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## France: paving the way for arbitrary Justice

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# France
# Paving the way for arbitrary Justice

Report of an international mission of inquiry in France
on the application of anti-terrorist laws in France,
with particular reference to the issue of provisional detention
and the exercise of defence rights

Conducted between April and November 1998 by:

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# France

## Introduction

Since the beginning of the 1990s, the French criminal courts have witnessed a series of major trials involving allegations of terrorism. Several have involved abnormally large numbers of defendants. Indeed, the most recent, the "Chalabi network" trial (le Procès Chalabi) in which the judges' verdicts are expected on January 22nd 1999, boasts a total of 138 defendants, of whom some 27 are in custody.

During the same period, lawyers and others have expressed serious concerns, both about the inherent character of the "anti-terrorist" laws invoked, and about the manner in which they have been applied. Criticism has been directed in particular at the law creating the offence of "participation in an association of malefactors... with a view to the commission of one or more acts of terrorism" (participation à une association de malfaiteurs en relation avec une entreprise terroriste). This is the statute which has been at the centre of all recent mass trials.

As for the application of the legislation, it is the provisions of the Code of Penal Procedure governing the investigation, prosecution and trial of alleged terrorist offences which have attracted most attention. In addition, criticisms have been voiced of those who actually put the laws and the code into practice, whether as police officers, investigating magistrates or judges in the pertinent courts of trial, review and appeal.

The major concern of those critical of the present system is that it does not allow suspects, defendants and the lawyers who represent them the full range of rights to which they are entitled. Given the pre-eminent role that France has played for over 200 years in the struggle for human rights throughout the world; given, too, that the present controversy reached its climax, in the shape of the "Procès Chalabi", in 1998, the year marking the 50th anniversary of the International Declaration of Human Rights; the French Human Rights League (Ligue française des droits de l'Homme et du citoyen) thought it appropriate to ask the FIDH to commission an independent enquiry into the anti-terrorist laws and their application, with reference to the issues of human rights generally and the right to a fair trial in particular.

## I. Genesis of the report

We were mandated early in 1998 to conduct the enquiry and produce a final report. We are both experienced practitioners in the field of criminal law and have conducted the defence in numerous cases brought under anti-terrorist legislation within our own national jurisdictions. We have also taken part in and written reports on human rights missions in other parts of the world. Alessandro Attanasio works in a criminal justice system based, like the French, on Roman law and the inquisitorial mode of procedure. Michael McColgan's practice lies within the adversarial system characteristic of Anglo-Saxon jurisdictions. It is our hope and belief that our differing legal experiences (differing, that is, both from each other's and from that of French lawyers) have enabled us to look at the issues under investigation in a fresh and independent manner, and we trust that the recommendations which we make at the end of our report will not be regarded as motivated by legal "Schadenfreude" a mischievous desire to score points off the French penal system. We have deliberately refrained from making comparisons, favourable or otherwise, between the French system and our own (see the section on Methodology below).

In April 1998 we spent a week in Paris. We had meetings - seldom less than an hour long, usually longer - with a large number of officials working within the penal system, including the Prime Minister's advisor on justice matters, the Procureur général at the Court of Appeal and all four examining magistrates (juges d'instruction ) in the 14th Section of the Paris Court, popularly known as the "juges anti-terroristes ".

We also met many lawyers who have in recent years taken on the defence of those charged with terrorist offences. All told, taking into account Michael McColgan's subsequent week-long visit to Paris in September and his and Alessandro Attanasio's visits to Ajaccio and Bayonne respectively in April, some 35 defence lawyers were seen directly. Most were and had been for some years active in representing numerous clients facing serious terrorist charges including those alleged to be at the centre of terrorist networks / réseaux. In April 1998 we also met M. Gravet, the Director of the Police Judiciaire, accompanied by M. Marion, Head of the 6th Central Division of the Police Judiciaire. Discussions were also held with the Deputy Director of the Prison Service and leading officials of

both the Police Trade Union (UNSA, Police) and the Magistrates' Trade Union (Syndicat de la Magistrature). A request was made on our behalf by Henri Leclerc, President of the French Human Rights League, that we be allowed to visit Medhi Ghomri, who received a 7-year sentence in February 1998 for alleged terrorist offences (see chapter VIII of this report). The State Prosecutor (Procureur général) turned down the request in the following terms:

"Having myself received Mr McColgan some weeks ago, I understand perfectly the spirit and the context of your project (i.e the present enquiry and report). However, I am unable to depart from the strict rules that always apply to the issue of visitors' permits. Such permits are given only to the detainee's defence lawyers and members of his family. Any other person who wanted to obtain a permit by way of exception would have to demonstrate an interest relating to the situation of the detainee in question or to the proper functioning of procedures" ("Ayant moi-même reçu M. Mc Colgan il y a quelques semaines, je comprends parfaitement l'esprit et le contexte de votre démarche. Je ne puis cependant déroger aux règles constamment appliquées en matière de permis de visite selon lesquelles ces autorisations ne sont délivrées, outre aux avocats chargés de la défense du détenu, qu'aux membres de sa famille. Toute autre personne ne pourrait exceptionnellement obtenir un tel permis qu'a la condition de justifier d'un intérêt en relation avec la situation du détenu considéré ou la bonne marche de la procédure").

We have to confess that we are a little taken aback by such perfect understanding.

Michael McColgan attended the opening session of the "Procès Chalabi" on September 1st, at the prison gymnasium in Fleury-Mérogis.

In order to particularise and consolidate the information we had obtained during our initial visit in April, we devised three questionnaires, which we sent out in August to all the officials we had met, a large number of prisoners and about 100 lawyers. The texts are to be found at annex 1 (a, b and c) of this report. The responses from the lawyers and the prisoners were very helpful, inasmuch as they gave us a far more detailed insight into how the application of the anti-terrorist laws affected them and their advocates directly and personally.

On the other hand, no useful information at all was provided by the representatives of the penal authorities. None of the 16 questionnaires we sent out was completed and we have to date received only two formal letters in reply, neither shedding light on the central questions raised. We are at a loss to explain why the Ministry of Justice and the court officials should not have provided us with the statistics we requested. They would have helped us greatly in coming to an accurate assessment of the numbers of people affected and the proportionality of the measures employed under the anti-terrorist legislation. In Great Britain, the Home Office (Ministry of the Interior) publishes a 20-page "Statistical Bulletin" every year, which gives full details of the application of prevention of terrorism legislation. That in itself is an acknowledgement of the gravity of such legislation and hence the need to monitor carefully its use and effect (A copy of the front page of the 1996 bulletin is to be found at annex 2). Is any reliable record actually kept of what is happening in France?

Press reports have proved to be a useful source of information, as indeed have the numerous legal authorities we consulted, most of which are to be found listed in the bibliography attached to our report.

If we were to base our findings and recommendations solely on what we have been told or what we have read, whether by the defendants or their lawyers on the one side, the representatives of the bodies administering justice on the other, even when complemented by the extensive press coverage of recent "terrorist" trials, we would be doing little more than commenting on commentaries. Which is why we are extremely grateful to those who have provided us with what we might call primary source material: we have been able to read a number of the definitive summary of the prosecution case (réquisitoires définitifs) presented to the court of trial, together with a wide variety of court pleadings submitted by both the juges d'instruction and the defence lawyers (Ordonnances, conclusions, etc) and the responses of the tribunals seized of the matters (arrêts).

Moreover, we have had the opportunity to study closely several excerpts from the interviews conducted by the juges d'instruction with those who are under investigation (mis en examen). Reading these documents has given us a valuable insight into the way in which the juges d'instruction of the 14th Section

have viewed what has been made available to them in the way of evidence and how they have used that material in the course of their investigations. Although it is the State Prosecutor (Procureur de la République) who is ultimately responsible for and presents the réquisitoire définitif to the court of trial, it is the juge d'instruction (whose name comes first on the final document) who determines in reality the thrust and direction of the case as it is expounded before the tribunal.

## II. Methodology

Our brief from the FIDH was to enquire into and report on the application of anti-terrorist legislation in France, with particular reference to the issues of provisional detention and the exercise of defence rights. As we have already indicated, we work in criminal justice systems whose statutory framework and procedural provisions differ in many important respects from those which obtain in France. In our view, little is to be gained from comparing one system with the other. This is something best left to experts in the field of comparative law such as Jean Pradel, whose 1995 book, Droit Pénal Comparé, nevertheless provided us with many useful insights. A legal equivalent of the UEFA Champions' League only makes sense if all participants play by the same rules. Far better, it seems to us, to measure the subject of our enquiry against a standard that is universally accepted, without at the same time setting one system against another in what could easily degenerate into jurisprudential chauvinism.

It is for this reason that we have decided to evaluate French anti-terrorist laws and their practical application by reference to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Drawn up in 1950 and acknowledging in its preamble the inspiration of the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations two years earlier, the Convention has since been signed and ratified by nearly all European states. Set up at the same time to ensure observance of the pledges made by the signatories to the Convention, the European Court of Human Rights has, through its judgments, exerted great influence in ensuring Europe-wide compliance with the obligations in the field of human rights which are imposed by the Convention.

At the same time, the European Court has carefully avoided making systematic criticisms of the legal structures of individual States Parties. But, while harmonisation of the criminal procedures of the States Parties has never been one of the purposes of the Convention, some degree of uniformity in the safeguards and protections afforded to an accused is the stated objective of European co-operation in the field of human rights law.

Article 6 of the Convention, for instance, is entitled "Right to a fair trial" in the English version, and although the French version does not include separate headings for this or indeed any of the other 65 articles, it is, we think, generally agreed that article 6 can be regarded as dealing specifically with the "droits de la défense". It is certainly the most important of the Convention's articles for this particular enquiry. And although always conscious of the need to respect legal pluralism, the European Court has made it clear in a number of seminal judgments over the years that national legislation is meant to conform with the Convention and not vice versa, precisely in the application of Article 6.

"The Convention places a duty on the Contracting States to organise their legal system so as to allow their courts to comply with Article 6" (Buchholz v. FRG, 6 May 1981, para. 51).

"(The respondent Governments) may not, in relation to the fulfilment of the engagements undertaken by virtue of art.6, seek refuge behind the possible failings of their own domestic law" (Eckle v. FRG, 15 July 1982, para. 84).

Underlying these and other definitive judgments - indeed, we would suggest, underlying the whole philosophy of the Convention and the Court - is the belief that, regardless of differences among national legislations, it is possible to achieve objective standards in the administration of justice.

We have approached our task in the following way:

We review briefly the principal substantive and procedural provisions which have been introduced since 1986 to form, in their ensemble, French anti-terrorist legislation. In particular, we consider the charge most commonly levelled against defendants under this legislation, that of participation in an

association of malefactors formed for the purpose of preparing a terrorist act (association de malfaiteurs ayant pour objet de préparer un acte de terrorisme).

1. We look at those articles in the Convention which deal specifically with the rights of persons accused in criminal proceedings, and then we assess the extent to which French anti-terrorist laws and procedures meet the standards set by those articles.

2. We examine the way in which the anti-terrorist legislation has affected what we see as four main groups of defendants: Corsicans, Basques, Kurds and (by far the biggest group) "Islamistes". Much of our discussion centres on, and most of our illustrations are drawn from the "Chalabi" case. It is without doubt the most "spectacular" of all the "anti-terrorist" trials and in many ways the most instructive. The lessons to be learned from it are essentially applicable to all the other cases that we have examined.

It is important to emphasise here that, although we have for the sake of convenience adopted the term "Islamistes", we do so with reservations and always in quotation marks. We find it disturbing that the legal authorities (in their dossiers, réquisitoires and other court pleadings) and the media should use the term so indiscriminately.

To take one example: an article in "Libération" (May 27th, 1998) on the raids and arrests carried out just before the World Cup read: "Rafle 'préventive' dans les milieux islamistes". Significantly, the word "préventive" is put into quotation marks, but "islamistes" is not. Why the distinction? France is a democratic country where the rule of law applies. "Preventive" law enforcement is therefore inconsistent with that state of affairs. So, even if the "rafle" masterminded by Messrs Chevènement and Bruguière had all the characteristics of a preventive operation - which of course it was - it might be considered indelicate to say so in so many words. Hence the distancing quotation marks.

When it comes to the term "Islamistes", however, no such scruples are brought to bear. The people arrested are not Algerians, Tunisians or Moroccans, not even Arabs. They are stripped of their national identity, no longer citizens with citizens' rights to criticise or oppose the policies of their national governments. Nor, in religious terms, are they simply "musulmans". No, "islamiste" is much better suited to the subliminal demonisation of those arrested, since it connotes deracinated fanaticism. This is another, more subtle attack on the presumption of innocence.

We isolate a small number of individual cases and issues which highlight the concerns raised in a more general way elsewhere in our report.

We consider the role and powers of the four juges d'instruction responsible for investigating and compiling dossiers in all cases of alleged terrorism.

We examine the role and powers of the defence lawyer in "anti-terrorist" procedures from arrest of the suspect to the conclusion of the trial, and we ask whether or not the financial and legal resources available to the defence lawyer are sufficient to enable a proper defence to the charges to be prepared, and thereby resolve the issue of "equality of arms".

Finally, we make a number of recommendations for changes to the present system which would in our judgement bring it into closer conformity with the generally accepted principles which inform the European Convention, while not in any way undermining the struggle against terrorism.

## III. Anti-Terrorist Legislation and Procedures

### 1. Genesis of the legislation

Until the 80's, the Penal Code did not contain any reference regardin thenotion of terrorism.

Specifically anti-terrorist legislation had been enacted considerably earlier in several other Western European countries. The French state had of course taken draconian legal measures in the 1960s in its efforts to cope with the Algerian problem, but these were designated as "Laws for the Repression of Crime against the Security of the State". After the resolution of the Algerian issue and through most of the 1970s, France remained relatively untroubled by the kind of violence experienced in, for example, Britain and Germany. However, an upsurge of Corsican and Basque nationalist activity and a hardening of public opinion in the early 1980s encouraged the Chirac government of 1986 to place greater emphasis on law-enforcement generally and the repression of terrorism in particular.

## France

Before the elections which brought them and their allies to power, the RPR (Chirac's party) had set out their policy in a pamphlet entitled "Une politique pour la sécurité". Once in office, Prime Minister Chirac appointed Charles Pasqua to the post of Minister of the interior, and it was Pasqua who in September 1986 steered on to the French statute books Law n° 86-1020 ; which effectively formed the starting point of the French state's legal offensive against terrorism.

Law n°86-1020 has since been modified a number of times (Law n° 86-1322, Law n°96-647), and now, together with the updated and sterner provisions of the new Penal Code (le Nouveau Code Pénal, articles 421-1 ff.) and the Code of Penal Procedure (le Code de Procédure Pénale, articles 706-16ff.), constitutes a coherent body of substantive legislation and procedural measures with which to counteract the threat to French society of terrorism.

One of the most significant aspects of the 1986 law from the point of view of this report is that it both centralised the agencies responsible for counter-terrorist action within the penal system and at the same time gave those newly centralised bodies greatly increased powers, which are enumerated in Articles 706-16 ff. of the Code of Penal Procedure.

The powers in question relate to the prosecution, investigation and trial of terrorist offences as defined by Articles 421-1 to 421-5 of the Penal Code:

**2. The concentration of powers within the 14th Section of the Paris Court (Articles 706-17 to 706-22 of the Code of Penal Procedure)**

These provisions effectively vest total control of the legal counter-terrorist offensive in the Paris judiciary. All terrorist matters were henceforth to be dealt with by the prosecuting authority (Procureur de la République), the investigating Magistrate (le juge d'instruction), le Tribunal Correctionel and la Cour d'assises (the two higher criminal courts) based in Paris.

