

**COUNCIL OF EUROPE**  
**Office of the Commissioner for Human Rights**  
**For the attention of Ms Dunja Mijatović**  
F-67075 Strasbourg Cedex  
E-mail : [commissioner@coe.int](mailto:commissioner@coe.int)  
Tél : +33 (0)3 88 41 34 21

Europe, 13 January 2021

**Subject: Right to education and the French authoritarian context**  
**Articles 21 to 24 of the draft law confirming respect for the principles of the Republic**

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*FREE TRANSLATION*

Dear Commissioner for Human Rights,

You have recently invited the French senators to remove the ban erected by Article 24 of the bill on global security and we sincerely thank you for this.

No doubt you are aware of the French Government's practices, which are increasingly questionable from a democratic point of view: according to the information available, there is a multiplication of decrees that are often modified and therefore difficult to attack, last-minute legislation, sometimes even at night, proposals or votes for laws that are increasingly liberticidal...

We believe that Articles 21 to 24 of the French draft law confirming respect for the principles of the Republic (which has changed its name five times) <sup>1</sup> relating to the right to education should absolutely be deleted, which we explain in the attached report.

We believe that this issue is essential beyond France and we would be grateful if you could put us in touch with people involved in defending the right to education at the Council of Europe, with a view to organising a European colloquium on this subject in 2021.

It could be entitled "**FHREE to learn!**" ; FHREE = Full Human Rights Experience Education. <sup>2</sup>

On the occasion of such an event, experienced, multidisciplinary and directly concerned people could make their voices heard and inspire concrete solutions to further realise the right to education in the sense of fundamental rights.

We are counting on you to address this subject constructively with the French Government and in the interest of all the signatory countries of the European Convention on Human Rights. Please accept, dear Madam Commissioner for Human Rights, the assurance of our highest consideration.

**Contact:** [alliasbl@gmail.com](mailto:alliasbl@gmail.com) ALLI asbl 88, rue de Mersch L-8181 Kopstal

**Signatories :**

In view of the urgency with which this letter was drafted, no signatures were collected.

ALLI asbl, Luxembourg  
Les Enfants d'Abord, France  
Bertrand Stern, Germany, independent philosopher  
Full Human Rights-Experience Education

[www.alliasbl.lu](http://www.alliasbl.lu)  
[www.lesenfantsdabord.org](http://www.lesenfantsdabord.org)  
[www.bertrandstern.de](http://www.bertrandstern.de)  
[www.fhree.org](http://www.fhree.org)

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<sup>1</sup> The bill on separatism, the bill on separatisms, the bill strengthening secularism and republican principles, the bill strengthening republican principles and finally: the bill strengthening respect for the principles of the Republic.

<sup>2</sup> This acronym was invented by young people in a democratic educational context ([www.fhree.org](http://www.fhree.org)).

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## Introduction

**The purpose of this report is to highlight the risks of totalitarian drift inherent in the French bill to ensure compliance with the principles of the Republic from the point of view of the right to education.**

*“ Europeans have never ceased to gravitate towards what is called freedom, that is to say towards a State where the ruler is as little the ruler, and the ruled as little governed as possible. But how can sovereign power be restricted without destroying it? ”<sup>3</sup>*

The **right to education** is indispensable to any human society that makes the protection of fundamental rights an ideal to be achieved. The case-law of the European Court of Human Rights has constantly underlined the importance of the right to education in the enjoyment of the other rights and freedoms contained in the European Convention on Human Rights.

Article 2 of Protocol No. 1 - Right to education <sup>4</sup>

*« No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions. »*

The **mission of the State** is to implement Article 2 of the Additional Protocol to the Convention on the Right to Education. To this end, it must ensure that all persons under its jurisdiction have the possibility of access, under the same conditions, to existing means of investigation.

This obligation also implies a **requirement for impartiality, which is governed by respect for educational pluralism.**

While the role of the legislature is to protect fundamental rights in the light of changes in society, social progress and scientific and technological developments, the **recent French bill to strengthen respect for the principles of the Republic is particularly worrying** in this respect. We will attempt to demonstrate this in this report while also discussing possible ways forward in the realisation of fundamental freedoms.

