

France / terrorism

Interview with Michael Mc Colgan, chargé de mission of the FIDH

- [english] - Region - Europe & Central Asia - France -

Date de mise en ligne : Wednesday 13 January 1999

Description :

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When you were appointed by the FIDH for the mission on antiterrorist laws and their implementation in France, what did you know about the subject?

I had no precise elements in mind but had a general knowledge of the subject. I knew there was an inquisitory criminal system very different from the one in England. However, I was slightly disturbed by what I discovered during the investigation. For example, I had no idea when I started the investigation that some people remanded in custody four years ago were still awaiting trial. I found that deeply shocking.

Apart from that point, what surprised you most during your visits to France?

The enormous power of the examining magistrates to place someone in custody without reference to an independent tribunal. For me, deprivation of freedom is such an important thing that it should not be decided by one man only. I think that the accused should be entitled to argue his case before a court.

You mentioned England's antiterrorist laws. Should any similarities be drawn between the two systems?

There are some very important formal differences, but what I find disturbing in both cases is the tendency of these laws - which practically if not theoretically are emergency laws - to infiltrate the common law bit by bit. This is for example what happens in England. Some laws have been passed to control terrorists. But progressively they have been introduced into the ordinary law and are now applied to almost everyone. Moreover once a law has been implemented, it

becomes very difficult to change it.

To come back to the report, what are the main reproaches to be put forward to the magistrates investigating terrorist cases?

I went through a certain number of prosecution files and defence pleadings. From all this, it appears that magistrates handle the case on behalf of the prosecution only. In other words, they do not take into consideration the evidence and elements which could work in favour of the accused.

In the same report you also denounce the dark side of a "showbiz justice." Could you give an example?

The round up of 26 May, 1998 is a typical case. Fifty-three people were arrested for questioning in France. A few days later, most of them were released. It looks like a "showbiz justice" with no real efficiency. That is to say they were questioned without any element against them during the custody. I find this very disturbing. These first few days are very important for the accused. And yet they can only be assisted by a lawyer after 72 hours. This is the reason why evidence or some proof must be found before questioning them and not only a vague hope of obtaining clues during the questioning.

You are sometimes accused of attacking Judge Bruguière directly?

Obviously this report is not a personal attack. The system is such that any judge, placed in the same situation as these magistrates, would react in a similar way. If I were myself an examining magistrate, I would probably use the same methods as Mr. Bruguière as they are authorized by law. I hope

that this will never be the case..

(laughs). It is the system and not the individuals that matter.

Obviously there is some personal criticism but on the whole it is the framework of the laws and the power of the magistrates which is excessive in my opinion, and which we question in this report.

Some more serious criticisms were made by associations representing the victims of terrorist attacks.

Yes, but in my opinion there is no contradiction between the 'victims' rights and the rights of those suspected of terrorist attacks. You do not infringe the rights of the latter by insisting on respect for the former. The State must take care of the victims of terrorism; they have sustained terrible trauma, blind and savage. It is obviously a duty for the State to ensure people's safety.

But, you cannot sacrifice rights and essential liberties to do so, particularly the rights of defence and habeus corpus.

Do you think that today, the right to be defended is threatened?

During our first meeting at the law Courts, we asked why the defence lawyer's role was so limited. "It is the French tradition" were we often told. Everywhere, including England, there are legal traditions. They are all the more lasting because they have become part of our habit. The most spectacular cases like the "Chalabi" file draw attention to the faults of these traditions. We must fight against this hangover from the past. I have not started with the process yet. This mission has been initiated at the request of defence lawyers, Corsican and Basque associations, the friends of Kurdish or Arab prisoners who persuaded the French League to request it. I have never dreamt of making an investigation in order to free France from this system

(laughs). This movement existed a long time before this case.

Interviewed by Gaël Grilhot
January 1999