Not laid down in any part of Article 706, but what has in fact happened, is the concentration of power, not just in Paris, but within one particular section of the Paris court. A small group of four juges d'instruction, presently Jean-Louis Bruguière, Gilbert Thiel, Mme. Laurence le Vert and Jean-François Ricard, works in close liaison with the office of the Public Prosecutor (Procureur de la République) in the 14th Section of the Paris Court (Parquet). It is this by now nationally known group which is responsible for the investigation of all alleged terrorist offences, wherever they occur on French territory. More than that, Article 706-16 empowers the competent authorities in Paris to deal in the same way with acts of terrorism committed abroad where French law applies. And it is these four judges who complete the case dossiers which are then prepared for presentation to the court of trial in the form of a "Réquisitoire" by their prosecuting colleague (the Procureur or Avocat Général) from the selfsame section.

Wide powers are given to the Procureur de la République by Article 706-18 to require that terrorist cases as defined in Article 706-16 be transferred to the Paris-based authorities, thereby ensuring total centralisation.

**3. Procedure**

**3-1. Initial detention (Garde à vue)**
The period in which a suspect can be detained by the police without charge was extended from 48 to 96 hours. The suspect has the right to be examined medically, but by a doctor designated by the Procureur or the juge d'instruction (Art. 706-23).

**3-2. The right to legal advice**
In addition, the suspect detained under the 96-hour provision has the right to see a lawyer, but not until 72 hours have elapsed (It was not until 1993 - laws number 93-2 and 93-1013 - that the right to consult a lawyer during the Garde à vue was enshrined in law). This means that the arrested person has to wait twice as long as someone arrested under le droit commun before being able to obtain legal advice. One academic commentator has observed that this:
"corresponds to a reassuring mathematical logic, since the maximum duration of the garde à vue is likewise double that which applies under ordinary legislation" (correspond à une logique mathématique rassurante, puisque la durée maximale de la garde à vue est également du double par rapport à celle du droit commun) - Yves Mayaud, le Terrorisme, Dalloz 1997.

We do not believe the author intended any irony.

**3-3. Searches**
Article 706-24-1 gives the investigating authorities far greater powers of search, but makes it incumbent upon the juge d'instruction to provide written reasons (une ordonnance motivée) for authorising such searches. However, the reasons are not open to appeal.

**3-4. The trial of adult defendants (Article 706-25)**
This article invokes the provisions of Article 698-6, which is designed to deal with the criminal trial of military matters in peace-time. In so doing, it does away with the concept of trial by a jury made up at least partly of one's peers. The Cour d'assises, for example, when dealing with designated terrorist cases, is henceforth to consist of seven professional judges, a president and six assessors. One of the justifications for this change was that it would prevent the destabilisation of the criminal justice system that could result from intimidation of lay jurors. We have not so far seen any convincing evidence of such intimidation on a scale that justifies so radical a change in the composition of tribunals. On top of that, decisions of the court could henceforth be reached by a simple majority.

**3-5. Sentencing (Article 706-25-1)**
His article makes provision for greatly increased sentences in cases classified as terrorist. The maximum penalty for terrorist crimes is fixed at 30 years, while the lesser offence (délit) of participation in an association of malefactors etc. can be punished with imprisonment for up to 10 years.

**3-6. "Conspiracy" (Association de Malfaiteurs)**
This section of the report would not be complete without mention of the law of July 22nd 1996 (Law n°96-647), which led to the inclusion of a new Article in the Penal Code, Article 421-2-1. This Article now designates as an "act of terrorism" participation in a group formed or an agreement established with a view to the preparation - characterised by one or several facts - of one of the acts of terrorism mentioned in the preceding Articles. Such participation was initially intended by the then Government to be ranked alongside the other more obvious terrorist offences, but the scruples of the legislator prevailed, and it remained classified as a délit rather than as a crime and subject to the jurisdiction, not of the Cour d'assises, but of the Tribunal Correctionel, with a maximum sentence on conviction of 10 years' imprisonment. At the same time, however, it was treated to all intents and purposes as being subject to the special provisions of Article 706-16 of the Penal Code (extended Garde à vue, etc.)

It is particularly noteworthy that, in the last couple of years the "anti-terrorist" authorities of the 14th Section have chosen to charge the overwhelming majority of those arrested on suspicion of involvement in terrorist activities with participation in such associations. The way in which the offence has been defined and indeed interpreted is especially interesting:

"The offence continues to consist of preparatory participation: participation in a group or an understanding, preparation of a subsequent or ecological act of terrorism. The association therefore remains independent of the actual commission of the offences, which are its object. This is significant, since it means that, as long as it is sufficiently realised, the preparation alone is enough to constitute the punishable offence" (le délit continue à s'entendre d'une participation préparatoire: participation à un groupement ou à une entente, préparation d'un acte de terrorisme dérivé ou écologique. L'association reste ainsi indépendante de la réalisation effective des infractions qui en sont l'objet, ce qui n'est pas sans intérêt, dès lors que, suffisamment matérialisée, la seule préparation suffit à consommer le fait de participation punissable) - Mayaud, op. cit., p.29.

Professor Mayaud's understanding of Article 421-2-1 is in our view correct, and we note with interest that he does not on this occasion make any mention of a "logique rassurante". The intention of the Article is quite clear: the investigating and prosecuting authorities (the police judiciaire in the first instance, then the juge d'instruction and finally the Procureur de la République) are statutorily absolved from any duty to link the alleged participation with any actual execution of a terrorist offence or even a verifiable plan for the execution of such an offence.

It is a legal truism that laws should be both certain and precise. The danger with open-ended laws - and we believe article 421-2-1 to be one such - is that they lend themselves too readily to arbitrary interpretation and implementation. In this matter of participation à une association de malfaiteurs, little or no effort seems to have been made within the context of the

legal prosecution of the cases that have been drawn to our attention (“Chalabi”, “Ali Touchent”, “Coupe Mondiale”, etc.) to establish precisely which specific terrorist act, let alone which category of terrorist act, was allegedly being prepared by those charged. This is not to say that diligent enquiries have not been made by the police and others to discover specific plans -but they seem not to have met with great success, any more than the investigations into the 1995 Paris bombings have yielded any convictions.

That failure to concretise the alleged object of the association or conspiracy inevitably allows almost any kind of “evidence” however trivial, to be invested with significance. The reason for our putting the word evidence in inverted commas should by now be apparent. Evidence, if it is to justify the term, has to be relevant. If there is nothing beyond speculation or innuendo to which it relates, it cannot be relevant and does not therefore merit the designation. What is striking about the cases we have enquired into is the paucity of real evidence about intended acts of terrorism, coupled with questionably relevant evidence as far as large numbers, possibly the majority, of those accused are concerned.

The whole issue of intention and “mens rea” (guilty mind) is one to which both the juges d’instruction and the sentencing tribunals seem to have paid far too little attention. As Medhi Ghomri’s lawyer, relying on definitive dicta issued by the Cour de Cassation, correctly points out, proof of criminal intent is an indispensable element in the establishment of guilt.

We believe that all tribunals passing judgments on defendants should be obliged, as a matter of law, to provide reasoned legal and evidential reasons for their decisions. We have read a number of judgments handed down by the Chambre d’accusation and the Tribunal correctionnel which do little more than regurgitate the text of the Procureur’s requisitoire before the one-line verdict is announced. One official we met told us that French legal tradition dictates that “one does not give reasons for one’s reasons” (on ne donne pas des raisons pour les raisons). This, we suggest, is one sacred cow that ought to be sacrified. Article 6 of the Convention stipulates “a fair and public hearing” for all who face criminal charges, as well as the right “to be informed, in a language which he understands and in detail, of the nature and cause of the accusation against him”. Implicit in that right is the right to be similarly informed in detail of the reasoning behind any finding of guilt. This is especially important where, as is clearly the case in most “terrorist” trials, the bulk of the evidence and procedure is documentary in form.

There is no doubt that incriminating evidence has been brought to light. In the “Chalabi” case, for example, a large quantity of arms and explosives was uncovered in the course of the judicial investigation. But that in itself is far from conclusive. What needs to be established beyond that is, first, that all the accused were so closely linked in fact and intention to those arms and the presumed uses to which they were to be put that criminal liability arises. We submit, having read the Ordonnance de Renvoi and the Réquisitiore définitif, together with the Réquisitions du Ministère Public read to the court at Fleury-Mérogis in late October 1998, that the evidence adduced against many, possibly even the majority, of the 138 defendants is so tenuously circumstantial that it cannot found a conviction for such a serious offence, punishable by up to 10 years in prison.

But even if it could be proved - and here we return to the “presumed uses” of the arms caches discovered - that all 138 defendants were fully aware that the arms, the meetings, the telephone calls and so on were geared to supporting the armed struggle against the present Algerian government, what grounds are there for saying that that in itself constitutes terrorism?

It is only possible to consider a charge of terrorism in the “Chalabi” case - which serves here merely as one example among several - if the intended target of the alleged terrorists, the Algerian military regime, is regarded as a legitimate government. And how is that to be done? In the Chalabi case, as in the Ali Touchent case of 1997, the réquisitoire définitif is prefaced by what purports to be a neutral summary of recent Algerian history.

The opening paragraph of the summary in the Chalabi réquisitoire is revealing:

“Before examining the role and responsibilities of each of those persons investigated in this association of malefactors having as its object the preparation of a terrorist act, it is appropriate to recall the religious and political context within which the evolution of this dossier as it relates to the different armed Islamic

movements has to be seen" (Avant d'examiner le rôle et les responsabilités de chacun des mis en examen dans cette association de malfaiteurs ayant pour objet de préparer un acte de terrorisme, il convient de rappeler le contexte religieux et politique dans lequel s'est inscrit l'évolution de ce dossier au sein des différents mouvements Islamistes armés).

Further on (page 60), we read of the "annulation 1991 des élections législatives Algériennes" (a delicate way of describing a military coup) and find the Algerian army described in anodyne fashion as "tenante du gouvernement". The events of 1991 are described in equally disingenuous terms in the Ali Touchent réquisitoire:

"At the legislative elections on December 26th, 1991, the Islamic Salvation Front, taking advantage of a massive abstention on the part of the electorate, won 188 seats. Under the influence of the People's National Army President Chadli Benjedid was induced to dissolve the National Assembly on January 4th 1992 and then to resign a week later, on January 11th" (Aux élections législatives du 26 décembre 1991, profitant d'une abstention massive du corps électoral, le Front Islamique du Salut (FIS) obtenait 188 sièges. Sous l'influence de l'armée nationale populaire le Président Chadli Benjedid était amené (our emphasis) à dissoudre l'Assemblée nationale le 4 janvier 1992 puis à démissionner le 11 janvier suivant).

What follows is a crude and tendentious account of the various opposition movements in Algeria, which reads like an Algerian government hand-out. Opposition to the junta-like government is presented as being almost by definition "terrorist", and no attempt is made to discriminate between the widely differing perspectives and practices of the numerous opposition groupings. This is not the appropriate place to debate the "pros" and "cons" of the continuing Algerian crisis. But by the same token, nor is a court of law the appropriate forum for what is in effect an extremely prejudicial and unsubstantiated "scene-setting" exercise such as those to be found on pages 60-66 of the Chalabi réquisitoire and pages 31-35 of the Ali Touchent réquisitoire (attached to this report as Annexes 3 & 4 respectively.)

We submit that, in putting these documents before the Court as objective accounts, the Procureur and those who provided him or her with the purported facts they contain may well have been acting unwittingly as propagandists for the Algerian regime, which is considered by many - including the FIDH, Amnesty International, Human Rights Watch and former members of the Algerian government and security forces - to have been responsible, directly and indirectly, for many of the massacres that have occurred and have been blamed on the "Islamistes". Whatever the truth is about Algeria, these two documents, which betray a certain anti-Islamic tone and are clearly not open to discussion, should not have been included in a dossier presented to the Court as the fruit of lengthy and impartial investigation. It is difficult to avoid the suspicion that these "historical introductions" have been used to furnish a context which the actual evidence uncovered in the course of the investigation fails to provide.

## IV. The relevant articles of the European Convention for the protection of Human Rights and Fundamental Freedoms

### 1. The right to be tried within a reasonable time

Article 5(3): "Everyone arrested or detained in accordance with the provisions of paragraph 1c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial".

On January 1st 1998 the French prison population stood at 53,845. Of these 21,591 or 40% were on remand in custody, still awaiting trial or the outcome of an appeal. The average period spent in custody in 1997 was 4.4 months, almost double what it had been in 1975. The figures for the defendants in the Chalabi case, to take the best known "anti-terrorism" case, are quite different. 169 people were arrested in all, and arrest warrants were issued in respect of a further four people. The total time spent in custody by those 169, including 26 who were detained for one month or less, was 2,355 months, an average of 14 months in custody for each defendant.

By the time the Chalabi mass-trial was concluded at the end of October 1998, fourteen defendants had

spent four years (all bar a few days) in custody, and will have spent a further three months in prison by the time the Court delivers its verdicts in January 1999. Another eight will have been detained for between three and four years by the time they learn their fate. Six defendants were released on bail (libérés sous contrôle judiciaire) after spending between 32 and 39 months in custody.

Generally, the Chalabi figures, which we understand are in no way untypical, betray a disturbing lack of urgency on the part of the competent authorities (the juges d'instruction, the Chambre d'accusation and the office of the Procureur) in dealing with the issues of bail and pre-trial detention. The rationale behind Article 5(3) of the Convention is twofold: first, no one should be deprived of his or her liberty - and hence be subjected to distress and anxiety - for a moment longer than necessary, all the more so when the charges he or she faces are grave; secondly, pre-trial detention should be kept to a minimum so as to keep to a minimum the length of time unjustly spent in custody by defendants subsequently acquitted at trial.

Those who are found not guilty on January 22nd 1999 and there are going to be, we would guess, a considerable number - will have little cause to be grateful for the long periods of time they have spent in the prisons of Fresnes, La Santé or Fleury-Mérogis. And for some of those found guilty, particularly defendants who are depicted even in the réquisitoire as peripheral, the "appropriate" sentence could well prove to be less than the time already spent in prison.

We do not accept that the delays in bringing defendants to trial, as exemplified in the Chalabi trial, are justifiable. An examination of the evidence adduced in the réquisitoire reveals that very little of it was obtained after June 24th 1995. In fact, as far as most of the alleged ringleaders are concerned, the evidence had been uncovered - again according to the réquisitoire - by November 1994. Why then the delay between 1994/1995 and the ordonnance of 9th March 1998, signed by Messrs Bruguière and Thiel, which committed the 138 defendants for trial before the Tribunal Correctionel? Many of the defendants have complained about long delays in the investigation of their cases, and about the seeming lack of interest on the part of the authorities in moving the case forward. One defendant, Boualem Belaid, was detained for four months, during which time he claims he was interviewed once only, by M. Bruguière, "for ten minutes during which I was not allowed to express myself properly" (pendant dix minutes durant lesquelles on ne m'a pas laissé m'exprimer). He goes on to say that he was not allowed to have his solicitor present at that interview. Despite the poor quality of the evidence (see pp. 399-400 of the réquisitoire), he was not granted bail until five weeks later.

We have read a number of transcripts of interviews conducted by the juges d'instruction with persons mis en examen. In our lengthy discussions with defence lawyers, we have been able to confirm that the transcripts are typical. They consist largely of long, complex statements by the judge, involving numerous alleged occurrences, meetings, conversations and the like, some seemingly connected, others of questionable relevance. At the end of such assertions, the defendant is asked to respond in terms such as "as regards these matters, what do you have to say?" (Sur ces éléments, qu'avez vous à dire?).

We shall be looking at the way in which the four juges d'instruction conduct their interviews in more detail elsewhere in this report. For the present, we are concerned simply to point out that these interviews seem, to judge by the réquisitoire, not to lead to further time-consuming investigations on the part either of the juges themselves or of the police under their control. In other words the interviews - and in many individual instances there may be several over a number of months - constitute the latter, often final stages of the investigation, confirmation or denial of a case already all but established in the mind of the judge.

All of which makes the excessive time-lag between arrest, charge and trial even less understandable. Two possible causes suggest themselves: either the four judges are so overburdened with work that they cannot conclude their investigation (instruction) and close their dossiers within a reasonable time; or they are not working as efficiently and speedily as they ought to be, and there exists no supervisory mechanism or regulation to ensure that they do.

