



ADF INTERNATIONAL

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**FRANCE**

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## Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people.
2. This report illustrates the state of homeschooling in France, highlighting that the restrictions on home education resulting from the enactment of the 2021 Anti-Separatism Bill violate France's obligations to respect freedom of education and parental rights under international human rights law.

### (a) Freedom of Education

3. France has been experiencing a significant increase in the number of families turning to homeschooling. In 2021, around 62'000 children were declared to be homeschooled, compared to 41'000 in 2019 and an estimated 30'000 to 35'000 in 2017.<sup>1</sup>
4. The Jules Ferry Laws established free education in France in 1881. Under these laws, parents (or other individuals legally responsible for the child) are empowered to freely choose the form of education that shall be given to their children, including homeschooling.<sup>2</sup> This key principle was later integrated into the Education Code of France, which asserts that 'Compulsory education may be given either in public or private establishments, or in families by parents, or one of them, or any person of their choice,' and further reaffirmed in the French Civil Code, according to which that parental authority 'is vested in the father and mother until the majority or emancipation of the child in order to [...] ensure [the child's] education'.<sup>34</sup>
5. The French Education Code lays out the following conditions for homeschooling: first, parents must submit an annual declaration to the relevant government authorities indicating their intent to homeschool in conformity with the minimum educational standard laid out by the State; second, parents (or those legally responsible for the child) must respond to a biennial inquiry assessing the compatibility of the form of education received by the child with his or her wellbeing and the living condition of the family.<sup>5</sup>
6. A state authority may verify the state of the education of the child through annual visits.

### *Anti-separatism Bill*

7. In August 2021, the French Parliament adopted a controversial Anti-Separatism Bill, whose stated goal is to 'strengthen respect for the principles of the Republic' and fight extremism, including by setting tighter constraints on the freedom of parents to

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<sup>1</sup> Liberté éducation 'Le Monde parle de notre mobilisation pour l'instruction en famille' (February 2021) <<https://www.liberteeducation.com/le-monde-parle-de-linstruction-en-famille/>> ; Parent Concept 'French Homeschooling Law from 2022' <<https://www.parentconcept.com/french-home-education-law/>>.

<sup>2</sup> Jules Ferry Laws (1881), art. 4.

<sup>3</sup> Education Code of France, art. 131-2

<<https://www.legifrance.gouv.fr/codes/id/LEGIARTI000038901859/2019-09-02/>>.

<sup>4</sup> Civil Code of France (as of 4 October 2022), art. 371-1

<<https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006070721/>>.

<sup>5</sup> Education Code of France (version 2 September 2019) art.131-10

<<https://www.legifrance.gouv.fr/codes/id/LEGIARTI000038901859/2019-09-02/>>.

educate their children at home.<sup>6</sup> The new law effectively characterizes homeschooling as an exception: parents must indeed obtain a written authorization from the State, which is granted on a case-by-case basis provided that parents can prove that one of the following conditions is met: (i) the child's health requires that he or she be educated at home; (ii) intense physical or artistic activities prevent the child from attending formal education; (iii) the child travels frequently within France or lives far from public schools; (iv) the child follows a special learning track.<sup>7</sup> The law does not provide for religious exemptions. The French Education Code was amended accordingly.

8. The new law positions France among the most restrictive countries in the world in terms of school choice.<sup>8</sup>
9. French President Emanuel Macron attempted to justify the constraints on home education by claiming the existence of an alleged 'desire and methodological organisation aiming to create a law-breaking parallel order with values nurturing a different organisation for society', specifically referring to 'a conscious, theorized, political-religious project [...] whereby children are taken out of school'.<sup>9</sup>
10. However, according to the Ministry of Education's impact study, no evidence whatsoever is provided as to the existence of any links between homeschooling and extremism. Instead, the study merely refers to 'an increase in family instruction as form of social separatism' and 'self-eviction' from society, referring to only two cases of clandestine schools in France which did not meet pedagogical standards and had refused to make the necessary changes despite formal notices and continued to operate secretly.<sup>1011</sup>
11. It is worth recalling that France's Council of State expressed reservations with regard to the restrictions on homeschooling. While noting that 'excesses are observed in certain cases, in particular when home education hides clandestine schools', it considered, however, that these excesses 'remain too rare to justify the restriction of a freedom that has long been recognized for parents'.<sup>12</sup>
12. The Education Ministry's impact study also falsely alleges the existence of a fundamental right of the child to be educated at schools, despite the fact that international law clearly upholds educational choice, which includes:

