Alan Johnson

Biographies

Antonio Delfini • Sociologist, associate researcher at the Centre d'études et de recherches administratives, politiques et sociales (CERAPS/Université de Lille) and coordinator of the *Observatoire des libertés associatives*. He recently published (with Julien Talpin and Janoé Vulbeau) *Démobiliser les quartiers. Enquêtes sur les pratiques de gouvernement en milieu populaire* (Presses Universitaires du Septentrion, 2021).

Julien Talpin • Research fellow in Political Science at the CNRS (CERAPS/University of Lille) and co-director of the scientific interest group "Democracy and Participation". He also heads the scientific council of the *Observatoire des libertés associatives*. He recently published (with Antonio Delfini and Janoé Vulbeau) *Démobiliser les quartiers. Enquêtes sur les pratiques de gouvernement en milieu populaire* (Presses Universitaires du Septentrion, 2021).

Reproduction prohibited without the agreement of the review Humanitarian Alternatives. To quote this article: Antonio Delfini and Julien Talpin, "State-association relations: an authoritarian shift in contemporary France?", Humanitarian Alternatives, no. 20, July 2022, pp. 51–62,

<https://alternatives-humanitaires.org/en/2022/07/28/state-association-relations-an-authoritarian-shift-in-contemporary-france/>

ISBN of the article (PDF): 978-2-37704-970-7