In our view, the delays in bringing these "terrorist" cases to trial - and our concerns extend to the Kurds, Corsicans and Basques as well as to the "Islamistes" - are a clear contravention of the Convention's insistence that a defendant "shall be entitled to trial within a reasonable time".

Of particular interest in this context is the judgment of the European Court in the case of Tomasi v. France (Arrêt du 27 août 1992). The reasons advanced by the French authorities for detaining M. Tomasi for so long (over five years) were very similar to those we have encountered time and time again in more recent cases. Given, as we have pointed out earlier, that substantive investigations, such as they were, had been more or less concluded by the time of arrest in the majority of cases we have examined, we believe that the finding of the Court in the Tomasi case bears repeating:

"Overall, the Court concluded, certain of the reasons given for rejecting M. Tomasi's application were both relevant and sufficient, but to a large extent they became less so with the passage of time, which means that it falls to us to examine the conduct of the procedure".
"It is evident from the dossier that the competent legal authorities did not act with the appropriate and necessary promptness [...] the length of detention complained about does not seem to us to be attributable in essence either to the complexity of the case or to the conduct of the applicant. Hence, we find a violation of article 5(3)".
("Au total, conclut la Cour, certains des motifs de rejet des demandes de M. Tomasi étaient à la fois pertinents et suffisants, mais ils perdirent en grande partie ces caractères au fil du temps, de sorte qu'il échoit d'examiner la conduite de la procédure".
"Il ressort du dossier que les juridictions compétentes n'ont pas agi en l'espèce avec la promptitude nécessaire [...] la longueur de la détention incriminée n'apparaît imputable, pour l'essentiel, ni à la complexité de l'affaire ni au comportement du requérant. Partant, il y a eu violation de l'article 5(3)".)

The European Court in the Tomasi case also criticises the French authorities for not making greater use of conditional bail (contrôle judiciaire) instead of detention. One of us is accustomed to the failure of many of his clients to attend court without a reasonable excuse even for the most trivial of cases. It was therefore a revelation to witness the prompt, orderly attendance of all but a small handful of more than 110 alleged terrorist conspirators on bail at the opening day of the Chalabi trial. Many, if not the majority, had had to fight over and over again to be granted bail by the Chambre d'accusation, generally in the teeth of opposition from the juge d'instruction involved (using arguments à la Tomasi). Yet here they now were, assembled from all four corners of France, having honoured the terms of their bail (contrôle judiciaire) for lengthy periods without trouble, willing to appear and plead their case before the Tribunal, even though it meant making considerable financial sacrifices. (The mass walk-out later on September 1st was a gesture of protest completely unrelated to the issue of bail).

**2. The excessive powers of the "juges d'instruction" (examining magistrates) as regards provisional detention**

We turn now to the requirement in Article 5(3) that a defendant "shall be brought promptly before a judge or other officer authorised by law to exercise judicial power". It seems to us that the juge d'instruction, with his ability to order the detention of a person being investigated (mis en examen), effectively exercises judicial power, but in autarchic fashion, without his decision being scrutinised unless and until the detainee appeals to the Chambre d'accusation.

Even if we were to accept that the juge d'instruction has in every case impartially considered all the arguments for and against detention before making his or her decision, we do not accept that deprivation of liberty is a matter which should be determined in this way by an individual. Justice demands that the initial decision (and, indeed, all subsequent decisions) to detain a defendant or to grant him or her bail should only be taken in an open hearing before a tribunal independent of the investigation, at which both the defendant / prospective detainee and the juge d'instruction would have the right to make representations.

The defendant should, of course, be able to make his or her representations either directly or through a lawyer of his own choice or one designated by the court. This is all the more important when - as has been the case with most of the "Islamistes" and Kurdish defendants especially - they have extremely limited resources and little working knowledge of legal procedures (The difficulties, particularly financial, that face defence lawyers are dealt with elsewhere.)

There should also exist, in our view, a right of appeal in respect of bail to a second court beyond the

Chambre d'accusation and statutory limits far lower than those presently in force (which we understand to be half the maximum penalty on conviction) for the permitted length of detention in custody. We see no reason, having looked at the relevant papers, why trials, either, should not start within stricter time limits. A criminal justice system that consigns so many defendants so soon and so easily to detention in prison has a duty to be equally diligent in bringing them to trial.

There is a further and extremely important reason why we are troubled by the inordinate delays in bringing "anti-terrorist" cases to trial. As we have already pointed out, our reading of a considerable number of case papers confirms what so many defence lawyers have told us: that the evidence against many of their clients at the time they are arrested is so insubstantial as not to merit arrest and detention at all, let alone prosecution for terrorist activities.

The danger of prolonged detention is that, in and of itself, it exerts enormous psychological and social pressure on the detained person. In some cases - for example, that of Ramazan Alpaslan - it can lead to severe depression and even suicide. In others, it can cause the irreversible breakdown of personal and family relations.

Worse, from a legal point of view, it can lead innocent detainees to make confessions that are not true or - and this is a grave danger in cases where large-scale conspiracy is alleged - to incriminate their co-accused, simply in the hope of ingratiating themselves with the prosecuting authorities and thereby enhancing their prospects of bail or facing lesser charges. (This is why, in most accusatorial jurisdictions, the word of one accused implicating his fellow accused is, with some exceptions, not regarded as evidence).

We have noted the remarkable frequency with which the juges d'instruction confront the detainee with apparently incriminating statements from other detainees. There is nothing inherently objectionable in this practice, but in the circumstances which obtain in the cases we have been examining, there is a serious risk that it will be used to pressurise detainees whose resistance and willpower have already been weakened by months or even years in prison.

The prolonged periods of detention characteristic of all the "terrorist" cases is a violation of both Article 5(3) and Article 6(1) of the Convention, as borne out by a number of judgments of the European Court (Zimmermann v. Switzerland; Jesso, Ewing v. UK, and others). Moreover, we are strengthened in our contention that these sections implicitly condemn over-long detention as being a form of illegitimate pressure by Article 5(4), which calls for speedy proceedings to determine the lawfulness of detention, and Article 5(5), which enshrines the enforceable right to compensation for detention in breach of the Convention.

We remember only too well the dictum of Charles Pasqua, architect of the 1986 anti-terrorist provisions, who said in November 1994 that "il faut terroriser les terroristes" ("We need to terrorise the terrorists"). Even if M. Pasqua did not intend his words to be taken literally, they find today a disturbing echo in what has become the conventional practice of keeping "terrorist" suspects locked up in gaol for three or four years before trial.

**3. Article 6: the right to a fair trial**

Article 6:

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interest of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed Innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:
(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
(b) to have adequate time and facilities for the

preparation of his defence;
(c ) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

**3-1. The conduct of the investigation**
One of the major obstacles to "a fair trial" mentioned by the defence lawyers whom we consulted was the attitude of the four juges d'instruction linked to the 14th section of the Paris court. Most considered that the judges had largely made up their minds about the persons under investigation (mis en examen) and that the purpose of the investigation (instruction) was simply to confirm their initial judgement. One lawyer, responsible for the defence of at least ten "terrorist" suspects, wrote in response to our questionnaire: "In anti-terrorist cases, the investigation proceeds solely with a view to establishing culpability, never with a view to uncovering exculpatory evidence" (l'instruction en matière anti-terroriste se déroule uniquement à charge, jamais à décharge).
Others echoed this sentiment to varying degrees, and we were unable, in spite of writing to over 100 defence lawyers, to elicit a positive response to the way in which the judges conducted their investigations.

As experienced practitioners in the criminal law we know how tempting it is for defence lawyers to lose sight of objective reality in championing the cause of their clients. But the virtual unanimity of those who represent, we estimate, one half to two thirds of those presently on or awaiting trial on anti-terrorist charges, is not to be dismissed lightly. It is not as if these lawyers were claiming that there was in every instance no case to be answered. Far from it: they acknowledged that certain defendants were confronted by cogent and compelling evidence of their involvement in, for example, the acquisition of arms and ammunition. What the lawyers object to above all is what they see as the insistence of the four judges on drawing almost invariably the worst inferences from evidence that is in itself tenuous or circumstantial, and their reluctance or refusal to entertain explanations which contradict their own apparent views.

**The conduct of the interviews**
This seeming lack of impartiality, the lawyers told us, also manifests itself in the comportment of the judges during the interviews. One judge was generally exempted from criticism, but otherwise the lawyers felt that both their clients and they, together with what they had to say in response to the questions put to them, were too often met with reactions that ranged from indifference to anger. Attempts by the lawyers to intervene in the interviews (interrogatoires) were received "mostly with much ill-will", "irritably", "negatively", or simply "badly" ("avec beaucoup de mauvaise volonté pour la plupart", "avec énervement", "négativement", ou simplement "mal").

Add to this that the questions posed were regarded by the defence lawyers as too long and convoluted ("incompréhensible", said one lawyer acting for three clients), and a disturbing picture begins to emerge of interviews calculated only to end in a finding of guilt.

Interviews are not tape-recorded, and it is the judge who dictates a résumé of the detainee's response (the judge's questions, having been prepared in advance, are reproduced in full) to the attendant clerk. The interventions of the defence lawyer, if they are tolerated at all (generally only at the end of the interview), do not seem to be noted.

**Access to the judge's dossier**
In any case, most of the defence lawyers we consulted considered that they were at a more fundamental disadvantage throughout the period of the instruction because of the difficulties in getting access to the judge's dossier. In the first place, all but one felt they were not privy to all the information held by the judge. Moreover, several complained that there were frequent delays before they were allowed to inspect the dossier, and then in conditions which, as we saw for ourselves, were anything but conducive to serious study: a high, narrow desk in a corridor, in front of which the lawyer sat on a high stool, a scene reminiscent of monkish devotions in the Middle Ages.

Of course, every lawyer is entitled to ask for a copy of every page of the judge's dossier - at three francs per page! (Unless one is an avocat commis d'office, designated not by the client, but by the Bar Council, in which the copies are free.) In the Chalabi case, the dossier amounts to some 50 000 pages, making it effectively unobtainable for those lawyers "chosen" by

their clients, especially as most of the latter have very meagre financial resources.

The issue of finance and legal aid will be examined elsewhere. We note here in passing, however, that the avocats commis d'office received in the Chalabi case a total of FF 1700 to cover their work during a four-year investigation and FF 700 for a trial scheduled to last two months. It would not be surprising in these circumstances if some lawyers were less than keen to become too deeply involved in anti-terrorist cases. And yet it is precisely in such serious cases that long-term involvement and thorough knowledge of the case papers in their entirety are required.

**3-2. The right to be tried by an independent tribunal**

We have already expressed concerns about the "professionalisation" of the tribunals before which terrorist cases are heard: the removal of lay jurors and the introduction of verdicts reached by a simple majority represent, in our view, a retrograde step in the administration of justice.

Also worrying are the close ties that exist between the Parquet, the juges de siège (Cour d'assises, Tribunal correctionel and Chambre d'accusation) and the juges d'instruction, particularly since the concentration of powers brought about by the 1986 Law. Many lawyers feel that there is too little distance - in terms of training and career structures (even personal links according to some) - between the various authorities to allay the fear that they may not each be acting fully independently. Relying on the axiom that justice must not only be done, but must be seen to be done, we recommend that urgent consideration be given to re-structuring what at present appears to many to be too coherent an ensemble. Some lawyers have re-named the Chambre d'accusation the "Chambre de Confirmation", and indeed Mme. Ponroy, president of the Chambre d'accusation in Paris (though not herself responsible for terrorist adjudications), indicated when we met her, as did other officials we met, that she was aware of the cynical sobriquet.

Again, it needs to be stressed that defence lawyers in particular are prone to demonise those they see as their adversaries (and, of course, it works in the other direction!). But no statistics have been provided to us by the Ministry of Justice or the Ministry of the Interior. And Mme. Ponroy herself was uncertain about the proportion of cases where the Chambre d'accusation (the second section under its president, Mr. Beyer, which deals exclusively with terrorist cases) finds against the juge d'instruction where bail (la mise en liberté) is an issue - she thought it might be between 20% and 30%.

One lawyer acting for a defendant in the Chalabi trial had to appeal eighteen times to the Chambre d'accusation before his client was finally granted conditional bail after 2½ years in prison. Another involved in the same case estimates that he and his colleague have made over 50 applications for bail on behalf of their three clients, two of whom were released on strict conditions after 27 months. We find these cases disturbing, especially viewed against the background of tortoise-like progress towards trial on evidence long since gathered.

Mme. Ponroy outlined the controls exercised by the Chambre d'accusation over the work of the juges d'instruction. Where bail applications were made she said "we don't go into the case in detail" ("on n'examine pas le fond de l'affaire"), although the advisor (the Conseiller) to the Président is supposed to examine the dossier before the hearing. The principal concern of the Chambre d'accusation, according to Mme. Ponroy, were the garanties de représentation (guarantees that the defendant will attend court). Additionally, the Chambre d'accusation exercises a supervisory function with regard to the progress being made in the case by the juge d'instruction. This function, she told us, was usually exercised through informal meetings, although the judges themselves are supposed to submit progress reports every three months.

In view of what Mme. Ponroy said about terrorist cases - their "complexity" and "length", the "number of defendants", the "need for the judges to go abroad" as part of their investigation, together with the "inefficient functioning of international co-operation" - it seemed to us that she was indicating that effective supervision was not what it might be. This again is something which urgently needs to be considered if the impression is to be avoided that the slow progress of cases is ignored or tolerated.

**3-3. Infringing the right to a fair and public hearing (Article 6.1)**

As far as we are aware, all trials relating to charges of terrorism had until September 1998 been held in normal courtrooms, possibly adapted and with extra security measures in place. The Chalabi trial, which began on September 1st 1998, marked a new departure. On December 29th 1997 a law was passed, almost unnoticed, giving the judicial authorities the right "in exceptional circumstances and for security reasons to stage" (à titre exceptionnel et pour des motifs de sécurité) "terrorist" trials elsewhere than in the courtrooms normally available to them.

In the early summer of 1998 it was announced that the 138 defendants jointly charged with participation in an association de malfaiteurs and other related offences in the Chalabi "network" - would be put on trial in the gymnasium attached to the Prison Service training school, situated at Fleury-Mérogis (about 40 kilometres from the centre of Paris), next door to the prison of the same name, where so many of the defendants had been and where several continued to be detained.

There was an immediate protest from some fifty lawyers involved in defending clients in the Chalabi case and other similar trials. The Paris Bar Council claimed that it had not been adequately consulted and expressed deep reservations. But the powers-that-be were unmoved, and in his address to the Court in late October, Jean Pierre Dintilhac, the Procureur de la République près le Tribunal de Grande Instance de Paris, the State Prosecutor-in-Chief attached to the High Court in Paris, made a spirited defence of the choice of location. He said that the temporary court was freely accessible to the public and that the conditions which obtained within it allowed both judges, prosecution and defence to perform their functions in a dignified and effective manner.

We respectfully disagree. The choice of a location which, although only 45 minutes by car from Paris, was considerably "off the beaten track", inevitably, in our view, reduced the number of members of the public - especially friends and relatives of the defendants - who could attend regularly or at all. (Newspaper reports of the later stages of the trial speak of a "ghostly" atmosphere.) And as far as access to Fleury-Mérogis itself is concerned, all persons attempting to get into the gymnasium were obliged to run a triple gauntlet of road-blocks, manned by armed gendarmes, followed by further intensive security measures within the gymnasium itself: a deterrent to all but the most determined.

Defence lawyers active in the trial complained at length on the opening day about the conditions in which they were forced to take their clients' instructions: insufficient rooms for properly private consultations before and after the hearings; and, for those with clients still in custody, the sheer impossibility of holding any conversation with their clients during court proceedings.

Twenty-seven defendants in custody were divided into two groups, each housed in a glass cage on either side of the court. Each defendant was flanked by two gendarmes and could converse with his lawyer outside the box only by shouting through the minuscule holes in the glass, when of course every word he or his lawyer uttered would be heard by at least half of those confined with him.

