

Statewatch article: RefNo# 6624

France: New internal security law

Statewatch bulletin, vol 12 no 6 (Nov-Dec 2002)

New laws governing the exercise of police powers and the criminalisation of a host of new offences place the blame, and appear to be aimed directly at the poor and the "foreign"

Nicolas Sarkozy, interior minister in the Jean-Pierre Raffarin government, presented a draft bill on internal security (projet de loi de sécurité intérieure, PLSI) in the Assemblée Nationale (French parliament) on 23 October 2002. The text was an expression of the goals sought by its predecessor, the loi d'orientation et de programmation pour la sécurité intérieure (LOPSI), approved on 29 August 2002, that establishes a five-year plan and follows the priorities to be addressed in that period, particularly making the national police force and paramilitary gendarmerie more effective in criminal investigations and improving security. Provisions include an increase in police numbers, better cooperation between forces, simplified procedures and lower thresholds for the recording of personal information in law enforcement databases and stop-and-search. These measures will be supplemented by the introduction of tough sanctions against petty crimes such as begging (which may even be construed as organised crime!), prostitution, squatting or obstructing public highways. A number of organisations - including trade unions, opposition parties, civil liberty groups, lawyers and magistrates have described the law as "instituting a Republic in which poverty is considered a crime and in which the expression of a conflict becomes a crime".

LOPSI: more police, more powers

The reorganisation of French internal security under LOPSI has a planned budget of 5.6 billion euros between 2003 and 2007, and includes the creation of 13,500 new jobs to be divided between the gendarmerie (7,000) and the national police force (6,500) over this period. Provisions are also made for gendarmes who reach their age limit to extend their service by a year, though the plans do not only concern police numbers. They also attempt to create a system whereby policing will permeate civil society, through:

- the establishment of civilian reserve officers to be used in the case of "serious crises";
- an increased number of six-man patrolling squads for "problem areas";
- the strict management of municipal, national and paramilitary police forces by central and local political authorities who would have regular meetings with police chiefs;
- increased cooperation between forces through regular high level meetings;
- the shared use of databases - the scope of which are extended to "petty and medium-scale delinquency" in the PLSI;
- and a reduction in legal restraints on the use of investigatory powers.

LOPSI's overall aim is to "fix the new institutional architecture of internal security", and to "give internal security services a renewed judicial framework to allow them to combat certain kinds of criminal conduct and delinquency more effectively". A network of international liaison officers will be developed,

with officers and funds made available for activities outside France that involve internal security, such as combating terrorism, organised crime and money laundering, international crime syndicates and 'illegal immigration' networks. This appears to tie in with the EU Framework Decision on joint investigation teams (OJ 2002 L 162/1) and proposed Decision on the joint use of liaison officers in third countries (OJ 2002 C 176/8).

PLSI: security as "the first of all liberties"

The PLSI's explanatory memorandum claims that new framework is needed to address the four million crimes recorded in France in 2001. With no mention of social factors such as exclusion, it assumes that crime can be reduced by improving the effectiveness of internal security forces; "modernising" the French legal system; and "strengthening the authority and ability of public agents" to restore security. While paying lip service to the need to "strike a balance between the respect for individual liberties" and the need for effective action to "restore security", it rests on the assumption that the latter is a "fundamental right and the first of all liberties".

The draft law comprises six parts. Part 1, which includes measures concerning internal security forces, databases, terrorism and the protection of persons and property, is examined in detail below. Part 2 establishes a stricter control on the purchase and possession of weapons and ammunition. Part 3 grants increased powers to local councils and municipal police forces to combat delinquency, such as wider access to vehicle registration and driving license databases and the power to confiscate vehicles. Part 4 provides private security activities with a legal framework that defines the investigative activities that may be carried out and deals with the procedures for the authorisation and registration of firms and individuals. It also lays down the powers of private security agents, and demands that such agents be professional and do not carry out any other activities outside their private security roles. Part 5 is entitled "miscellaneous measures" and strengthens the legal protection of internal security agents and their families, and of a wide new range of "public and private officers", such as private security guards, caretakers, as well as teachers, social workers, medical professionals and firemen etc. Part 6 covers measures applicable in overseas French territories.

