

TG: EUR 21/002/2002

M. Dominique Perben
Minister of Justice
13 place Vendôme
75042 Paris Cédex
FRANCE

02 December 2002

Dear Minister

Following your appointment to the French government earlier this year, Amnesty International is writing to bring to your attention some of the issues which are of continuing, and in some cases, of increasing, concern to this organization.

As you may already know from the reports published annually by Amnesty International, the organization remains particularly concerned about those issues within the brief of the Minister of Justice which include:

- effective impunity of a number of police officers or gendarmes accused or convicted of acts of violence or involvement in deaths in custody (we wish to refer to this issue in a separate letter);
- length of provisional (or pre-trial) detention of some detainees accused of politically-motivated crimes;
- prolonged isolation of some convicted prisoners and the detrimental effects to health of such isolation or other cruel, inhuman or degrading treatment;
- apparent incompatibility with imprisonment of some seriously ill prisoners;
- severe restriction of the freedom of movement of some persons officially recognized as political refugees by the French government and subjected to a form of administrative detention (*assignation à résidence*).

We wish to take the present opportunity to focus mainly on the length of provisional detention in the case of a detainee who is also reportedly very sick, and on reports about some convicted prisoners who are seriously ill and whose illness may not be compatible with their continuing imprisonment.

Length of provisional detention: You will be aware that, in July 1999, the European Court of Human Rights found France guilty of torture and of excessively lengthy judicial proceedings (in the case of Ahmed Selmouni) and that, in a separate judgment, the Court also found that the French authorities had breached international norms on the length of provisional detention.

The latter judgment, given in November 1999, found that France had violated international norms on trial within a reasonable time in the case of Ismael Debboub, (also known as Ali Hussein), one of the defendants in the mass trial of persons accused of belonging to support networks for Algerian armed opposition groups, commonly known as the “Chalabi” trial. In that case, in a letter dated 29 December 1998, Amnesty International had expressed to the then Minister of Justice its concerns in relation, among other things, to the length of provisional detention to which many defendants had been subjected. This organization, which believed that the judicial proceedings had violated a number of international norms relating to fair trial, noted that 24 defendants had been held

in provisional detention for over four years before the opening of the trial, and of these a large number had reportedly been held in isolation.

Amnesty International is currently concerned about the situation of Alain Solé, an alleged member of the Breton nationalist group Emgann, who was arrested on 4 October 1999 in connection with alleged illegal activities by Breton nationalists (notably the reported theft of explosives at Plévin on 28 September 1999). Alain Solé, who has now been held in provisional detention for over three years, is a diabetic and reportedly did not receive adequate medical care in the first months following arrest. He reportedly became insulin-dependent while in prison, and tried to commit suicide on 24 March 2001 at the *maison d'arrêt* of Villepinte after additionally falling ill with a viral condition. On 9 October 2002 Alain Solé was reportedly transferred urgently from the hospital wing of the *maison d'arrêt* of Nantes to the prison hospital at Fresnes with circulatory problems affecting one leg. Amnesty International was subsequently informed that Alain Solé, whose circulatory problems could be related to an infarction, requires surgery.

On 15 October 2002, in a letter that was made public, Alain Solé's lawyer, Me Isabelle Coutant Peyre, wrote to ask you to take all necessary measures to ensure that the law in respect of this detainee was upheld. Me Coutant Peyre noted that, according to the Law of 15 June 2000 on the protection of the presumption of innocence and the rights of victims – which sets out, among other things, the various lengths of provisional detention governed by Article 145-1 of the Code of Criminal Procedure - Alain Solé should have been released on 4 October 2001, a year after his arrest. On 19 June 2001 the *chambre de l'instruction* indeed ordered his release. However, he was then placed under examination for a separate incident - that of the bomb attack on the McDonalds food outlet which took place at Quévert on 19 April 2000, when Alain Solé was already in prison. He has therefore remained in provisional detention.

Amnesty International wishes to stress that, according to Article 5(3) of the European Convention on Human Rights and Fundamental Freedoms everyone has the right to trial within a reasonable time or release and that, in the case of those held in provisional detention, the obligation on the Government to expedite trials is even more pressing. International standards require that a person charged with, or under examination for, a criminal offence, be released from detention pending trial if the time deemed reasonable in the circumstances is exceeded. If, in addition, it is true that Alain Solé requires continual and specialised medical care, and that this cannot be provided in his present circumstances, his continuing detention is of particular concern. We should, therefore, be grateful if you would confirm the above-mentioned reports with regard to the state of health and provisional detention of Alain Solé. In particular, we should appreciate knowing the decision of the *chambre de l'instruction*, which was due to be made on 12 November 2002, with regard to his new application for release, and whether, in your view, the authorities are acting with the necessary diligence.

Convicted prisoners with serious medical conditions: On 14 November 2002, the European Court of Human Rights stated that it held unanimously that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, in respect of Jean Mouisel, a French national sentenced by a French court to 15 years' imprisonment on 12 June 1996 for armed robbery, kidnapping and fraud.¹ The Court awarded him 15,000 euros (EUR) for non-pecuniary damage. According to the Court, a medical certificate dated 8 January 1999 showed that Jean Mouisel "was suffering from chronic lymphatic leukaemia. When his condition worsened, he had chemotherapy sessions at hospital in the daytime. The applicant was put in chains during the journeys to the hospital and claims that during the chemotherapy sessions his feet were chained and one of his wrists attached to the bed. He decided to stop his medical treatment in June 2000, complaining of these conditions and of the guards' aggressive behaviour towards him". Jean Mouisel was subsequently released on licence.