The presiding judge said the problems had been raised in July, but clearly nothing had been done since then. Indeed, there was a generally makeshift air about the whole of the first day's proceedings, with only thirty places available for the 50 or 60 defence lawyers present - and those some twenty or thirty metres away from the tribunal and the clients. The defendants on bail (prévenus libres) sat behind the lawyers, surrounded by about 30 gendarmes spaced along the walls of the gymnasium, and at the very back of the hall, probably 50 metres or more from the centre of the action, sat the public and the press. The public address system was low-powered and in any case even the best might have struggled to cope with the bad acoustics (high ceiling) and inevitably constant movement on the floor of the gymnasium.

The impression created was that of a floating, amorphous mass, and we find it impossible to believe that the judges would be able to form any kind of individual visual judgement of those arraigned before them. Apart possibly from a few in the glass cages, all the defendants must have been indistinguishable from the bench.

There are other aspects of M. Dintilhac's address to the Court which merit consideration, notably his remarks about the size of the dossier and the problems this poses for the defence, but we deal with this elsewhere.

Our final point on the choice of the gymnasium as venue for the largest and most spectacular terrorist trial in France, possibly in Western European history, is this: if M. Dintilhac believes that references to trials held in other countries in gymnasia and stadia (e.g. Chile) are "inadmissible", as he claims, then it is he who is being disingenuous, not the defence lawyers who are "being" irrational (his term). France is the birthplace of semiotics, and the signs sent out from Fleury-Mérogis in September and October were, unfortunately, authoritarian in character. What if the next major rafle organised by M. Bruguière nets 500 or 1000 alleged terrorists? The Stade de France as Tribunal Correctionel?

**3-4. Breaching the presumption of innocence (Article 6.2)**

"Everyone charged with a criminal offence shall be presumed innocent until proved guilty by law".

We consider that Article 6(2) is breached in two important ways:

**Interviews: form and substance**
It is clear that the central figures in the investigation of alleged terrorist offences, the juges d'instruction, tend from the outset to assume the worst of those mis en examen. We have already alluded to the concerns of defence lawyers about the comportment of the juges d'instruction. Here we intend to look a little more closely at the actual substance of the interrogatoires.

We have been unable to discern any meaningful dialogue between questioner and questioned. The questioner reads out his prepared question, always extremely lengthy, full of references to other documents and far from simply constructed. In fact, we have not come across a question which does not contain at least another two or three or more. The detainee replies, briefly, and the questioner puts his next lengthy prepared question. And so it goes on.

It strikes us as extraordinary that this kind of procedure should be regarded as conducive to the search for the truth. It reminds us of nothing so much as an inquisition in the more restricted, medieval sense of the word. We accept that all interviews of those suspected of criminal offences tend to be inquisitorial in tone, even in the adversarial Anglo-Saxon system, but we detect a disturbing imperviousness on the part of the juges d'instruction as they conduct their so-called débats contradictoires. Our feeling is that, for these judges, the answers precede the questions.

In the face of such a welter of words, the defendant - especially one not wholly conversant with the French language and therefore dependant on an interpreter - is seriously disadvantaged. And with his lawyer confined to the sidelines until the end of the interview, he is little better than helpless.

We consider that an interview which is fair and just to all parties should have the following characteristics:

1. It should be of reasonable length - not more, say, than 45 minutes or an hour - and there should be at least 15 minutes before a further Interview, during which the defendant should be allowed to consult privately with his lawyer ;

2. The questioners should break their complex questions down into simple questions, so that they can be readily understood and appropriately answered ;

3. The defendants' lawyer should be entitled as of right to intervene, whether to advise his client (but clearly not to direct him as to how to answer), to make representations about the form and substance of the questions posed, or indeed for any other legitimate purpose ;

4. All interviews should be tape-recorded and a copy made available on request within, say, 14 days to the defendant or his lawyer.

We believe that these measures, among others, would help to allay suspicions that the interviews as presently conducted in anti-terrorist cases are little more than a formal exercise.

Earlier in our report we referred to the way in which material obviously supplied by the French (and Algerian?) intelligence agencies was adopted, seemingly without reflection, in the historical

"scene-setting" introductions to the Chalabi and Ali Touchent réquisitoires.

Several lawyers voiced the fear that the judges, throughout the instruction, placed too much reliance on secret service reports without pausing to consider whether they were totally reliable. Certainly, judging by the papers we have seen, the juges d'instruction seem less inclined than they might be to subject such material to scrutiny. To that extent, they make themselves more into "prosecutors" in the Anglo-Saxon sense than even-handed investigators, and the interview itself takes on a more traditional character: "the interview, traditionally part of the inquisitorial procedure, was above all a means of investigation intented to confuse the detainee..." (L'interrogatoire, tradition de la procédure inquisitoriale, était surtout un moyen d'instruction destiné à confondre le prévenu...) - Pierre Chambon, Le Juge d'Instruction, 4e edition, 1997, p.177. Before the law of January 4th 1993, the suspect was subjected to what was called "l'inculpation", but it was felt that this term evoked prematurely the notion of guilt and it was changed to "mise en examen". Many of the defence lawyers we spoke to felt that the attitudes of the anti-terrorist judges were still largely rooted in the earlier tradition.

**Prejudicial media coverage**

In a number of "terrorist" cases we have examined, the presumption of innocence has been effectively undermined by prejudicial media coverage. We have seen hundreds of press cuttings relating to such cases, and what strikes us about them is, first, the amount of "inside information" they contain and, secondly, the unmistakable assumption that those arrested are ipso facto guilty.

But it was not only the media who were jumping to that conclusion. On September 30th 1995, Jean-Louis Debré, then Minister of the Interior, announced on France 2 that the "Kelkal" group was implicated in recent attacks, in particular the bomb attack on St. Michel station on July 25th and the assassination of Imam Sahraoui on 11th July. Only a week previously M. Debré had given an even more explicit interview to Le Figaro (Magazine, 23.9.95), in which he unequivocally pronounced guilty a number of people who have even today not yet been tried in a court of law.

Even Libération seems in the last few years to have taken the line of least resistance to official propaganda, reproducing it as if it were established truth. And articles in Le Monde (February 20th 1996 and June 5th 1996) left the reader with little room for doubt. Indeed, the headline of the June article stated quite baldly: "Seven sympathisers of the Algerian GIA groups have been arrested in Marseilles" ("Sept sympathisants des GIA algériens ont été arrêtés à Marseilles") and the article as a whole appeared to have overlooked the indispensable journalist convention and what ought to be a legal requirement that charges not yet proved in court should be reported in the conditional tense.

The relevance of these articles and utterances - and they are only a fairly random selection - is that they relate to many of the defendants in the Chalabi case, which is still not concluded. Further, the detailed information which they contain can only have come from sources extremely close to the investigation - which, at the time these particular articles appeared, can mean only the police or the juge d'instruction or someone privy to their plans. It is apparent that M. Bruguière is happy to be in the media limelight and has on occasions been photographed by the media at the scene of an operation or rafle. Who, we wonder, tips the photographers off about the time and place of such operations? And who later gives any consideration to the impact that the presence of such a figure of authority will have on the mind of the reader or viewer? What, in short, has become of the secret de l'instruction, the legal obligation to maintain the confidentility of the investigation?

It seems to us an inescapable conclusion from the media coverage of "terrorist" cases, particularly at the early stage of arrest, that many defendants have suffered prejudicial publicity, and that such publicity has either been instigated or encouraged by the public authorities. M. Debré's statements amount in our view to an outright violation of Article 6(2), as does much of the press coverage we have seen, in as much as, even if they stop short of formally declaring the suspect guilty (and we suggest that on occasions it does not even do that), it is couched in terms that cannot but lead to the suspect's innocence being called into question before trial.

We are not aware of any provision in French law for staying trials where prejudicial publicity has made a

fair hearing impossible, nor have we heard of any action ever having been taken by the authorities against those who are responsible for it, whether as newspaper publishers or as sources. We urge that prompt consideration be given to enacting legislation that would curb what can only be described as an attack on the presumption of innocence and contempt of court.

**3-5. The right to a proper defence (Article 6(3)-b-c and d)**

"Everyone charged with a criminal offence has the following minimum rights:
(b) to have adequate time and facilities for the preparation of his defence;
(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."

**Access to the dossier: the difficulties**
When, in the course of our inquiry, one of us met the four judges "anti-terroristes", M. Bruguière, their leader, made great play of the fact that the judges' dossier is open for inspection by the person mis en examen or his lawyer throughout the period of the instruction. He contrasted this with the position in Anglo-Saxon jurisdictions, where the prosecution assembles its evidence in secret. There is certainly some strength in this argument - or, rather, there would be if it signified substantive rather than simply formal transparency in the French system. In reality, in our view, the defence faces an almost impossible task in complex terrorist cases (and because of the nebulous nature of the most common charge - participation à une association de malfaiteurs - and the numbers of suspects allegedly involved in each particular network, all of the cases we have looked at are complex by any standards).

First, there is the issue of the accessibility of the dossier. Most of the lawyers we spoke to said that they had experienced delays on numerous occasions in gaining access to the dossier. The longer the delay, of course, the more difficult it becomes to trace witnesses and uncover evidence that would contradict or even nullify the existing evidence in the dossier. It also makes the submission of a demande d'acte, a request that the juge d'instruction himself or herself look for this piece of evidence or that witness, something of a "shot in the dark". Some lawyers have complained that their demande d'acte has been ignored or refused on the basis that the delay - for which they were not responsible - has made any action redundant!

Secondly, one of us actually witnessed the in situ facilities provided for lawyers to study the dossier, and we hardly need to re-state how inadequate we consider them. At the very least, a private room or a reasonably sized table in a room shared only with other lawyers should be provided. The principle of equality of arms should extend to every part of the procedure, even what seems to be the most mundane.

**Financial difficulties**
But let us suppose, thirdly, that the defence lawyer has made his or her initial perusal of the dossier and decided that he or she needs copies of most of the pages therein. If he is an avocat commis d'office, then, as M. Dintilhac rightly pointed out at Fleury-Mérogis, he is entitled to receive those copies free of charge. What M. Dintilhac omitted to mention was that the lawyer who has been personally chosen and instructed by his client - presumably on the basis of his record and his reputation for thorough and committed work - is obliged to pay FF 3 for each page copied.

The Chalabi dossier is extremely voluminous, a 50,000 page mountain, and the cost of copying that is FF 150,000. In the absence of any state-run system of legal aid, which lawyer can be expected to spend so much on initial costs? And, even more to the point, why should the defendant or his lawyer have to pay at all to read the evidence that the state has chosen to assemble against him? Full access to the case against him, unhindered by administrative delays or financial constraints, is a defendant's right, not a privilege, and he should never have to pay for it.

M. Dintilhac referred in his Réquisitions (submissions) to the availability of a 600-page summary of the Chalabi case, the réquisitoire définitif, where "the subsisting charges are perfectly individualised" (les charges retenues sont parfaitement individualisées).

Quite apart from our view that the Chalabi réquisitoire no more individualises matters than a pond individualises the frog-spawn on its surface, we wonder if he is perhaps suggesting that a reading of those 600 pages would be sufficient preparation for the defence?

It was not we, but the four juges d'instruction we met who insisted on the multifarious ramifications of the "terrorist" networks, the intimate inter-connections between one group and another. That, after all, was why they said it was important to try all 138 defendants before the one tribunal and not in separate groups.

It became abundantly obvious on the first day of the Chalabi trial that many of the lawyers originally listed by the authorities as representing certain clients had, for whatever reason, not retained conduct of the case as far as trial. In addition, several defendants, when arraigned on September 1st, expressed their dissatisfaction with the lawyer nominally in charge of their case. A further eight appeared without legal representation of any kind and were informed by the President of the Tribunal, M. Steinmann, that they would be assigned the services of an avocat commis d'office. (Quite how these unfortunate lawyers were supposed to master a 50,000 page dossier before the case proper started some 24 hours later is beyond us).

Almost all the defendants in the current series of "terrorist" trials, whether Corsicans, Basques, Kurds or "Islamistes", are either workers or peasants or - the great majority, we estimate - unemployed or in casual work only. They do not themselves have the resources to engage a lawyer to, first, obtain copies of the costly dossier, then undertake the time-consuming and expensive work of research and preparation, not to mention repeated applications to and appearances before the Chambre d'accusation and attendances at interviews.

Lawyers, of course, generally have greater resources than the clients they represent in the criminal courts, but they should not be expected to subsidise their work on "terrorist" cases from the profits (or even overdrafts) of the rest of their own or their colleagues' practice. The state, after all, pays in full for the work done by the police, the juge d'instruction and the Procureur, but as we have shown elsewhere, seems prepared to pay only a derisory pittance to those who defend persons at risk of losing their liberty.

It could be argued that the inquisitorial system, with its juge d'instruction duty-bound to gather both inculpatory and exculpatory evidence, to act, as it were, as an honest broker between the state and the suspect, reduces the need for a defence lawyer of the Anglo-Saxon type. But given the extensive powers in general of the juge (particularly the power to deprive a suspect of his liberty without a hearing), and given the particular development of anti-terrorist procedures in recent years (which we have gone into in detail elsewhere), there is, we believe, an unanswerable case for the adequate public funding of defence lawyers, to enable them to carry out the essential work that the juges d'instruction either cannot or will not undertake.

If the formal balance and impartiality of the present system no longer inspires the confidence of some of its principal participants - and, more importantly, no longer serves the interests of justice - it is incumbent upon the relevant public authorities to take corrective action, which should include a re-examination and modification of the functions and powers of the juge d'instruction, as well as providing for an enhanced and properly recompensed role for the defence lawyer.

**Testing the evidence**

Article 6(3)(d): " Everyone charged with a criminal offence has a right to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him ".

In the section of this report concerning Mehdi Ghomri, we pointed out that the réquisitoire définitif presented to the Court by Mme. Stoller and Mme. Le Vert contained crucially misleading information about the availability of bus and tube tickets in London. (If the objection is raised that this is a minor detail, then it has to be said that a large part of the "terrorist" dossiers is made up of purportedly incriminating minor details). The mistake was pointed out by M. Ghomri's lawyer, but no corrective action or investigation was carried out. It was only at trial that the defence was able, as a consequence of its own unpaid enquiries, to prove that the ticket in question did not after all carry the incriminating significance ascribed to it in the réquisitoire.

Several defence lawyers have characterised their role in anti-terrorist procedures as being like that of a "potiche" (ornamental vase), decorative but not very useful. The issue of examination of witnesses, both for and against the defendant, which pre-supposes investigations and enquiries beforehand, is too important to be left to chance or the altruistic commitment of a particular lawyer. The lack of funds at present acts as a positive disincentive to carry out the necessary work on behalf of one's client.

A number of defence lawyers complained in the summer of 1998 about the proposed length of the Chalabi trial - two months - and to an extent we understand their concern:
- in relation to the strain to which such a lengthy trial would subject their clients;
- as regards the enormous financial burden it would place on their own resources.

On the other hand, it seems somewhat surprising to us that one should expect a complex trial of 138 defendants to be conducted fairly and fully within such a relatively short period of time. Clearly, few if any of the participants envisaged detailed examination and cross-examination of live witnesses; and indeed we understand from reports of the Chalabi trial that it consisted almost entirely of a word-for-word reading of the réquisitoire - so much for the individualisation of the charges! Although there were special features in the Chalabi case - few lawyers or defendants present after the first day - we have been told that live evidence is the exception rather than the rule. This we regard as unfortunate, especially when, as we believe, the reliability and credibility of many of the cited witnesses (whether police officers, intelligence agents or co-defendants) is at the very least challengeable.

**3-6. Freedom of expression, freedom of assembly and association (Articles 10 and 11)**

The ways in which particular kinds of evidence have been used in the assembling of "anti-terrorist" dossiers makes something of a mockery of Articles 10 and 11.

Tracts, pamphlets, newspapers - almost anything with an "Islamic" slant; photographs of people entering or leaving restaurants or talking to other co-defendants; telephone conversations that are open to several interpretations: all have been pressed into service to construct a case that essentially lacks cogency and conviction as far as large numbers of defendants are concerned.