Organisational issues

Part 1 of the PLSI is comprised of six chapters, the first of which establishes the responsibility of the regional préfet (heads of police) to direct and coordinate internal security measures and the action of regional internal security forces (both from the national police and paramilitary gendarmerie) involved in administrative activity or public order. Préfets can also call on assistance from other local services such as customs, taxation and anti-fraud bodies, for internal security purposes. Zone préfets coordinate the actions of regional préfets in cases involving public order situations that may affect two or more regions in a zone.

Judicial procedure

The second chapter simplifies legal procedures and extends the competencies of judicial police officers beyond the constituency to which the court under whose authority they are operating belongs, ostensibly to improve the effectiveness of judicial investigations. Reserve police or gendarmerie officers who have previously undertaken judicial police functions may be called upon to fulfil such functions again. Article 4 lowers the burden of proof for ID checks to be carried out on vehicles, including mobile-homes and camper-vans, or individuals from "evidence allowing to presume" to "one or more plausible reasons to suspect": this replacement of concrete evidence with plausible suspicion will appear again in relation to databases. In particular places and for specific periods decreed by an investigating

magistrate (of no more than 24 hours, though these are renewable), judicial police officers may stop and search individuals or vehicles for a range of crimes. This marks an expansion from terrorism, illegal explosive or weapon possession, and drug trafficking to the inclusion of theft, "serious threats against persons or property" and abetting crimes, apart from carrying out customary identity checks. Such stop-and-searches only need to be recorded if an offence is uncovered, or on request from the vehicle's driver, and if a different offence is discovered from the one motivating the search, the search is nonetheless valid.

Law enforcement databases

The third chapter deals with automated information systems holding information on named individuals for participation in crimes or offences involving "troubling public safety or peace, threats against persons or goods, actions linked to forms of organised delinquency, or actions against the dignity of persons". One of the main themes of the law is to coordinate the efforts of the police and gendarmerie and sharing the use of their respective databases is seen as one of the means of achieving this. Members of the national police, gendarmerie and judicial police officers who have been selected and granted special authorisation, are granted access to the databases, and Article 12 allows the transmission of the information to international police cooperation bodies such as Interpol or Europol, or to foreign police forces in accordance with international agreements such as the EU Mutual Legal Assistance Convention 2000. Newly proposed amendments also grant them power not only to access communication data, but to request its preservation by Internet Service Providers (ISPs) and to make 'remote' computer-searches, including of data and systems accessible linked to the initial system.

The databases may contain information on people who are the subject of preliminary investigations; have been caught in the act of committing a crime; are the subject of information requested by a magistrate; or on the basis of evidence or serious suggestions "proving or allowing to presume participation in committing the acts that are under investigation". According to a recent amendment before the parliamentary assembly first reading, the information held would be erased in the case of investigations that did result in prosecution or where individuals are acquitted only at the explicit request of the General Attorney. The Cabinet will decide upon the length of time during which the data may be retained when investigations do not result in trials, or are not followed up for lack of evidence. It will also decide the procedures for updating or erasing information, allowing access to information based on public order concerns and the secrecy of investigations, the conditions under which information may be transmitted in the context of administrative or security police missions, and those under which victims of crimes may have information concerning them erased after the person responsible for the crime has received a final sentence.

Article 13 makes permanent some emergency provisions taken in the Law for Sécurité Quotidienne (LSQ) on 15 November 2001 and extends the reasons for which administrative authorities are allowed access to automated databases for reasons including the taking of decisions on the recruitment, appointment or authorisation of individuals to undertake a specified list of public sector jobs, or private sector activities of a sensitive nature (particularly in the fields of security or defence); and to evaluate applications for French nationality or for the renewal of entry or residence permits by migrants.