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<sup>6</sup> Law no. 2021-1109 of August 24, 2021 Reinforcing the Respect of the Principles of the Republic of France <[https://www.legifrance.gouv.fr/jorf/article\\_jo/JORFARTI000043964862#](https://www.legifrance.gouv.fr/jorf/article_jo/JORFARTI000043964862#)>.

<sup>7</sup> Ibid, arts. 49-52.

<sup>8</sup> Liberté éducation 'Ecole à la maison : des décrets inadmissibles' (February 2022) <<https://www.liberteeducation.com/ecole-a-la-maison-des-decrets-inadmissibles/>>.

<sup>9</sup> The Ministry of Europe and Foreign Affairs of France 'Fight against separatism – the Republic in action: speech by Emmanuel Macron, President of the Republic, on the fight against separatism (Les Mureaux, 02 Oct. 2020)' <<https://www.diplomatie.gouv.fr/en/coming-to-france/france-facts/secularism-and-religious-freedom-in-france-63815/article/fight-against-separatism-the-republic-in-action-speech-by-emmanuel-macron>>.

<sup>10</sup> Étude d'impact: Projet de loi confortant le respect des principes de la République (9 December 2020), pgs. 212, 234-237. <[https://www.assemblee-nationale.fr/dyn/15/textes/l15b3649\\_etude-impact.pdf](https://www.assemblee-nationale.fr/dyn/15/textes/l15b3649_etude-impact.pdf)>.

<sup>11</sup> Ibid, pgs. 235-236.

<sup>12</sup> Conseil d'État 'L'instruction à domicile : poser un cadre sans interdire' (2020) <<https://www.conseil-etat.fr/publications-colloques-rapports-d-activite/2020/l-instruction-a-domicile-poser-un-cadre-sans-interdire>>.

‘the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.’<sup>1314</sup>

13. Before the adoption of this law, the jurisprudence of the Council of State of France was consistent in its recognition that the ‘principle of freedom of education implies the rights of parents to choose alternative methods to those offered by the public school system, ‘including instruction within the family’.<sup>15</sup>
14. It is also worth recalling that the new restrictions on homeschooling were adopted without any prior consultation with homeschooling parents and thie representative organizations.<sup>16</sup> During a meeting with the Ministry of Education in October 2021, the national associations asked a series of concrete questions – which, regrettably, remained answered – challenging the limited scope of the abovementioned exceptions. In particular, concerns were raised that the new law would not adequately protect children with learning disabilities, children with high potential, children whose parents’ pedagogical choices would allow them to receive personalized education, with the exploration and pursuit of the child's interests taking pride of place.<sup>17</sup>
15. The significantly varying rate of home-schooling request denials across regions of France shows a lack of uniformity in the application of the law. Ahead of the start of the 2022 school year, it has been estimated that around 80 percent of home education requests were denied by the authorities in Toulouse, Dijon, Grenoble, Besançon, Créteil, Rennes, Strasbourg, Orléans/Tours, Poitiers, Versailles (with the notable exception of Yvelines). More flexibility has instead been shown in Nantes, Normandy, Clermont, Armiers (except in the department of Somme).<sup>18</sup>
16. In some cases, administrative courts found that school principals had illegally refused requests by arbitrarily adding criteria to those contained in the new law, making it even harder for parents wishing to educate their children at home to obtain an authorization.<sup>19</sup>

### *Freedom of Education in International Human Rights Law*

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<sup>13</sup> Étude d’impact: Projet de loi confortant le respect des principes de la République (9 December 2020), pg. 212 <[https://www.assemblee-nationale.fr/dyn/15/textes/15b3649\\_etude-impact.pdf](https://www.assemblee-nationale.fr/dyn/15/textes/15b3649_etude-impact.pdf)>.