We fail to see how much of this evidence can be considered relevant, let alone probative. It is inevitable that, in nationalist or refugee / immigrant communities, people will gravitate to certain social centres, shops and restaurants run by their fellow nationals. It is possible, perhaps even probable, that such locations will from time to time be the site of criminal activities. But the mere fact that a person is known and seen to frequent such locations, known and seen to be on friendly terms with various others, who may be involved in criminal activities, is insufficient to found criminal charges, let alone accusations of "terrorist" activity.

We have noted how often speculation replaces the certainty necessary for conviction in the judges' assessment of such "associations", most notably in the Ali Touchent and Chalabi dossiers. For example, in the Chalabi réquisitoire we read of one defendant:

"Just as with A, it seems improbable that B, knowing or having met, as we have already seen, most of the central figures in this network of malefactors, did not realise the importance and responsibilities of these persons".
(Tout comme pour [...], il apparaît invraisemblable que [...], connaissant ou ayant rencontré, comme nous l'avons vu précédemment , la plupart des responsables de ce réseau de malfaiteurs, ne se soit pas rendu compte de l'importance et des responsabilités de ces personnes...).

Again, later in the same réquisitoire, we come across similar attempts to make two and two add up to five:

"In spite of his denials, it is appropriate to mention that X, who had no resources and, according to his own statements, was fed by his brothers and sisters, who had been frequenting (location) Y, could not not be aware (double negative in the French original) of the activities of his brother and his friends in the new premises at Z, the phone number of which was registered in his electronic diary. He was in constant touch with the most active members of the 'integrist' network
(Malgré ses dénégations, il convient de mentionner que [...] qui était sans ressources et qui, selon ses

propres déclarations, était nourri par ses frères et soeurs, qui avait fréquenté plusieurs mois [...], ne pouvait pas ne pas connaître les activités de son frère et celles de ses amis dans le nouveau local de [...] dont il avait les coordonnées téléphoniques sur son agenda électronique. Il était en relation constante avec les membres les plus actifs de ce réseau intégriste).

"M's explanations are not credible: she knew several of the people being investigated, among them some who were among the principal figures in the network, she knew there were arms, ammunition and explosives at her home, and it is not posible that she could not have known (again the double negative is in the original French) about the activities of her partner and his brother" (Les explications de [...] ne sont pas crédibles: elle connaissait plusieurs des personnes mises en examen dont certaines parmi les principaux responsables du réseau, elle savait qu'il y avait des armes, des munitions et des explosifs à son domicile et il est impossible qu'elle ait pu ignorer les activités de son concubin et de ses frères).

Of particular interest is a sentence relating to one of the alleged ringleaders of the Chalabi "terrorist" network.

"He was the person who initiated a support network for the Algerian 'maquis' (resistance) the object of which was to collect arms, medical supplies and clothes" (Il était l'initiateur d'un réseau de soutien au maquis algérien qui avait pour but de collecter des armes, des médicaments et des vêtements).

Another alleged leader of the "network" is characterised later in the réquisitoire as having "An essential role in the association of malefactors, as much by conveying religious doctrine as by providing documents and arms or by providing a refuge or the possibility of being in contact with the members of this network" (un rôle essentiel dans l'association de malfaiteurs tant en véhiculant la doctrine religieuse qu'en fournissant des documents d'identité faux où falsifiés, des armes où en fournissant un abri ou la possibilité d'être en contact avec les membres de ce réseau).

This is particularly interesting because it shows how the juge d'instruction, in his zeal, has attempted to lump together the teaching of religious doctrine (Islam) and allegedly terrorist activities. Even so, it is a sentence so full of qualifications and alternatives that it adds up to little of substance. We are extremely troubled by the careless, indeed almost cavalier fashion in which the teaching of Islam has been infiltrated, in this way, into the category of terrorist activity.

There is a clear message to the members of the Corsican, Basque, Kurdish and "Islamistes" communities which emerges from the dossiers compiled by M. Bruguière and his colleagues: even if nothing substantial in the way of terrorist activities can be proved against you, you run the danger of being arrested, interrogated and imprisoned for lengthy terms simply by virtue of associating with others in your community. The concept of guilt by association has, it seems, been elevated to pride of place in the work of the juges anti-terroriste, but for those concerned for the maintenance of the rule of law, due process and human rights, this retrograde development is a cause for alarm.

## V. The Corsican and Basque issues

We understand from our discussions with officials in the French Prison Service that there are presently about 30 Corsican and 60 Basque prisoners in jails in the Paris region, all facing terrorist charges. The great majority, if not all, belong to one or other nationalist group. They regard themselves as political prisoners, and there have in the last two years been growing demands from the organisations supporting them that they should be granted political status by the authorities. These demands fell on deaf ears before the last General Election in France, and there are so far few signs that the Socialist government of M. Jospin is any more inclined to accede to them.

In many formal respects, their situation is analogous to that of the "Islamistes", but in reality it is quite dissimilar - which is why we think it right to approach this section of the report slightly differently. We have referred elsewhere to the danger that, in proceeding against the "Islamist" and Kurdish detainees as terrorists, the French authorities are acting as "enforcers" or "agents" on behalf of regimes, the Algerian and Turkish in particular, whose democratic credentials are highly suspect and whose brutal treatment of those who oppose them has been widely and reliably documented.

## France

As for the Corsican question - and, mutatis mutandis, the Basque question - what is at issue is, ultimately, the integrity of the French state in the face of the demands from Basque and Corsican nationalists for national liberation or, at the very least, a form of autonomy far greater than that so far contemplated by successive French governments. In that respect, the situation in the Pays Basque and Corsica presented - in less proportions - some similarities with the situation that existed in Northern Ireland until recently.

It will be remembered that, from the start of the modern "Troubles" in the late 1960s right up to the mid-1990s, the attitude of successive British governments, but particularly that of Margaret Thatcher, remained hostile to the idea of a political solution to the Irish problem. One "anti-terrorist" law after another was passed; juries were abolished for "terrorist" trials in Northern Ireland (Diplock Courts); the right of silence was drastically curtailed; the rules of evidence were changed to allow for easier convictions; and in the courts sentences of up to 35 years' imprisonment were passed on defendants convicted of terrorist offences. And still the bombings and the killings went on It is only in the last couple of years that the emphasis has switched from legal repression to political negotiation - with, it is generally agreed, positive results.

It is not our place, nor indeed our wish, to tell the French government how to resolve the difficult issues of the Pays Basque and Corsica. But it does seem to us that at some stage - and we suggest it should be sooner rather than later - the political nettle will have to be grasped. The lesson from Ireland, and the impression we gained from our visits to Bayonne and Ajaccio and our subsequent reading of relevant legal and political documents, is that continuing legal repression creates more problems than it solves. The anger and resentment, not only of those arrested and imprisoned, but of their families and indeed of much of the national minority community, tends to find expression in further acts of civil disobedience, rebellion and - in the last resort - armed struggle. The national minorities in Corsica and the Pays Basque, their aspirations and their demands, will not disappear, however often the police judiciaire conduct their raids, however many nationalists are arrested and condemned.

We have heard and read innumerable complaints from former detainees, prisoners still on remand, lawyers and families of those in custody. Raids and arrests, we were told, were carried out very often in an unnecessarily brutal and intimidating fashion. One Corsican describes his arrest in the following terms:

Without any advance warning, I was thrown to the ground by one or several individuals, even though I had offered no resistance. I was held down, handcuffed, with a pistol aimed at my head and not removed until I was in the police headquarters at X. And all this was done in an aggressive manner embellished with insults ('dirty Corsican', 'little faggot',) etc. .
(Sans avertissement préalable j'ai été projeté à terre par un ou plusieurs individus, bien que je n'opposais aucune résistance, j'ai été maintenu à terre, menotté, on m'a braqué un pistolet la sur la tête, on m'a ensuite mis un sac sur la tête qui ne m'a été enlevé que dans les locaux du commissariat de [...]. Tout cela dans un fort climat d'agressivité agrémanté d'insultes [Sale corse, petit enculé, etc.]).

He goes on to describe the conditions he endured during his initial detention (garde à vue):

"I was kept in detention for four days at X, in an entirely concrete cell and without blankets. The only food I was given was a piece of bread and cheese at mid-day and in the evening. The sanitary conditions were deplorable. There was a W.C. in the cell, but I was not able to wash myself properly for the whole period of the garde à vue - until I was detained by the judge" (J'ai été détenu en garde à vue pendant 96h à [...] dans une cellule toute en béton, sans couverture. J'ai eu pour seule nourriture le même morceau de pain et de fromage chaque midi et soir. Les conditions d'hygiène étaient déplorables, il y avait un W.C. dans la cellule, mais je n'ai pu procéder à ma toilette corporelle durant toute la garde à vue - jusqu'à ma mise en détention).

In addition to the invariably male targets of these raids, large numbers of women were arrested - "female hostages" (la femme otage) - and placed in garde à vue as a means of exerting pressure: on the women to betray their men, on the men to confess in order to secure the freedom of their women. We accept that operations of this kind cannot be conducted with kid gloves, but the number and detailed nature of the complaints that have reached us suggest that there is a considerable element of "overkill" at work.

As with the other mass arrests of "terrorist" suspects, moreover, many of these operations - their exact time and location - are "leaked" in advance to the media, which can film and photograph them as they happen, with possibly the added bonus of an appropriate quotation from the officer or magistrate in charge.

In respect of those Corsicans and Basques in detention, they are all to be found in five or six "maisons d'arrêt" (prisons) in the Paris region (under the anti-terrorist measures, everything has been centralised). This makes it extremely difficult and costly for their families to visit them. Lengthy journeys, often stretching to several days, have to be made in order to spend an hour or two in prison with them. The prisoners and their families regard this particular aspect of their treatment as a gratuitous punishment and an indirect attack on the presumption of innocence. There is much merit in this view.

As regards conditions within the prisons themselves, there were repeated complaints of heavy -handed treatment: surveillance was intense, and opportunities for exercise were limited, ostensibly for security reasons. Access to publications, especially Corsican and Basque journals, and adequate medical facilities was restricted, and communications between detainees was made all but impossible by their dispersal through several prisons.

This last point is an important one: most of the detainees, like the others mentioned in our report, are accused of participation à une association de malfaiteurs. That amounts to a charge of conspiracy, and no doubt, like the "Islamistes" and the others, they will be tried in groups. If they are, then their demand that they should be allowed to consult with their defence lawyers as a group is an entirely legitimate one. Only thus can they properly prepare their defence in accordance with Article 6(3)(b) of the Convention.

Legal representation as a whole poses enormous difficulties for the Corsicans and the Basques. Most, as far as we can judge, have chosen understandably to engage a local Corsican or Basque lawyer to act for them. But if they are "mis en examen", then they will be taken off to Paris for the length of the investigation (instruction) and kept there if detained in custody pending trial. Their lawyers cannot for the most part afford either the time or the cost of travelling back and forth to Paris for a series of interrogatoires or hearings before the Chambre d'accusation. What they tend to do instead is instruct a lawyer in Paris to act as their agent, which is both cumbersome and expensive. (We deal elsewhere with the vexed question of legal aid for defendants and their lawyers.)

Here, too, we consider that Article 6(3)(b) is being violated. The solution is to move the Corsican and Basque prisoners - still presumed innocent, it should be remembered - to gaols nearer their homes and families, where they can be seen regularly and without incurring heavy expenses by their lawyers, and of course by their families. If that is not possible, then financial provision should be made by the State, enabling the lawyer to visit his or her client without jeopardising his everyday livelihood.

Like the other categories of "terrorist" suspects, the Basque and Corsican prisoners and their lawyers complained of inordinate delays between arrest and trial. We were told, for instance, that Jose Luiz Alvarez a Basque nationalist, has been kept in detention for nearly five years. A case like this raises another disturbing issue: the possibility that M. Alvarez could eventually be tried and sentenced in Paris, and then, as a persona non grata, expelled to Spain, where he might be tried a second time for the same or a similar alleged offence, the purported evidence being effectively the fact that he was found guilty in a French court applying the unsatisfactory standards we have criticised elsewhere in this report.

We cannot conclude this section without mentioning briefly the extraordinary confrontation between Mme. Marie-Hélène Mattei, one of Corsica's best known defence lawyers, and the judicial authorities ranging from Jean-Louis Bruguière to France's highest Court of Appeal, the Cour de Cassation.

The background is as follows: Mme. Mattei was acting for several persons mis en examen (but later released) on suspicion of having been involved in an attempted attack at Spérone (Corsica). In the course of her work, she met a M. Dewez, president of the Domaine de Spérone PLC, to inquire what the company's intentions were in relation to its possible role as the partie civile in the proceedings. Three days later, M. Dewez made a formal complaint that Mme. Mattei had asked him at that meeting to receive as soon as possible a person who would present himself under the name "Gulliver".

He said that some days later a man by the name of Noël Filipeddu had come to his office and demanded payment of FF 4 million to the FLNC (Front de Libération Nationale de la Corse). Mme. Mattei denied that she had ever made such a request of M. Dewez and insisted that she had no knowledge of Noël Filipeddu.

After being mise en examen on suspicion of attempted extortion, conspiracy (association de malfaiteurs) and re-constitution of a proscribed organisation, she was placed in détention provisoire in Paris on December 17th 1996. She was bailed some months later by M. Bruguière with the most stringent conditions imaginable:

(a) the lodging of a security of FF 750,000;
(b) not to leave the Paris area;
(c) not to take part in the following social or political activities:
participation in any group or organisation established or existing legally whose objects or activities have any link with the present procedure, active or passive assistance to the activities of any such group or organisation, participation in any demonstration in public or in the media and in particular expressing a view orally or in writing in connection with the present procedure or the Corsican nationalist movement; intervention as a lawyer in any procedures conducted in pursuance of Articles 706.16 ff. of this Code of Penal Procedure (i.e. the "anti-terrorist" provisions) relating to the Corsican National Movement.

What the conditions mean, Mme. Mattei submits justifiably, is that, although not in prison, she is effectively bound and gagged, deprived of several basic Convention rights:

- Freedom of Expression (Article 10)
- Freedom of Assembly and Association (Article 11)
- Prohibition of Discrimination (Article 14)
- Right to have adequate facilities to prepare a defence, and the presumption of innocence (Article 6) (Here, the reference is to the right of her clients, whom she is forbidden to represent, to have her prepare their defence).

Mme. Mattei has exhausted all the appeal procedures open to her in France and has now lodged an application with the European Commission of Human Rights. In our view, she is quite right to do so, and, having read all the relevant documents, including the laconic judgment of the Cour de Cassation, we can simply register our astonishment - not at the imposition by M. Bruguière of such onerous and punitive conditions (he seems, from the papers we have read, to have something of a knee-jerk reaction to applications for bail), but at the failure of the appeal tribunals in France to grasp the significance of the human rights at issue.

## VI. Ramazan Alpaslan

In the late evening of October 27th, 1998, M. Alpaslan, a 28-year-old Kurdish political refugee, hanged himself in his cell at Fleury-Mérogis. Three days earlier, his lawyer, Anne-Carine Jacoby, had argued before the Chambre d'accusation of the Court of Appeal in Paris that M. Alpaslan, who had been in custody ever since his arrest on December 6th 1996, should be released on bail. On October 28th, the day after his death, the court agreed to release him on conditional bail (sous contrôle judiciare).

The tragic irony of the Court's decision was not lost on public opinion in France. Disquiet had been voiced for some time about both the substance and the application of anti-terrorist legislation, and the shocking death of Mr Alpaslan seemed to some to confirm their worst fears. The French Human Rights League took up the case, and it was at least in part as a response to the league's representations that this present report was commissioned.

Like so many of those detained on charges of belonging to an association de malfaiteurs, Ramazan Alpaslan found it, according to his lawyer, all but impossible to mount a defence against his accusers. Not, Mme. Jacoby states, because he was guilty, but because the allegations made against him by the Juge d'Instruction, Jean-Francois Ricard, were themselves so insubstantial as to make refutation an exercise in shadow boxing.