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1. Overview of the legal situation in France
2. Overview of the right to education
3. On the role of the legislator
4. General report on educational freedom
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<sup>3</sup> Quote of Jean Baubérot in *Les défis du pluralisme* Presses de l'Université de Montréal (2018)

<sup>4</sup> [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf)

## 1. Overview of the legal situation in France

The following articles of the draft law confirming the respect of the principles of the Republic relate to the right to education:

- **Article 21** lays down the principle of **compulsory schooling** for all children now subject to **compulsory** education, i.e. children **aged between three and sixteen**. At the heart of the republican promise, school is the place for fundamental learning and sociability, where children experience the values of the Republic. The obligation to attend a public or private educational institution can only be waived with the **permission of the academic services**, on grounds derived from the child's situation and defined by law.

On the website of the French national education<sup>5</sup> system, you can read:

"Article 21 of the bill proposes to restrict the possibility of homeschooling. **The aim would be to move from a regime in which homeschooling is possible by simple declaration, to a regime in which each family wishing to educate its children in the family would have to obtain authorisation based on a restricted list of grounds, to the exclusion of any other grounds, in particular political, philosophical or religious grounds.** »

- **Article 22** establishes a regime of administrative closure of **non-contractual private educational institutions as well as illegally opened institutions**. The aim is to enable the authorities, when serious and repeated abuses or breaches of the regulations are observed, to put an end to them as soon as possible, in the interests of the children attending them.

**Article 23** accordingly amends the provisions of the **Criminal Code** relating to offences committed in this area.

**Article 24** provides for an additional condition for the conclusion by a private educational establishment of a simple contract or an association contract with the State. Any private institution wishing to enter into such a contract, which **entitles it to public funding**, must first demonstrate that it is able to provide, depending on the nature of the contract, **education in accordance with the public education curricula** or by reference to them.

Thus the Ministry of Education will then be judge and jury, which raises questions about the separation of powers. As for Article 23 with financial penalties multiplied by 10 (7500 euros currently rising to 75,000 euros), it would seriously hinder project leaders from setting up an establishment and we can think that this is a form of dissuasion to undertake.

Moreover, according to the opinion of the French Council of State of 7 December 2020, the Government's draft does not meet the condition of proportionality or that of an unbalanced conciliation between the constitutional and contractual requirements at stake.

Despite this opinion, the Government plans to give full control of the investigation to the arbitrariness of the academic services. The pluralism that has hitherto made it possible to achieve a relative balance in the French education system is being called into question.

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<sup>5</sup> <https://www.education.gouv.fr/projet-de-loi-confortant-le-respect-des-principes-de-la-republique-quelles-mesures-pour-l-education-307871> consulted on 29.12.2020

The heavy sanctions for those who do not submit to it are enough to create a climate of fear and submission. It will be difficult to escape the unique curriculum of public education, as legal procedures are complex, lengthy and costly and therefore for many inaccessible and unequal.

Moreover, without the support of public funding, it is very complicated to pave the way to necessary alternatives to conventional education for all.

- Is it not worrying that the French Government is seeking to impose on everyone, except the unstoppable, a single model that has so far never really kept its promises?

## 2. Overview of the right to education

Let us recall that the right to education<sup>6</sup> is a pillar of democratic values and fundamental freedoms. Its purpose is none other than the enjoyment of these freedoms.

It is the "Right of a person to be able to benefit from an education that enables him or her to develop fully and to be able to play a useful role in society".

*On the one hand, instruction corresponds to the "action of forming one's mind, one's personality through a sum of knowledge related to experience, life, events".*

*On the other hand, it is the "action of communicating a body of theoretical or practical knowledge related to teaching".*

"The right to education has no other purpose than to open the doors of existing education to all" and this "without having to suffer arbitrary or discriminatory limitations".

Indeed, any social interaction, whether institutional or not, can be a source of emancipation or indoctrination. It is therefore a matter of enabling individuals to have access to a pluralist education enabling them to form their own opinions while integrating into a society made up of diversity. The only solution proposed by the legislator is then the imposition of a single form of school attendance for all unless exceptional derogations are made.