<sup>14</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 171 (ICESCR), art. 13.

<sup>15</sup> Conseil d’État, Assosiation les enfants d’abord, No. 406150 (10 July 2017).

<sup>16</sup> Liberté éducation ‘Le ministère de l’Education nationale ne souhaite pas collaborer avec les associations nationales de l’instruction en famille’ (October 2021) <<https://www.liberteeducation.com/le-ministere-de-education-nationale-ne-souhaite-pas-collaborer-avec-les-associations-nationales-de-linstruction-en-famille/>>.

<sup>17</sup> Ibid.

<sup>18</sup> Liberté éducation ‘Des centaines de refus d’autorisation : la bataille continue au tribunal’ (29 June 2022) <<https://www.liberteeducation.com/des-centaines-de-refus-dautorisation-la-bataille-continue-au-tribunal/>>.

<sup>19</sup> Liberté éducation ‘Des centaines de refus d’autorisation : la bataille continue au tribunal!’ (29 June 2022) <<https://www.liberteeducation.com/des-centaines-de-refus-dautorisation-la-bataille-continue-au-tribunal/>>. See for example case N° 2204434 at the Toulouse Administrative Tribunal (26 August 2022) <<https://louislefoyerdecostil.fr/wp-content/uploads/2022/08/IEF-Ordonnance-du-26-aout-2022.pdf>>.

17. Article 13(3) of the ICESCR contains explicit guarantees for the rights of parents with respect to the education of their children:

‘The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.’<sup>20</sup>

18. Article 18(4) of the ICCPR similarly provides that States must ‘undertake to have respect for the liberty of parents [...] to ensure the religious and moral education of their children in conformity with their own convictions’.<sup>21</sup>

19. Parental rights in this area are further safeguarded in the CRC. Article 18 states that ‘parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child,’ whereas ‘State Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities,’ not to assume those on their behalf.<sup>22</sup>

20. Writing on the issue of home education, the former special rapporteur on the right to education, Vernor Muñoz Villalobos, affirmed that:

‘Distance learning methods and home schooling represent valid options which could be developed in certain circumstances, bearing in mind that parents have the right to choose the appropriate type of education for their children, as stipulated in article 13 of the International Covenant on Economic, Social and Cultural Rights. The promotion and development of a system of public, government-funded education should not entail the suppression of forms of education that do not require attendance at a school.’<sup>23</sup>

21. In 2021, former special rapporteur on the right to education Dr. Koumbou Boly Barry echoed this concern by stressing that ‘measures such as [...] prohibiting homeschooling, without legitimate justification under international law, cannot be considered compatible with the cultural dimensions of the right to education.’<sup>24</sup>

## **(b) Recommendations**

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<sup>20</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 23 March 1967) 999 UNTS 171 (ICESCR), art. 13.

<sup>21</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 3 January 1976) 999 UNTS 171 (ICCPR), art. 18.

<sup>22</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art. 18.

<sup>23</sup> V. Muñoz, ‘Addendum to the Report of the Special Rapporteur on the Right to Education, Mission to Germany’ (9 March 2007) UN Doc A/HRC/4/29/Add.3, 62.

<sup>24</sup> K.B. Barry ‘Report of the Special Rapporteur on the right to education, Right to education: the cultural dimensions of the right to education, or the right to education as a cultural right.’ UN Docs A/HRC/47/32, 42.

22. In light of the aforementioned, ADF International suggests the following recommendations to be made to France:

- a. Review and amend the requirements set out for parents intending to homeschool their children in a manner consistent with relevant human rights obligations, particularly under Article 13 of the International Covenant on Economic, Social and Cultural Rights;
- b. Respect the right guaranteed under international law of parents to raise and educate their children in accordance with their moral and religious convictions;
- c. Recognize that the State has no legitimate authority under international law to mandatorily prescribe conventional education for all children, that individuals have the right to seek alternative forms of education, and that the current regulation of home education is incompatible with international human rights law.



**VIENNA**

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