In its judgment the European Court of Human Rights observed that: "a prisoner's state of health, age or serious physical disability were factors that had to be taken into account under Article 3 of the Convention with regard to custodial sentences. Although there was no general obligation to

¹ Application no. 67263/01

release prisoners suffering from ill health, Article 3 required States to protect the physical integrity of persons who had been deprived of their liberty, notably by providing them with any necessary medical assistance. The Court also reiterated that the method of execution of the measure should not subject the person detained to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention.”

The Court also referred to specific French legislation on this subject, including the Law of 15 June 2000 on the protection of the presumption of innocence and the rights of victims, under which prisoners could be released on licence when they needed to receive treatment, and the Law of 4 March 2002 on the Rights of Sick Persons, according to which prisoners’ sentences could be indefinitely suspended if they were critically ill or suffering from a chronic condition that was incompatible with their continued detention.² While noting that, in the case of Jean Mouisel, neither remedy had been available to him during the period concerned, as he did not satisfy the conditions required to obtain release on licence and the Law of 4 March 2002 had not by that stage been passed, the Court found that, among other things, his condition had become increasingly incompatible with his continued detention as his illness progressed, yet the prison authorities had failed to take any special measures.

With regard to another case involving a seriously ill prisoner, we understand that, on 19 September 2002, you requested the public prosecutor to lodge an appeal against the decision of the Court of Appeal of Paris to release the former high-ranking official, 92-year-old Maurice Papon, on the grounds that his health was incompatible with his detention. The court took into account the concordant expertise of two colleges of medicine that the health of M. Papon, who was sentenced on 2 April 1998 to 10 years’ imprisonment for complicity in war crimes, was seriously failing. If this is indeed the case, the decision of the Court of Appeal would appear to be fully in accordance with the humanitarian aims underlying the Law of 4 March 2002. According to reports, some other prisoners have now benefited from the provisions of the new law. Given widespread concerns about the number of prisoners suffering from AIDS, terminal cancer and other severe or chronic illnesses, we should be grateful if you would let us know how many prisoners have so far benefited from the new law, and whether further requests for suspension of their prison terms are currently being examined.

We wish, in this regard, to draw your attention to Amnesty International’s longstanding concern about the deteriorating health of at least two of the four former members of the armed group *Action directe*. On 31 January 2001 this organization publicly urged the French government to uphold international standards with regard to the treatment of Joëlle Aubron, Nathalie Ménigon, Jean-Marc Rouillan and Georges Cipriani, who were arrested in February 1987 and sentenced in 1994 to multiple terms of life imprisonment for politically-motivated acts of violence, including murder. For most of the 14 years they had been imprisoned they had been held under varying degrees of solitary confinement and isolation. The reported breakdown in the physical and mental health of Nathalie Ménigon and Georges Cipriani, in particular, was widely attributed to the years of isolation to which they had been subjected. At the time of Amnesty International’s 2001 appeal, Nathalie Ménigon was suffering from serious cardio-vascular problems and depression and was reported to have had two heart attacks. She was also reported to be paralysed on her left side and to be suffering from speech problems. Georges Cipriani was reported to have gradually lost his sanity and to no longer be aware that he was being held in prison at all. Prison guards had expressed concern about his condition.

Amnesty International believes that prolonged isolation may have a detrimental effect on the physical and mental health of prisoners and may in some circumstances amount to cruel, inhuman and degrading treatment. In 1988 the organization wrote to the Justice Minister to seek clarification about

² Article 10 of the Law 2002-303 of 4 March 2002 on the rights of sick persons and the quality of the health system (*Loi no. 2002-303 du 4 mars 2002 relative aux droits des malades et à la qualité du système de santé*) inserts into Article 720-1 of the Code of Criminal Procedure, a new clause 720-1-1, according to which: “*La suspension peut également être ordonnée, quelle que soit la nature de la peine ou la durée de la peine restant à subir, et pour une durée qui n’a pas à être déterminé, pour les condamnés dont il est établi qu’ils sont atteints d’une pathologie engageant le pronostic vital ou que leur état de santé est durablement incompatible avec le maintien en détention, hors les cas d’hospitalisation des personnes détenues en établissement de santé pour troubles mentaux.*”

the conditions under which the four detainees were held. Ten years later, in 1998, the organization again sought clarification from the Justice Minister after receiving reports that, 12 years after their arrest and four years after conviction, the prisoners were still being subjected to strict isolation and to severe restrictions on their correspondence and visits. We should be most grateful if you would confirm in what circumstances the four *Action directe* prisoners are now being held, and whether, in view in particular of the reported loss of sanity of Georges Cipriani, and the severe deterioration in the mental and physical health of Nathalie Ménigon, you believe that there is a case for suspension of their sentences under the Law of 4 March 2002.

Administrative detention in the form of “assignation à résidence”: We wish, finally, to draw your attention to the organization’s longstanding concern with regard to the administrative procedure of *assignation à résidence*, whereby some political refugees, asylum-seekers or former prisoners who have completed sentences served in France but may not, for whatever reason, be returned immediately to their country of origin, are confined to certain specific and very limited geographical areas without recourse to a court of law in which they can contest the detention order.

Amnesty International Report 2001, as well as previous reports, referred in particular to the case of Salah Ben Hédi Hassen Karker, an officially recognized political refugee who had, by 2000, been detained in this way for more than six years, far from his wife and child, and without having committed any offence in France. Amnesty International has since received an unconfirmed report that the conditions of Salah Karker’s detention order have been relaxed by the French authorities. We should be most grateful if you could let us know whether, and in what circumstances, M. Karker is currently *assigné à résidence*. We should also appreciate you letting us know how many other persons are being detained in this way, and for what reasons.

Yours sincerely

For Irene Khan
Secretary General