However, just as the prohibition of *de jure* racial segregation in schools since 1954 in the United States<sup>7</sup> has not eradicated racism, it is doubtful that forcing individuals to attend public schools will be effective in instilling Republican values. The transmission of values (and knowledge) takes place in spite of school, and probably all the more so since the digital boom.

School attendance has also failed to prevent radicalisation, and may even have contributed to it. Young people who become radicalised are school dropouts.

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<sup>6</sup> <https://tel.archives-ouvertes.fr/tel-01249583/document>

<sup>7</sup> [https://en.wikipedia.org/wiki/School\\_segregation\\_in\\_the\\_United\\_States](https://en.wikipedia.org/wiki/School_segregation_in_the_United_States)

At a conference organised by Respect.lu, the mechanism of radicalisation was summarised as follows.

In the beginning, we wish :

- be loved, if this is not possible, then
- be respected, if this is not possible, then
- be recognised, if this is not possible, then
- be accepted, if this is not possible, then
- have the impression of existing, if this is not possible, then
- fear me at least a little, if this is not possible, then
- learn to hate me ....

- Isn't this where the problem lies, when schools are not really the places of fulfilment they claim to be, as many empirical studies show?

According to the French Minister of Education, *school is good for children*.<sup>8</sup> What if it's not? Those who dare to ask this question are often perceived as pseudo-anarchists, threatening *sovereign power*.

- What if these individuals were in reality nothing more than misarchist humanists, in some way fundamental rights fundamentalists, harmless dreamers, explorers, researchers and powerful creators? Why should they be punished?

All individuals should have access to the means of education in the best possible conditions. The freedom of parents to give or cause to be given to their children the education they consider best for their physical and cultural development" is essential. <sup>9</sup>

- The French bill confirming the respect of the principles of the Republic restricts this freedom to the arbitrariness of supporters of school ideology, isn't this an infringement of the principle of impartiality?

The European Court of Human Rights has moreover repeatedly raised the issue that a relationship of subordination, a relationship of domination was problematic for the development of freedom of conscience and therefore education in the universal values of human rights. The Court even says that the situation of relations of domination and subordination is exacerbated by the minority of pupils in schools.

- How can parents who wish to practise collaborative and equidignitary parenting then preserve their young sons and daughters from a threat to their emancipation, if they are forced to school them in a coercive and authoritarian educational model?
- And when young people themselves refuse to submit to such a system, what right do parents have to force them to comply with a prescribed school standard?

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<sup>8</sup> <https://www.education.gouv.fr/projet-de-loi-confortant-le-respect-des-principes-de-la-republique-quelles-mesures-pour-l-education-307871> Hearing in the Council of Ministers on Wednesday 9 December 2020.

<sup>9</sup> Statement by Mr. AZARA on the occasion of the preparatory work for the Additional Protocol, Council of Ministers of the European Union Europe, 9 May 1967, European Court of Human Rights., C.D.H. (67) 2, p. 62.

Parents who fulfil their duties without resorting to a school system, out of respect for the subject for which they are responsible, are committed and present parents, they do not need teaching diplomas, they are motivated and learn to offer an environment favourable to the development of their offspring by listening, observing, valuing and empowering.

L	Listen
O	Observe
V	Value
E	Empower

In accordance with human rights, each individual should be able to make the choice of an educational model that respects fundamental rights, parental authority is nothing other than a duty of emancipation and protection, parents must therefore be able to make this choice in order to respect the law.

In accordance with human rights, every person, regardless of age, should be able to say NO to an education that violates his or her dignity and be respected when they claim the right to be educated in the manner that suits him or her.

- But is it enough to let people simply LOVE or is it still necessary to impose the "action of communicating a body of theoretical or practical knowledge related to teaching"? We will provide some elements of an answer in the following section.

### 3. On the role of the legislator

**The role of the legislator is to protect fundamental rights in the light of changes in society, social progress and scientific and technological developments.**

The case law of the ECHR on the H. v. United Kingdom<sup>10</sup> family case in 1984 is particularly interesting in this respect. On the one hand, it states that a high Court recognises the legitimacy of non-didactic educational approaches<sup>11</sup>, and on the other hand, it questions the limits to be placed on them in order to guarantee the acquisition of basic skills. In this case, it was young dyslexic people with reading, writing and arithmetic deficiencies who were to be subject to the educational standards in force.