The thrust of M. Ricard's case against M. Alpaslan is to be found in a number of legal pleadings which he issued between December 1996 and his final rejection, on October 6th 1997, of Mme Jacoby's renewed application for bail on her client's behalf. Perhaps the most instructive is M. Ricard's Ordonnance de refus d'acte, dated May 15th 1997. Mme. Jacoby's application, submitted on April 9th 1997, had asked the Juge d'Instruction to:

a) arrange a confrontation between M. Alpaslan (together with his brother, Eyyup, who was arrested on the same day as Ramazan but released on bail as early as April 4th 1997, despite M. Ricard's plea for his continued detention) and two co-defendants, Messrs Doru and Durmus, alleged to be cadres of the PKK (Kurdish Workers' Party);
b) hear evidence from two senior officials of OFPRA and from the recorder responsible for the asylum requests presented by the two Alpaslan brothers.

M. Ricard alleged throughout that Ramazan Alpaslan had direct links with high-level activists in the PKK and that he was himself active "at the heart of a terrorist organisation" (au sein d'une organisation terroriste), the PKK. The evidential basis for this claim was that M. Alpaslan, when arrested, was found to be in possession of some names and addresses of PKK activists and false documents emanating from SARL DOMINO, an organisation (alleged by M. Ricard to be a front for the PKK) whose telephone numbers were found on Durmus; and that he, Alpaslan, was the owner of a hand- gun, for the possession of which he gave contradictory explanations.

It is apparent that such evidence may well give rise to suspicion, but that is a far cry from claiming, as M. Ricard does, that it puts M. Alpaslan at the heart of a terrorist organisation. Where the evidence is as inconclusive as it is here, we consider it highly prejudicial and not at all probative to enumerate the alleged wrongdoings of the PKK, which is precisely what M. Ricard does. In the absence of conclusive direct evidence that M. Alpaslan was in fact a PKK militant - which he consistently denied - no amount of denigration of the PKK by the learned judge can establish the connection in intent and practice necessary to establish guilt.

No less troubling, from our point of view, is the unquestioning reliance of the learned judge on information provided by security services in Turkey, a country whose human rights record is at the very least open to question, particularly in relation to the Kurdish issue. We believe here, as in the Medhi Ghomri case, that the investigating judges should beware of seeming to act as "enforcers" for governments abroad who are anxious to silence those who oppose their policies.

Furthermore, we believe an important legal principle is at stake. If there exists no mechanism within the legal process itself for challenging the information presented by the juges d'instruction as objective and trustworthy, it should be ruled inadmissible. The right to a fair trial is meaningless if even a small part of the evidence against the accused is regarded as untouchable. We have seen a reference in papers relating to this case which indicate that the police judiciaire, who of course conduct the initial questioning, mentioned information from Ankara in the course of their interrogations. M. Ricard himself talks of acting "selon renseignements" which we think can safely be interpreted as meaning intelligence provided by security agencies, whether in France or in Turkey. There can, of course, be no objection to the police or the judge acting on such information, but that cannot justify including it in court pleadings as if it were Holy Writ.

M. Ricard's refusal to countenance either a confrontation or testimony from witnesses supporting M. Alpaslan could be interpreted as a refusal to consider the possibility that M. Alpaslan might not after all be a PKK activist. Bearing in mind the gravity of the alleged offences and the heavy sentences to be expected on conviction; bearing in mind, too, the flimsy character of the evidence purportedly inculpating M. Alpaslan; we consider that it would have been more appropriate for an investigating judge duty-bound to look for evidence "à charge" and "à décharge" to accede to the demands made by M. Alpaslan's lawyer. It would certainly have helped to maintain the transparency of justice.

Altogether, M. Alpaslan's lawyer made five applications before the Chambre d'accusation in an effort to secure bail for his client. Each application was vigorously opposed by the juge d'instruction, M. Ricard, and each application was refused, except the final one, which of course came too late to save the life of M. Alpaslan.

It was difficult, when studying the case papers, to avoid the impression that the reason for M. Ricard's consistent opposition to the granting of bail to M. Alpaslan was based not so much on the weight of evidence already in his possession (which we believe was shown to be minimal), but on the hope that the continued and lengthy detention of M. Alpaslan and others would of itself exert enough pressure on the detainees to enable further "evidence" to be gathered (The reason we put "evidence" here in quotations

marks is that, gathered in such circumstances, any testimony provided by detainees would be of doubtful and diminished value). As far as we can judge, in any case, no evidence of any great probative value was unearthed during the lengthy periods of detention to which Mr Alpaslan and his co-defendants were subjected.

There is a clear imbalance in power and resources between, on the one hand, the investigating judge and the police judiciaire, and, on the other hand, the defendant and his lawyer. We deal elsewhere in this report with the financial and other difficulties facing lawyers representing those accused in terrorist cases, but we note here simply that we understand the cynicism of one defence lawyer to whom we spoke, who described his role in the proceedings as akin to that of “une potiche” (ornamental vase). Equality of arms is an absolute sine qua non of criminal proceedings.We have received many complaints from defence lawyers that their representations and their requests that a certain course of action be taken or that a certain item of evidence should be looked into by the juges d’instruction frequently meet with a response that ranges from indifference to outright hostility.

A further particularly disturbing feature of the Alpaslan case is the apparent failure of the prison authorities at Fleury-Mérogis to foresee and prevent Ramazan Alpaslan’s final successful suicide attempt. Mr Alpaslan had already made one attempt to kill himself at the end of September 1997. In the wake of that, the investigating judge, M. Ricard, engaged two psychiatrists to examine Mr Alpaslan. Both considered that there was nothing in M. Alpaslan’s mental state that would render him unfit for further incarceration. Only days later, their expert opinions were shown to be tragically wrong. In circumstances such as these, we believe it is imperative that the defence should be allowed to appoint a psychiatrist of its own choosing. We do not maintain that the outcome would necessarily have been any different, but at least the bereaved family of M. Alpaslan would have been able to conclude that their son’s mental health problems had been examined in a balanced fashion. As for the conditions in M. Alpaslan’s cell, we note here with astonishment that he was allowed to keep his belt and shoe laces with him while unsupervised. In many other jurisdictions, such items are taken from a prisoner even when he or she is not known to be a suicide risk. The prison authorities should review their security arrangements in respect of potentially harmful items left with a prisoner in his or her cell.

## VII. The case of Medhi Ghomri

The case of Medhi Ghomri, a young Algerian arrested on October 24th 1995 and sentenced on February 18th 1998 to seven years’ imprisonment, is not the best-known to have come before the French courts under the anti-terrorist legislation. We have chosen to highlight it, however, because it demonstrates in our view precisely why we expressed such concern about the law relating to association de malfaiteurs earlier in this report. Medhi Ghomri was one of 41 suspects arrested between September 4th 1995 and July 1st 1997 and charged with belonging to such an association. Three of the 41 were also charged with arms offences while four others were accused of holding or issuing false documents. The investigation was conducted by Mme. Le Vert, and the trial took place in Paris in late 1997. A sentence of seven years’ imprisonment was passed on M. Ghomri by the Tribunal correctionel on February 18th 1998. He is presently appealing against both conviction and sentence.

We have read the essential documents in the case, the réquisitoire définitif and the Court’s judgment of February 18th 1998. The section of the requisitoire which sets out the allegations against Mehdi Ghomri is to be found on pages 236 to 243. The very first paragraph exemplifies the approach of the learned investigating magistrate (juge d’instruction). Mr Ghomri’s notebook, it states, included the telephone number of the sister-in-law of Abdeghani Ait Haddad, who had been arrested on October 3rd 1995, one of a number, including Djamel Tehari, charged with membership of an association de malfaiteurs in relation to a terrorist enterprise and condemned to death in his absence by an Algerian court for his alleged part in the attack on Algiers Airport on August 26th 1992.

M. Ghomri never denied, when questioned, that he knew M.Haddad, but there was no evidence at trial to suggest that his acquaintance with him, as a fellow casual newspaper seller at Marne la Vallée Station was anything other than a simple relationship with a co-vendor.

For the author of the requisitoire, however, it is enough, it seems, simply to affirm the link between Ghomri and a man condemned as a terrorist in Algeria. Even more disturbing is the readiness of the Tribunal correctionel to, in the American phrase, "pick up the ball and run with it". On page 205 of its judgment, the Tribunal "takes note of the link that unites (our emphasis) Medhi Ghomri to Abdeghani Ait Haddad". Even the learned juge d'instruction had not gone so far, although no doubt she will have been content to see the inference drawn. In this connection M. Charles-Edouard Renault, Mr Ghomri's lawyer, makes an important point that could apply to a very large number of the defendants - "Islamistes", Corsicans, Kurds and Basques - whose case histories we have studied.

"It is not possible to come and accuse him today of having committed extremely grave actions, when the basis for such accusations are simple personal acquaintances or visits to particular locations" (Il n'est pas possible de venir lui reprocher aujourd'hui des agissements d'une rare gravité sur des constructions reposant sur de simples connaissances ou fréquentations).

The Tribunal also picks up word for word, without any comment, the death sentence passed on Abdeghani Ait Haddad. Not a word - neither here nor in the Chalabi papers presented to the Court by the Procureur - that might indicate any doubts or misgivings about the Algerian criminal justice system, which, incidentally, bears more than a passing resemblance to the French system, especially in its "anti-terrorist" provisions.

In the last five or six years, there have been countless enquiries into the Algerian Government's record on human rights, including the right to a fair and public trial. Bodies as different as Amnesty International, the FIDH and the US State Department have strongly criticised the widespread violations of due process and defendants' rights. We find it quite disturbing that both the réquisitoire and the Tribunal's judgment draw an adverse inference - for that is what it is, otherwise it would not be "noted" at all - from such a tainted source.

The Tribunal's judgment as a whole is a remarkable document. The first five and a half pages reproduce almost in their entirety pages 236-243 of the réquisitoire. They have had the presentational "nous" to cut out the more obviously biassed comments to be found in the réquisitoire - "curiously", "it seemed even then very surprising" ("Curieusement", "il paraissait déjà fort surprenant") - as well as the section relating to the allegedly incriminating London Transport ticket which Mr Ghomri's solicitor proved to be wholly and inexcusably wrong. But otherwise it is indistinguishable.

The last two pages of the judgment list what the Court finds to be the evidence conclusive of M. Ghomri's guilt and punishable by seven years in prison. Every single point made by the Tribunal has been methodically and successfully challenged by M.Ghomri's defence lawyer in his Conclusions prepared for M. Ghomri's appeal against conviction and sentence. The first part of M. Renault's Conclusions isolates the three essential elements of the offence of participation in an association de malfaiteurs:

a) an understanding (entente) established among several persons;
b) particular objects or goals which the group formed by this understanding sets for itself;
c) the criminal intent which motivates the delinquents.

He then goes on, with well-chosen references to judgments of the Cour de Cassation, France's highest Court of Appeal, to demonstrate that the evidence against Medhi Ghomri falls down on all three fronts, even if the evidence produced against him at his trial were accepted in its entirety, which of course it was not.

The case against M. Ghomri amounts in essence to an attempt to establish "guilt by association," in the course of which the weakest kind of circumstantial evidence is put to work. The trial judges in their judgment add their own puzzling logic. On page 206, for instance, they state:

"Mr. Ghomri's lack of resources while he was living in France from 1993 onwards means that his situation could be explained by his belonging to the Ali Touchent network - that, in other words, he was being looked after financially by the network" (l'absence de ressources de Medhi Ghomri, alors qu'il vit en France depuis 1993 et qu'en consequence l'appartenance au réseau d'Ali Touchent pourrait expliquer cette situation, à savoir une prise en charge financière par le réseau).

Whereas only a page later, on page 207, they note that:

"In order to provide for his needs, he worked as a newsvendor at the 'Point H' shop on the Gare de Lyon, earning 3000 FF a month" (Pour subvenir à ses besoins, il a exercé la profession de vendeur de journaux aux establissements "Point H" de la gare de Lyon, au salaire mensuel de 3000 francs).

What particularly concerns us is the apparent eagerness of the juge d'instruction, the Procureur and the Tribunal to build a case on such flimsy foundations. And if our reading of other case papers (Chalabi, Alpaslan, the Corsican and Basque trials) is correct, it is not only in the Ali Touchent/Medhi Ghomri affair that speculation has supplanted certainty beyond a reasonable doubt. In other words, a lower standard of proof is being offered and accepted than we consider to be compatible with the basic rights of a defendant in criminal proceedings.

## VIII. The " rafle préventive " of May 26 th 1998

"On ratisse large, on trie ensuite", VSD magazine, August 1998 ("Rake first, sift later")

There could hardly have been a more blatant demonstration of the dangers inherent in the anti-terrorist laws than the Europe-wide arrests on May 26th 1998 of eighty persons suspected, according to Le Monde, "of belonging to the Islamist movement" (d'appartenir à la mouvance islamiste). As with so many of the more spectacular, media-friendly rafles, it was Jean-Louis Bruguière who planned and co-ordinated the operation, together with the Socialist Minister of the Interior, Jean-Pierre Chevènement.

Fifty three persons were arrested in France, the others in Belgium, Switzerland, Italy and Germany. The Interior Ministry took the unusual step of issuing a lengthy press release, the text of which makes interesting reading. Several months of surveillance by European intelligence agencies, it said, "gave rise to the presumption that terrorist actions were being planned in the run-up to the World Cup". The operation of the police judiciaire had been targeted " at the dismantling of dissident extremist networks of the GIA" (au demantèlement de réseaux extrémistes dissidents du GIA). Searches carried out in the course of the operation, the communiqué continued, had uncovered documents and large sums of money. It concluded by stating that further developments were expected in the next few hours.

If there were any such developments in the following few hours, they were unusually publicity-shy. We were told some time later by a journalist from Le Monde that about forty of the 53 arrested in France had been released within 48 hours.

We know that one of the men arrested in Germany, Adel Mechat, was extradited at the request of the French authorities several months later, on October 29th, in spite of the fact that his German lawyer had already initiated political asylum proceedings on his behalf in Germany. One of us spoke with an official from the German Federal Prosecutor's office. He said that the extradition request was not looked at by the German authorities to establish whether or not a prima facie case existed against M. Mechat. All they were interested in was whether or not the necessary formalities had been observed. In fact, he said, the grounds advanced by the French were not specific but "sehr allgemein" (very general).

M. Mechat's German lawyer, Jörg Höhberg, says that the "evidence" consists solely of a statement from an Algerian arrested in Belgium who claimed that a third person had told him that Mechat was one of the most important GIA men in Europe. The German Federal Prosecutor had said there was not sufficient evidence to hold him, yet, basing himself on the same hearsay information and exploiting the undemanding requirements of the extradition agreement, M. Bruguière has managed to get M. Mechat to France for eventual trial, no doubt as a conspirator. It will be interesting to see whether M. Bruguière attempts to get hold of any of the evidence submitted by Mr. Höhberg for the asylum hearing in Germany. No doubt he would regard it as conclusive proof that M. Mechat is a terrorist!

Overall, the operation of May 26th seems to have been less of a security measure and rather more of a publicity gimmick. Le Monde reported one official source describing it as "giving the ant-hill a good kicking" (donner un coup de pied dans la fourmilière). Some of the comments of those involved, as reported faithfully in Libération, are almost laughably

melodramatic. There is talk of "lots of conspiratorial manoeuvres denoting a more clandestine sort of activity than the usual transmission of funds and other things to the Algerian resistance", "intense comings and goings", "ambiguous conversations" and "verbal instructions given in veiled terms".

This kind of thing may feed the fevered imagination of readers brought up on old black-and-white films starring Jean Gabin as the good detective in the whispering, shadowy alleyways of the Casbah, but it is a little surprising to see it passed on - without irony, we think - by a journalist of a reputable newspaper as if it had any real significance.

We are forced to the conclusion that the true purpose of the "preventive raid" (rafle préventive) was to convince all those who might be considering visiting France for the World Cup a few weeks later that they would be in safe hands. The lack of any substantial evidence uncovered during the operation - in contrast to the abundant media coverage - and the early release of the overwhelming majority of those arrested in France point to a cynical exploitation of anti-immigrant feeling in France on the one hand and a cavalier disregard for the rights of those against whom there were in reality no grounds for suspicion.