Article 14 will establish fixed and permanent mechanisms for the automatic control of data on stolen vehicles in all "appropriate" locations, such as land borders, ports or airports, and major national and international transit routes, to combat car theft and trafficking stolen cars.

The fourth chapter deals with the national DNA database (fichier national automatisée des empreintes

génétiques, FNAEG). Originally reserved for offences of a sexual nature, it will be extended to a long list of crimes, ranging from crimes against humanity, crimes and offences that threaten peoples' lives, torture, threatening fundamental national interests, acts of terrorism and organised crime including organised begging and prostitution, to violence against persons or property, threats against people or property, drug trafficking, theft, extortion, money laundering, and aiding and abetting criminal acts. Furthermore, the lower threshold of "one or more plausible reasons" to suspect that an individual may have committed one of the specified offences justifies inclusion, rather than the gathering of concrete evidence. A penalty of six months' imprisonment and a 7,500 Euro fine (approx £5,000) introduced for the refusal to allow a sample to be taken has been recently doubled and is raised to 2 years' imprisonment and a 30,000 Euro fine (approx £20,000) for persons who have already been found guilty. These penalties are cumulative with any other sentences that the individual in question may receive.

Chapter 5 extends the period in which temporary anti-terrorist legislation will be in force concerning searches conducted by internal security officers without permission from the searched person and the retention of data on communications by telecommunications operators from the end of 2003 to the end of 2005.

Criminalisation of 'petty crimes'

Chapter 6 introduces a raft of measures to prevent the spreading of "certain forms of criminality" or "the development of situations that trouble the peace of citizens" and their right to security. It introduces heavy penalties for offences such as prostitution, begging, squatting, and newly qualified petty-crime called "noise assault" sanctioned by a two month jail penalty. Loitering in groups in communal areas within buildings if this entails obstruction, drug dealing, or aggressive or threatening behaviour is also introduced.

Combined with the provisions on plausible suspicion, prostitution or approaching someone in public with a view to recruiting them to carry out sexual relations in exchange for money, may be gauged by a "[person's] clothing attire or attitude". The distinction between active (prostitute) and passive (client) recruitment is abolished, and what was previously a non-custodial offence will carry a six month prison sentence and 7,500 Euro fine (approx £5,000). Soliciting, accepting or obtaining sexual relations with a minor or particularly vulnerable person, is an aggravating factor.

A new criminal offence, aimed at travelling communities, of installing oneself in association with others on land belonging to the local council or private individuals with a view to residing there without authorisation is introduced, to be punished with six months' imprisonment and a 3,750 Euro fine (approx £2,500). If the occupation is carried out using a vehicle, the draft law envisages further sanctions: the seizure of the vehicle, restitution (upon proof of the means and legality of its acquisition), and a three-year suspension of the person's driving license.

Threatening public officers (including judges, jurors, lawyers, public or ministry officials, gendarmes, police, customs or prison service officers, or others representing public authority or responsible for public service duties such as teachers, social assistance agents, emergency doctors, firemen etc) during the exercise of their duties will carry a two year prison sentence and a 30,000 Euro (approx £20,000) fine, rising to five years and 75,000 Euro (approx £50,000) if a death threat is involved. This assigns to these public and private agents the same privileges and as police officers, and by placing upon them some law enforcement responsibilities, some have argued that their status will be raised to that of auxiliaries of the police. Article 20 eliminates the requirement that the menace be "repeated or

expressed through writing, an image or any object", and extends the measure's scope to the public officers' children, family, spouse's family and anyone living with them, as well as to security guards working in buildings. This means that the burden of proof is lowered and that a heated argument with any of a wide range of public officers could result in crippling sanctions for an individual. Causing a nuisance in communal spaces (entrance, stairways or other collective areas) within "collective residence buildings" (ie blocks of flats), in the form of "violence, the threat of violence, the deliberate obstruction of access and the free movement of persons, or of security measures", if committed by several accomplices, is to carry a two year prison sentence and a 3,750 Euro fine (approx £2,500).