To date, a few decades later, it has been found that in a benevolent educational model that respects the neurodiversity and pace of learners while supporting their requests for help<sup>12</sup>, except in particularly severe and relatively rare cases, dyslexia does not require *remediation*.

Thus, outside the grip of a school standard, these particular minds can fully realise their potential without being subjected to any judgement that could be detrimental to their self-esteem and therefore unfavourable to learning and their development. <sup>13</sup>

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<sup>10</sup> APPLICATION/REQUEST No. 10233/8 3 Family H. v/United Kingdom DECISION of 6 March 1984

<sup>11</sup> [https://www.researchgate.net/publication/285547234\\_Legitimacy\\_of\\_non-negotiable\\_imposition\\_in\\_diverse\\_approaches\\_to\\_education](https://www.researchgate.net/publication/285547234_Legitimacy_of_non-negotiable_imposition_in_diverse_approaches_to_education)

<sup>12</sup> <http://www.fhree.org/4-10-dys-sde/>

<sup>13</sup> "What if School Creates DYSlexia?" Je'anna L Clements (to be published in French in 2021 by Ed. Hêtre Myriadis) E-Book in English <https://www.smashwords.com/profile/view/LifeLearningMedia>



We could thus similarly review all the "school" pathologies. Although there is a trend towards differentiation, we are far from the flexibility that would be necessary for optimal learner development and which is achievable in a non-standardised model. In the same way that the European Convention on Human Rights called for "resisting the egalitarian sirens of communism"<sup>14</sup> it should be concerned with the standardisation of education.

- But how can educational standards be developed without allowing genuine educational pluralism? How can beliefs and practices be changed if it is not really possible to free oneself from the grip of norms?

"With the technician wave that makes us focus on methods, we have forgotten the human being who is at the centre of the educational relationship and teaching."<sup>15</sup> Recently the French government prescribed a single syllabic reading method on an experimental basis for 10,000 students. This approach is far from being insignificant, since it completely ignores the state of research and a lot of empirical data. "For the past three years, the French National Education system has been seeking at all costs the support of science to justify its directives and seems to be particularly in need of it in areas where it acts in an authoritarian manner".<sup>16</sup>

*To want to standardise from a science is to refuse to place oneself in the field of philosophy.  
The terrain of truth is the terrain of domination. (Hannah Arendt)*

The latest PIRLS study has shown that French schoolchildren are in the middle of OECD countries in decoding but are failing in text comprehension. How could a single phonological method for all remedy this? There is already a great deal written on the subject, yet 30-40% of the population still cannot read and make sense of it.<sup>17</sup> These people are thus disadvantaged in their freedom to think critically and independently.

Freed from the crutches of educational totalitarianism in learner-centred models, basic learning happens naturally when the time is right. Yet such democratic schools have been seriously threatened and weakened by French academic services. Simply for fear of straying from their comfort zone or by being too convinced of their beliefs? The facts showed that they were wrong.<sup>18</sup>

Shouldn't more support be given to pedagogical freedom in order to truly innovate?

*"To the extent that the set of rules and norms is established to maintain an order that benefits the most privileged but can oppress the most disadvantaged, individual actions - which, without necessarily pursuing unjust intentions, simply conform to the structures put in place - contribute to producing and perpetuating structural injustices." (Ryoo Chung)<sup>19</sup>*

<sup>14</sup> [https://fr.wikipedia.org/wiki/Convention\\_europ%C3%A9enne\\_des\\_droits\\_de\\_l%27homme#Sa\\_gen%C3%A8se](https://fr.wikipedia.org/wiki/Convention_europ%C3%A9enne_des_droits_de_l%27homme#Sa_gen%C3%A8se)

<sup>15</sup> Rachid Zerrouki vers minute 16 <https://www.franceculture.fr/emissions/la-grande-table-idees/que-fait-lecole-pour-ceux-qui-ny-trouvent-pas-leur-place?>