The ratio of arrests to charges and ultimate conviction may in this case appear disproportionate. But it is certainly not new. We were interested to read in Le Monde that a similar operation on November 9th 1993 resulted in the arrest of 88 persons, of whom only three were actually detained and investigated on charges of belonging to an association de malfaiteurs for terrorist purposes.

Two of the most important questions we asked of the government, court and Ministry of Justice officials (including the Minister of Justice herself, twice), were Numbers 8 and 9, which asked for details of the proportion of those arrested who were not proceeded against or who were acquitted at trial. Not one of those to whom we sent the questionnaire has seen fit to answer it, and we wonder whether in fact any figures at all are kept and whether anybody in the relevant authority exercises any kind of control. Perhaps the rationale is that you can't make an omelette without breaking eggs. Hardly the most appropriate motto for the organs of justice.

## IX. The "juges d'instruction"

### Quis custodiet custodes?

It will have become apparent in the course of this report that we are extremely concerned about the functions, powers and attitudes of M. Bruguière, Mme. Le Vert, M. Ricard and M. Thiel.

In the first place, we find that they seem, as a team of four, to be struggling to keep their heads above water as the initial trickle of terrorist cases has become a torrent. After the initial fanfare and razzmatazz surrounding the mass arrests, things go exceedingly quiet for months and years on end. Interviews ostensibly central to the quest for the truth are conducted irregularly over long periods of time and frequently in desultory fashion. Dossiers take an unconscionable time to complete before they are passed on to the Procureur, when further delays occur. The upshot is that almost all the trials fail to reach court "within a reasonable time", as stipulated by Articles 5 and 6 of the Convention.

If the volume of cases is unavoidable - and we do wonder whether a good part of it is not perhaps self-imposed - then there is an overwhelming case for increasing the number of juges d'instruction dealing with this particular kind of case. It is for each national legal system to ensure that it functions in conformity with the rights enshrined in the Convention, not vice versa, and in our view, the French system is failing in its duty to ensure trial "within a reasonable time". (For all detainees, not just those on terrorist charges, of course. We remind readers of the abnormally high proportion of prisoners (40%) in French gaols who are still awaiting trial.)

More juges d'instruction taking on "terrorist" cases would inevitably dilute the concentration of power in the hands of the present small team of four. That would not in our opinion be a bad thing: there is always a risk with a small group doing what is, by any calculation, difficult and stressful work over a long period of time that it will become somewhat case-hardened and inflexible. We have examined enough cases in the course of our inquiry to conclude that the process has already begun. We have noted in particular the formulaic character of the interviews; the apparent and uncritical reliance on information provided by intelligence and police sources; the reluctance to take seriously evidence and explanations

put forward by the defence and to accede to their demandes d'acte (requests to take action); the use of prejudicial but often unsubstantiated assertions and asides in the dossiers; and the mechanically negative responses to applications for bail (mise en liberté sous contrôle judiciaire) - which was exposed most notably by the attendance of so many defendants on bail (prévenus libres) at Fleury-Mérogis in September (cf. the Tomasi case for the view of the European Court).

Since we started our inquiry, the Minister of Justice, Mme Guigou, has indicated that she proposes to establish the post of "juge de la détention provisoire", who is intended to take over from the juge d'instruction responsibility for decisions relating to detention and bail. In the absence of any structural change to the overall system such as that set out elsewhere in this report, we find nothing in the Minister's proposal to suggest that the decisions of the "juge de la détention provisoire" (will he or she be attached to the 14th section as well?) will be any less arbitrary than those currently made by M. Bruguière and his colleagues.

We note in this context that none of the relevant authorities - neither the Ministers of Justice and the Interior, nor the Président du Tribunal de Grande Instance, nor the Procureur de la République, nor - last not least - the juges d'instruction themselves have ever raised their voice in public to protest at the term "juge anti-terroriste". That in itself is revealing.

But the question as to whether or not the powers and functions of the juge d'instruction are appropriate in these matters is in the final analysis not a question of personalities. Much is made in French legal texts of the independence of the juge d'instruction, and in principle, given that he operates within an inquisitorial system, it is right that he should be able to work free from pressure from whatever quarter. However, even in an ideal world he is dependent on others for information. And when, as in these "terrorist" cases, his primary sources of information, on which he tends to rely uncritically, are the security services, not just of France, but of countries with considerable democratic deficits, his independence risks turning into licence. We have suggested elsewhere a number of possible changes to the way in which the juge d'instruction works, but we believe that in the present circumstances nothing short of a full-scale independent inquiry should be set up by the Ministries of Justice and the Interior.

One important point needs to be borne in mind: for all the resources deployed by the juges d'instruction - special police forces, high-powered trips abroad (especially by the peripatetic M. Bruguière), electronic surveillance devices and the constant glare of media attention - their palpable successes in the struggle against terrorism have not been overwhelming. We leave the final comment in this section to Nathalie Gillot, writing in August 1998 in VSD, a magazine not celebrated for its political radicalism:

"Nowadays, however, Bruguière's halo is starting to slip. Two 'hot' cases have so far defeated him: the bomb attack on Port Royal station remains unsolved, and the assassins of the Corsican Prefect, Claude Erignac, are still at large. And all this in spite of dozens of arrests and much hype" (Aujourd'hui, pourtant, la méthode Bruguière patine. Deux dossiers chauds lui résistent: l'attentat de la station RER Port-Royal reste un mystère et les assassins du préfet de Corse, Claude Erignac, courent toujours. Malgré des dizaines d'interpellations et beaucoup de tapage).

## X. Defence Lawyers and Legal Aid

The case for enhancing the part played by defence lawyers in "anti-terrorist" cases is irrefutable - and it may well be desirable in matters dealt with under the droit commun. At present, the lawyer stands for the most part in the wings, while centre stage is occupied by the juge d'instruction, who may but is not bound to allow him to intervene in the interrogatoire, who may but is not bound to pay heed to his requests and suggestions about evidence, confrontations, medical attention or whatever. Almost all the lawyers we consulted spoke of their frustration at watching what they frequently regarded as a biased case being built up by the juge d'instruction and yet not having themselves effective means, whether procedural or financial, to do much about it except complain.

We recommend that urgent consideration be given to the requisite structural, procedural and financial changes that would allow the defence lawyer to emerge from the shadow of the juge d'instruction and play a full, active part in defending his client's basic rights and interests. To refuse to make or even consider such changes would be to reinforce the impression, which

we have found inescapable, that in the kind of cases which our report has covered, almost absolute priority has been accorded to raisons d'état at the expense of human rights. It would not be right for us to specify precisely what changes should be made, because they would obviously have to be integrated into the French criminal justice system. However, we think that, as a point of principle, it should be accepted that lawyers engaged in work on these cases should be remunerated on a proper hourly basis for all the work they do, whether it is preparation, attendance at court, filing of applications, or pleading before the courts either at interim hearings or at the full trial.

In addition, they should be recompensed for any costs they incur in tracking down relevant evidence or securing medical or other expert reports. We appreciate here again that the French criminal justice system is inquisitorial. However, in practice and in reality the anti-terrorist procedures have become effectively adversarial, but with one of the parties obliged to fight his corner with his hands tied behind his back.

## Conclusion

Our enquiry into the application of anti-terrorist legislation in France with particular reference to the issues of provisional detention and the exercise of defence rights (the right to a fair trial) has led us to conclude that France is in violation of a substantial number of its obligations under the European Convention of Human Rights. The violations in question result both from the substance of the legislation itself and from the ways in which it is put into effect.

We consider the consequences of these violations to be a matter of serious concern. Not only have they inflicted grave, often irreparable damage on their victims; they have also drained much of the meaning from a number of basic rights guaranteed in the French constitution and enshrined in international agreements to which France is a signatory.

Quite apart from such immediate consequences, we are also disturbed by the pernicious long-term effects these violations could have on race relations and the integration into French society of national minority communities. We fear that their impact on the Muslim residents of France, especially the youth, will be at once oppressive and alienating. We have read the summary of the report drawn up in 1995 by the French National Consultative Commission on Human Rights. The Commission drew attention to three phenomena noted in France that year: the reappearance of racist or xenophobic attacks, which had led to seven deaths; the preponderance of North Africans among the victims of these attacks; and the increasing "acceptability" of racist views among ever larger sections of the population. The anti-terrorist laws and the way in which they are put into effect are, in our view, exacerbating the situation.

No-one doubts the need to wage war on terrorism, which represents a grave threat to democracy and basic freedoms. But at the same time it is right to expect of democratic states such as France, where the rule of law obtains, that they will fulfill their duty in this regard with scrupulous respect for the protection of fundamental human rights. We are not at all sure that the French authorities have taken full cognisance of the fact that such respect is a sina qua non, not just of the legitimacy of their actions, but also of their credibility and, ultimately, their effectiveness. On the contrary, our investigation has left us with the overall impression that current practice is geared more to legal "spectaculars" and short-term pandering to public opinion than to the apprehension of the actual perpetrators of terrorist acts.

As for the Corsican and Basque issues, it seems to us highly unlikely that these will, or indeed can ever, be resolved by purely legal means. The still unsolved assassination of the French Prefect in Corsica, Claude Erignac, is a grim reminder of the urgent need to look elsewhere than to the criminal, and specifically "anti-terrorist," courts for solutions.

As we stated at the beginning of our report, the historical record of France in the struggle to defence and extend human rights bears comparison with that of any other country in the world. Our comments and recommendations are made in full awareness of that record. They are also made in the knowledge that other countries in Europe - including, to our great regret, our own - have introduced similar legislation or taken similar measures to combat terrorism that we would likewise regard as being a violation of the letter and spirit of the European Convention on Human Rights. But that cannot be allowed to justify the present "anti-terrorist" practices in France, which in our view pave the way for arbitrary justice. We hope that the political authorities will act urgently and decisively to remedy the situation.

# France

## Recommendations

In the light of our findings, we make the following recommendations to the relevant French authorities. They appear to us to be necessary in order to help bring the anti-terrorist laws and procedures currently in force into conformity with the standards set by the European Convention on Human Rights.

**In general:**

**1. Repeal the existing anti-terrorist legislation**

The fact that charges are serious does not in itself justify the suspension of the standard legal procedures (procédure de droit commun) guaranteeing basic rights. Virtually all the violations of those rights detailed in this report are the product of the special legislation - which we would categorise, in French, as lois d'exception - enacted since 1986.

**In particular:**

**2. Abolish the offence of "participation in an associaton of malefactors (association de malfaiteurs) in relation to a terrorist enterprise".**

This is a catch-all offence which in practice is found to be proved on a minimum of objective, independent evidence and a maximum of speculation, innuendo and inference, some of which is supplied by souces of questionable impartiality and integrity.

**3. Put an end to the specialisation of the "juges d'instruction" linked with the 14th Section of the Paris Court (Parquet du Tribunal de grande instance de Paris).**

The present state of affairs concentrates extensive - we would say: too extensive - powers in the hands of four examining Magistrates (juges d'instruction). This concentration of powers, regardless of any personal considerations, explains many of the shortcomings mentioned in our report. It makes for dangerously intimate and privileged relations between this small group of Magistrates, their colleagues in the Court and the special (6th) division of the police judiciaire, with whom they clearly work hand-in-glove. It also reduces the scope of effective legal and procedural supervision of the work of the juges d'instruction.

**4. Enact legislation to make it incumbent on all courts and judges to provide legal and evidential reasons (with copies automatically available to the suspect/defendant and his lawyer) for all judgments, orders or other decisions which affect the liberty and the rights of the suspect/defendant.**

**5. Ensure proper facilities for the exercise of defence rights, in particular the rights of the defence lawyer:**
a) To be present and assist his client from the beginning of his initial detention (garde à vue);*
b) To intervene and make representations during all interviews both before and after the mise en examen (when matters are transferred to the juge d'instruction);
c) To be given on demand and within a specified time limit a copy of all such interviews, which should all be recorded in their entirety on tape;
d) To be given, on demand, free of charge and within a specified time limit, copies of such pages or other material in the dossier relating to his or her client's case as he or she deems appropriate;
e) To be paid an appropriate remuneration, based on hours worked, for the work done properly on his or her client's behalf. This would include time spend on preparation, taking instructions from and advising the client, the tracing of evidence, travel, correspondence and telephone calls.

**6. Repeal the systematic extension of the garde à vue to 96 hours, simply on the basis that a matter is adjudged initally to concern "terrorism"**

All extensions to the garde à vue beyond that which exist under le droit commun should have to be requested before an independent tribunal at which the suspect would have the right to make representations.

**7. Likewise, remove the power of the juge d'instruction to order the detention of a suspect (mis en examen)**

The decision as to whether or not that person is to be denied his liberty should be taken by an independent tribunal hearing representations from all interested parties.

**8. Reduce the duration of provisional detention.**

The common practice of keeping those mis en examen (suspect under investigation) in custody for periods of up to four years flies in the face of the stipulations of

the European Convention that suspects should be brought to trial "within a reasonable time" or released. Strict time limits would also allay the suspicion that lengthy detention is being used as a means of exerting pressure on detainees when there is otherwise insufficient evidence to make a reasonable case.

**9. Enact legislation to ensure the presumption of innocence and the secret de l'instruction (confidentiality of the investigation).**

This would aim at preventing persons within the criminal justice system leaking "inside information" to the media and thereby ensuring the kind of spectacular and highly prejudicial media coverage that we have criticised in the body of our report. We consider that officials within the penal system who leak such information should be charged with professional misconduct and appropriately disciplined. Furthermore, it could be envisaged that when media organs grossly violate the presumption of innocente by divulgating confidantial information, a system of fines be set up within strict and total respect for the fundamental freedom of information and expression. We have noted with interest the existence of legislative reform projects reinforcing the protection of the presumption of innocence.

* This recommendation is fully in line with paragraph 39 of the report of the European Committee on the Prevention of Torture submitted to the French government on 14th May 1998.