“Organised” begging, food stands and mobile phone theft

The exploitation of begging is introduced as an offence punished with three years in prison and a 45,000 Euro fine (approx £30,000), and involves profiting from begging by other persons, organising the begging activities of others for profit or recruiting, training or convincing persons to beg. This measure also applies to someone who is in habitual contact with one or more beggars and cannot justify their life-style. The punishment increases to five years' imprisonment and a 75,000 Euro (approx £50,000) fine if the crime involves: using a minor or a particularly vulnerable person, several persons, if a person has been encouraged to beg abroad, before entering France, if a person exercising parental or other authority over the person is responsible, if constraint or violence are involved, or if numerous persons are acting in association. Mobile phone theft, international organised crime and unauthorised take-away food stands are also addressed. Begging undertaken "aggressively" or using the threat of a dangerous animal carries a six month prison sentence and 3,750 Euro fine (approx £2,500).

Article 24 allows the administrative closure of take-away food stands for no more than three months if its activity represents a threat to public order, security or the peace. With regards to mobile phone theft, anyone responsible for carrying out alterations or technical adjustments on stolen mobile phones is to be subjected to the same punishment as the main culprit of the theft, and operators are required to implement technical mechanisms to prevent the use of their networks by mobile phones that have been declared stolen. Finally, to combat international organised crime syndicates, new categories of crimes are included for which foreigners' temporary residence permits may be withdrawn, including prostitution, exploitation of begging or aggressive begging, and recruitment for such syndicates.

Fear of crime, racism and xenophobia

In a speech to present the LOPSI in the Assemblée Nationale on 16 July 2002 Sarkozy painted a picture of France in which the increase in crime meant that the French people were no longer free, "Living with fear for oneself or ones loved ones on a daily basis is not to live in freedom". He laid the blame squarely on foreigners for ordinary French citizens' real or imagined fears, arguing that in France the issue has been a taboo for too long. Prostitution (and problems linked to it such as drugs aids and organised rackets), drug dealing and aggressive begging or begging by minors, are explicitly described as "foreign" crimes, and must no longer be tolerated. He accepts that such crimes are the result of human misery, "which must be fought and not suffered".

It is in this context that the introduction of heavy sanctions against what are in many cases victimless crimes must be understood. The measures are aimed explicitly at migrants, beggars, travellers, prostitutes or even groups of youths who gather within block of flats, or around take-away food stands, because their very presence and visibility threatens the "peace" of citizens (for real or imagined reasons). Thus, offences are created to discourage this presence by subjecting it to increasingly stringent conditions, including crimes by association when members of a group carry out an offence, that will sometimes entail crippling fines as well as prison sentences.

Another aspect, which was in LSQ Bill and is strengthened in PLSI, is the systematic and exploratory access to all communication data. In this matter, the French PLSI is implementing a new procedure of “automatic computer-searches” that might well be un-constitutional.

Sources: Loi n. 2002-1094 du 29 août 2002 d’orientation et de programmation pour la sécurité intérieure (LOPSI); Nicolas Sarkozy speech in the Assemblée Nationale to present LOPSI, 16.7.2002; Nicolas Sarkozy response to criticism from the magistrates' trade union regarding LOPSI, 26.9.02; Projet de loi pour la sécurité intérieure 23.10.2002, and explanatory memorandum; "Sur le projet de loi sur la sécurité intérieure" ? appeal opposing the law, 21.10.02; "Letter to Mr. Nicolas Sarkozy", by the Ligue des Droits de l'Homme, and the lawyers' and magistrates, trade unions, 29.10.02. El País 23.10.02.

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Statewatch, PO Box 1516, London N16 0EW, UK. Tel: + 44 (0)20 8802 1882 Fax: + 44 (0)20 8880 1727, email office@statewatch.org