<sup>16</sup> <https://blogs.mediapart.fr/roland-goigoux/blog/191120/discredit-scientifique>

<sup>17</sup> <https://ec.europa.eu/epale/en/node/40675> Electronic Platform for Adult Learning in Europe

<sup>18</sup> [https://actu.fr/bretagne/quimper\\_29232/quimper-l-ecole-democratique-le-carre-libre-ferme-ses-portes\\_34820092.html](https://actu.fr/bretagne/quimper_29232/quimper-l-ecole-democratique-le-carre-libre-ferme-ses-portes_34820092.html)

<sup>19</sup> Ryoo Chung *Les défis du pluralisme* p.150 Ed. Les Presses de l'université de Montréal

## 4. General report on Educational Freedom

Beyond all these observations, what we are really talking about is the violation of the human rights of a whole category of the population, the so-called *minors*.

This is clearly expressed in this excerpt from the summary of the White Paper of the « Etats généraux de la Liberté Educative »<sup>20</sup> held last November, where young people, multidisciplinary professionals and parents were able to express themselves:

*"We denounce a conception and treatment of young people as inferior and incomplete beings that justifies their domination and the discrimination to which they are subjected.*

*This postulate, which seems to us to contravene human rights, underpins the entire educational philosophy of the French education system, which is the source of much ordinary educational violence and institutionalised attacks on the integrity and dignity of young people. Thus, rights that are nevertheless guaranteed by the law are denied to young people, such as the right to consent<sup>21</sup> or not to decisions that concern them.*

*Thus, young people's right to education is replaced by an obligation to be educated in a certain way decided by the competent education authorities. Rather, this "manner" is driven by economic imperatives, both in the curriculum and in the provision of training, which instrumentalizes young people in making socio-economic choices that are outside or even contrary to their immediate needs, making them exploited, even as the elimination of labour exploitation of "children" is praised. It is also subject to the material, managerial or organisational constraints of the National Education system, which should in no way be opposed to the primary interests and fundamental rights of young people.*

*We propose, in contrast to this conception of education, an education centred on the needs of young people, as the sciences of human psycho-affective development are increasingly bringing them to light, an education based on a conception of the learner as the subject of rights and whose interests must be understood as his own, defined from his point of view, and not as subordinate to extrinsic interests. »*

*"The intensive educational "monoculture" proposed by the French National Education system does not make it possible to respond to the current social issues that require adaptability and resilience. It is crucial to preserve and promote diversity, i.e. an educational, cultural and social ecology that guarantees justice, equity and equidignity. Societies and ecosystems evolve and it is vital that the humans that make up or inhabit them can adapt quickly to these changes according to their own resources and needs. This requires a high degree of flexibility in the structures that support them, which is not the case with the current provision of education.*

*This educational or pedagogical monoculture is reflected in the existence of a common knowledge base, a hierarchy of knowledge and skills, and therefore of cognitive profiles, and, for teachers, a lack of pedagogical freedom. »*

- How can one still accept and be complicit in such a collective denial of institutional violence which, beyond ethics, is not even justified for the general interest?

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<sup>20</sup> <https://les-egle.fr>

<sup>21</sup> See the call of young people on this web page [www.educationconsent.me](http://www.educationconsent.me).



## 5. Education and dignity

### A plea for the subject, not for subjugation

Thus restricted in its freedom to free itself from norms, to act outside a prescribed framework, the realisation of the right to education remains an insoluble equation established on false assumptions that it is high time to reconsider.

Human rights are a bulwark against fear and ignorance, it is France's ideological choice and yet today more than ever, they are threatened. Who knows where this may lead us. Therefore, dear Commissioner for Human Rights, we ask for your help to avoid the worst and move towards the best. The role of a State is not to dictate how an individual should be educated, its role is to enable him or her to educate himself or herself in order to form his or her own opinions and to emancipate himself or herself while respecting others and safeguarding democratic values.