## Annex 1 (a)

**QUESTIONNAIRE CONCERNING THE APPLICATION OF THE ANTI-TERRORIST LEGISLATION IN FRANCE**

1. Total number of persons arrested under the legislation since 1986 ?

| Category/Nationality | Total |
|---|---|
| Corsicans | ..... |
| Basques | ..... |
| Islamistes | ..... |
| Kurds | ..... |
| Others (please specify) | ..... |
| | ..... |
| | ..... |

2. Total number of persons sentenced (juges) under the legislation since 1986 ?

| Category/Nationality | Total |
|---|---|
| Corsicans | ..... |
| Basques | ..... |
| Islamistes | ..... |
| Kurds | ..... |
| Others (please specify) | ..... |
| | ..... |

3. Total number of persons presently detained under the legislation ?

| Category/Nationality | Total |
|---|---|
| Corsicans | ..... |
| Basques | ..... |
| Islamistes | ..... |
| Kurds | ..... |
| Others (please specify) | ..... |
| | ..... |
| | ..... |

4. Please state where those presently detained are held ?

| Category/Nationality | Location | Total |
|---|---|---|
| Corsicans | ..... | ..... |
| Basques | ..... | ..... |
| Islamistes | ..... | ..... |
| Kurds | ..... | ..... |
| Others (please specify) | ..... | ..... |

5. How many of those still in prison have been detained :

| | Corsican | Basque | Islamiste | Kurd | Other |
|---|---|---|---|---|---|
| Less than one day | ..... | ..... | ..... | ..... | ..... |
| 1-7 days | ..... | ..... | ..... | ..... | ..... |
| 7-28 days | ..... | ..... | ..... | ..... | ..... |
| 1-3 months | ..... | ..... | ..... | ..... | ..... |
| 3-6 months | ..... | ..... | ..... | ..... | ..... |
| 6-12 months | ..... | ..... | ..... | ..... | ..... |
| 1-2 years | ..... | ..... | ..... | ..... | ..... |
| 2 years or more | ..... | ..... | ..... | ..... | ..... |

## France

6. How many of those presently detained have been accused of :

| | Corsican | Basque | Islamiste | Kurd | Other |
|---|---|---|---|---|---|
| a) specific terrorist acts | ..... | ..... | ..... | ..... | ..... |
| b) preparation of terrorists acts | ..... | ..... | ..... | ..... | ..... |
| c) belonging to an «association de malfaiteurs » | ..... | ..... | ..... | ..... | ..... |
| d) other offences (please specify) | ..... | ..... | ..... | ..... | ..... |

7. What is the average sentence imposed on those found « guilty » under the anti-terrorist legislation ?

| | Corsican | Basque | Islamiste | Kurd | Other |
|---|---|---|---|---|---|
| a) specific terrorist acts | ..... | ..... | ..... | ..... | ..... |
| b) preparation of terrorists acts | ..... | ..... | ..... | ..... | ..... |
| c) belonging to an «association des malfaiteurs » | ..... | ..... | ..... | ..... | ..... |
| d) other offences (please specify) | ..... | ..... | ..... | ..... | ..... |

8. What proportion of those arrested since 1986 whose cases have been concluded have been found « not guilty » ?

| Category/Nationality | Total |
|---|---|
| Corsicans | ..... |
| Basques | ..... |
| Islamistes | ..... |
| Kurds | ..... |
| Others (please specify) | ..... |

9. What proportion of cases under the anti-terrorist legislation since 1986 have not been concluded or have been abandoned without the detainee having been brought to Court ?

| Category/Nationality | Total |
|---|---|
| Corsicans | ..... |
| Basques | ..... |
| Islamistes | ..... |
| Kurds | ..... |
| Others (please specify) | ..... |

10. In what proportion of cases does the Chambre d'Accusation support the lawyer representing the detainee when he or she applies for bail (mise en liberté) in opposition to the decision of the juge d'instruction ?

| Category/Nationality | Total |
|---|---|
| Corsicans | ..... |
| Basques | ..... |
| Islamistes | ..... |
| Kurds | ..... |
| Others (please specify) | ..... |

11. In what proportion of cases does the Chambre d'Accusation support the lawyer representing the detainee when he or she ask the juge d'instruction to undertake a certain course of action or to provide certain information (faire demande) ?

| Category/Nationality | Total |
|---|---|
| Corsicans | ..... |
| Basques | ..... |
| Islamistes | ..... |
| Kurds | ..... |
| Others (please specify) | ..... |

12. How many cases under the anti-terrorist legislation have been dealt with by the different tribunals since 1986 ?

| | Numbers of cases | Proportion of « guilty » verdicts |
|---|---|---|
| a) Cours d'assises Speciale | ..... | ..... |
| b) Tribunal Correctionnel | ..... | ..... |
| c) Cour de cassation | ..... | ..... |
| d) Other | ..... | ..... |

13. What proportion of those found «guilty » appeal against the decisions ?
14. What proportion of the appeals are successful ?
15. What proportion of those arrested and detained in the « garde à vue » are released without charge before the juge d'instruction assumes responsibility for their case ?

| Category/Nationality | Total |
|---|---|
| Corsicans | ..... |
| Basques | ..... |
| Islamistes | ..... |
| Kurds | ..... |
| Others (please specify) | ..... |

16. Do the four juges d'instruction have special responsibilities for particular categories of detainee ? Please give details, together with the number of cases conducted by each judge.
17. We know a considerable number of lawyers who represent clients detained under the anti-terrorist legislation. Is there available a list of others (e. g. commis d'office) who have also taken on such cases and who would be willing to discuss them with us ?
18. Do you consider that the present application of the anti-terrorist laws provides adequate safeguards for human rights and the rights of the defence ?
19. Are there presently any projects, initiated either by the Government or by the criminal justice authorities, designed to modify the anti-terrorist legislation and its mode of application ?
20. Can you give us any further relevant information about the anti-terrorist legislation ?

## France

### Annex 1 (b)

**THE ANTI-TERRORIST LAWS**
**FROM THE POINT OF VIEW OF THE DETAINEE/CLIENT**

1. Name (or letter)
2. Age
3. Nationality
4. Married/Single
5. Children
6. Working/Unemployed ?
7. Organisation
8. When arrested ?
9. Where ? Circumstances ?
10. Alone or with other people ?
11. Reasons given for arrest if any ?
12. Manner of arrest (any ill treatment) ?
13. Where were you taken to ?
    (Prison, Police station)
14. Conditions of detention ?
15. Were food, drink and toilet facilities provided ?
16. Were you advised of any legal rights ?
    (Access to a lawyer, contact with your family, Medical treatment ?)
17. Did you in ant case ask for any of these facilities ?
18. Were you questioned ?
19. By whom ?
20. In what manner ?
21. How often, for how long ?
22. Were your subject to any physical or verbal ill-treatment ?
23. What did your questioners accuse you of ?
    (A specific offence or of being part of an association des malfaiteurs)
24. Was a written or taped record made of your interview ?
    Did you sign it ?
25. How long was it before you were allowed to see a lawyer ?
26. Did you see the lawyer of your choice ?
27. How long did you see your lawyer for ?
28. Under what conditions ?
29. What advice/help did he/she offer ?
30. Were you happy with the help/service provided by your lawyer ?
31. How long did your « garde à vue » last ?
32. What happened then ?
33. Were you transferred to Paris ?
34. Were you interviewed by a « juge d'instruction » ?
35. Which one ?
36. How often ?
37. In what manner ?
38. Did you feel that he/she was impartial ?
39. Was your lawyer present ?
40. Did you lawyer play inactive role in the procedure ?
41. What kind of record was kept of the interrogation by the juge d'instruction ?
42. Did you provide your lawyer or the juge with evidence or information which might have helped your case ?

43. Do you know if either of them acted on that information ?
44. Did you lawyer go to the Chambre d'Accusation in connection with :
    a) bail (mise en liberté)
    b) to ask that the juge d'instruction pursue a certain course of action (faire demande) ?
45. What were the results of your lawyer's activity in this respect ?
46. How long were you kept in custody ?
47. Did the charges against you change while you were in detention ?
48. Did they become more or less serious ?
49. How many times were you brought for interview with one of the juges d'instruction ?
50. How many times were you brought to Court, if at all ?
    a) the Cour d'Assises ?
    b) the Chambre d'Accusation ?
    c) the Tribunal Correctionnel ?
51. Were you tried (jugé) by one or other of these Courts ?
52. If so, were you found guilty or not guilty ?
53. Please describe the way the trial proceeded ? (In particular, describe what opportunity was given to put forward your version of events and your defence)
54. If you were found guilty, what was your sentence ?

# France

## Annex 1 (c)

**QUESTIONNAIRE FOR LAWYERS REPRESENTING CLIENTS ARRESTED AND DETAINED UNDER THE ANTI-TERRORIST LEGISLATION IN FRANCE**

**A. YOUR PERSONAL EXPERIENCE IN «ANTI-TERRORIST» CASES**

1. When did you first become involved in defending people held under the anti-terrorist laws ?

2. How many people do you act or have you acted for who have been arrested/detained/prosecuted under the anti-terrorist laws ?

3. Which categories of defendants do you represent :

| CATEGORY | NUMBERS |
|---|---|
| Corsicans | ..... |
| Basques | ..... |
| «Islamistes » | ..... |
| Kurds | ..... |
| Others (please specify) | ..... |

4. How did you come to be asked to represent your client :

a) nominated directly by client
b) approached by the client's family or friends ?
c) approached by an organisation ?
d) as avocat d'office (commis d'office) ?

**B. LEGAL AID/FINANCIAL SUPPORT**

5. Do you receive any financial support in representing your clients :

a) from the client directly ?
b) from his/her family or friends ?
c) from any organisation ?
d) from the state ?
e) from your own personal funds ?

6. Does the financial support you receive cover the cost of your work :

a) wholly ?
b) in part ?
c) inadequately ?
d) not at all ?

7. Do you believe that you could achieve more on behalf of your clients if you had more resources ?

**C. ARREST AND DETENTION**

8. How was/were your client(s) arrested ? Where ? Were they alone at the time ? Where they arrested as a result of a large-scale police operation ? Where the police armed ?

9. When were you alerted to your client's arrest ? What information were you given ? By whom ?
10. When were you first allowed to have access to your client ? Where, for how long and under what conditions ? What facilities have been afforded to you generally while visiting your client ?

11. Are you and your client(s) able to correspond by letter or telephone without your exchanges being intercepted ?

12. Had your client already been questioned before you first saw him or her ? If, so, by whom ?

13. Do you know how many times your client was questioned ?

14. Do you know if any written record was kept in respect of these interrogations ? If so, was that record a verbatim record or a summary ? Were you or your lawyer allowed to read it and/or make a copy ?

15. Did your client complain to you in any way about :

a) the manner of his/her arrest ;
b) the conditions in detention (garde à vue) ; access to medical assistance and his/her treatment generally ;
c) the manner, substance, duration or frequency of any interrogation.

16. Were any of your clients injured while being arrested or while being detained at the police station ?

**D. <u>THE INVESTIGATION («INSTRUCTION») PROPER</u>**

17. At what stage was your client's case transferred into the authority of the « juges d'instruction » ?

18. What records are kept of the questioning of your clients by the juge d'instruction ? Are you as defence lawyer allowed to take notes yourself and to intervene in the process of questioning on behalf of your client ? What is the attitude in general of the juge to any attempts you make to intervene ?

19. Do you have any reason to believe that the « modus operandi » of the juges d'instruction infringes human rights and the rights of the defence ?

20. Do you feel that the mode of questioning by juges d'instruction is correct ? A number of lawyers have told us that the questioning by the juges d'instruction consists of lengthy assertions rather than proper investigative questioning, which aims to discover the truth. What is your opinion ? Do you have any written example of such interrogations which we could examine (with all details which would tend to identify the client erased) ?

21. Do you have any experience or knowledge of false confessions being made by people arrested under the anti-terrorist legislation. Could you please give details ?

22. Generally, do you believe that you are allowed, either by the legislation itself or in practice by the juges d'instruction, to play as active a part in the process of the « instruction » as you consider necessary to protect your client's human rights and the right to adequate representation and defence ?

23. Do you believe that you have access to all the necessary information that passes trough the hands of the juges d'instruction ?

24. What influence, if any, do you personally have on the conduct of the « instruction » ?

25. Do you feel that any of the investigations conducted by the juges d'instruction are influenced by extra-legal (e. g. political) considerations ? Please explain if you do.

26. What is the average length of detention - how does it relate to the gravity of the charge ?

27. What proportion of your clients are detained until a final hearing ? (This is an important practical question, and we should be grateful for detailed answers.)

**E. <u>RIGHTS OF REVIEW/RIGHTS OF APPEAL</u>**

28. If the answer to question 21 (D above) is « yes » : have you ever successfully challenged any of the false confessions ? What is the attitude of the Courts towards any confessions produced in evidence by the juges and the prosecution at Court ? Do the Courts insist that confessions should be supported by corroborative evidence ?

29. How many times have challenged the decisions/actions of the juges d'instruction ? Please specify whether your challenge related to bail (mise en liberté), evidence or some other matter ?

30. What was the result of your challenge, whether before the Chambre d'Accusation or elsewhere ?

31. Do you believe that the Courts reviewing the decisions and actions of the juges d'instruction (e.g. the Chambre d'Accusation) have given your challenge/application/appeal a fair and impartial hearing ?

**F. HEARING BEFORE THE VARIOUS TRIBUNAL**

32. What proportion of the cases you act in have been concluded ? If your client has been found guilty, what sentence did he/she receive ?

33. When cases are brought to Court, do you feel the evidence is proportionate to the length of detention suffered by the client/accused ?

34. Do you believe that the way in which the anti-terrorist laws are applied can lead to people being found guilty by association ?

35. Do you believe that the Courts which decide whether your clients are guilty or not :

a) are properly composed (i.e. do they strike the right balance between professional Judges and lay jurypeople (jurés) ;
b) are provided by the prosecution with sufficient evidence both for and against the client to be able to come to a fair decision ;
c) give adequate reasons for their decision ?

36. Is it your opinion that you as a defence lawyer should play a more active role in the hearings, whether intermediate or final ?

37. What is your general and specific view of the rights of appeal given to the client in respect of « anti-terrorist » matters ? Do you believe that decisions taken at first instance, whether by a juge d'instruction or by a first instance tribunal, are open to sufficient scrutiny by an appeal tribunal ?

38. We understand that a mass « terrorist » trial with some 120 or more defendants is shortly to take place in Paris. We also understand that each defence lawyer has the right of access only to the dossier of his or her individual client, but has no right to examine the dossiers or papers relating to co-defendants. Does this in any way prevent a fair trial and the rights of the defence to make adequate preparation ?

**G. GENERAL**

39. What effect, if any, has the application of the anti-terrorist laws had in your opinion on the rights of :

a) the individuals arrested and detained ;
b) their families ;
c) their communities (national, religious, etc...) ;
d) public opinion.

40. What effect, if any, do you think the media and public opinion have had on the application of the anti-terrorist laws ?

41. What is your opinion of the way in which publicity reaches the press about the arrest and detention of people under the anti-terrorist laws ? Does this offend against the presumption of innocence and the « secret de l'instruction » ?

42. What, if anything, has been the political significance and impact of the anti-terrorist legislation since it was introduced in 1986 ?

43. Effective power in the application of anti-terrorist laws seems to be concentrated on a small section of the prosecuting authorities (the parque), the « juges d'instruction » (fourteenth section) and the chambre d'Accusation (fifth section), working in close co-operation with a specialised arm of the police service. What is your view of this apparent concentration of resources and powers ?

44. What is your opinion of the way in which the following authorities act to apply and enforce the anti-terrorist legislation :

a) the local police ?
b) the local prosecuting authorities and «juges d'instruction » ?
c) the fourteenth section of the Parquet in Paris ?
d) the « police judiciaire » ?
e) the Chambre d'Accusation ?
f) the Cour d'Assises Speciale ?
g) the Tribunal Correctionel ?
h) the Cour de Cassation

45. Do you believe that the present anti-terrorist laws and the authorities which apply them should be :

a) maintained more or less in their present form ?
b) modified ?
c) strengthened ?
d) abolished ?

Please give reasons.

46. Apart from representing and defending your individual clients, have you made any representations about the anti-terrorist laws to the political parties, the Government or any other national or international bodies (e.g. European Court, Amnesty International, United Nations Commission on Human Rights ?). If so, what response have you received ?

47. Is the number of arrests and detention under the anti-terrorist laws :

a) rising ?
b) remaining fairly constant ?
c) declining ?

48. If there is any trend (see 8 above), to what do you attribute it ? (e. g. change of Government, unfavourable decisions in the European Court, etc)

49. In what important ways does the anti-terrorist legislation differ from the «droit commun » :

a) in theory ?
b) in the way it is applied ?

50. What, if any, are you objections to the present anti-terrorist legislation and the way it is applied ?

51. What effect, if any, can the « partie civile » have on proceedings under the anti-terrorist laws ?

**Annex 2**

**Copy of the Front page of the Home Office bulletin providing statistics on the application of anti-terrorist legislation in Britain**

## Annex 3

### List of officials we met in the course of our inquiries

**Representative of the Prime Minister**
- Robert Gelli, technical adviser (justice) to the Prime Minister

**Representatives of the Ministry of Justice**
- Michel Debacq, technical adviser
- Eric Spitz, adviser on questions of civil liberties
- Emmanuel Rébeillé-Borgella, deputy director of the Prison Service
- Mme. Pinet-Uriot, head of the Prison Service section in charge of individual prisoner regimes

**Representatives of the legal authorities**
- Alexandre Benmaklouf, State Prosecutor at the Court of Appeal
- Elisabeth Ponroy, President of the Chambre d'Accusation at the Court of Appeal
- Philippe Chemithe, Deputy State Prosecutor
- Jean-Louis Bruguière, Laurence Le Vert, Gilbert Thiel, Jean-François Ricard, Examining magistrates ("juges d'instruction"), responsible for investigating all "terrorist" cases

**Representatives of the "police judiciaire"**
- Bernard Gravet, Director-General
- M. Marion, Head of the National Division against terrorism

## Annex 4

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**Personal Notes**

## France

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