

**BUREAU
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法國
在台協會

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**HUMAN RIGHTS PROTECTION UNDER COVID - 19
THE FRENCH EXPERIENCE.**

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Constitutionality block

1789 Declaration of the Rights of Man and of the Citizen



Fundamental principles of the law (FPL)
(Judge)

1958 Constitution of the 5th Republic



Laws
(Parliament)



Regulations
(Central Government
Local governments)

Jurisdictions

Constitutionnal Concil

Conformity of laws to Constitution, including FPL

Administrative Judge

Conformilty of regulations to laws
Judiciary Judge

Judiciary judge

Acts of private life.
Judge (protecting) of individual freedoms

Authorities (CNIL, The Defender of Rights...)

Laws on press freedom, freedom of association...

Sources of the law in France

Basis of the decisions  The principle of proportionality of the measures to justify the exception to the principle of freedom.

- ➔ General character / specific character
- ➔ Permanent duration / Limited duration
- ➔ Adequacy of the measures to the situation

I.- THE STATE OF HEALTH EMERGENCY:

A/ Law adopted on March 23rd 2020

- The law established a « state of health emergency » initially for 2 months. The state of emergency gives the government the right to legislate by ordinance in the most extensive areas - from labor law to corporate law - and restricts certain public or individual liberties.
- The state of emergency is intended to remain temporary.

B/ Impacts on Human rights

- In march 2020, a national lockdown was established. It lasted 55 days in a row.
- Fundamental freedoms were impacted, particularly:
 - ▶ freedom of movement, freedom of assembly, freedom of enterprise and the right to demonstrate.
 - ▶ rights of the child and access to education.
 - ▶ Access to health treatment; protection of workers.
- But also, indirectly: impact on freedom of expression in a context of massive desinformation online, threats against journalists and economic difficulties of independant media.

C/ Emergence of new issues: human rights and digital tools

- « Digital surveillance » ? The App « TousAntiCovid » developed and launched by the French government ignited a heat up debate on the respect of privacy and the use of personal data.
- Vaccination: the French government decided to uphold the principle of individual choice from the start of the vaccination campaign in December 2020. In August 2021, it required certain categories of workers, including health workers, to be vaccinated.
- Digital health pass: In July 2021, France resorted to « a digital health pass » allowing vaccinated people and those with a less than 48h negative PCR test to enter certain venues (restaurants, bars...) or use public transportation (flights, long-distance trains).

II. HOW TO ENSURE THE PROTECTION OF HUMAN RIGHTS?

A/ The obligation to inform the Parliament

The law requires the government to inform immediately the National Assembly and the Senate of measures adopted under the state of health emergency.

B/ The jurisdictional oversight by the Conseil d'Etat

- The administrative sections examined all the texts drafted by the government.
- The litigation section: high number of requests. The administrative judge has taken care to reconcile the health objectives pursued by the government with the protection of rights and freedoms, and has always sought to offer concrete and realistic solutions.

II. HOW TO ENSURE THE PROTECTION OF HUMAN RIGHTS?

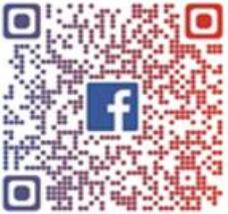
C/ The review on the conformity with the Constitution

- The constitutional judges validated several provisions of the March 2020 bill. But on the processing of personal data and the regime of quarantine and isolation measures, the Council censured certain provisions and expressed reservations of interpretation.
- A similar process led to the **Decision 2021-824 DC, 2021** August 5 of the Constitutionnal Council on the Health Crisis Management Act. It considered that a 10-day quarantine order for positive cases could not be applied without an individual decision based on an assessment by the administration or the judge.

D / The independant institutions on Human Rights and civil society

- The National Consultative Commission on Human Rights (CNCDH) and the Defender of Rights published several opinions and recommandations to the gouvernement.
- The National Commission on Freedom and data (CNIL) expressed an opinion on the digital health pass.
- NGOs have been active, particularly through the legal system, by filing petitions with the administrative judge.

- Necessity to find a balance between urgency of the situation and respect of human rights.
- The role of public opinion, and social acceptability, is crucial in strategies to fight against COVID.



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Conclusion – Thank you!