We implore your support for the unconditional defence of the human rights that are the hallmark of our European social consensus. Defending human rights means ensuring that each subject is fully respected in his or her self-determination and dignity, which implies the most obvious right of every person, whatever his or her age (or youth), to find his or her way to education in a free and autonomous way; and to refuse what is not suitable for him or her, even if a majority of people believe that it would be beneficial. Do we not agree, dear Commissioner for Human Rights, that one characteristic of democracy is respect for the subject, especially where what emanates from it may be in contradiction with general standards? If a society is dictated to by a majority to the detriment of a so-called oppressed minority, do we not then have a dictatorship of the masses far from the founding principles of a democratic Europe of which you are one of the guarantors? Moreover, how can we envisage democracy in the near or distant future if those among the young people living in this society today are treated in an undemocratic manner by national authorities with little respect for fundamental rights? Commitment to democracy is not learnt through school curricula, but through the daily experience of feeling fully accepted and respected - especially when it comes to refusing to accept an unhealthy and obsolete school obligation when the subject knows what he or she needs to know. Free and autonomous learning is rooted in human nature, as is the need to move or to engage in dialogue.

In view of the many misunderstandings in this area, we would like to make one important point clear: the school and education authorities are used to opposing family schooling, often referred to as 'homeschooling', to the schooling they run as part of their standards. In recent years, this so-called right to 'family schooling' has often (not exclusively) been claimed by families with a clear ideological, political, pedagogical, religious or other intention. However, this is not the purpose of this demand. We address you as the person responsible for the defence of the rights of every person, whatever his or her age, and therefore his or her youth, because this right is not there to prioritise the family in the same way as the State, but - also in the well asserted opinion of jurists - to (enforce) respect the tacit or expressed will of a person to find his or her own way to be educated in a free and autonomous way, even without or beyond the usual and legalised norms. In other words: where national authorities try to establish a dualism, an opposition between school education and family education, the aim of this request is to oppose any kind of coercion (pedagogical, school or family) to the right of every human being to full respect for his or her self-determined choice and therefore his or her dignity. It is on this point that we call on your help as Commissioner for Human Rights whose role is to ensure unconditional respect for the rights of the subject, rights clearly linked to the individual.

## 6. French authoritarian context

The current French political context is worrying in terms of the retreat of the rule of law and this attack on the freedom of education seems to be the culmination of it.

**This is all the more striking given that the French state seems to be taking an authoritarian stance, currently running the country through a Defence Council that does not feature in the decision-making bodies provided for in the Constitution.**

Several laws, regulations or draft laws established in 2020 demonstrate this shift towards a form of totalitarianism.

The **Council of Europe** as well as the UN Commission on Human Rights had the opportunity to question France about the draft law on Global Security and in particular its article 24 which provided for a restriction of the freedom of information and expression. This article was voted on by a large majority despite the opinions and in particular the opinion of the Human Rights Defender No. 20-06 of 17 November 2020 relating to the text adopted by the Law Commission on the proposal for the law on global security. Despite this vote and in the face of the reactions, the Prime Minister proposed to convene a rewriting commission. The National Assembly took offence and a committee of majority deputies proposed to rewrite the article, which had passed for parliamentary work and analysis in the Senate. The President of the Senate did not fail to recall the legislative procedure in progress and the constitutional rules.

Several provisions of the Global Security Act were considered disproportionate. The remarks of the rights defender were not taken into account, in particular with regard to Article 24 of the Act, on which the Council of Europe was also able to express reservations.

On the general context in France and the taking of exceptional measures, the **National Consultative Commission on Human Rights (CNCDH)**, provided for by the 1946 Constitution, noted in its unanimous opinion of 28 April 2020<sup>22</sup> that "The CNCDH wonders about the need to create a new state of emergency regime, when it would have been possible to include the current exceptional situation within the framework of the 1955 law on the state of emergency".

It notes a series of points of concern in the Opinion adopted at the Plenary Assembly of 28 April, in which it recalls that "All measures taken under the state of health emergency must comply with the principles of strict necessity, appropriateness, proportionality and non-discrimination, and that the state of health emergency, and all related measures restricting freedoms, must be brought to an end as soon as the health situation no longer justifies it".

In the **Reporter Sans Frontière** ranking, France falls to 34th place on press protection and press freedom.

The **NGO Amnesty International** has also pointed out a deterioration of the climate of fundamental freedoms in France and recalled on the occasion of the demonstrations of 12 December 2020 on global freedom, that since we became aware of this bill known as the "Global Security" bill, since adopted in the National Assembly and soon to be debated in the Senate, we have been warning of the threats it poses to fundamental rights: an infringement of the freedom to inform, the right to privacy and the right to demonstrate, and raises the issue of arbitrary arrests.

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<sup>22</sup> [https://www.cncdh.fr/sites/default/files/avis\\_2020\\_-\\_2\\_-\\_200424\\_avis\\_etat\\_durgence\\_sanitaire\\_et\\_etat\\_de\\_droit.pdf](https://www.cncdh.fr/sites/default/files/avis_2020_-_2_-_200424_avis_etat_durgence_sanitaire_et_etat_de_droit.pdf)

"We are very worried about what happened during the demonstration on 12 December in Paris. Some of the images show a disproportionate use of force by the forces of order: demonstrators hit on the ground, people falling and unable to disperse, journalists pushed away. These practices are all the more worrying as they have become recurrent. For years, we have regularly denounced the excessive use of force against demonstrators in France, in different contexts".

On 2 December 2020, **3 decrees** were adopted in France which now allow law enforcement agencies to **register citizens on the basis of opinions expressed** and no longer on the basis of actions or facts committed. The French Council of State validated these 3 decrees on 4 January 2021, it did not find them disproportionate.

Parents of family educated children have been able to refer to parliamentarians on the possible links between these decrees and the registration of family-educating parents. In connection with Article 21 of the draft law on the respect of the principles of the Republic, the adoption of the so-called PASP decrees on 2 December 2020, i.e. one week before this draft law, is of concern to us. The "impact study" presented by the French Government in support of its bill, retooled by the Council of State on 7 December 2020 (in its opinion), identifies family education as a form of social separatism: "The growth of **education in the family**, which reflects a form of **social separatism** - whether it is philosophical, religious or sociological - has experienced a new progression with the lowering of the age of compulsory education".

Announced on 2 October 2020, the bill aims to fight against separatism, after being presented as a project fighting against Islamist separatism ...

However, on Wednesday 2 December 2020, 3 decrees were adopted "PASP decrees" which from now on make it possible to **file, report and observe a citizen for his convictions and opinions**.

In view of this shift, which was reported in the unanimous opinion of April 2020 by the National Consultative Commission on Human Rights, will families practising within a legal framework today homeschooling be reported, and registered in these files, as well as their children?

The 3 decrees question the authoritarian and repressive shift and an infringement of the freedom of opinion, association, worship and conscience.

It is in this liberticidal context that the bill on the respect of the principles of the Republic evolves, a bill which from October 2, 2020 to December 9, 2020 changed its name 5 times<sup>23</sup>, thus demonstrating that the real framework of the project is not itself stable.

It is also clear from the replies to requests to the President of the Republic that the decision to abolish family investigations is a unilateral and final decision.

Despite the reserved opinion of the Council of State on 7 December 2020, the rewritten bill maintains an authorisation regime that constrains fundamental freedom.

The position of the French Government, which has since proceeded by making erroneous assertions and denigration in the media and even with members of the majority by disseminating false information, in particular on the situations which would justify such a suppression of a fundamental freedom, is not supported by any factual evidence. This was again revealed during the hearing of the Minister of National Education before the Special Commission of Deputies on 16 December 2020, when the Minister disagrees with other positions taken on the same subject.

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<sup>23</sup> The bill on separatism, the bill on separatism, the bill strengthening secularism and republican principles, the bill strengthening republican principles and finally: the bill strengthening respect for the principles of the Republic.

Before a Senate committee on 18 June 2020, which addressed the issue of the risk of radicalisation, particularly in sport and family education, the Minister of National Education stated that:

- 1- "In terms of legal principles, we have struck a good balance" in answering a senator's question about whether home schooling should be banned or further conditioned.
- 2- **New control procedures apply from 2016 and 2019, including the possibility of unannounced checks.** "The vote of the law of 26 July 2019 for a school of trust (...) has made it possible to strengthen the control of homeschooling. Indeed, homeschooling also experienced a boom in 2010. Control procedures have been made easier and sanctions in the event of non-compliance with legal obligations have been eased".
- 3- "The Ministry applies the rules of the 2019 law. And we are at the beginning of this implementation" "At the moment, I think that we have to apply the rules that we have established in the 2019 law. The implementation is starting, we are in an ascending phase ... so there is concrete progress to be made"
- 4- **Family education has "a powerful constitutional foundation that we can only acknowledge and which I think is positive."**

In the context of the debates on the law on the "school of trust", on the question of replacing the prior declaration system with an authorisation system, the Minister - associate professor of public law at universities - replied on 14 February 2019, in the context of an amendment by deputies aimed at subjecting family education to an authorisation system:

- "Does it have to be done with an authorisation? 14 February 2019": The Rapporteur of the bill gives an "unfavourable opinion, constitutional freedom being opposed". The Minister of National Education also gives an unfavourable opinion recalling the constitutional opposition to the introduction of prior authorisation.

On 7 December 2020, the Council of State issued a reserved opinion on the current draft law, which is unfavourable to a ban on family education, specifying that :

- Elements "that we have at our disposal make it possible above all to know that this reality is very diverse".
- Reliable evidence is lacking in the Government's Impact Assessment "this removal is not supported by reliable and documented evidence on the reasons, conditions and outcomes of teaching practice within the family".
- The violations, "shortcomings and abuses mentioned above, if they are proven, concern, according to the Government's own indications, only a very small proportion of situations, at any rate, as regards shortcomings in the instruction provided, for those that can be described as serious".
- The constitutional and conventional requirements in question show that "the Government's draft does not meet the condition of proportionality or that of an unbalanced conciliation...".

Freedom of education is moreover guaranteed in France by the Constitutional Council, in its decision No. 77-87 DC of 23 November 1977, it established "that the principle of freedom of education [...] constitutes one of the fundamental principles recognised by the laws of the Republic, reaffirmed by the preamble to the 1946 Constitution and to which the 1958 Constitution conferred constitutional value" "the principle of freedom of education implies the right of parents to choose alternative methods to those offered by the public school system, including instruction within the family" (EC, 19 July 2017, Association les enfants d'abord, No. 406150).

The Constitutional Council, in its Decision No. 71-44 DC of 16 July 1971 on the Freedom of Association Act, ruled that the exercise of a fundamental freedom cannot be made conditional "on the prior intervention of the administrative authority or even the judicial authority", i.e. on prior authorisation.

However, despite calls from associations for the maintenance of family education and educational diversity, the Government's position has not changed and was confirmed by the Minister on 16 December 2020 in a special commission. The provisions of the European Convention for the Protection of Human Rights do not seem to be integrated or taken into account either.

## Conclusion

Dear Commissioner for Human Rights, we all know that hell is paved with good intentions, yet it is high time to consider more than just what is not working to overcome this impasse. Education must then be a liberation, not an imposition.

Finally, you should also know that our commitment, currently directed against French projects, is not limited to these projects, but has a supranational dimension, since this fundamental issue obviously has its value and importance in other countries.

**Educational totalitarianism paves the way for political totalitarianism. In a democratic state governed by the rule of law, it is essential to preserve and promote the freedom to learn and not to prevent parents or anyone else from being able to fully fulfilling their duty of emancipation and protection.**

*We are all born free and equal in dignity and rights, let us cultivate the art of remaining so.*

Contact: [alliasbl@gmail.com](mailto:alliasbl@gmail.com) ALLI asbl 88, rue de Mersch L-8181 Kopstal

### Signatories :

In view of the urgency with which this letter was drafted, no signatures were collected.

ALLI asbl, Luxembourg  
Les Enfants d'Abord, France  
Bertrand Stern, Germany, independent philosopher  
Full Human Rights-Experience Education

[www.alliasbl.lu](http://www.alliasbl.lu)  
[www.lesenfantsdabord.org](http://www.lesenfantsdabord.org)  
[www.bertrandstern.de](http://www.bertrandstern.de)  
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